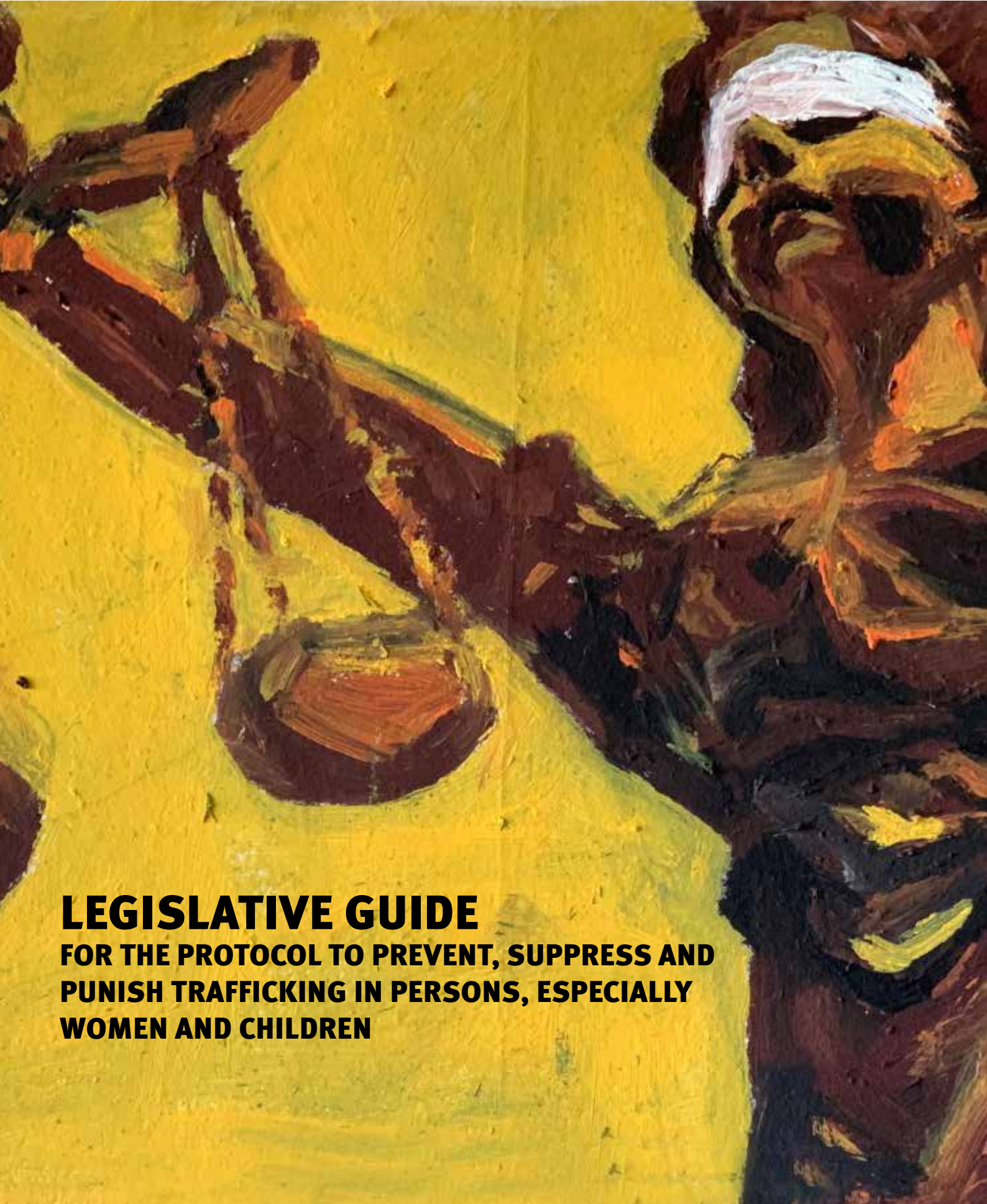




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The background of the cover is an abstract painting. It features a large, textured area of bright yellow on the left side, which transitions into dark brown and black tones on the right. The brushstrokes are thick and expressive, creating a sense of depth and movement. The overall composition is dynamic and somewhat somber, reflecting the serious nature of the document's subject matter.

LEGISLATIVE GUIDE
FOR THE PROTOCOL TO PREVENT, SUPPRESS AND
PUNISH TRAFFICKING IN PERSONS, ESPECIALLY
WOMEN AND CHILDREN

UNITED NATIONS OFFICE ON DRUGS AND CRIME
VIENNA

LEGISLATIVE GUIDE

FOR THE PROTOCOL TO PREVENT, SUPPRESS AND
PUNISH TRAFFICKING IN PERSONS, ESPECIALLY
WOMEN AND CHILDREN, SUPPLEMENTING THE
UNITED NATIONS CONVENTION AGAINST
TRANSNATIONAL ORGANIZED CRIME



UNITED NATIONS

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1. INTRODUCTION

1. Trafficking in persons is a serious crime which undermines the dignity and liberty of its victims. Every year, thousands of women, men, and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. Accurate and complete data on the true extent of trafficking is difficult to collect, including because many instances of trafficking occur clandestinely and are never officially recorded. The number of victims of trafficking in persons recorded each year is, however, rising, which is also a result of improved detection and reporting methods¹.
2. The challenge for all countries is to target the offenders who exploit desperate people and to protect and assist victims of trafficking, many of whom endure unimaginable hardships in their bid for a better life. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children [the 'Trafficking in Persons Protocol'], supplementing the United Nations Convention against Transnational Organized Crime² marks the international community's most comprehensive effort to deal with trafficking in persons in its modern forms. Since its adoption in 2000, the Trafficking in Persons Protocol has spurred significant activities at the local, national and international levels.
3. The purpose of the Protocol, as expressly stated in its article 2, 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.
4. The Trafficking in Persons Protocol is a milestone in the development of international law and overcomes weaknesses in earlier international instruments that were less precise about the meaning of trafficking in persons and not comprehensive enough about the specific actions that must be taken to combat it. Unlike earlier instruments, the Protocol seeks to address trafficking in persons in all its manifestations, regardless of the exploitative purpose, regardless of whether the crime occurred transnationally or not and regardless of the victim's age and gender. The Protocol nevertheless recognizes that women and children are disproportionately affected by this crime³. The Protocol sets out a minimum uniform approach to be taken by all States Parties, and to facilitate international cooperation among them.

A short history of events leading to the Enactment of the Trafficking in Persons Protocol

5. Throughout the 19th and 20th centuries, a wide range of international instruments emerged which sought to prevent and combat the exploitation of human beings. These instruments address, inter alia, slavery and servitude, the exploitation of prostitution of others, and forced labour, as well as the rights of children and other human rights dimensions associated with exploitation. Often aimed at particular types of offending or specific categories of persons, these instruments did not form a framework to tackle trafficking in persons comprehensively, yet they have helped to shape and explain the scope, vocabulary, and interpretation of the Trafficking in Persons Protocol.
6. The origin of the Protocol can be found in a proposal made by the Government of Argentina suggesting the development of a new convention against trafficking in minors. The proposal was discussed in 1997 during the Sixth Session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), the central body within the United Nations (UN) system dealing with criminal justice matters⁴.

¹ See further, UNODC, Global Reports on Trafficking in Persons.

² Opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) [hereinafter 'Trafficking in Persons Protocol'].

³ See further, UNODC, Global Report on Trafficking in Persons 2018 (2018) 25–29.

⁴ UN Economic and Social Council, Measures to Prevent Trafficking in Children, Report of the Secretary-General, UN Doc. E/CN.15/1997/12 (28 February 1997).

