

Human Rights and  
Trafficking in Women  
and Young People.  
**An Educational  
Toolkit for Teachers  
and Students**

Daphne Project



## Human Rights and Trafficking in Women and Young People in Europe

# INTERNATIONAL LEGAL POCKET COMPILATION



University of Padua, Interdepartmental Centre on  
Human Rights and the Rights of Peoples



La Strada Foundation against  
Trafficking in Persons and Slavery, Poland



Ludwig Boltzmann Institute  
of Human Rights



Association  
Human Rights - Human Development

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Human Rights and Trafficking in Women and Young People.  
An Educational Toolkit for Teachers and Students

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## **Introduction<sup>1</sup>**

The aim of this *International Legal Pocket Compilation* is to provide teachers with a basic yet complete educational Toolkit containing the main international and regional laws on the dramatic theme of trafficking in human beings and its manifold implications under the human rights perspective, with particular reference to women and young people's condition involved in sexual exploitation.

The material selected herein takes into account both the need –however unfeasible – for the most comprehensive information possible - and didactic motivations.

Trafficking in human beings and the manifold implications this phenomenon generates from a human rights point of view, has given rise to a rich documentation on the issue which are presented herein as articles and excerpts. All the acts listed in this Compilation include basic reference elements and a brief introductory note that should help teachers transmit awareness to students and diffuse knowledge on human rights, which in its very nature is transversal to single disciplines.

In identifying the material and in its thematic development the model adopted was that of the United Nations classification, especially from the Office of the United Nations High Commissioner on Human Rights.

Issues on trafficking in human beings must depart from a legal basis rooted in juridical instruments of universal breadth that is provided by the "International Bill of Human Rights", especially the 1948 Universal Declaration on Human Rights and the two Covenants on the economic, social and cultural rights and on civil and political rights of 1966.

The rest of the International Legal Pocket Compilation is organized in thematic categories which trace both binding norms (conventions, treaties, protocols...), and recommendations (declarations, resolutions, principles, guidelines, etc.) that, depending on the category, can prove pertinent.

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<sup>1</sup> The documents here proposed, if otherwise annotated, are those official or those contained in accredited publications of specialists on the topic. All the acts of the European Union are available on line at: [www.europea.eu.int](http://www.europea.eu.int)

The section on international instruments is followed by a section on European regulations. Here too, next to treaties, space was dedicated to certain non-binding but politically significant documents that are also particularly useful for didactic objectives and an in-depth study of the European approach to trafficking in human beings under a human rights perspective.

The many acts, binding and non-binding, embodied herein can be found in other parts of the Toolkit.

Yet, this Compilation, if on the one hand can serve to integrate other parts of the Toolkit, on the other hand, and because of the relevance and thoroughness of the texts contained herein, can be used separately from other material as an in-depth basis to discover the implications of human trafficking from a human rights perspective.

# **PART 1: THE HUMAN RIGHTS ARE FOR EVERYBODY**

## **Section 1: The International Bill of Human Rights**

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS,**

**Adopted and proclaimed by General Assembly of the United Nations with resolution 217 A (III) of 10 December 1948 (Excerpts)**

*The Udhr is not a binding treaty yet provides the basic norms for international human rights standards. All the principle affirmations declared in Udhr over the years have been recognized as legally binding. The Udhr represents the manifesto of the human rights paradigm.*

#### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Adopted and opened for signature, ratification and accession by General Assembly with resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27 (Excerpts)**

*The International Covenant on Economic, Social and Cultural Rights translates into a binding treaty some of the principles announced in the Udhr. It does not contain an explicit prohibition of trafficking but it establishes a series of obligations whose violation is at the base of sexual exploitation of women and of other contemporary forms of slavery and trafficking in human beings.*

#### **Part III**

#### **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or

accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d ) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be



protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations with resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.**  
(Excerpts)

*The International Covenant on Civil and Political Rights reproduces, in a binding way, some basic principles of the Udhr that prohibit slavery, servitude and the slave trade providing a general prohibition to perform forced or compulsory labour.*

### **Part II**

#### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and

to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### **Part III**

#### **Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. (...)

#### **Article 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.

#### **Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

#### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (...)

#### **Article 10**

1. All persons deprived of their liberty shall be treated with humanity and

with respect for the inherent dignity of the human person. (...)

### **Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

### **Article 13**

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons

especially designated by the competent authority.

### **Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name. (...)

## **INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

**Adopted and opened for signature and ratification by General Assembly of the United Nations with resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19.**

(Excerpts)

*This Convention is not directly connected with trafficking, but deals with racial discrimination and racism, elements that increase the vulnerability of the victims of trafficking both during the trafficking process and in destination countries. This phenomenon is particularly evident for the victims of sexual exploitation*

### **Part I**

#### **Article I**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal

footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

## Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (....)

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

## INTERNATIONAL CONVENTION RELATING TO THE STATUS OF REFUGEE

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entry into force 22 April 1954, in accordance with article 43.

(Excerpts)

*This Convention is the most significant treaty on refugees. It is the basis of all regional and national instruments on this topic*

### Article 1. Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee," shall apply to any person who: (...)

(2) As a result of events occurring before 1 January 1951 and owing to 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.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national. (...)

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of

the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United

Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that.

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

## **CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**Adopted and opened for  
signature, ratification and**

**accession by General Assembly  
resolution 39/46 of 10 December  
1984, entry into force 26 June  
1987, in accordance with article  
27 (1).**

(Excerpts)

*This Convention could concern situations in which public officials or other persons, acting in an official capacity, are involved in severe forms of abuse and ill-treatment. This problem could emerge in cases in which victims are considered criminals.*

### **Part I**

#### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### **Article 3**

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

## **Section 2: Rights of women**

### **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN,**

**Adopted and opened for  
signature, ratification and**

**accession by the General  
Assembly of the United Nations  
with resolution 34/180 of 18  
December 1979, entry into force  
3 September 1981, in  
accordance with article 27(1).**

(Excerpts)

*This Convention represents the most important reference for women's rights. It is constructed on a basis of a complete scope of measures connected to the elimination of all forms of discrimination against women, giving a definition of sexual discrimination. Article 6 specifically obliges state parties to adopt measures to suppress all forms of traffic in women and their exploitation in prostitution. But it does not contain any reference to violence against women and it does not create a right to live free from violence and to suffer damage.*

The States Parties to the present Convention,

(...)

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of



their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity, Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

(...)

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

(...)

Have agreed on the following:

### **Part I**

#### **Article I**

For the purposes of the present Convention, the 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.

#### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against

women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **Part II**

#### **Article 9**

1. States Parties shall grant women equal rights with men to acquire,

change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### **Part III**

#### **Article 10**

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: (...)

#### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the

application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in

dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

## **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

(....)

### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

### **Part IV**

#### **Article 15**

1. States Parties shall accord to women equality with men before the law.

(...)

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

#### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(...)

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN**

**Proclaimed by the General Assembly of the United Nations during the 85th**

**plenary meeting with resolution 48/104  
of the 20 December 1993.**

(Excerpts)

*This Declaration represents the document that offers, at an international level, the definition of violence. It is very interesting because it contextualizes the phenomenon of violence. The document needs to be considered with the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women because it can contribute to the elimination of violence against women set forth in the present resolution, to strengthen and complement the process to protect and recognize women's rights. This resolution was adopted as remedy and answer to the political demand of NGO's and women association during the International Conference on human rights held in Vienna in 1993. It represents the most recent example of "soft law" on the topic of violence at international level. A treaty on the topic of violence exists in the context of Organization of American States. The inter American Convention on The Prevention, Punishment And Eradication of Violence Against Women "Convention of Belem Do Para" adopted in Brazil on 06/09/94 and entered into force the 03/05/95.*

The General Assembly,  
Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,  
Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,  
Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,  
Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat

violence against women was recommended, and to the full Discrimination against Women, Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women, Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men, Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective

steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

Convinced that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their

responsibilities, and a commitment by the international community at large to the elimination of violence against women,

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

### **Article 1**

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

### **Article 2**

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

### **Article 3**

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favourable conditions of work;
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

#### **Article 4**

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States

should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

f) Develop, in a comprehensive way, preventive approaches and nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and



should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women;

those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and NGO and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

### **Section 3: Rights of migrants**

#### **INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

**Adopted by General Assembly  
with resolution 45/158 of 18  
December 1990, entry into force:  
1 July 2003, in accordance with  
article 87**

(Excerpts)

*The Convention provides, an international definition of "migrant workers" and of the members of their families, establishing some international standards for their treatment. It is also relevant because it recognizes migrant workers not only as a work force but also as parts of a social entity and as members of a family nucleus. According to this treaty, migrant workers are entitled to fundamental rights. They constitute a vulnerable group needy of particular care. This important juridical tool of the United Nations tries both to prevent the exploitation of migrant workers and the members of their families and to put end to the illegal and clandestine movements of irregular people entering in the*

*countries, establishing some universally recognized standards for their protection. The Convention considers all the phases of the migratory process, from the preparations for the departure to the re-entry. The really innovative course of the Convention, nevertheless, concerns the fact that all the migrant workers and family members should enjoy some fundamental human rights. For the regular migrants the Convention provides some added rights. An aspect that certainly deserves to be in relief is that UN Convention defines the migrant without a residence-permit as irregular and not illegal. For this reason, all migrant workers and their relatives, including those people who are found in irregular situations, are entitled to fundamental human rights (art. 8-35). Based on the principle of equality of treatment and of non discrimination, migrant workers enjoy a series of rights on life, equal conditions of job and employment as local members of the State in which they live, freedom of choice of the working activity, moving and settling, freedom of thought, conscience, religion and faith, and personal safety. Furthermore, they are guaranteed the right to the health service, to education and professional training, to be reunited with the family and the*

*right to move their earnings, savings and personal possessions. Nevertheless, a series of prohibitions prescribed to avoid a cruel, inhuman or degrading treatment as torture, slavery and forced labour, the arbitrary deprivation of possessions; detention, the arbitrary judicial treatment, the forfeiture and the destruction of identity documents; collective expulsion, discrimination at the work place. This Convention completes the contents of ILO Conventions n. 97 concerning Migration for Employment (text revised, adopted in 1949 entry into force: 22:01:1952.) and n. 143 (Supplementary Provisions) Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers adopted in 1975 and entry into force: 09:12:1978.).*

## **Part I: Scope and Definitions**

### **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social

origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

### **Article 2**

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2.

