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**United Nations Office on Drugs and Crime**

**United Nations Division for the Advancement of Women**

**Expert Group Meeting on good practices in legislation on violence against women**

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***Introduction.*** The United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Human Trafficking has recognized that:

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Convention mandated that: *“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.”* Accordingly, this language was explicitly used in the Criminal Codes of many countries, and trafficking in persons was not recognized as a specific offence. Instead, it was addressed under related offences, most frequently the procurement of prostitution. Other offences were also considered, such as kidnapping, abduction, illegal confinement, deprivation of liberty, and sexual slavery. Criminal sanctions for the procurement of prostitution were limited to a small fine and/or short-term imprisonment, hardly comparable to the gravity of the crime. Finally, in cases of international trafficking, the trafficked person was treated as a criminal who was subject to deportation for the commission of the acts of illegal entry, falsification of travel documents, and prostitution. This phase of anti-trafficking legislation was marked by inadequate measures in satisfying the special needs of victims of trafficking, and only a few domestic laws which provided a limited measure of protection.

However, since the adoption of the UN Protocol—the first international document providing for comprehensive measures to prevent trafficking, prosecute traffickers, and protect victims—significant strides have been made in anti-trafficking legislation around the world. At least 70 countries have amended their Criminal Codes to recognize trafficking in persons as a specific offence; at least 38 countries have enacted comprehensive acts that not only criminalize trafficking but also provide for the necessary measures to protect and assist victims of trafficking; 14 countries passed comprehensive acts to combat trafficking in children; 9 countries criminalized trafficking in persons as part of their immigration laws; and 22 countries are in the process of passing an anti-trafficking law. Some countries have even made the prohibition of trafficking in persons a part of their constitutional law. For example, the Constitution of Iraq, promulgated in 2005, in Article 37 states that *“Forced labor, slavery, slave trade, trafficking in women and children, and sex trade shall be prohibited.”* Others have explicitly recognized in their legislation that international law will be afforded due priority in adopting state policy to combat trafficking, such as in the case of Georgia, where *“State policy in preventing and combating trafficking in persons, and in protection, assistance and rehabilitation of the (statutory) victims of trafficking in persons shall be determined in accordance with the obligations under the Constitution and international treaties of Georgia relative to combating the transnational organized crime and corruption and the protection of human rights”* (Georgia, Law on Combating Human Trafficking, 2006, Article. 4). Consequently, only 19 countries have yet to join the international community in legislating against trafficking in persons. This is a tremendous achievement, given the short legislative time-span of less than 10 years since the adoption of the UN Protocol.

In spearheading this legislative movement, the UN Protocol made some important strides in guiding anti-trafficking legislation toward a more comprehensive direction, thereby

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changing international law in a number of significant ways. While prior to the adoption of the UN Protocol, several international conventions recognized trafficking in persons as a crime amongst their other provisions, the UN Protocol became the first to address the phenomenon exclusively and comprehensively, expanding the body of international law to encompass its full breadth and scope, a

*organs.*” A variety of domestic laws following

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*persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity; 5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*” As such, through the prism of the UN Protocol, prevention was viewed as a key part of any comprehensive anti-trafficking legislation and prevention policies were to strive to alleviate the major causes of vulnerability to trafficking in persons. As per the UN Protocol, these policies were to reflect a focus on the alleviation of economic, social, political, and cultural causes of vulnerability to trafficking, including both the “supply” and “demand” sides of the trafficking infrastructure.

Domestically, States have legislated accordingly. For example, the goal of conducting research toward development of accurate prevention policies has been legislated for by the United States in the Trafficking Victims Protection Reauthorization Act of 2003, which states, in Section 112A, that “*The President, acting through the Council of Economic Advisors, the National Research Council of the National Academies, the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, the Secretary of State, the Administrator of the United States Agency for International Development, and the Director of Central Intelligence, shall carry out research, including by providing grants to nongovernmental organizations, as well as relevant United States Government agencies and international organizations, which furthers the purposes of this division and provides data to address the problems identified in the findings of this division. Such research initiatives shall, to the maximum extent practicable, include, but not be limited to, the following: (1) The economic causes and consequences of trafficking in persons; (2) The effectiveness of programs and initiatives funded or administered by Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking; (3) The interrelationship between trafficking in persons and global health risks.*” The Trafficking Victims Protection Reauthorization Act of 2005 further expanded this section, to include research on the “*interrelationship between trafficking in persons and terrorism, including the use of profits from TIP to*

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*realistic teaching modules in school and college curricula and to informing pupils and students of human rights and gender issues. These subjects should specifically be linked to teaching young people about the modus operandi and dangers presented by trafficking crime, the opportunities for legal migration and foreign employment and of the grave risks involved in irregular migration.”* Likewise, the Kingdom of Cambodia’s Five Year Plan Against Sexual Exploitation of Children of 2000-2004, mandates that “*schools will be used as a place to make both teachers and pupils aware of the problem, the law, the tricks used by the traffickers, and the existing protection mechanisms.*” The Law of Georgia on Combating Human Trafficking of 2006 similarly states, in Article 5(f) that “*Preventive measures of the state shall imply: [...] (f) Inclusion of human trafficking-related issues in the curricula of secondary (high schools) and highest education institutions.*”