7. On 9 December 1998, following recommendations by the CCPCJ and the Economic and Social Council (ECOSOC)⁵, the UN General Assembly established an open-ended intergovernmental Ad Hoc Committee open to all Member States to draft and discuss the main text of a new comprehensive international convention against transnational organized crime along with three additional international legal instruments (later referred to as Protocols), including one instrument on trafficking in women and children⁶.
8. Between January 1999 and October 2000, the Ad Hoc Committee held 11 sessions at the United Nations in Vienna, Austria to discuss and finalise the text of the Convention and the three supplementing Protocols. At the first session, the United States introduced the draft text for a “Protocol to Combat International Trafficking in Women and Children”⁷ and Argentina for “an agreement on the prevention, suppression and punishment of international trafficking in women and children.”⁸ These were combined and submitted as one draft at the second session of the Ad Hoc Committee in March 1999⁹. Following a resolution by the UN General Assembly, the scope of this additional instrument was expanded to address trafficking in all persons, albeit with special attention to women and children who were believed to be especially vulnerable to this crime¹⁰.
9. Consultations on the Convention against Transnational Organized Crime, the Trafficking in Person Protocol, and the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded at the 11th session in October 2001. The final text of the Convention and Protocols was endorsed by the United Nations General Assembly on 15 November 2000¹¹.
10. The two Protocols, along with the Convention against Transnational Organized Crime, were opened for signature on 12 December 2000 at a high-level conference held in Palermo, Italy; for this reason, these instruments are sometimes referred to as the ‘Palermo Convention’ or ‘Palermo Protocols’. A third protocol, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was opened for signature on 31 May 2001¹².
11. The Trafficking in Persons Protocol entered into force on 25 December 2003, 90 days after the fortieth instrument of ratification, acceptance, approval or accession¹³.

⁵ UN Economic and Social Council, Transnational organized crime, UN Doc. E/RES/1998/14 (28 July 1998) [10].

⁶ UN General Assembly, Transnational organized crime, UN Doc. A/RES/53/111 (20 January 1999) [10]; UN General Assembly, Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity, UN Doc. A/RES/53/114 (20 January 1999) [13].

⁷ UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Crime, UN Doc. A/AC.254/4/Add.3 (25 November 1998).

⁸ UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Consideration of the additional international legal instruments against trafficking in women and children, UN Doc. A/AC.254/8 (15 January 1999).

⁹ UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.3/Rev.1 (22 February 1999).

¹⁰ UN General Assembly, Draft United Nations Convention against Transnational Organized Crime and draft protocols thereto, UN Doc. A/RES/54/216 (20 January 2000) 2 [3].

¹¹ UN General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, UN Doc. A/55/383 (2 November 2000).

¹² 2326 UNTS 208 (entered into force 3 July 2005).

¹³ Article 17 paragraph 1 Trafficking in Persons Protocol.

A. STRUCTURE OF THIS LEGISLATIVE GUIDE

12. The present Legislative Guide seeks to explain the context, content, meaning, and interpretation of the provisions in the Trafficking in Persons Protocol. It serves as a tool to legislators and those charged with drafting and reviewing laws against trafficking in persons and offers guidance on implementing the obligations under the Protocol into domestic laws. The Guide should not be read in isolation. Other UNODC tools, including the Model Legislative Provisions against Trafficking in Persons, published alongside this material, and the various issue papers on key concepts contained in the Trafficking in Persons Protocol provide further guidance and assistance on implementation.
13. The Guide further seeks to assist those interpreting and enforcing international and national laws relating to trafficking in persons, as well as those conducting research and analysis of policies, laws, and practical measures to prevent and combat trafficking in persons, protect victims of such trafficking, and foster international cooperation.
14. The Guide is divided into six chapters, marked by Roman numbers (I to VI). Following this introduction (I), Chapter II addresses the scope of the Protocol and technical provisions that explain the relationship between the Protocol and the Convention against Transnational Organized Crime and that give general guidance on the interpretation and implementation of the Protocol. Chapter III explains the definition of trafficking in persons and its elements as well as the obligation to criminalize trafficking in persons. Chapter IV turns to the provisions under the Protocol that seek to protect the rights of victims and identify strategies to support them. Measures to prevent trafficking in persons are the subject of Chapter V. Chapter VI outlines the requirements pertaining to cooperation among States Parties and between States Parties and other entities.
15. The sequence of chapters and the structure of each chapter are presented thematically rather than following the Protocol article by article. This was done to make it easier to use by allowing the reader to focus on particular issues or questions. Those parts of this Guide that cover specific articles of the Protocol start by quoting the relevant text. Each chapter is divided into several parts (marked alphabetically by A, B, C, ...). Each part, insofar as possible, is organized along the same structure, using the following four sections:
 1. Introduction
 2. Main requirements
 3. Implementation
 4. Further matters.
16. Particular attention should be paid to the parts giving a summary of the main requirements, which provide information on the essential requirements of the articles concerned.
17. “Related international instruments” are listed at the end of each chapter. These include references to other relevant articles in the Convention against Transnational Organized Crime and the Protocols thereto and references to other relevant international and regional instruments. Where applicable, references to related provisions under other instruments relating to trafficking in persons have been included.
18. At the end of this Legislative Guide, three Annexes set out: (I) notification requirements under the Trafficking in Persons Protocol; (II) a table comparing the provisions under the Trafficking in Persons Protocol to provisions under relevant regional anti-trafficking instruments; and, (III) a record of the material used to compile this Legislative Guide.
19. The information presented in this Legislative Guide is current as of 2020. It replaces the first edition of the Legislative Guide published in October 2004¹⁴.

¹⁴ UNODC, Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto (2004).

B. STRUCTURE OF THE TRAFFICKING IN PERSONS PROTOCOL

20. The Trafficking in Persons Protocol comprises 20 articles and is divided into four parts: I. General provisions, articles 1 to 5; II. Protection of victims of trafficking in persons, articles 6 to 8; III. Prevention, cooperation and other measures, articles 9 to 13; and, IV. Final provisions, articles 14 to 20.
21. The Protocol sets the minimum standard in addressing trafficking in persons that must be dealt with in domestic law. The process by which the requirements of the Trafficking in Persons Protocol can be fulfilled will vary from State to State. Monist systems could ratify the Protocol and incorporate its provisions into domestic law by official publication. Dualist systems would require implementing legislation.
22. As those responsible for preparing legislative drafts examine the priorities and obligations under the Protocol, the guidance presented in the following paragraphs should be kept in mind.
23. Several provisions in the Trafficking in Persons Protocol are qualified by reference to the domestic law or legal system of the States Parties. While the precise formulation of this clause varies between articles, the common purpose of these phrases is to ensure that legislators adapt the language of the Protocol's requirements to the relevant domestic settings, such that they match general principles and pre-existing laws and systems. If the phrase "to the extent possible within their legal systems" is used, this does not make the Protocol's obligations subject to those principles; rather, the obligation here is to adopt appropriate measures in accordance with general principles and the particular application and understanding in the State Party.
24. The phrase "subject to the basic concepts of its legal system" is a safeguard clause that limits the relevant provisions to consistency with the State Party's legal principles or that subjects relevant requirements to those principles. The phrase "consistent with their respective domestic legal and administrative systems," is explained in an Interpretative Note to the Convention against Transnational Organized Crime, stating that this clause provides States Parties with flexibility regarding the extent and manner of cooperation, within the object and purpose of the Convention. For example, it enables States Parties to deny cooperation where it would be contrary to their domestic laws or policies to provide the assistance requested¹⁵. Such justified exceptions must, however, be consistent with the overall duties of States Parties under the Convention and Protocol.
25. It is recommended that drafters of legislation check for consistency with existing law, including other offences, definitions, and other legislative uses before relying on formulations or terminology of the Trafficking in Persons Protocol, which was drafted for general purposes and addressed to governments. Thus, the level of abstraction is higher than that necessary for domestic legislation. Therefore, in drafting legislation, care should be taken not to incorporate verbatim parts of the text but to reflect the spirit and meaning of the various articles.
26. Interpretative Notes have been articulated by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime throughout the process of negotiation of the draft Protocol and Convention. The Interpretative Notes are cited in this Legislative Guide to provide additional explanations and to give insight into the intent and concerns of the drafters¹⁶. In addition, this Legislative Guide makes reference to the Travaux Préparatoires (official records) of the negotiations of the Conventions and the Protocols thereto¹⁷. The purpose of the Travaux Préparatoires is to track the progress of the negotiations of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in order to provide insight into the issues confronted by the Ad Hoc Committee and the solutions it found.