(a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a

migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work

whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

#### **Article 4**

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

## **Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article

## **PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, entry into force: 28 January 2004, in accordance with article 22.**

(Excerpts)

*This Protocol offers a specific definition of smuggling of migrants, different from trafficking in human beings, considered in the other Protocol of the United Nations Convention against Transnational Organized Crime*

## **I. General provisions**

### **Article 2 Statement of purpose**

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

### **Article 3 Use of terms**

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

- (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
- (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (iii) That is being used by a person other than the rightful holder;
- (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

## **Section 4: Rights of the child**

### **CONVENTION ON THE RIGHTS OF THE CHILD**

**Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations with resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49.**  
(Excerpts)

*The Convention on the Rights of the Child (CRC) represents the most significant treaty for the protection of the rights of minors. It requires state parties to protect children against every kind of economic and sexual exploitation and to combat trafficking in children.*

*In a more specific way, these obligations, are contained and outlined in the Optional Protocol to the CRC, which requires state parties to combat the sale of children, as well as the ILO Convention No. 182 on the Worst Forms of Child Labour that obliges state parties to eliminate "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict." In these treaties "children" are defined as anyone under the age of 18.*

#### **Part I**

##### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

## **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

## **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

## **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

## **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

## **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for

the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements

### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;



(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any

refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.  
(...)

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

#### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

#### **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations with resolution 54/263 of 25 May 2000, entry into force 18 January 2002.**

(Excerpts)

*The Protocol gives specific definitions for the offences of the 'sale of children', 'child prostitution' and 'child pornography'. It also binds governments to criminalize and punish the activities related to these offences. It prescribes punishment not only for those offering or delivering children for the purpose of sexual exploitation, transfer of organs, or children for profit or forced labour, but also for anyone using children for these activities. The Protocol also protects the rights and interests of*

*child victims. Governments must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system. Children must also be supported with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration. As a complement to the Convention on the Rights of the Child, interpretation of the Optional Protocol's text must always be guided by the principles of non-discrimination, best interests of the child and child participation. The Protocol also stresses the relevance of international cooperation and public education as a means to combat these transnational activities.*

The States Parties to the present Protocol,  
(...)  
Have agreed as follows:

#### **Article 1**

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

#### **Article 2**

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

#### **Article 3**

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable

international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

## **Article 8**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as

that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration (...)

## **INTERNATIONAL LABOUR CONVENTION N. 182 ON WORST FORMS OF CHILD LABOUR CONVENTION,**

**Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted a Geneva, during the Session of the Conference n. 87 of the International Labour Organisation, on the 17 June 1999, entry into force 19 November 2000.**  
(Excerpts)

*This Convention lists the Worst Forms of Child Labour and is linked to other important binding and non-binding acts of ILO.*

*This Convention is explicitly aimed at liberating millions of children from all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment for use in armed conflict, prostitution and pornography, being used for illicit activities and all work that is likely to harm their health, safety and morale. The Convention recognizes the role of the national authorities to define the types of work that are likely to harm their health, safety and morale of children. It focuses on fighting the worst forms of child labour. Addressing this aim, Convention n° 182 covers all persons under the age of 18 aligned to the definition of the child under the UN Convention of the Rights of the Child. This Convention calls for international cooperation and assistance to make its provisions really applicable, including support for economic and social development, poverty eradication and education. Conventions n° 182 is considered as part of ILO's "core conventions". At the same level is ILO Convention n. 138*

*adopted in 1973 on Minimum Age for Admission to Employment*

### **Article 1**

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

### **Article 2**

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

### **Article 3**

For the purposes of this Convention, the term the worst forms of child labour comprises:

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

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

## **Section 5: Modern slavery**

### **SLAVERY CONVENTION**

**Adopted by the League of Nations Signed at Geneva on 25 September 1926, entry into force on 9 March 1927, in accordance with article 12. The Convention was amended by the Protocol done at the Headquarters of the United Nations, on 23 October 1953; the amended Convention entered into force on 7 december 1953 in accordance with article III**

(Excerpts)

*This Convention adopted by the League of Nations represents the first international treaty that defines slavery and slave trade and commits governments to abolishing slavery. It has been estimated that between 1815 and 1957 some 300 international agreements were adopted to suppress slavery in its various forms, including for example the 1910 International Convention for the Suppression of the White Slave Traffic, the 1915 Declaration Relative to the Universal Abolition of the Slave Trade, the 1926 Slavery Convention, the 1949 Convention for the*

*Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.*

### **Article 1**

For the purpose of the present Convention, the following definitions are agreed upon:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all 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.

### **Article 5**

The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or

tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that:

(1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes.

(2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.

(3) In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.

## **SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND**

## **PRACTICES SIMILAR TO SLAVERY**

**Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of the United Nations of 30 April 1956 and done at Geneva on 7 September 1956, entry into force on 30 April 1957, in accordance with article 13**

(Excerpts)

*This Convention adds to the definition of slavery provided by the 1926 Convention on slavery that remains operative, a list of institutions and practices similar to slavery to intensify, at national as well as at international level, the efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery. This Convention represents, to date, the most important legal international instruments on slavery and slave-like practices.*

### **Section I. - Institutions and practices similar to slavery**

#### **Article 1**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the

following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

( 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.

## **Article 2**

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

## **Section II. - *The slave trade***

### **Article 3**

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence

under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

2.( a ) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.

( b ) The States Parties shall take all effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.

3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

## **Section III. - *Slavery and institutions and practices similar to slavery***

(...)

### **Article 6**

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory

thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

#### **Section IV. - Definitions**

##### **Article 7**

For the purposes of the present Convention:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

(b) "A person of servile status" means a person in the condition or status resulting from any of the institutions

or practices mentioned in article 1 of this Convention;

(c) "Slave trade" means and includes all 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 person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

#### **INTERNATIONAL LABOUR ORGANISATION CONVENTION N. 29 ON FORCED LABOUR CONVENTION**

**Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its fourteenth session on 1930, entry into force on 1 May 1932, in accordance with article 28.**

(Excerpts)

*This is the first Convention that defines forced labour and lists its features.*

## **Preamble**

(...)

## **Article 2**

1. For the purposes of this Convention the term "forced or compulsory labour" shall mean 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.

2. Nevertheless, for the purposes of this Convention the term "forced or compulsory labour" shall not include:

(a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

( b ) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent

epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

## **INTERNATIONAL LABOUR CONVENTION NO. 105 ON FORCED LABOUR CONVENTION**

**Adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session, entry into force on the 17 January 1959, in accordance with article 4.**

(Excerpts)

*This Convention fully defines the obligation for the state parties to eradicate and to abolish all forms of forced labour. Convention members states must also be committed to*

*prevent forced labour in their countries.*

The General Conference of the International Labour Organisation ,  
(...)

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and (....)

#### **Article 1**

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:

- (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b)As a method of mobilising and using labour for purposes of economic development;
- (c)As a means of labour discipline;

- (d) As a punishment for having participated in strikes;
- (e)As a means of racial, social, national or religious discrimination.

#### **Article 2**

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1 of this Convention.

### ***Section 6: Trafficking in persons and exploitation of prostitution***

## **CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS**

**Approved by General Assembly resolution 317(IV) of 2 December 1949, entry into force 25 July 1951, in accordance with article 24.**

(Excerpts)

*This treaty constitutes the main international agreement on trafficking in persons and on the exploitation of the prostitution of others. Following its*

*ratification, several countries decided to close down the brothels and to criminalize the instigation and exploitation of prostitution, recognizing the right to practise in an autonomous way this activity.*

## **Preamble**

*Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:  
(...)*

*Now therefore*

*The Contracting parties*

*Hereby agree as hereinafter provided*

## **Article 1**

The Parties to the present Convention agree to punish 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.