In many countries, laws enacted since the promulgation of the UN Protocol have likewise focused on legislating for public awareness as an important prevention tool. In these cases, the role of the media has been specifically emphasized. For example, the United States Trafficking Victims Protection Reauthorization Act of 2003 states, in Section 3(d), that “*The President shall establish and carry out programs that support the production of television and radio programs, including documentaries, to inform vulnerable populations overseas of the dangers of trafficking, and to increase awareness of the public in countries of destination regarding the slave-like practices and other human rights abuses involved in trafficking, including fostering linkages between individuals working in the media in different countries to determine the best methods for informing such populations through such media.*” In Belarus, Article 9 of the Belarus Presidential Decree on Certain Measures Aimed to Combat Trafficking in Persons of 2005, states that “*The Ministry of the Interior, the Ministry of Trade, the Ministry of Information, the Ministry of Justice, regional executive committees and Minsk C Bela*



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*be exposed to, in active collaboration with mass-media.”* The Law of Georgia on Combating Human Trafficking, Article 10(2), states that “[*The Interagency Coordination Council for the Implementation of Measures against Human Trafficking*] may consist of representatives from not-for-profit legal entities and international organizations working in the relevant field, representatives from mass media and relevant specialists and scientists.” While promoting the importance of a role for the media, some States have paid special attention to the dangers that coverage may pose to victims of trafficking, specifically in media coverage of trials related to trafficking in persons. For example, the Philippines Republic Act No. 9208, states in Section 6, that “*In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.*” This reflects a commitment on the part of the State to prevent any harm to the victim of trafficking and ensure that all appropriate protections are taken.

*Protection.* International and domestic legislation prior to the UN Protocol focused on a crime-control approach to trafficking in persons, an approach which did not recognize the case of traffias such,

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Guidelines, and existing legislation has been amended from criminalizing victims of trafficking to recognizing them as victims entitled to these international human rights.

The UNHCHR Principles and Guidelines themselves are an example of this evolving legislative movement. For instance, where the UN Protocol did not place an explicit

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*about crimes connected with human trafficking, court examination, as well as the period after declaring the final decision of the court. False names can be used with an aim to ensure anonymity of the personality of persons who suffered from human trafficking.”* Closely linked with the principle of the right to safety is that of the right to housing and shelter, likewise called for in Article 6 of the UN Protocol. Azerbaijan’s law also provides for this right, stating in Article 13.1 that “*Temporary shelters for accommodating the victims of human trafficking...shall be created to provide the victims of human trafficking with decent living conditions, to ensure their security, to provide*

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*material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies”* (Guideline 9). Following the lead of the UN Protocol and the UNHCHR Principles and Guidelines, countries began and continue to enact provisions mandating this form of protection. Five basic models on victim compensation have been utilized by the legislator in various countries in enacting appropriate civil compensation provisions, including: *mandatory restitution, confiscation of assets, creation of a state fund to assist victims of trafficking, civil action, and punitive damages*. For example, the Indonesian Law on the Combat against the Crime of Trafficking in Persons of 2007 provides for mandatory restitution, stating in Article 38 that “*Every victim or his/her beneficiary, as a result of the crime of trafficking in persons, is entitled to receive restitution. Restitution [...] is payment for losses to be provided by the perpetrator to the victim or his/her beneficiary.*” The Law of the Dominican Republic on the Illicit Traffic of Migrants and Trafficking in Persons No. 17-03 provides for a confiscation of assets model of compensation for damages, stating in Article 11 that “*Proceeds of the fines of the crime of trafficking shall be used to compensate the victims of trafficking for material damages as well as moral damages and to establish the programs and projects of protection and assistance that the law provides for the victims of trafficking.*” In Georgia, compensation to victims of trafficking is paid out of a specially created State fund, with the law mandating that “*Public law entity “State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking” (hereinafter “the Fund”) shall be established for the purpose of effective implementation of protection, assistance and rehabilitation measures for the (statutory) victims of human trafficking...The purpose of the Fund is to issue compensation to (statutory) victims of human trafficking as well as to finance their protection, assistance and rehabilitation measures. Sources of income of the Fund are: (a) state budgetary resources; (b) resources received from international organizations; (c) contributions from legal entities and natural persons; and (d) other income permitted under legislation of Georgia*” (State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking (Georgia), Article 9). Other legal systems recognize the right of a victim of trafficking to seek damages in a civil court, such as the United States Trafficking Victims Protection Reauthorization Act of 2003, which, in Section 107, states that “*An individual who is a victim of [trafficking in persons] may bring a civil action against the perpetrator in an appropriate district court of the US and may recover damages and reasonable attorney’s fees. Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.*” Finally, in some legal systems, victims have been awarded not only damages to compensate for their losses or moral damages, but also punitive damages, the purpose of which is to reform or deter the perpetrator whose conduct had damaged the victim. Such a model has been followed by the Cyprus Law on Combating of Trafficking in Persons and Sexual Exploitation of Children of 2000, which stated in Article 8 that “*The victims of exploitation according to the meaning of this Law have an additional right for damages against any person who is responsible for their exploitation, and is liable for damages, special and general... The Court may award punitive damages when the degree of the exploitation or the degree of relationship or the dominating position of the offender*