¹⁵ UN General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions – Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN Doc. A/55/383/Add.1 (3 November 2000) [50]; UNODC, Travaux Préparatoires of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, 2006) [hereinafter Travaux Préparatoires] 244.

¹⁶ UN General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions – Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN Doc. A/55/383/Add.1 (3 November 2000).

¹⁷ UNODC, Travaux Préparatoires of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, 2006) [hereinafter Travaux Préparatoires].

C. OTHER MATERIAL TO BE CONSIDERED IN IMPLEMENTING AND INTERPRETING THE TRAFFICKING IN PERSONS PROTOCOL

27. Legislators, drafters, and other officials engaged in efforts to ratify or implement the Trafficking in Persons Protocol, or to review or amend national anti-trafficking laws, should also refer to the text of¹⁸:
- (a) the Convention against Transnational Organized Crime (with which the provisions of the Trafficking in Persons Protocol must be read),¹⁹ and
 - (b) the Protocol against the Smuggling of Migrants by Land, Sea and Air because it contains some of the same provisions as the Trafficking in Persons Protocol and, in practice, trafficking in persons and migrant smuggling cases may overlap²⁰.
28. Relevant provisions under these instruments are referenced throughout this Legislative Guide.
29. Since the Trafficking in Persons Protocol was first opened for signature, a plethora of material has been produced to shed light into the spirit, scope, application, and interpretation of the Protocol, its relationship to the Convention against Transnational Organized Crime, and into the practical challenges encountered by States Parties when implementing and enforcing the terms of the Protocol domestically.
30. Pursuant to article 32 paragraph 1 of the Convention against Transnational Organized Crime, a Conference of the Parties to the Convention has been established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of the Convention and its Protocols. Since the first session of the Conference of the Parties in 2004, regular sessions of the Conference have been convened every two years (with one additional session in 2005). A working group on international cooperation and another on technical assistance were established in 2006. Working Groups assist the Conference to fulfil its mandate under article 32 of the Convention against Transnational Organized Crime. The Conference of the Parties and these two working groups have examined a great range of legislative, technical, and practical issues pertaining to the operation of the Convention and its Protocols. This work is documented in a range of reports, background papers, and other documents that inform the implementation and interpretation of the Convention and the Protocols and that have been cited, where relevant, throughout this Legislative Guide.
31. At its fourth session, held from 8 to 17 October 2008, the Conference of the Parties decided to establish an open-ended interim working group to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol. The first meeting of the Working Group on Trafficking in Persons was held from 14 to 15 April 2009. The Conference of the Parties further decided that the Working Group should perform the following functions:
1. Facilitate implementation of the Trafficking in Persons Protocol through the exchange of experience and practices between experts and practitioners in this area, including by contributing to the identification of weaknesses, gaps and challenges.
 2. Make recommendations to the Conference on how States Parties can better implement the provisions of the Trafficking in Persons Protocol;
 3. Assist the Conference in providing guidance to its secretariat on its activities relating to the implementation of the Trafficking in Persons Protocol;

¹⁸ See further, II.A.1 below.

¹⁹ Those States which have signed the Convention against Transnational Organized Crime and its Protocols by the date prescribed for each instrument may become parties by filing an instrument of ratification. Those which did not sign within that period may become parties at any time once the instrument is in force by acceding to the instrument. Information about the exact requirements may be obtained from the Office of Legal Affairs, United Nations Headquarters. For the sake of simplicity, references in this guide are mainly to “ratification”, but the possibility of joining an instrument by accession should also be borne in mind.

²⁰ Opened for signature 15 November 2000, 2247 UNTS 507 (entered into force 28 January 2004).

4. Make recommendations to the Conference on how it can better coordinate with the various international bodies combating trafficking in persons with respect to implementing, supporting and promoting the Trafficking in Persons Protocol.
 32. In 2014, in its resolution 7/1 entitled “Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto,” the Conference of the Parties decided that the Working Group on Trafficking in Persons will be a constant element of the Conference.
 33. Since its inception, the Working Group on Trafficking in Persons has explored a host of issues that directly relate to the understanding and interpretation of the text of the Trafficking in Persons Protocol and that reflect the experience by States Parties in implementing and operationalizing the Protocol’s provisions. The reports, background papers, and other documents presented to the Working Group are important resources that can assist national drafters when enacting, amending, implementing and reviewing domestic legislation. Accordingly, relevant documents from the Working Group on Trafficking in Persons are referenced extensively throughout this Legislative Guide.
 34. Other UN bodies, including the Security Council, the General Assembly and the Economic and Social Council have repeatedly discussed a range of matters relating to trafficking in persons. Relevant resolutions and other documents are instructive for the understanding and interpretation of the provisions under the Trafficking in Persons Protocol and, accordingly, are referenced throughout this Guide.
 35. In addition, the United Nations Office on Drugs and Crime (UNODC), the “guardian” of the Convention against Transnational Organized Crime and its Protocols, has published a wealth of issue papers, “toolkits”, and other material designed to assist those involved in drafting national laws, enforcing anti-trafficking laws, protecting victims, in international cooperation, and in prevention efforts. This material has informed and shaped the content of this Legislative Guide. This also includes the first edition of the Legislative Guide, published in 2004, which formed the basis of this fully revised and updated version which captures developments up until 2020. These materials and the Legislative Guide complement each other and should all be relied upon when developing or adapting anti-trafficking responses.
 36. Extensive material on specific aspects pertaining to trafficking in persons and on best practices in preventing and suppressing this crime and on protecting and assisting victims of trafficking have also been developed by other UN entities, including the Office of the High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the International Organization for Migration (IOM), and UNICEF, the United Nations Children’s Fund. While not covered exhaustively, relevant material is referenced throughout this Guide.
 37. Not further considered here is the ever-growing body of academic scholarship and secondary sources on trafficking in persons. This also includes the myriad publications produced by non-governmental organizations that make an important contribution to national and international efforts to combat trafficking and assist trafficked persons. This should also be considered when developing strategies, laws, and practical measures against trafficking in persons.
-

REGIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

38. Several regional anti-trafficking agreements, instruments and frameworks exist around the world that, like the Protocol, serve to promote and guide national efforts as well as cross-border cooperation to prevent and suppress trafficking in persons and protect victims of such trafficking. Some of these instruments predate the Protocol, while later ones adopt the language of the Protocol and complement its provisions with additional measures. Some instruments have slightly broader application than the Trafficking in Persons Protocol; some focus on very specific trafficking-related matters.
39. The Organization of American States' Inter-American Convention on International Traffic in Minors pre-dates the Trafficking in Persons Protocol by more than a decade. It was adopted on 18 March 1994 and entered into force on 15 August 1997²¹. The purpose of this Convention, as stated in its article 1, "is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects. Accordingly, the States Parties to this Convention undertake to:
- (a) ensure the protection of minors in consideration of their best interests;
 - (b) institute a system of mutual legal assistance among the States Parties, dedicated to the prevention and punishment of the international traffic in minors, as well as adopt related administrative and legal provisions to that effect; and
 - (c) ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors."
40. The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was enacted on 5 January 2002 and entered into force on 15 November 2005. According to its Article II, "[t]he purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination."
41. On 16 May 2005, Member States of the Council of Europe adopted the Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008²². The preamble to the Convention makes express reference to the United Nations Convention against Transnational Organized Crime and the Trafficking in Persons Protocol and, in this context, seeks to "improve the protection" these instruments afford and to "develop the standards established by them". Accordingly, article 1 paragraph 1 of the Convention states the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings are as follows:
- (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.

²¹ Organization of American States, Inter-American Convention on International Traffic in Minors, adopted 18 March 1994, OAS Treaty Series No. 79 (entered into force 15 August 1997).