## **Article 2**

The Parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

## **Article 6**

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

## **Article 16**

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the

offences referred to in the present Convention.

### **Article 17**

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

- (1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;
- (2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;
- (3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;
- (4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

### **Article 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.

### **Article 19**

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations there under and so far as possible:

- (1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;
- (2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and

nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

#### **Article 20**

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

## **PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS**

## **CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November**

**2000, entry into force 25 December 2003, in accordance with article 17.**

(Excerpts)

*By resolution 53/111, of 9 December 1998, the General Assembly established an Ad Hoc Committee open to all States to elaborate the International convention against transnational organized crime and three additional international legal protocols. The first session of the Ad Hoc Committee took place in Vienna, Austria, from 19-29 January 1999. The United Nations Convention against Transnational Organized Crime was adopted by the General Assembly. It was opened for signature at a High-level Conference in Palermo, Italy, in December 2000.*

*It is the first legally binding UN instrument in the field of transnational crime. State parties to the Convention are required to set out, in their domestic laws, four criminal offences: the participation in an organized criminal group; money laundering; corruption; and obstruction of justice.*

*The new instrument spells out how countries can improve cooperation on such matters as extradition, mutual legal assistance, transfer of proceedings and joint investigations. It contains provisions for victims and witness protection and shielding legal markets from infiltration by organized criminal groups. Parties to the treaty would also provide technical assistance to developing countries to help them take the necessary measures to upgrade their ability to deal with organized crime.*

*Also adopted by the Assembly are two optional protocols by which countries would undertake in-depth measures to combat smuggling of migrants and the buying and trafficking of persons especially women and children for sexual exploitation. A third protocol, dealing with the illicit manufacturing of and trafficking in firearms, has recently entered into force.*

*The Protocols on trafficking in human beings -- new forms of slavery -- and on smuggling of illegal migrants are intended to internationalize efforts to stem these practices.*

*The Trafficking Protocol gives a new international definition of trafficking and obliges state parties to establish trafficking in human beings as a criminal offence. The purposes of this Protocol are the prevention and the contrast of all conducts connected*

*with trafficking in persons, paying particular attention to women and children, the protection and assistance of the victims of such trafficking, with full respect for their human rights and the promotion and cooperation among States Parties in order to meet those objectives. Trafficking Protocol is a treaty characterized by the coexistence between the need to criminalize trafficking and to respect the victim's rights.*

*The Protocol definition offers a far reaching concept of trafficking in human beings that includes both the explicit use of force and coercion and the recognition that other forms of deception and human rights abuses (debt bondage, deprivation of liberty and control over one's labour and earnings, vulnerability, age...) can be, and often are, involved in trafficking for sexual exploitation. The initial consensus of the victim is irrelevant for the crime of trafficking where any of the means set forth in subparagraph a of article 3 have been used and always when in reference to a child.*

### **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,  
(...)

### **I. General provisions**

(...)

#### **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 5 Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures

as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

### ***Article 6 Assistance to and protection of victims of trafficking in persons***

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2 Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of

victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

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

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

### **Article 8 *Repatriation of victims of trafficking in persons***

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

person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be

necessary to enable the person to travel to and re-enter its territory

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### ***Article 9 Prevention of trafficking in persons***

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from re-victimization.

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.

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.

### ***Section 7: Prevention, protection, assistance***

## **UNHCHR RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING**

**Adopted by the Office of the High Commissioner for Human Rights (Unhchr). Document presented to the Economic and Social Council as an**

**addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).**  
(Excerpts without footnotes)

*The Recommended Principles and Guidelines on Human Rights and Human Trafficking, which are included as an addendum to the report of Mary Robinson, High Commissioner for Human Rights. The purpose of these guidelines is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.*

*The Principles and Guidelines offer a framework and reference point for the work of OHCHR on this topic. High Commissioner for Human Rights strongly recommends their use by intergovernmental organizations in their own efforts to prevent trafficking and to protect the rights of trafficked persons.*

*The Recommended Principles and Guidelines have been developed in order to provide practical, rights-based policy guidance on prevention.*

*The development of the Principles and Guidelines began in 2000 in response to the clear need for practical, rights-based policy guidance on the trafficking issue. They have been used as a framework and reference point for the work of OHCHR on this issue.*

**Recommended Principles on Human Rights and Human Trafficking**

***The primacy of human rights***

1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.

2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

***Preventing trafficking***

4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.

5. States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.

6. States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in

trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

### ***Protection and assistance***

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

8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.

10. Children who are victims of trafficking shall be identified as such. Their best interests shall be

considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.

11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.

### ***Criminalization, punishment and redress*** (...)

### **Recommended Guidelines on Human Rights and Human Trafficking**

#### ***Guideline 1: Promotion and protection of human rights***

*Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti trafficking measures should not adversely affect the human*

*rights dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.*

*States and, where applicable, intergovernmental and non-governmental organizations, should consider:*

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.
2. Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.
3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society.
4. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to

ensuring that such measures are not applied in a discriminatory manner.

5. Protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.

6. Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.

7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.

8. Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies.

9. Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law.

10. Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

***Guideline 2: Identification of trafficked persons and traffickers***

(...)

***Guideline 3: Research, analysis, evaluation and dissemination***

(...)

***Guideline 4: Ensuring an adequate legal framework***

*The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an*

*appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.*

*States should consider:*

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized.

2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.

3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide



for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.

5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.

7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.

8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.

9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.

10. Guaranteeing that protections for witnesses are provided for in law.

11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

***Guideline 5: Ensuring an adequate law enforcement response***  
(....)

**Guideline 6: Protection and support for trafficked persons**

*The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination. States and, where applicable, intergovernmental and non-governmental organizations, should consider:*

1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.
2. Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.
3. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular

representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.

4. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.

5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.

6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.

7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).

8. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

***Guideline 7: Preventing trafficking***

*Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.*

*States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programmes, should consider:*

1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.

2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.

3. Improving children's access to educational opportunities and increasing the level of school attendance, in particular by girl children.

4. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.

5. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities

surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.

6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.

7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.

8. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.

9. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

***Guideline 8: Special measures for the protection and support of child victims of trafficking***

*The 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. 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.*

*States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:*

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of

trafficking where the person involved is a child.

2.Ensuring that procedures are in place for the rapid identification of child victims of trafficking.

3.Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

4.In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.

5.In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.

6.In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being

given due weight in accordance with his or her age and maturity.

7.Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.

8.Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.

9.Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.

10.Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

**Guideline 9: Access to remedies**

*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.*

*States and, where applicable, intergovernmental and non-governmental organizations, should consider:*

1.Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.

2.Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.

3.Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

***Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel***

(...)

***Guideline 11: Cooperation and coordination between States and regions***

(...)

## **PART 2: TRAFFICKING IN HUMAN BEINGS AND SEXUAL EXPLOITATION: EUROPEAN STRATEGIES**

### ***Section 1: The regional legal framework***

**TREATY ON THE EUROPEAN UNION, TITLE VI, Provisions on police and judicial cooperation in criminal matters.**

**Consolidated text Official Journal C 321, 29 December (2006)**

(Excerpts)

*As recalled by the European Commission on its web page containing the most significant documentation on the EU action against trafficking in human beings and the sexual exploitation of children ([http://ec.europa.eu/justice\\_home/fsj/crime/trafficking/fsj\\_crime\\_human\\_tra](http://ec.europa.eu/justice_home/fsj/crime/trafficking/fsj_crime_human_tra)*

*fficking\_en.htm), trafficking of persons as defined by EU law is not only a crime aiming at the sexual or labour exploitation of persons, but also a fundamental violation of human rights. Article 5 (3) of the Charter of Fundamental Rights of the European Union, which will be a part of the European Constitution, declares: "Trafficking in human beings is prohibited."*

*A high degree of organised-crime-involvement and a wide range of illegal operations in various states as countries of origin, transit or destination of trafficked victims are characteristics of human trafficking. A variety of measures are required, including preventive measures, adequate protection of and assistance to the victims, criminalisation of sexual violence in all its forms, as well as measures to ensure law-enforcement and judicial cooperation. The Treaty on European Union explicitly refers to trafficking in human beings in particular offences against children.*

(...)

### **Article 29**

Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by

developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32,
- closer cooperation between judicial and other competent authorities of the Member States - including cooperation through the European Judicial Cooperation Unit ("Eurojust"), in accordance with the provisions of Articles 31 and 32,
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).

## **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

**Proclaimed by the European Council held in Nice on 7, 8 and**

**9 December 2000. (2000/C 364/01)**

(Excerpts)

*The European Union Charter of Fundamental Rights sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all EU residents. These rights are divided into six sections: Dignity, Freedoms, Equality, Solidarity, Citizens' rights, and Justice. They are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of the EU Member States, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the European Union or its Member States are parties.*

(...)