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*with regard to the victim so require... The Court, in the award of special damages, takes into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners.”*

Accordingly, the right to assistance, whether medical, psychological, or legal, is also an important right elaborated by the IL Protocol

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*residence permit, would ideally be granted to victims of trafficking regardless of whether the trafficked person is able or willing to give evidence as a witness. Such protection of the victim serves to raise his or her confidence in the State and its ability to protect his or her interests. Once recovered, a trafficked person with confidence in the State is more likely to make an informed decision and cooperate with authorities in the prosecution of traffickers.”* Importantly, as a sign of the growing acceptance of this notion, the Council of Europe Convention on Action against Trafficking in Human Beings has made such a period a mandatory requirement for State Parties to the convention regardless of their willingness to cooperate with the authorities in prosecution, requiring that: “*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*” (Article 13).

Complementary to the right of residence, the UN Protocol mandated that trafficking victims be granted the right to a dignified return to their country of origin, rather than deportation, as had been common practice until the passage of the UN Protocol. The UN Protocol provided, in Article 8, that State Parties of which victims of trafficking are nationals or residents should “*facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.*” Repatriation of victims “*shall be preferably voluntary.*” States have recognized this element of protection for victims of trafficking and enacted provisions accordingly. For example, the Law of the Republic of Azerbaijan on the Fight against Human Trafficking, in Article 20, states that “*If the victim of human trafficking wishes to leave the territory of the Republic of Azerbaijan, assistance in providing him/her with relevant documents, covering travel and other necessary expenses shall be provided and recommendations on reducing a risk of becoming a victim of human trafficking in the country of destination shall be given.*”

*Prosecution.* The UN Protocol introduced an important shift in legal thinking in reference to the crime of trafficking. Prior to the passage of the UN Protocol, the crime of trafficking in persons as distinct and separate from the crime of migrant smuggling was largely ignored or misunderstood and the two crimes were conflated with each other. In most cases, States recognized explicitly the crime of alien or migrant smuggling, with trafficking victims lumped into the category of illegal migrants. As such, few States had the necessary legal framework to adequately identify and punish the crime of trafficking in persons as distinct from the crime of alien smuggling. For many years, even after the passage of the UN Protocol, many States misunderstood this distinction. However, with

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increased worldwide efforts of sensitization and public awareness work, States have begun to comprehend the differences between the two crimes and legislate accordingly.

An important example of this increased understanding has been the enactment of appropriate, dissuasive and proportionate sanctions for the crime. Anti-trafficking legislation has begun to recognize trafficking as a serious crime, one which carries penalties similar to those of other serious crimes like drug trafficking, rape, and arms

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*the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group.”*

Other States have legislated on the basis of aggravating circumstances regarding the victim. Examples of such aggravating circumstances include cases in which the offence had deliberately or by gross negligence endangered the life of the victim; the offence had caused the victim's death or suicide; the offence had caused particularly serious harm or





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residency status is granted. Prior to the UN Protocol, a role for civil society was rarely legislated for in domestic laws given that most tended to either lump victims of trafficking into a category of criminals, persons not entitled to the benefits victims are

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The representation model, which is the more inclusive model, incorporating the full partnership of civil society organizations in governments' anti-trafficking efforts, involves the inclusion of representatives of non-governmental organizations concerned with the issue of trafficking as part of a national inter-agency body tasked with implementing anti-trafficking policies. For example, the Anti-trafficking in Persons Act no. 670 of 2007 of Malaysia, states, in Article 6 that "*A body to be known as the Council for Anti-trafficking in Persons shall be established. The Council shall consist of various ministries and "not more than three persons from non-governmental organizations or other relevant organizations having appropriate experience in problems and issues relating to trafficking in persons including the protection and support of trafficked persons."* The Philippines Republic Act 9208 of 2003, in Section 20(g), states that "*In The Philippines three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino*

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*Agency Task Force on Trafficking shall engage in consultation and advocacy with governmental and non-governmental organizations, among other entities.”* The Union of Myanmar Anti Trafficking in Persons Law

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Philippine Overseas Employment Act aims to “...*Give utmost priority to the establishment of programs and services to prevent illegal recruitment, fraud, and*