²² Council of Europe, Convention on Action against Trafficking in Human Beings, adopted 16 May 2005, Council of Europe Treaty Series No. 197 (entered into force 1 February 2008).

42. Member States of the European Union are further bound by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims²³. This Directive, which makes express reference both to the Trafficking in Persons Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings, “establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof” (article 1).
43. Member States of the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Convention against Trafficking in Persons, especially Women and Children on 21 November 2015. This Convention entered into force on 8 March 2017. Its preamble recalls the purposes and principles of the United Nations Convention against Transnational Organized Crime and, where applicable, the Trafficking in Persons Protocol. The objectives of this Convention, as stated in article 1 are to effectively:
- (a.) prevent and combat trafficking in persons, especially against women and children, and to ensure just and effective punishment of traffickers;
 - (b.) protect and assist victims of trafficking in persons, with full respect for their human rights; and
 - (c.) promote international cooperation among the parties to meet these objectives.
44. In 2004, the League of Arab States adopted the Arab Charter of Human Rights. Article 10 provides that “all forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.” Subsequently, in 2010, the League of Arab States adopted the Arab Convention against Transnational Organized Crime, which replicates the definition of trafficking in persons from article 3 of the Trafficking in Persons Protocol and calls on Arab States to criminalize trafficking in persons.
45. For the purposes of this Legislative Guide, references to provisions under these regional agreements that correspond to provisions under the Trafficking in Persons Protocol have been included at the end of each chapter. In addition, Annex II of this Legislative Guide contains a table comparing the provisions under the Trafficking in Persons Protocol to provisions under relevant regional anti-trafficking instruments.

²³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15 April 2011.

02



SCOPE AND TECHNICAL PROVISIONS

A. RELATIONSHIP TO THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND OTHER INSTRUMENTS

Trafficking in Persons Protocol

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

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

Article 14 – Saving clause

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

Convention against Transnational Organized Crime

Article 37 – Relation with protocols

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

1. INTRODUCTION

46. States Parties need to be aware of a number of general provisions and requirements that may not be evident in reading a particular article of the Trafficking in Persons Protocol. These general provisions and requirements concern the relationship between the Protocol and the Convention against Transnational Organized Crime, the purpose, scope, and implementation of the Protocol, and obligations arising from other international instruments that States are parties to. These general provisions and requirements must be clearly understood by legislative drafters and policy makers and care must be taken to incorporate them when preparing legislation to implement the specific articles concerned.

1. APPLICATION OF THE CONVENTION AGAINST TRANS-NATIONAL ORGANIZED CRIME TO THE TRAFFICKING IN PERSONS PROTOCOL (ARTICLE 1 OF THE PROTOCOL AND ARTICLE 37 OF THE CONVENTION)

47. Article 37 of the Convention against Transnational Organized Crime and article 1 of each of the Protocols thereto, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition²⁴, together establish the principles governing the relationship between the Convention and its Protocols.
48. The four instruments were drafted as a group, with general provisions against transnational organized crime placed in the Convention and elements specific to the subject matter of the Protocols in each of the Protocols. This ensures that, in any case that arises under a Protocol to which the States concerned are parties, all of the general provisions of the Convention will also be available and applicable. Many specific provisions are drafted on this basis.
49. As the Protocols are not intended to be independent treaties, to become a party to any of the Protocols, including the Trafficking in Persons Protocol, a State is required to be a State Party to the Convention (article 37 paragraph 2 of the Convention against Transnational Organized Crime). Simultaneous ratification or accession is permitted, but it is not possible for a State to be subject to an obligation of any of the Protocols unless it is also subject to the obligations of the Convention.
50. The Convention and the Trafficking in Persons Protocol must be interpreted together (article 37 paragraph 4 of the Convention and article 1 paragraph 1 of the Protocol). In interpreting the various instruments, all relevant instruments should be considered and provisions that use similar or parallel language should be given generally similar meaning. In interpreting one of the Protocols, the purpose of that Protocol must also be considered, which may modify the meaning applied to the Convention in some cases (article 37 paragraph 4 of the Convention).
51. The provisions of the Convention apply, *mutatis mutandis*, to the Protocol (article 1 paragraph 2 of the Protocol). An Interpretative Note to article 1 paragraph 2 explains that: “[t]his paragraph was adopted on the understanding that the words *mutatis mutandis* meant ‘with such modifications as circumstances require’ or ‘with the necessary modifications’. Provisions of the United Nations Convention against Transnational Organized Crime that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as under the Convention.”²⁵ In other words, modifications and interpretations are permissible to take account of the circumstances that arise under the Protocol, but modifications should not be made unless they are necessary, and only to the extent that is necessary. This general rule does not apply where the drafters have specifically excluded it.
52. Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (article 1 paragraph 3 of the Protocol). This principle, which complements the *mutatis mutandis* requirement, is a critical link between the Protocol and the Convention. It ensures that any offence or offences established by a State to prohibit trafficking in persons as required by article 5 of the Protocol will automatically be inclu-

²⁴ Opened for signature 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005).

²⁵ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 330.

²⁶ In most cases, the drafters used the phrase “offences covered by this Convention” to make this link.

ded within the scope of the basic provisions of the Convention governing forms of international cooperation²⁶. For example, States Parties may invoke the Convention's articles concerning mutual legal assistance (article 18), extradition (article 16) and cooperation for the purpose of confiscation (article 13) in cases involving trafficking in persons. Key provisions of the Convention that are also applicable to trafficking in persons. In particular, as discussed in Chapter III of this Legislative Guide, obligations in the Convention concerning money-laundering (article 6), liability of legal persons (article 10), prosecution, adjudication and sanctions (article 11), confiscation (articles 12–14), jurisdiction (article 15), extradition (article 16), mutual legal assistance (article 18), special investigative techniques (article 20), obstruction of justice (article 23), witness and victim protection and enhancement of cooperation (articles 24–26), law enforcement cooperation (article 27), training and technical assistance (articles 29 and 30), and implementation of the Convention (article 34) apply equally to the offences established in the Protocol.

53. The Protocol requirements set a minimum standard. Domestic measures may be broader in scope or more severe than those required by the Protocol, as long as all obligations specified in the Protocol have been fulfilled (article 34 paragraph 3 of the Convention). States that legislate more broadly and impose increased or stricter measures in their domestic law may, however, not be able to get cooperation from other States Parties with respect to the provisions that go beyond the standards set in the Protocol.

2. APPLICATION OF OTHER RELEVANT INTERNATIONAL INSTRUMENTS (ARTICLE 14 PARAGRAPH 1)

54. The Trafficking in Persons Protocol is the principal international treaty addressing trafficking persons, though it stands in a series of international instruments that, directly or indirectly, deal with trafficking in persons, exploitation, or related subjects. That made it necessary, in the course of drafting the Protocol, to consider carefully the language of the various provisions and how they would interact with principles already established in international law.²⁷
55. The basic principle established by article 14 paragraph 1 is that any rights, obligations, or responsibilities arising from other international law are maintained and not affected by the Protocol. The Protocol does not narrow or diminish any rights, obligations, or responsibilities; it only adds to them to the extent that is provided for in the text.²⁸ Improper measures taken to address trafficking can have an adverse impact on the rights and freedoms of victims of trafficking. Article 14 paragraph 1 reminds States that they must ensure that anti-trafficking measures do not undermine or otherwise negatively affect human rights or international legal obligations.²⁹
56. At the same time, care has also been taken to recognize that not all States that become parties to the Protocol are parties to some of the other relevant international instruments. An Interpretative Note to article 14 paragraph 1 explains that: “[t]his Protocol is without prejudice to the existing rights, obligations or responsibilities of States Parties under other international instruments, such as those referred to in this paragraph. Rights, obligations and responsibilities under another instrument are determined by the terms of that instrument and whether the State concerned is a party to it, not by the Protocol. Therefore, any State that becomes a party to this Protocol but is not a party to another international instrument referred to in the Protocol would not become subject to any right, obligation or responsibility under that instrument.”³⁰

²⁷ For a record of other human rights instruments adopted by the United Nations and its agencies prior to the Trafficking in Persons Protocol see, for example, UN Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development; Report submitted by the Special Rapporteur on Trafficking in Persons, especially Women and Children, Joy Ngozi Ezeilo, UN Doc. A/HRC/10/16 (20 February 2009) 9–11 [20].

²⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle, Analytical report of the Secretariat, UN Doc. CTOC/COP/2006/6 (16 August 2006) 13 [38].

²⁹ OHCHR, Human Rights and Human Trafficking, Fact Sheet No. 36 (2014) 49.

³⁰ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 421.

57. Given the number of overlapping principles that may apply to any State Party in both developing and applying legislation, drafters and legislators are advised to review the scope of their state's obligations under international law, including regional agreements, as well as any national legislation previously enacted or adopted to implement those obligations, in order to ensure that any measures undertaken in conformity with the Protocol are consistent. A list of instruments that might be considered or consulted by drafters is found at the end of this Chapter.

(a) Convention and Protocol relating to the Status of Refugees

58. Article 14 paragraph 1 makes clear that the Trafficking in Persons Protocol does not affect the rights, obligations and responsibilities of States and individuals under international law. This encompasses not only the specific areas of law and Conventions referenced in Article 14, but also any regional instruments to which a state may be party to, including those relating to refugees. Article 14 makes explicit mention of the Convention and Protocol relating to the Status of Refugees,³¹ which set out the definition of refugees and the protection and rights afforded to them. An Interpretative Note to article 14 paragraph 1 stresses that "[t]he Protocol does not cover the status of refugees."³² In cases where a victim of trafficking in persons is also a refugee, the Convention and Protocol relating to the Status of Refugees apply in addition to the Trafficking in Persons Protocol.³³
59. The explicit reference in the text of article 14 paragraph 1 to non-refoulement found in article 33 of the Convention relating to the Status of Refugees serves to emphasize the importance of this principle. The principle, which is broader than what is specifically referenced in article 33, is that no State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where her or his life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group, or political opinion.

(b) International humanitarian and human rights law

60. The scope and application of the Trafficking in Persons Protocol inevitably raises human rights issues and article 14 paragraph 1 of the Protocol is designed to respect and uphold relevant international instruments and the rules of customary international law.
61. The Protocol refers to principles of international humanitarian and human rights law; some of these principles may also be norms of customary international law. Becoming a party to the Protocol does not indirectly make those principles, which are not norms of customary international law, from other instruments applicable to a State to which they had not previously applied. Relevant treaties include, but are not limited to, the Convention relating to the Status of Refugees and its Protocol of 1967, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

³¹ Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954), and Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

³² UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 421.

³³ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle*, Analytical report of the Secretariat, UN Doc. CTOC/COP/2006/6 (16 August 2006) 13 [38].

3. NON-DISCRIMINATION (ARTICLE 14 PARAGRAPH 2)

62. Article 14 paragraph 2 of the Trafficking in Persons Protocol states that the measures set forth in the Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons and on the type of exploitation and shall be consistent with internationally recognized non-discrimination principles.
63. The link between discrimination and trafficking lies in the fact that measures taken by States to prevent and suppress trafficking can perpetuate discrimination or violate the prohibition against discrimination. This is particularly acute in cases involving non-nationals and in the context of gender-based discrimination. Even if they are outside their country of residence, international law is clear that victims of trafficking in persons cannot be discriminated against simply because they are non-nationals.³⁴ Under international human rights law, an anti-trafficking measure will violate the prohibition on sex-based discrimination if the measure can be shown to: (a) negatively affect the rights of the individual involved; and (b) be overwhelmingly directed to and affect women and girls. Detention of women and girls and restrictions on cross-border and internal mobility of women and girls are just two examples of potentially discriminatory responses to trafficking.³⁵
64. The “internationally recognized principles of non-discrimination” referred to in article 14 paragraph 2 of the Trafficking in Persons Protocol are not further defined or specified in the Protocol and the phrase does not refer to a clearly identifiable set of instruments or documents. Article 2 of the Universal Declaration of Human Rights provides one of the earliest non-discrimination statements by declaring that all rights and freedoms are afforded “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”³⁶. Article 26 of the International Covenant on Civil and Political Rights states that: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁷ Subsequent international and regional agreements re-state and further elaborate on this statement by recognizing additional protected classes. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is specifically addressed at addressing discrimination against women (articles 1 and 2) and in article 6 it includes an express obligation for States Parties to this convention to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”³⁸ The Convention on the Rights of the Child in article 2 further requires States Parties to respect and ensure the rights set forth that Convention to each child apply 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.
65. It is widely accepted that the principle of non-discrimination extends to indirect discrimination, where a practice or requirement is neutral on the face but impacts disproportionately upon particular groups.³⁹

³⁴ OHCHR, Human Rights and Human Trafficking, Fact Sheet No. 36 (2014) 6.

³⁵ OHCHR, Human Rights and Human Trafficking, Fact Sheet No. 36 (2014) 49–51, see also Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38, 2020.

³⁶ UN General Assembly, Universal Declaration of Human Rights, Resolution 217 (III), 10 December 1948.

³⁷ Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

³⁸ Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

³⁹ David McClean, Transnational Organized Crime (2007) 369.

4. INTERPRETATION OF THE TRAFFICKING IN PERSONS PROTOCOL (ARTICLES 1 AND 14 OF THE PROTOCOL AND ARTICLE 37 OF THE CONVENTION)

66. The interpretation of treaties is a matter for States Parties. General rules for the interpretation and application of treaties are covered by the Vienna Convention on the Law of Treaties;⁴⁰ these are not discussed in detail in this Legislative Guide.
67. One factor in interpreting treaties is that interpretative principles may be established by the treaty itself. These general rules may be amended or supplemented by rules established in individual treaties, however, and a number of specific interpretative references appear in both the Trafficking in Persons Protocol and the Convention against Transnational Organized Crime.
68. The first rule, established by article 37 of the Convention and article 1 of the Protocol, is that elements of the Convention must be taken into consideration when interpreting the Protocol (see II.A.1 above).
69. The second rule, set out in article 14 paragraph 2 of the Protocol, requires that the measures set forth in the Protocol should be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. Further, the interpretation and application of those measure should be consistent with internationally recognized principles of non-discrimination (see II.A.3 above).
70. The dispute settlement provisions found in the Convention and the Protocol require negotiations, followed by arbitration, as the means of resolving any disputes over interpretation or application matters (see article 35 of the Convention and article 16 of the Trafficking in Persons Protocol).

B. PURPOSES OF THE TRAFFICKING IN PERSONS PROTOCOL

Trafficking in Persons Protocol

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.

71. Three basic purposes of the Trafficking in Persons Protocol are established by article 2: the prevention and combating of trafficking in persons, the protection and support of victims of trafficking, and the promotion of cooperation between States Parties.
72. Article 2 subparagraph (a) requires that “particular attention” be paid to combat and prevent trafficking in women and children, while maintaining the basic principle that any human being, regardless of age or gender, could become a victim and that all forms of trafficking should be covered by the Protocol. That reflects a decision taken by the General Assembly to expand the scope of the Protocol after the negotiations had already commenced.⁴¹ In drafting legislation on the implementation of the Protocol, legislators should generally bear in mind that, although anyone could become a victim, in addition to general rules, more specific provisions

⁴⁰ Opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

⁴¹ UN General Assembly, Draft United Nations Convention against Transnational Organized Crime and draft protocols thereto, UN Doc. A/RES/54/216 (20 January 2000) 2 [3]; see further, Chapter I above.

may be needed in some areas to take into account the particular circumstances associated with women and children who are victimized. Contemporary victim-focussed anti-trafficking responses must pay particular attention to the unique needs of each victim, recognizing that a one-size-fits-all approach will not generally be sufficient.