**Article 5 Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

**COUNCIL OF EUROPE  
CONVENTION ON ACTION  
AGAINST TRAFFICKING IN  
HUMAN BEINGS**

**Adopted by the Committee of Ministers on 3 May 2005 and opened for signature in Warsaw on 16 May 2005, (not entry into force)**

(Excerpts)

*Since the late 1980s, the Council of Europe has undertaken a relevant number of activities related to trafficking in human beings. The first initiatives were awareness-raising and action oriented. The Convention is based on the already stated principle announced in Recommendation N° R (2000) 11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation, that trafficking in human beings represents a violation of human rights and an offence to the dignity and integrity of the person.*

*The Convention is a comprehensive agreement that focuses on the protection of victims of trafficking and the promotion of their human rights. It also aims at preventing trafficking as well as prosecuting traffickers. The*



*Convention takes into consideration all forms of trafficking; national or transnational, related or not to organised crime. It applies to the victims: women, men or children and whatever the form of exploitation: sexual exploitation, forced labour or services, etc. The Convention provides an independent monitoring mechanism that guarantees compliance of parties with its obligation.*

*In this Convention the organisations of civil society play an important role with regard to prevention of trafficking and protection of the victims. For this reason, the treaty encourages and sustains the cooperation among public authorities, non-governmental organisations and members of the civil society.*

(...)

## **Chapter I Purposes, scope, non-discrimination principle and definitions**

### **Article 1 Purposes of the Convention**

1 The purposes of this Convention are:

- a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the

protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

c) to promote international cooperation on action against trafficking in human beings.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

### **Article 2 Scope**

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

### **Article 3 Non-discrimination principle**

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

### **Article 4 Definitions**

For the purposes of this Convention:

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

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

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

d) "Child" shall mean any person under eighteen years of age;

e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

## **Chapter II Prevention, co-operation and other measures**

### ***Article 5 Prevention of trafficking in human beings***

1 Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.

2 Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.

3 Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.

4 Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.

5 Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.

6 Measures established in accordance with this article shall involve, where appropriate, non-governmental organizations, other relevant organizations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

### **Article 6 *Measures to discourage the demand***

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

- a) research on best practices, methods and strategies;
- b) raising awareness of the responsibility and important role of

media and civil society in identifying the demand as one of the root causes of trafficking in human beings;

c) target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;

d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

### **Article 7 *Border measures***

1 Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.

2 Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.

3 Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any

transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4 Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5 Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.

6 Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

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

#### **Article 10 Identification of the victims**

1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and

helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3 When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special

protection measures pending verification of his/her age.

4 As soon as an unaccompanied child is identified as a victim, each Party shall:

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

### **Article 12 Assistance to victims**

1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

- a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- b) access to emergency medical treatment;
- c) translation and interpretation services, when appropriate;
- d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;

f) access to education for children.

2 Each Party shall take due account of the victim's safety and protection needs.

3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

7 For the implementation of the provisions set out in this article, each Party shall ensure that services are

provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

### **Article 13 Recovery and reflection period**

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

2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

### **Article 14 Residence permit**

1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- a) the competent authority considers that their stay is necessary owing to their personal situation;
- b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.

4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.

5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

### **Article 16 *Repatriation and return of victims***

1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.

2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

4 In order to facilitate the return of a victim who is without proper documentation, the Party of which

that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party

concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

### **Article 17 Gender equality**

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

## **Chapter IV Substantive criminal law**

### **Article 18 Criminalisation of trafficking in human beings**

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

### **Article 19 Criminalisation of the use of services of a victim**

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

### **Article 26 Non-punishment provision**

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

## **Chapter V Investigation, prosecution and procedural law (...)**

## **Chapter VI International co-operation and co-operation with civil society (...)**

### **Article 32 General principles and measures for international co-operation**

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant



applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

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

### **Article 35 *Co-operation with civil society***

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

## **Chapter VII Monitoring mechanism**

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

1 The Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”), shall monitor the implementation of this Convention by the Parties.

2 GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.  
(...)

## **Chapter VIII – Relationship with other international instruments**

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

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

## **Section 2: EU legislation**

### **COUNCIL FRAMEWORK DECISION 2002/629/JHA OF 19 JULY 2002 ON COMBATING TRAFFICKING IN HUMAN BEINGS**

**Official Journal L 203, 1 January  
2002.**

(Excerpts)

*In this Council Framework Decision, the European Union provides a definition of trafficking for labour exploitation or sexual exploitation in which pornography is included as a form of exploitation, but there is no mention to the removal of organs. The Framework Decision, similarly to the UN Protocol on trafficking, is also oriented to criminalize a series of conducts that constitute trafficking in human beings.*

*The Framework decision objective is to approximate the laws and regulations of Member States in the area of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings and to define, at European level, a common framework provisions in order to address certain issues such as criminalisation, penalties and other*

*sanctions, aggravating circumstances, jurisdiction and extradition.*

*Since the adoption in 1997 of the Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children [Official Journal L 63 of 04.03.1997], initiatives have developed considerably in number at both national and regional levels. The Vienna Action Plan and the Tampere European Council called for additional provisions to further regulate certain aspects of criminal law and criminal procedure.*

*Article 1 defines the concept of trafficking in human beings for the purpose of labour or sexual exploitation. The Member States must punish any form of recruitment, transportation, transfer or harbouring of a person who has been deprived of his/her fundamental rights. Thus, all criminal conduct which abuses the physical or mental vulnerability of a person will be punishable. The victim's consent is irrelevant where the offender's conduct is of a nature which would constitute exploitation within the meaning of the proposal, that is, involving: the use of coercion, force or threats, including abduction; the use of deceit or fraud; the abuse*

*of authority or influence or the exercise of pressure; the offer of payment.*

*Instigating trafficking in human beings and being an accomplice or attempting to commit a crime will be punishable. Penalties provided for by national legislation must be "effective, proportionate and dissuasive."*

*In addition, the Framework Decision introduces the concept of criminal and civil liability of legal persons in parallel with that of natural persons.*

*Child victims of trafficking are entitled to special assistance, in accordance with Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.*

*This Framework Decision repeals Joint Action 97/154/JHA as regards combating trafficking in human beings.*

The Council of the European Union,  
Having regard to the Treaty on European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal of the Commission(1),

Having regard to the opinion of the European Parliament(2),

(...)

Has adopted this framework decision:

## **Article 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

(a) use is made of coercion, force or threat, including abduction, or

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of a person having control over another person

for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall

be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.

### **Article 2 *Instigation, aiding, abetting and attempt***

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

### **Article 3 *Penalties***

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. 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 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;

(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.

### **Article 7 *Protection of and assistance to victims***

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should

be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings(1).

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

### **Article 10 Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.

2. By the date referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the

necessary measures in order to comply with this Framework Decision.

## **COUNCIL DECISION 2000/375/JHA OF 29 MAY 2000 TO COMBAT CHILD PORNOGRAPHY ON THE INTERNET**

**Official Journal L 138, 9 June  
2000**

(Excerpts)

*With this Council Decision, Member States will take measures to: encourage Internet users to inform law enforcement authorities if they suspect that child pornography material is being distributed on the Internet; ensure that offences are investigated and punished, by setting up specialised units within the law enforcement authorities. The Member States are to investigate all measures which could help to eliminate child pornography on the Internet and are to exchange information on the best practice. In partnership with industry, Member States will encourage the production of filters and other technical means to prevent the*

*distribution and facilitate the detection of such material.*

The Council of the European Union,  
(...)

Whereas the traffic in human beings and the sexual exploitation of children constitute a serious infringement of fundamental human rights and in particular of human dignity;

Aware of the fact that the sexual abuse of children and the production, processing, possession and distribution of child pornography material may constitute an important form of international organised crime, the extent of which within the European Union gives cause for ever-increasing concern;

Convinced that respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union's concerns;

Aware of the need for further measures by the Union to promote the safe use of the Internet;

In order to prevent and combat the sexual abuse of children and, in particular, the production, processing, distribution and possession of child pornography material through the Internet,

Has decided as follows

## **Article 1**

1. Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in order to intensify measures to prevent and combat the production, processing, possession and distribution of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States shall take the necessary measures to encourage Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

2. Where necessary, and taking account of the administrative structure of each Member State, measures for the promotion of effective investigation and prosecution of offences in this area may be the setting-up of specialised units within law enforcement authorities with the necessary expertise and resources to be able to

deal swiftly with information on suspected production, processing, distribution and possession of child pornography.

3. Member States shall ensure that the law enforcement authorities act swiftly when they have received information on suspected production, processing, possession and distribution of child pornography material. Law enforcement authorities may defer taking action if and as long as tactically necessary, for instance with a view to getting at those behind the criminal operations, or at networks (child pornography, rings).

## **Article 2**

1. Member States shall ensure the widest and speediest possible cooperation to facilitate an effective investigation and prosecution of offences concerning child pornography on the Internet in accordance with existing arrangements and agreements.

2. To ensure a timely and effective response to these offences, Member States shall communicate already established points of contact, which are set up on a 24-hour basis and consist of knowledgeable personnel, as well as the specialised units which are referred to in Article 1(2) and which can be used for exchange of information and for further contacts

between Member States. Points of contact, which Member States have already set up for other duties, may also be used for these purposes. Likewise, existing channels for communication, such as Europol and Interpol shall be used.