C. SCOPE OF APPLICATION

Trafficking in Persons Protocol

Article 4 – Scope of application

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

73. The range of activities and circumstances in which the Trafficking in Persons Protocol will apply, as well as exclusions to its application, are governed by article 4 of the Protocol and articles 2 and 3 of the Convention against Transnational Organized Crime, which apply, mutatis mutandis, to the Protocol.
74. Article 4 of the Protocol limits the Protocol to matters relating to trafficking in persons. As with other provisions of the Convention and Protocols, article 34 paragraph 3 of the Convention sets a minimum standard, which States Parties are free to exceed if they wish, bearing in mind that any investigation, prosecution, or other procedures relating to activities that are outside the scope of the Convention or Protocol would not be covered by the various requirements to provide international cooperation.
75. In addition, on first glance, article 4 of the Trafficking in Persons Protocol seemingly limits the application of the Trafficking in Persons Protocol to those trafficking offences that are transnational in nature and involve an organized criminal group. These terms are to be read in conjunction with articles 2 and 3 of the Convention against Transnational Organized Crime which define certain terms and the scope of the Convention's application.
76. Article 2 defines "organized criminal group" as: a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.
77. The terms "structured group" and "serious crime" are also defined in Article 2. A "structured group" is a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure. A "serious crime" is conduct constituting an offence punishable by imprisonment of at least four years.

78. Article 3 of the Convention makes clear that the obligations it creates apply to offences established by the Convention and the Protocols thereto as well as any other offences that meet the definition of “serious crime” provided that the offence in question is transnational in nature and involves an organized criminal group. An offence is “transnational in nature” if it is committed in:
- (a) More than one State;
 - (b) One State but has a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) One State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) One State but has substantial effects in another State.
79. Article 4 of the Trafficking in Persons Protocol reflects Article 3 of the Convention and makes clear that it is applicable to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group, except as otherwise stated.
80. However, these requirements are not part of the definition of trafficking in persons, nor are they required elements for an offence enacted in domestic law (see the Protocol, Article 3 and Article 5, paragraph 1). This point is also emphasized in Article 34, paragraph 2 of the Convention. An Interpretative Note to article 34 paragraph 2 further “indicates unequivocally that the transnational element and the involvement of an organised criminal group are not to be considered elements of those offences for criminalisation purposes”.⁴² This means that national laws prohibiting trafficking in persons must be established independently of the transnational nature or involvement of an organized criminal group. By contrast, when relying upon the Trafficking in Persons Protocol and the Convention for the purpose of international cooperation, for example, a State may be required to show that the offence in question involved organized crime and was transnational.
81. States parties are required to adopt anti-trafficking measures that apply regardless of whether the crime occurred domestically or transnationally and regardless of whether it was perpetrated by one individual or an organized criminal group.

D. IMPLEMENTATION OF THE ARTICLES

82. Generally, most of the articles covered in this Chapter govern the interpretation and application of the other provisions of the Trafficking in Persons Protocol and the Convention against Transnational Organized Crime. They may thus provide for assistance and guidance to be given to Governments, drafters and legislatures, but they do not themselves require specific measures for implementation.
83. However, there may be a need for legislation to ensure the fulfilment of the requirements that the Convention against Transnational Organized Crime be applied *mutatis mutandis* to the Protocol and that offences covered by the Trafficking in Persons Protocol be regarded as offences established in accordance with the Convention. The measures required as a result of these provisions are described in detail under II.A above.

⁴² UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 285.

Related international instruments

Convention against Transnational Organized Crime

Article 37 – Relation with protocols

Protocol against the Smuggling of Migrants by Land, Sea and Air

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

Other international instruments

Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)

Protocol Relating to the Status of Refugees, opened for signature 31 January 1967, 606 INTS 267 (entered into force 4 October 1967)

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

International Covenant for Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

Universal Declaration of Human Rights, GA Res 217 A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc. A/RES/3/217A (10 December 1948)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

Other regional instruments relating to trafficking in persons

ASEAN Convention Against Trafficking in Persons, Especially Women and Children, adopted 21 November 2015 (entered into force 8 March 2017)

Article 1 – Objectives

Article 5 – Criminalisation

Council of Europe Convention on Action against Trafficking in Human Beings, adopted 16 May 2005, Council of Europe Treaty Series No. 197 (entered into force 1 February 2008)

Article 1 – Purpose of the Convention

Article 2 – Scope

Article 40 – Relationship with other international instruments

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101

Article 1 – Subject matter

Council of Europe Convention against Trafficking in Human Organs, adopted 25 March 2015, Council of Europe Treaty Series No. 216 (entered into force 1 March 2018)

Article 1 – Purposes

Article 2 – Scope and use of terms

Article 26 – Relationship with other international instruments

South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, enacted 5 January 2002 (entered into force on 15 November 2005)

Article 2 – Scope of the convention

Organization of American States, Inter-American Convention on International Traffic in Minors, adopted 18 March 1994, OAS Treaty Series No. 79 (entered into force 15 August 1997)

Article 1 – Purpose

Article 3 – Scope



DEFINITION AND CRIMINALIZATION OF TRAFFICKING IN PERSONS

A. DEFINITION OF “TRAFFICKING IN PERSONS”

Trafficking in Persons Protocol

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.

1. INTRODUCTION

84. Article 3 of the Trafficking in Persons Protocol contains the first internationally agreed upon definition of trafficking in persons. This definition forms the basis of the criminalization requirement, of the provisions concerning protection and assistance of victims of trafficking, and of the measures concerning prevention and cooperation.
85. The main reason for defining the term “trafficking in persons” in international law was to provide some degree of consensus-based standardization of concepts. That, in turn, was intended to form the basis of domestic criminal offences that would be similar enough to support efficient international cooperation in investigating and prosecuting cases.
86. Apart from these direct advantages, it was also hoped that the agreed definition would standardize research and other activities, allowing for better comparison of national and regional data and enable a clearer global picture of the problem. The requirement to criminalize trafficking in persons was intended as an element of a global counter-strategy that would also include the provision of support and assistance for victims and that would integrate the fight against trafficking in persons into the broader efforts against transnational organized crime.

2. MAIN REQUIREMENTS

87. As defined in article 3 subparagraph (a) of the Protocol, trafficking in persons consists of three basic elements, each of which must be taken from a list set out in the definition:
- (a) the act of recruitment, transportation, transfer, harbouring or receipt of persons;
 - (b) that the act be accomplished by the means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
 - (c) and that the act also be done for the purpose of exploitation, which includes, 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.
88. Article 3 subparagraph (b) expressly states that any consent given by a victim of trafficking in persons to the intended exploitation is irrelevant if any of the means under subparagraph (a) are used.
89. Article 3 subparagraph (c) alters the definition of trafficking in persons for cases involving children in such a way that the means element is not required. In other words, trafficking cases involving child victims require proof of an act committed for the purpose of exploitation. For the purpose of the Protocol, a child is any person under the age of 18 (article 3 subparagraph (d)).

3. IMPLEMENTATION

(a) Act elements

90. Article 3 subparagraph (a) lists five possible conduct elements; specifically, “recruitment, transportation, transfer, harbouring or receipt of persons”. These five actions are disjunctive or alternatives to one another; the presence of any one suffices.⁴³ It is not an essential requirement of trafficking in persons that the victim be physically moved.
91. The terms are understood in their natural meaning; they are not further defined in the Protocol and the interpretative material provides no further guidance. The terms are not mutually exclusive, and it may not be necessary to define them in domestic legislation. The discussion of the terms below is not meant to represent legislative drafting, but rather to provide general information on the ordinary meaning of these terms.
92. In a general sense, “recruitment” refers to the act of drawing a person into a process and can involve a multitude of methods, including orally, through advertisements, or online through the internet. In transnational cases, recruitment can involve activities in the country of origin, of transit or of destination, for example, involving legal or semi-legal private recruitment agencies.
93. “Transportation” would cover the acts by a carrier by land, sea, or air by any means or kinds of transportation. Transportation may occur over short or long distances, within one country or across national borders.
94. “Transfer”, too, can refer to transportation of a person but can also mean the handing over of effective control over a person to another. This is particularly important in certain cultural environments where control over individuals (mostly family members) may be transferred to other people.