3. Member States shall ensure that Europol, within the limits of its mandate, is informed of suspected cases of child pornography.

4. Member States, in appropriate cooperation with Europol, shall examine the possibility of organising regular meetings of competent authorities specialising in combating child pornography on the Internet with a view to promoting general information exchanges, analysis of the situation and the coordination of measures in criminal tactics.

5. Each Member State shall notify the General Secretariat of the Council of its organisational unit or units acting as points of contact pursuant to paragraph 2. The General Secretariat shall inform all other Member States of these points of contact.

## **Article 3**

Member States shall engage in constructive dialogue with industry and examine appropriate measures, of a voluntary or a legally binding nature, to eliminate child pornography on the Internet. In particular, Member States

shall exchange experiences on the effectiveness of any measures they have taken to eliminate child pornography on the Internet. In this context, they shall examine the following measures, which would place Internet providers under a duty:

(a) to advise the competent entities mentioned in Article 1 (1) or the units mentioned in Article 1(2) of child pornography material of which they have been informed or of which they are aware and which is distributed through them;

(b) to withdraw from circulation child pornography material of which they have been informed or of which they are aware and which is distributed through them unless otherwise specified by the competent authorities;

(c) in accordance with the Council resolution of 17 January 1995 on the lawful interception of telecommunications<sup>(14)</sup> to retain traffic-related data, where applicable and technically feasible - in particular for criminal prosecution purposes in cases of suspected sexual abuse of children, production, processing and distribution of child pornography - for such time as may be specified under the applicable national law, to allow the data to be made available for inspection by the criminal prosecution

authorities in accordance with the applicable rules of procedure;

(d) to set up their own control systems for combating the production, processing, possession and distribution of child pornography material.

**COUNCIL FRAMEWORK  
DECISION 2004/68/JHA OF 22  
DECEMBER 2003 ON  
COMBATING THE SEXUAL  
EXPLOITATION OF CHILDREN  
AND CHILD PORNOGRAPHY**

**Official Journal L 13, 20 January  
2004**

(Excerpts)

*The aim of this Framework Decision is to harmonise the legislative and regulatory provisions of the Member States concerning police and judicial cooperation in criminal matters in order to combat the trafficking in human beings, the sexual exploitation of children and child pornography. It introduces common European provisions to address certain issues such as the creation of offences, penalties, aggravating circumstances, jurisdiction and extradition. Article 1 of*



*the Framework Decision gives a definition to terms such as "child", "child pornography", "computer system" and "legal person". Article 2 sets out the actions that are punishable as "offences concerning sexual exploitation of children". Member States must take the necessary measures to ensure that the instigation of one of the listed offences, or an attempt to commit that offence, is punishable. The penalties prescribed by each Member State must be "effective, proportionate and dissuasive". Each Member State must take the necessary measures to ensure that a natural person who has been convicted of one of the offences may, if appropriate, be temporarily or permanently prevented from exercising professional activities related to the supervision of children. In addition, the Framework Decision introduces criminal and civil liability for legal persons.. Member States must also establish assistance programmes for victims and their families in accordance with Framework Decision 2001/220/JHA. Member States must take the necessary measures to comply with the Framework Decision no later than 20 January 2006.*

The Council of the European Union,  
(...)  
Has adopted this framework decision:

### **Article 1 Definitions**

For the purposes of this framework Decision:

- (a) 'child' shall mean any person below the age of 18 years;
- (b) 'child pornography' shall mean pornographic material that visually depicts or represents:
  - (i) a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child; or
  - (ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i); or
  - (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned in (i);
- (c) 'computer system' shall mean any device or group of interconnected or related devices, one or more of which, pursuant to a programme, perform automatic processing of data;
- (d) 'legal person' shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

## **Article 2 Offences concerning sexual exploitation of children**

Each Member State shall take the necessary measures to ensure that the following intentional conduct is punishable:

- (a) coercing a child into prostitution or into participating in pornographic performances, or profiting from or otherwise exploiting a child for such purposes;
- (b) recruiting a child into prostitution or into participating in pornographic performances;
- (c) engaging in sexual activities with a child, where
  - (i) use is made of coercion, force or threats;
  - (ii) money or other forms of remuneration or consideration is given as payment in exchange for the child
  - (iii) abuse is made of a recognised position of trust, authority or influence over the child.

## **Article 3 Offences concerning child pornography**

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct whether undertaken by means of a computer system or not, when committed without right is punishable:

- (a) production of child pornography;

- (b) distribution, dissemination or transmission of child pornography;
- (c) supplying or making available child pornography;
- (d) acquisition or possession of child pornography.

2. A Member State may exclude from criminal liability conduct relating to child pornography:

- (a) referred to in Article 1(b)(ii) where a real person appearing to be a child was in fact 18 years of age or older at the time of the depiction;
- (b) referred to in Article 1(b)(i) and (ii) where, in the case of production and possession, images of children having reached the age of sexual consent are produced and possessed with their consent and solely for their own private use. Even where the existence of consent has been established, it shall not be considered valid, if for example superior age, maturity, position, status, experience or the victim's dependency on the perpetrator has been abused in achieving the consent;
- (c) referred to in Article 1(b)(iii), where it is established that the pornographic material is produced and possessed by the producer solely for his or her own private use, as far as no pornographic material as referred to in Article 1(b)(i) and (ii) has been used for the purpose of its production, and provided that the act involves no

risk for the dissemination of the material.

### **Article 9 Protection of and assistance to victims**

1. Member States shall establish that investigations into or prosecution of offences covered by this framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 8(1)(a) applies.

2. Victims of an offence referred to in Article 2 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (1).

3. Each Member State shall take all measures possible to ensure appropriate assistance for the victim's family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of that framework Decision to the family referred therein.

(...)

### **Article 12 Implementation**

1. Member States shall take the necessary measures to comply with this framework Decision by 20 January 2006 at the latest.

2. By 20 January 2006 the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national legislation the obligations imposed on them under this framework Decision. By 20 January 2008 on the basis of a report established using this information and a written report from the Commission, the Council shall assess the extent to which the Member States have complied with the provisions of this framework Decision.

(...)

## **COUNCIL DIRECTIVE 2004/81/EC OF 29 APRIL 2004 ON THE RESIDENCE PERMIT ISSUED TO THIRD-COUNTRY NATIONALS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE ILLEGAL IMMIGRATION, WHO COOPERATE WITH THE COMPETENT AUTHORITIES**

**Official Journal L 261 of 6 August 2004**

(Excerpts)

*This Directive provides the possibility of recognizing a residence permit to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. As decided during the special meeting held in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source. It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims. This Directive appears to be inspired by the need to promote the collaboration of the victims to give greater force to the impulse of combating illegal immigration rather than making their protection the fundamental inspiration of this norm. Another element that is worth highlighting regards the application of this directive with respect to citizens of third countries, and the exclusion, by the circle of application, of the Community space. Today, this appears to be a limiting factor,*

*even when considering the central role in the traffic of people of some Community countries have as territories of origin, transit and also destination.*

The Council of the European Union, Having regard to the Treaty establishing the European Community, and in particular point 3 of Article 63 thereof,

Having regard to the proposal from the Commission,(1)

Having regard to the opinion of the European Parliament,(2)

Having regard to the opinion of the European Economic and Social Committee,(3)

Having consulted the Committee of the Regions,

(....)

Has adopted this Directive:

## **Chapter I General Provisions**

### **Article 1 Purpose**

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or

against action to facilitate illegal immigration.

### **Article 2 Definitions**

For the purposes of this Directive:

(a) «third-country national» means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) «action to facilitate illegal immigration» covers cases such as those referred to in Articles 1 and 2 of Directive 2002/90/EC;

(c) «trafficking in human beings» covers cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA;

(d) «measure to enforce an expulsion order» means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national;

(e) «residence permit» means any authorisation issued by a Member State, allowing a third-country national who fulfils the conditions set by this Directive to stay legally on its territory.

(f) «unaccompanied minors» means third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken

into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

### **Article 3 Scope**

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.

2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

## **Chapter II Procedure for issuing the residence permit**

(...)

### **Article 6 Reflection period**

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period

allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

#### ***Article 7 Treatment granted before the issue of the residence permit***

1. Member States shall ensure that the third-country nationals concerned

who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

### **Chapter III Treatment of holders of the residence permit**

#### ***Article 9 Treatment granted after the issue of the residence permit***

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

### **Article 10 Minors**

If Member States have recourse to the option provided for in Article 3(3), the following provisions shall apply:

(a) Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.

(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

(c) In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their

identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

### **Article 11 Work, vocational training and education**

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education. Such access shall be limited to the duration of the residence permit.

2. The conditions and the procedures for authorising access to the labour market, to vocational training and education shall be determined, under the national legislation, by the competent authorities.

### **Article 12 Programmes or schemes for the third-country nationals concerned**

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States,

aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

#### **Chapter IV Non renewal and withdrawal** (...)

### ***Section 3: The EU Commission integrated approach to trafficking and human rights***

## **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL - FIGHTING TRAFFICKING IN HUMAN BEINGS: AN INTEGRATED APPROACH AND PROPOSALS FOR AN ACTION PLAN**

## **COM/2005/0514, Brussels, 18 October 2005**

(Excerpts without footnotes)

*This document is divided into an introduction and seven sections that present, on a basis of an integrated approach, the idea of an action plan to combat trafficking in human beings. The topics of the protection of human rights, of the organized crime, of the illegal migration and of the vulnerability of specific groups as women and children, of the need to collect data and to work in coordination and cooperation among states and specialized institution are considered in this document.*

*As specified in the Introduction, the Communication aims at further strengthening the commitment of the European Union, and the Member States to prevent and fight against trafficking in human beings, committed for the purpose of sexual or labour exploitation as defined in the Framework Decision of 19 July 2002 n. 629 on combating trafficking in human beings, and to the protection, support and rehabilitation of its victims.*

*The Communication, intends to contribute to the establishment of the action plan. It takes due account of the comprehensive action plan to combat illegal immigration and*



*trafficking in human beings of 2002 and of the reflection and recommendations presented in the Report of December 2004 of the Expert Group on Trafficking in Human Beings that was set up by the Commission end 2003.*

## **I. Introduction**

This Communication aims at further[i] strengthening the commitment of the European Union,[ii] and the Member States to prevent and fight against trafficking in human beings, committed for the purpose of sexual or labour exploitation as defined in the Framework Decision of 19 July 2002 on combating trafficking in human beings,[iii] and to the protection, support and rehabilitation of its victims.

It is based on the recognition that in order to effectively address human trafficking an integrated approach is needed, having as its fundament the respect of human rights and taking into account its global nature. This approach calls for a coordinated policy response notably in the area of freedom, security and justice, external relations, development cooperation, employment,[iv] gender equality and non discrimination. It also aims to reinforce the broad public-private dialogue in this area.

Such response is required in the Hague Programme,[v] endorsed by the European Council in November 2004, in which the Council and the Commission are invited to develop a plan in 2005 for common standards, best practices and mechanisms to prevent and combat human trafficking and to enhance the fight against illegal immigration.[vi]

The Communication that was announced in the Commission and Council Action Plan implementing the Hague Programme[vii], intends to contribute to the establishment of this plan. It takes due account of the comprehensive action plan to combat illegal immigration and trafficking in human beings of 2002 and of the reflection and recommendations presented in the Report of December 2004[viii] of the Expert Group on Trafficking in Human Beings[ix] that was set up by the Commission end 2003.

## **II. The fundamental concern: the protection of human rights**

The persons concerned, their needs and rights shall be at the centre of the EU policy against human trafficking. This means first and foremost a clear commitment of EU institutions and Member States to follow a human rights centred approach and to

promote it in their external relations and development policies.

Article 5(3) of the Charter of Fundamental Rights of the EU[x] prohibits human trafficking in the context of inviolable human dignity which is at the very core of national constitutions and international human rights instruments binding the Member States.

According to international laws and commitments, the State which condones human trafficking or does not take any effective measure to curb it commits a human rights violation[xi].

*EU institutions and Member States shall actively pursue policies reinforcing the prohibition of human trafficking including the protection of real and potential victims at EU as well as at regional and international level.*

Third country nationals who are victims of human trafficking but without a legal residence status in the EU should not be excluded from such protection[xii], in particular if they have cooperated with Member States' competent authorities by testifying against their traffickers. Moreover, such persons should not be de facto excluded from the possibility of exercising their rights, for example to initiate an action against the

perpetrator or for compensation or to seek asylum.

Regular monitoring and follow up at experts and political level ensuring compliance with the above principles throughout the EU is essential.

*The Council, in close cooperation with the Commission and on the basis of an in-depth dialogue with civil society, [xiii] should hold at least once a year a political debate on the EU anti-trafficking policy and assess its compliance with human rights standards and the need for further action, e.g. improving schemes for assistance, protection and social inclusion.[xiv]*

It is legitimate to raise the issue in the political dialogue with third countries, drawing on the human rights essential elements clause which is included in EC trade and co-operation agreements, and in multilateral fora.[xv]

*The Community should strengthen the political dialogue with partner countries at bilateral and multilateral level on the human rights dimension of human trafficking and of anti-trafficking policies, as well as continue raising the issue in relevant regional and multilateral fora.*

The European Initiative for Democracy and Human Rights gave special attention to the issue in 2005/2006 and envisaged specific support under

the campaign “Fostering a culture of human rights”.

*EU institutions and Member States should intensify efforts to address the issue of human trafficking within the EU and in relations with third countries, e.g. by building on efforts to support anti-trafficking initiatives through development co-operation.*

### **III The Organised Crime Dimension (...)**

### **VI The Illegal Migration Dimension (...)**

### **V. Specific groups, especially women and children**

The promotion of non-discrimination including gender equality, the rights of children, indigenous people and minority groups<sup>[lii]</sup> is particularly relevant as many victims or potential victims of human trafficking are women, children and individuals belonging to ethnic and minority groups who may be subject to discrimination in their place of origin. Human trafficking is not necessarily a gender specific crime as men and, in particular, boys are also victims of sexual and labour exploitation. However, trafficking in women and girls especially for commercial sexual exploitation is a wide reality.

*EU institutions and Member States should promote gender specific prevention strategies as a key element to combat trafficking in women and girls. This includes implementing gender equality principles and eliminating the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation.<sup>[liii]</sup>*

*Within the EU, programmes such as Daphne should continue to be used for financial support of projects addressing human trafficking as violence against children, women and other groups at risk, whereas increased attention should be included in development cooperation.*

*Further attention and research on trafficking in children within Europe are needed. Municipalities confronted with the problem of forced child labour (including ‘sweat shops’, begging, pick-pocketing and prostitution) should be actively supported. Solutions to address the problem should be developed in close consultation with the countries of origin of the children.*

Offences related to child trafficking, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes, have already been addressed in the Council Framework Decisions on combating trafficking in human beings and the

sexual exploitation of children and child pornography.[liv] But the degree of harmonisation is quite limited.

*The Commission will, in 2006, when evaluating the implementation of the Council Framework Decisions on combating trafficking in human beings and the sexual exploitation of children and child pornography, focus in its evaluation reports on the need for further strengthening of legal framework specifically addressing child trafficking and related offences, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes, and where necessary submit appropriate proposals.*

Child trafficking[liv] must be tackled in the light of the EU Charter of Fundamental Rights that stresses the child's best interests as a primary consideration in all actions relating to children.[lvi] The Convention on the Rights of the Child of 1989 (CRC)[lvii] as the most important international child rights instrument includes provisions on child trafficking.[lviii] The Convention applies to every child under the age of 18 years, an approach which is shared by the Commission. The UN Trafficking Protocol must be read in the light of the CRC, taking into account also other relevant international instruments, such as the Optional

Protocol on the sale of children, child prostitution and child pornography of 25 May 2000 and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour[l ix] as well as the Hague Convention on the Protection of Children and Co-operation in Respect of Inter Country adoption. The actions decided in this field by the 46 Member States of the Council of Europe at their Warsaw summit should also be accounted for, in particular the 3-year Action Programme on Children and Violence.

*EU institutions and Member States should ensure that the EU anti trafficking policy reflects a child rights approach based on globally recognised principles, in particular in the UN Convention on the Rights of the Child. Such approach must consequently apply to any person below the age of 18. Coordination with the Council of Europe Action Programme on Children and Violence (2006-2008) should also be ensured.[l x]*

Particular attention has to be paid to unaccompanied minors or children travelling without an immediate family member[l xi] in the context of border management as it has been done in the recently adopted Regulation establishing a Community Code on the

rules governing the movement of persons across borders. [lxii]Very soon[lxiii] the Commission will address the protection of children in a specific communication.

Development co-operation must provide an effective contribution to address the plight of trafficked children in Developing Countries.

*The Commission should ensure that Country and Regional Strategy Papers, wherever relevant and possible, strengthen strategies to address factors facilitating child trafficking such as the failure to secure birth registration or the lack of access to basic education.[lxiv]*

## **VI. Reliable Data**

(...)

## **VII. Coordination And Cooperation**

(...)

## **REPORT OF THE EXPERTS GROUP OF THE EUROPEAN COMMISSION ON TRAFFICKING IN HUMAN BEINGS\***

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• As mentioned in the report, the views of the Experts Group do not necessarily reflect the views of the European Commission or of the States and the organisations for which the members of the Group work.

## **Experts Group on Trafficking in Human Beings of the European Commission, Brussels, 22 December 2004**

(Excerpts from Preamble and Executive Summary, without footnotes)

*The topics contained in the Declaration of Brussels adopted in the course of the European Conference on Preventing and Combating Trafficking in Human Beings. Global challenge for the 21<sup>st</sup> century, brought together on 18 – 20 September 2002 have been recently resumed and reaffirmed analytically in the Report prepared by the Experts Group on Trafficking in Human Beings of the European Commission. The Report contributes to the practical translation of the cited Declaration of Brussels and to implement the recommendations that it contains. Such document recognizes the validity and human rights approach and of its peculiarity also related to investigative process. The protection of the subjects involved as victims becomes central not only to respect human rights, but also because it could represent also a system that gives visibility and acquaintance to the phenomenon contributing to the repression. This Report represents a hypothesis of a concrete human rights approach, at the European level, to fight trafficking (.....).*

## Preamble

This report is the result of a year's work of the Experts Group on Trafficking in Human Beings. The main assignment of the Experts Group is to contribute to the translation of the Brussels Declaration into practice, in particular by submitting a report to the European Commission with concrete proposals on the implementation of the recommendations of the Brussels Declaration.