⁴³ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/2010/6 (10 August 2010) 10 [55].

95. “Harbouring” may be understood differently in different jurisdictions and may refer, for instance, to accommodating a person at the point of departure, transit, or destination, before or at the place of exploitation, or it may refer to steps taken to conceal a person’s whereabouts.⁴⁴ Harbouring can also be understood to mean holding a person.
96. “Receipt” of a person is the correlative of “transfer” and may refer to the arrival of the person, the meeting of a person at an agreed place, or the gaining of control over a person. It can also include receiving persons into employment or for the purposes of employment, including forced labour.⁴⁵ Receipt can also apply to situations in which there was no preceding process, such as inter-generational bonded labour or where a working environment changes from acceptable to coercively exploitative.⁴⁶

(b) Means elements

97. The second element of the definition of trafficking in persons refers to the means used by traffickers to accomplish the act elements. These means describe various ways in which perpetrators exercise control over or manipulate their victims. States Parties may choose to introduce other means in addition to those included in the definition in article 3 subparagraph (a) and can recognize new forms of coercion over time.⁴⁷

Threat or use of force or other forms of coercion

98. The terms “threat” and “force” do not need much explanation and definitions under domestic law may apply where they exist. Threats may be related to physical, psychological, emotional or economic outcomes. It is important to note that nothing is said in the definition as to the person (or possibly property) against whom (or which) the threat or force is directed. It may be the victim of trafficking or a third party. For example, a person may be “recruited” as a result of a threat of violence to their family member. The recruiter may also tell the victim they will disclose private information to the victim’s family or community if they fail to comply with their demand that they come with them. That is true, *mutatis mutandis*, of almost all the various means listed.
99. “Other forms of coercion” are not further defined but the interpretation of this term may be informed by domestic law. This would, for instance, include blackmail, extortion, and other forms of unjustified demand. Generally, however, coercion can be understood as an umbrella term that encompasses the use of physical or psychological pressure, force or threat thereof.

⁴⁴ United Nations & Council of Europe, *Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs* (2009) 78.

⁴⁵ ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (2005) 17; United Nations & Council of Europe, *Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs* (2009) 78.

⁴⁶ Anne T. Gallagher, *The International Law of Human Trafficking* (2010) 30–31.

⁴⁷ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 32.

Abduction

100. “Abduction” may, in some States, be interpreted to mean kidnapping.⁴⁸ Kidnapping may require evidence that someone was detained against their will. In other states, abduction may be understood as taking a person without lawful authority or otherwise taking them and restricting their liberty. It will very often involve the threat or use of force; the various means may overlap in practice.⁴⁹

Fraud and deception

101. In some contexts, “fraud” and “deception” are synonymous. In some legal systems, however, there are differences between these terms. Deception can be understood to mean words or conduct that cause someone to believe something that is false. Fraud, on the other hand, can be understood to mean deceiving someone with the intent of depriving the person deceived of something. Because the definition of trafficking in persons uses both the terms deception and fraud, it can be inferred that this reflects an intention that they were meant to address different things.
102. In the context of trafficking in persons, fraud and deception frequently involve misrepresentations as to the nature of the job for which victims of trafficking are recruited, the location of jobs, their end employer, living and working conditions, the legal status in destination countries, and the travel conditions, among other things. In many cases, fraud and deception are used in conjunction with threats, violence, or coercive practices.⁵⁰

Abuse of a position of vulnerability

103. “Vulnerability” can be defined as a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political, and environmental factors that create the context for their communities. As such, vulnerability is not a static, absolute state, but one that changes according to context as well as to the capacity for individual response. A response to vulnerability therefore needs to take into account the external conditions of an individual as well as the coping mechanisms that enable the individual to protect him- or herself against a negative impact from those external conditions.⁵¹
104. Abuse of a position of vulnerability comprises two components: proof of the existence of a position of vulnerability on the part of the victim and proof of abuse of that vulnerability.⁵²
105. The existence of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person’s physical or mental disability. Situational vulnerability may relate to a person being irregularly in a

⁴⁸ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005)* 34.

⁴⁹ David McClean, *Transnational Organized Crime (2007)* 324.

⁵⁰ See further, UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Role of recruitment agencies and recruitment fees in trafficking in persons*, UN Doc. CTOC/COP/WG.4/2015/2 (25 August 2015) 3–4 [16]–[17]; American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005)* 35.

⁵¹ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Analysis of key concepts: focus on the concept of “abuse of power or of a position of vulnerability” in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UN Doc. CTOC/COP/WG.4/2011/3 (4 August 2011) 9–10 [11]–[12]; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation*, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 4 [9].

⁵² UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation*, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 4 [11]; UNODC, *Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2012)* 1 [2.2].

⁵³ UNODC, *Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2012)* 2 [2.3].

foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution.⁵³

106. Such vulnerabilities can be pre-existing and can also be created by the trafficker. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction or a romantic or emotional attachment or through the use of cultural or religious rituals or practices.⁵⁴
107. Children are inherently vulnerable due to their age and relative level of maturity. Factors such as being unaccompanied when travelling or lacking birth registration are additional factors, that may further increase their vulnerability. It is further agreed that factors shaping vulnerability to trafficking tend to impact differently and disproportionately on groups that already lack power and status in society, including women, children, minorities, migrants, refugees, and internally displaced persons.⁵⁵
108. Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of. An Interpretative Note to article 3 subparagraph (a) explains that "[t]he reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."⁵⁶ This describes the effect of the behaviour by the accused on the person to whom it is directed at.
109. The 2013 UNODC Issue Paper on Abuse of a position of vulnerability and other means within the definition of trafficking in persons further concluded that this phrase (along with "abuse of power" and "the giving and receiving of payments to secure the consent of a person having control over another person") was left deliberately broad and undefined in order to "ensure that all the different and subtle means by which an individual can be moved, placed or maintained in a situation of exploitation were captured."⁵⁷
110. Vulnerability and its abuse are sometimes used as a subsidiary means to substantiate other means. For example, deception may take place through the abuse of a position of vulnerability, where a less vulnerable person would not have been deceived. A position of vulnerability can also explain why a victim does not identify as a victim and might appear to consent to trafficking, but still has the right to assistance and protection.⁵⁸

⁵⁴ UNODC, Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2012) 2 [2.3]; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 4 [9]; UNODC, Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, Issue Paper (2013) 13–14

⁵⁵ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 4 [9]; UNODC, Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, Issue Paper (2013) 13–14.

⁵⁶ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 347.

⁵⁷ UNODC, Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, Issue Paper (2013) 25.

⁵⁸ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 4 [10]; .

Abuse of power

111. The phrase “abuse of power” is not defined and has received comparatively little attention.
112. Article 2 of the International Convention for the Suppression of the White Slave Trade of 1910 uses a similar term, referring to “abuse of authority” as means element to “hire, abduct, or entice” an adult female “for immoral purposes”.⁵⁹ Early drafts of the Trafficking in Persons Protocol also used the term “abuse of authority” as one of the means element, but there was no agreement about the exact meaning of the word “authority” in this context. The Travaux Préparatoires contain a note that “[t]he word ‘authority’ should be understood to include the power that male family members have over female family members in some legal systems and the power that parents might have over their children.”⁶⁰
113. Although later drafts of the Protocol moved away from the term “abuse of authority” in favour of “abuse of power”, the note in the Travaux Préparatoires may nevertheless be instructive about the types of situation in which this means element can be relevant. In some countries, the concept of abuse of power has been interpreted to include situations where a person has power over another person by virtue of their relationship (e.g., employer and employee, teacher and student, coach and athlete).