The report aims to indicate ways to strengthen EU action against trafficking in human beings and, where appropriate, to launch new initiatives, programmes and activities. The Brussels Declaration, however, has been understood as a "platform" and not as a "fence". We have also taken into account other sources in order to benefit from new developments and findings in particular areas. The report follows the structure of the Brussels Declaration and consists of three major parts focusing on prevention, on victim assistance and protection and on law enforcement aspects in the broad sense. (...) The basis of our report is the definition as contained in the UN Protocol and the EU Framework Decision on trafficking in human beings. The core elements of trafficking, as defined in the Protocol,

are coercion, abuse and deceit. The definition covers all forms of trafficking into sexual exploitation, slavery, forced labour and servitude. Furthermore, it makes a clear distinction between trafficking and prostitution as such. Neither instrument implies a specific position on (voluntary, non coerced adult) prostitution as such, leaving it to individual States how to address prostitution in their respective domestic laws. Consequently the question of the definition has to be distinguished from questions about the political or legal approach to prostitution that is followed to tackle the problem of trafficking.

We have followed that approach. It is well known that in particular the issue of prostitution is extremely sensitive and that very different positions exist on this issue, which are also reflected in the Experts Group. Our choice has been to recognise, respect and accept the different positions and not allow them to take over. Rather we have focused on the aim we have in common, notably to reduce trafficking and related forms of violence and abuse in the sex industry and other industries.

In our report we have formulated a number of principles, in particular the need for a human rights based approach. We are, however, fully

aware that in translating these principles into reality, one meets a number of obstacles and practical problems and that is important to be realistic about this. (...)

Finally, I would like to highlight two of the major themes that run throughout the report.

### ***The need to integrate a human rights perspective***

The first theme that runs throughout the entire report is the need to integrate a human rights perspective as a normative framework in the further development of policies to address trafficking. This includes the integration of a child rights perspective.

From a human rights perspective, the primary concern is to combat the exploitation of human beings under forced labour or slavery like conditions, no matter whether such exploitation involves a victim of trafficking, a smuggled person, an illegal migrant or a lawful resident. In the application of the UN Trafficking Protocol, policies should therefore focus on the forced labour and slavery like outcomes of trafficking, rather than on the process through which people arrive in such conditions. Such an approach would solve much of the current confusion between smuggling

and trafficking and between so called “innocent” and “guilty” victims.

Moreover, under international human rights law States have an obligation to prevent, investigate and punish human rights violations and to provide the victims thereof with adequate remedies.

Up till now, States have concentrated predominantly on measures in the area of crime control and migration policies, rather than on victim assistance and protection. To effectively tackle trafficking, this imbalance needs to be redressed. You will find this reflected in the report, which in particular develops the issues of victim assistance and protection and prevention as we feel that these areas are lagging behind in comparison to the area of law enforcement. We consider this to be a key issue. The neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law. Trafficked persons should have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers. Those trafficked persons who do not wish to make a declaration as witnesses – or

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

In the field of prevention, a human rights based approach implies that the root causes of trafficking need to be addressed, not only in the countries of origin but also in the countries of destination. In this context special attention is paid to the potential that the promotion of managed migration, the protection of migrants' rights, the enforcement of labour standards and the formal and informal organisation of workers and other groups affected, can have in reducing trafficking.

Moreover, counter trafficking strategies should not only be in accordance with human rights norms, such as the right to privacy, the freedom of movement and the principle of non-discrimination, but also should not undermine or adversely affect the human rights of the groups affected, such as trafficked persons, (female) migrants, refugees and prostitutes. To this aim a "human rights assessment model" should be developed.

### ***The need for a multi disciplinary and integrated approach***

A second theme that runs throughout the report is the need for co-operation and coordination. Given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi levelled and integrated approach is needed. A holistic approach would strive for a balance between empowerment strategies, targeted at the provision of adequate remedies to trafficked persons and the social inclusion and participation of the groups affected, and repressive crime control strategies which are targeted at the prosecution and punishment of the perpetrators, while avoiding unintended and undesirable side effects of repressive policies that might increase vulnerability for trafficking. It should rely on multidisciplinary cooperation and coordination between all concerned actors and stakeholders, including law enforcement agencies, non governmental organisations, labour organisations and other relevant civil society actors. One of the elements is the development of national referral mechanisms to ensure the adequate identification and referral of trafficked persons and to harmonise the



interests of trafficked persons with those of law enforcement agencies.

Non governmental organisations play a special role, not only in providing assistance to trafficked persons, but also in maintaining and strengthening democratic processes in societies and in monitoring and advocating implementation of human rights commitments by States.

An integrated approach also comprises effective prosecution aimed at the punishment of the perpetrators. In this context, special attention is paid to the need for specialisation and prioritisation, training, the development of instruments in the area of money laundering and the seizure of criminal assets, compensation and restitution mechanisms, and anti corruption strategies as an integral part of anti trafficking strategies.

Finally, we are aware that our mandate is to advise the European Commission on initiatives it may take on combating trafficking. As such the recommendations in this report are recommendations to the European Commission for future actions. We hope, however, that in our future work we will further be able to advise the Commission with regard to suitable instruments and particular activities the Commission may bring forth to

bring the recommendations of this report into force.

*Marjan Wijers, President of the Experts Group*

### **Executive summary**

This report aims to indicate ways to strengthen EU action against trafficking in human beings. Trafficking in human beings should be understood as a complex phenomenon violating the trafficked persons' will and right of self-determination and affecting her or his human dignity. From a human rights perspective, the primary concern is to combat the use of forced labour or services, slavery, slavery like practices and the like, no matter how people arrive in these conditions. In applying the UN Trafficking Protocol, States should therefore focus on the forced labour and slavery like outcomes of trafficking rather than on the mechanisms of trafficking itself, i.e. the process of how the person is brought into the situation of exploitation. Member States should adequately criminalize any exploitation of human beings under forced or slavery like conditions, independent of whether such exploitation concerns a "victim of trafficking", a "smuggled person", an "illegal migrant" or a "lawful resident".

Policies should clearly stress that trafficking in human beings is a serious crime and human rights violation, which needs to be addressed separate and apart from other forms of illegal activities, in particular irregular migration.

A human rights approach should be integrated as a normative framework in the further development of policies and measures against trafficking in human beings. Mechanisms should be established to ensure that anti trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected, in particular trafficked persons but also female migrants, asylum seekers or prostitutes. To this aim a “Human Rights Assessment Model” should be developed, in close cooperation with NGOs and human rights institutions, as an instrument to monitor and evaluate the human rights impact of anti-trafficking laws, policies and practices.

The Commission should take the initiative for the adoption of a legally binding EU instrument covering the status of trafficked persons which clearly goes beyond current Member States commitments and lays down minimum standards of treatment to which all trafficked persons would be entitled, independent of their capacity

or willingness to cooperate in criminal proceedings or to give evidence. Special attention should be given to the position, rights and needs of children. All actions taken in relation to trafficked children shall be based on the following principles: the best interest principle, the right to participate and the principle of non-discrimination.

Given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi levelled and integrated approach is needed. Such an approach should rely on multidisciplinary cooperation and coordination between all involved actors and stakeholders, including non-governmental organisations, labour organisations and other relevant civil society actors. Non-governmental organisations play a crucial role not only in providing assistance to trafficked persons but also in maintaining and strengthening democratic processes in societies and in monitoring and advocating implementation of human rights commitments by States. Co-operation between state authorities and the non-governmental sector should be based on agreements defining the roles and obligations of the parties involved.

Member States should establish clear, comprehensive and gender sensitive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, societies and governments. States policies in promoting immigration restrictions and reducing opportunities for regular migration have not been effective in preventing migration. Rather they have created a market for irregular migration, often as organised serious crime, through trafficking and smuggling of people. The promotion of regular and managed migration based on demand and need, including the need for unskilled labour, the protection of migrants' rights, formal and informal organisation of workers and the application and enforcement of labour standards, on the other hand, have a potential to reduce trafficking by offering migrants and other workers a mechanism which is safer and guarantees their labour and human rights.

Security polices should take into consideration both the protection of national borders and the protection of the individual. Human security should be an integral part of governmental security policies.

Special attention must be paid to the creation of cooperation and coordination mechanisms. Along with

the establishment of National Referral Mechanisms, a governmental coordinating structure, consisting of a governmental co-ordinator and a cross-sector and multidisciplinary Round Table, should be established to develop, coordinate, monitor and evaluate national actions plans and policies. National referral mechanisms can ensure the proper identification, referral and assistance of trafficked persons, while at the same time harmonising the interests of trafficked persons and those of law enforcement agencies. In order to facilitate cooperation, contacts and exchange of information as well as the development, monitoring and evaluation of anti-trafficking policies on the European level, a European Anti-Trafficking Network built on the national cooperative structures should be established.

A present problem is the lack of relevant data and/or the fragmented character of available data and the lack of exchange of information at national as well as at European and international level. In order to address this problem, National Rapporteurs or a comparable mechanism should be established in order to systematically collect and analyse information from different sources and actors. To be able to compare data, common guidelines on data collection should

be developed. Once national data collection mechanisms are in place, a similar mechanism should be established at the European level.

An extremely sensitive issue concerns data protection. It should be recognised that increased cooperation and data-exchange lead to greater risks of misuse of data. In this context it must be realised that any failure to protect personal data may pose a direct and serious threat to the life, health and safety of trafficked persons. Exchange of personalised data has to be based on strict data protection protocols and regimes. Regulations should be in place to ensure the confidentiality of the client counsellor relationship and to protect counsellors from any obligation to pass on information to third parties without the consent of the trafficked person. Moreover, the need to criminalize the unauthorised use of data should be considered.

The EU as well as Member States should allocate proper resources to the prevention and repression of trafficking in human beings as well as to the provision of adequate remedies to trafficked persons. Rather than merely project based funding, future financial support should be geared to long term sustainable support of organisations, structures and mechanisms that have proven their

usefulness but cannot survive without further financial EU input. A balance needs to be found between project-based funding to give room to new and innovative initiatives and long-term, sustainable capacity building.

Prevention of trafficking in human beings is one of the most important lines of action to reduce this crime. Elements are research, awareness raising, training and administrative controls along with addressing the root causes of trafficking and the issue of demand. Prevention is not only an issue for countries of origin, but also for countries of destination. Prevention is primarily the responsibility of States, in cooperation with local authorities, international and non-governmental organisations, the business sector, labour unions and private citizens.

Root causes of trafficking are varied and complex. They range from globalisation, employment, trade and migration policies, humanitarian and environmental disasters and poverty to gender and ethnic discrimination, violence against women, lack of opportunities in countries of origin and the increasing demand for cheap, unskilled and easy to exploit labour and services in countries of destination. To prevent trafficking, the EU and Member States should review policies that may compel people to

resort to irregular migration and consider increasing the opportunities for legal labour migration, along with the protection of the human rights of all migrants, regular or irregular, internal or across international borders. Moreover, prevention strategies should counteract discrimination, marginalisation and social exclusion.

Research is a crucial contribution to prevention. Information on the magnitude of trafficking and its trends is still very limited. One of the biggest gaps in the understanding of trafficking is in the area of data collection. This is due to many factors linked with the illegal aspect of trafficking, the use of different definitions, the lack of a data sharing instance and political decisions. Annual assessments of patterns, trends and volume of trafficking, using a unified methodology should be carried out, including the evaluation of the impact of policy measures and programmes. Different subjects connected with trafficking should be further researched in countries of origin, particularly on the root causes and the links between trafficking and poverty and exploitation. In countries of destination, research should be carried out on the demand side and the incentives for trafficking. Moreover, more research is needed

on trafficking and forced labour in other sectors than the sex industry.

Raising awareness about the risks and dangers of trafficking and providing information on safe migration are an important form of prevention. Awareness raising activities should be tailor made to the different target groups and should include vulnerable groups, professionals, employers, clients and the public at large. For these purposes, all possible channels of formal and informal communication should be used, in cooperation with all actors, such as intergovernmental organisations, NGOs, labour agencies, State institutions and media in countries of origin, transit and destination.

Strengthening the technical capacity of counter-trafficking institutions through training is another important form of prevention. Training should provide an understanding of the process of human trafficking as well as the tools and skills to address it. It should be based on a human rights approach, raise awareness on anti-discrimination and be gender sensitive as well as underline the special needs of children. The target group for training should include not only law enforcement officials, but also diplomatic staff, labour inspectors, judiciary personnel, international

military, and others. To ensure a coordinated and multi-disciplinary approach multi-actor training is an important means.

Administrative controls can support the prevention of trafficking through regulating and monitoring procedures, practices and agencies that may have an influence on trafficking in human beings and/or a potential to combat it. They include a range of mechanisms from repressive to positive enforcement and imply multi agency cooperation, including civil society as well as private sector participation. Cooperation between countries of origin and destination with regard to migration management, document security, visa processing, border controls, regulation of private employment, tourist and adoption agencies as well as the enforcement of labour standards are all contributing to effective prevention.

Any measure aimed at preventing trafficking should entail specific measures to address and prevent violence, abuse and exploitation of children. Best practices on the prevention of child trafficking should be developed, implemented and disseminated. Children represent an increasing vulnerable group and should be guaranteed special attention, protection and opportunities. Existing international

instruments dealing with children should be enforced.

Until now States' policies, including EU policy responses to trafficking, have tended to concentrate on measures in the area of crime control and migration policies, but much less on the assistance and human rights protections for trafficked persons. The neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law. Trafficked persons should have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers.

To allow proper identification of trafficked persons all involved actors – governmental agencies, law enforcement, NGOs, local welfare organisations, labour unions, labour inspections and other labour related agencies – should be trained and referral systems should be established.

A reflection delay of not less than three months should be granted to all those who there is reason to suspect are trafficked in order to allow the trafficked person to begin to recover and to make an informed decision

about her/his options, including the decision on whether to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims. Following the reflection period a residence permit should be granted to identified trafficked persons for a period of at least six months, irrespective of the capacity and/or willingness of the trafficked person to act as a witness, with the possibility of renewal. Those trafficked persons who do not wish to make a declaration as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection measures as trafficked persons willing and able to testify. In specially qualified situations a long term permit should be granted, e.g. on humanitarian grounds. Trafficked children should always be allowed a temporary residence permit; they should only be returned if the return is in the best interest of the child, safe and assisted. Any decision to deport or return a trafficked person should be preceded by a risk assessment. Long term assistance programs should be developed in close cooperation with NGOs and IOs and should aim at the empowerment and social inclusion of

trafficked persons either in their home country or the country of destination. All trafficked persons should be entitled to basic social assistance and protection, including safe accommodation, health care, legal assistance, education, training and employment opportunities. All assistance services must be provided on a voluntary and confidential basis. Standards should be developed in order to ensure the quality of the services and that of the providers. Members States should recognise the importance of a variety of service providers working with trafficked persons, including the NGO sector, and should adequately support, cooperate with and timely and transparently fund them. Specialized services should be provided to trafficked children to meet their specific needs. Trafficked persons should be treated as victims of crime and not be detained, charged or prosecuted for activities they are involved in as a consequence of their situation as trafficked person. Provisions for protection in criminal proceedings should be defined. Victims should be granted the right to information and advice, privacy, compensation and protection. Special court proceedings should be developed to protect victims giving testimony. The

Commission should take the initiative for the development of a legally binding instrument covering the standing of trafficked persons in criminal proceedings.

One of the rights of trafficked persons is that to return voluntarily and safely to their countries of origin. Member States should establish appropriate return procedures and long term assistance programs, with due regard to the privacy, safety, dignity and welfare of the trafficked person, in close partnership with NGOs, IOs, IGOs and countries of origin. Return and long term assistance programs should aim at the empowerment and social inclusion of the trafficked person.

An integrated approach to trafficking in human beings comprises effective prosecution aiming at the punishment of the perpetrators. A number of legislative acts have been adopted over the last years in order to strengthen the penal framework combating trafficking in human beings and to improve the standing of victims in criminal proceedings. The main challenge ahead is to make this legislative framework and these structures fully operational. In this context, in particular, the Tampere II process or – more precisely further to the European Council of 4 and 5 November 2004 in Brussels – the

Hague Programme is relevant and has led to new multi-annual guidelines approved by the heads of State and governments in the area of justice and home affairs. Moreover, the enlargement of the EU presents new challenges in this context, particularly in relation to countering corruption and sharing data. Increased cooperation and data sharing must be accompanied by strict data protection measures and regimes.

Governments should ensure that law enforcement agencies are structured in a way that enables them to efficiently target trafficking in human beings as a serious form of crime. Appropriate education, formation and training of competent personnel at different levels is required.

The development of investigative techniques without the reliance on the testimony of victims should be further developed and the role of EUROPOL should be enhanced. “Intelligence led” approaches, however, should never be used to legitimate a neglect of the necessity to protection and assistance of trafficked persons.

Since trafficking in human beings generates huge profits and has clear links with the crime of money laundering, Member States should take appropriate measures to identify and trace proceeds of trafficking in human beings, to be subjected to



confiscation, freezing and seizing. Confiscated assets should be used for the benefit of victims.

Being the victims of serious crime, trafficked persons should be entitled to compensation by States. Procedures and mechanisms for these compensations should be created.

Corruption is one of the recurring and structural elements of trafficking, targeting government officials and institutions. Therefore, anti-corruption strategies should make up an integral part of any policy to prevent and combat trafficking.