Giving or receiving of payments or benefits to achieve the consent of a person having control of another person

114. The notion of “having control over another person” can be established as a matter of fact. For example, a parent may have control over a child, a prison guard may have control over an inmate, or a kidnapper may have control over their victim. The giving of the benefit must be linked to obtaining consent of the person in control of the victim; for example, the payment of a sum of money to a parent in order to transport their child in order to exploit them. Furthermore, state authorities have also been known to accept financial compensation or other benefits in exchange for handing over individuals under their control to the traffickers.⁶¹

(c) Purpose element: exploitation⁶²

115. The third constituent element of trafficking in persons is the purpose for which the acts are done, which is exploitation. Article 3 subparagraph (a) sets out a non-exhaustive list of examples of what constitutes 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.” By keeping this list non-exhaustive, the Trafficking in Persons Protocol allows for other, new, or less common forms of exploitation to be included in the scope of trafficking.⁶³ In domestic legislation, States Parties are required to address, at a minimum, those examples of exploitation that are listed in the Protocol.⁶⁴

⁵⁹ Opened for signature, 4 May 1910, amended by the Protocol of 4 May 1949, 98 UNTS 101 (entered into force 19 August 1951).

⁶⁰ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 343 [fn 20].

⁶¹ American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 38.

⁶² See, for example, Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol, UNODC (2015).

⁶³ See further, II.A.4.(a) below.

⁶⁴ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 8 [20]–[21].

116. The concept of „exploitation” within the definition of trafficking in persons is not defined, although some of the examples of exploitation listed in Article 3 subparagraph (a) have been defined in other international legal instruments (which are further explained below). Certain forms of exploitation raise particular practical and evidentiary challenges. Some forms of exploitation are often hidden within legitimate industries and therefore difficult to identify. Furthermore, it may be difficult in practice to delineate exploitative conduct, in the criminal sense, from conduct that may be more akin to bad working conditions and thus best addressed through other non-criminal measures.
117. Exploitation can be difficult to establish and can manifest itself in different ways. Therefore, there is a need for flexibility in determining what constitutes exploitation. At the same time, clear parameters need to be established in order to uphold the principle of legality and to also ensure that criminal law responses to human trafficking are focussed on sufficiently serious behaviour. Some countries have provided a specific definition of “exploitation” whereas others have itemized exploitative practices. Being clear on this core concept is critical to ensuring uniformity of interpretation and optimal criminal justice responses and support for victims.
118. The third aspect of the definition of trafficking in persons (the exploitative purpose) provides the basis for establishing the fault element in domestic criminal law. As a mens rea standard in criminal law, the phrase “for the purpose of” can mean either knowledge or intention. This means that evidence that the accused engaged in the prohibited conduct with either the intention that the victim be exploited or knowledge that they would be exploited will be sufficient to establish the offence. This means that the accused need not be the one who exploits the victim. It also means that actual exploitation is not required to establish the offence of trafficking in persons, but rather a purpose to exploit.⁶⁵ Trafficking in persons is a crime of specific or special intent (*dolus specialis*).⁶⁶

Sexual exploitation; exploitation of prostitution.

119. The terms “sexual exploitation” and “exploitation of prostitution” are not defined in other international instruments.⁶⁷ Sexual exploitation is a broader category of which exploitation of prostitution is one form. One definition for sexual exploitation can be found in the UN Secretary General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse. It provides that sexual exploitation means “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from sexual exploitation of another.”
120. An Interpretative Note to article 3 subparagraph (a) explains: “[t]he Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.”⁶⁸
121. The Protocol’s approach to prostitution accommodates different domestic legal schemes. Those with legislative frameworks regulating prostitution are able to exclude prostitution that is treated as non-exploitative

⁶⁵ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/2010/6 (10 August 2010) 10 [54].

⁶⁶ UNODC, *Anti-human trafficking manual for criminal justice practitioners* (2009) Module 1, 5.

⁶⁷ See, in particular, the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature 21 March 1950, 96 UNTS 271 (entered into force 25 July 1951).

⁶⁸ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 347.

from their national trafficking framework, while countries whose prostitution laws treat it as a form of sexual exploitation are able to include this conduct within their anti-trafficking frameworks.

122. While the Protocol draws a distinction between exploitation for forced labour or services and sexual exploitation, this should not lead to the conclusion that sexual exploitation could not amount to forced labour or services. Forced prostitution could fall within the scope of the definition of forced labour or compulsory labour.
123. Persons can be forced to engage in sex acts or have images taken in order to produce pornographic material, which can be made accessible on the internet. Victims of trafficking can be sexually abused through sex tourism. In all of these cases, the offence of trafficking in persons may also have been committed.⁶⁹

Forced labour or services

124. The reference to forced labour and services in the definition of trafficking in persons establishes a link between the Trafficking in Persons Protocol and Conventions of the International Labour Organization (ILO).⁷⁰ The definition of trafficking in persons cites forced labour or services as examples of exploitation. Instances of forced labour will also constitute trafficking if the act and means elements can be established.
125. Trafficking in persons and forced labour are closely related, but not identical phenomena.⁷¹ There are forms of forced labour that may not be considered as trafficking in persons, such as forced prison labour and some instances of bonded labour. Similarly, there are forms of trafficking in persons, such as trafficking for the purpose of organ removal that do not amount to forced labour.
126. “Forced or compulsory labour” is defined in article 2 paragraph 1 of the Convention concerning Forced or Compulsory Labour of 1930 (No. 29) to 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”. Article 2 then goes on to exclude certain types of forced or compulsory labour: namely compulsory military service, work or service as part of the normal civic obligations, certain forms of prison labour, work or service that is exacted in emergency situations, and minor communal services. Article 1 paragraph 3 of the Protocol of 2014 to the Forced Labour Convention of 1930⁷² reaffirms the definition of “forced or compulsory labour” under the Convention but recognizes that the context and forms of forced or compulsory labour have changed. Therefore, the measures set out in the Protocol include specific action against trafficking in persons for the purposes of forced or compulsory labour. The Convention concerning the Abolition of Forced Labour of 1957 (No. 105), requires the abolition of any form of forced or compulsory labour in five specific cases: (a) as a means of political coercion or education or as a punishment for holding or expressing political views; (b) as a means of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.⁷³ The two Conventions and the Protocol are complementary instruments that supplement each other.

⁶⁹ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Forms of exploitation not specifically mentioned in the Protocol, UN Doc. CTOC/COP/WG.4/2013/4 (23 August 2013) 3 [9].

⁷⁰ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Analysis of key concepts of the Trafficking in Persons Protocol, UN Doc. CTOC/COP/WG.4/2009/2 (9 December 2009) 4 [13].

⁷¹ ILO, Ending forced labour by 2030: A Review of policies and programmes (2018) 26.

⁷² Adopted 11 June 2014, 53 ILM 1232 (2014) (entered into force 9 November 2016).

⁷³ See also Convention concerning the Abolition of Forced Labour, 1957 (No. 105), opened for signature 25 June 1957, 1959 UNTS 291 (entered into force 17 January 1959).

127. The definition of “forced or compulsory labour” includes three elements (“all work or service,” “menace of any penalty,” and “voluntary offer”) which are considered hereafter.
128. “All work or service” encompasses all types of work, services, employment or occupation, regardless of the industry and sector within which it is found and irrespective of whether or not national rules and regulations recognize them as an “economic activity,” or a legal activity.⁷⁴ This means that many regular or irregular types of activity could be captured by “forced labour or services,” provided the other elements of the definition are met. This may seem obvious for work that takes place in regular work sectors, but less obvious for other types of activities such as begging, domestic work, or criminal activity including drug cultivation and trafficking.
129. The extraction of work or services “under the menace of any penalty” refers to a wide range of penalties used to compel someone to perform work or service, including penal sanctions and various forms of coercion such as physical violence, psychological threats or the non-payment of wages. The “penalty” may also consist of a loss of rights or privileges (such as a promotion, transfer, or access to new employment) or the threat of deportation.⁷⁵
130. The third element of the definition, “voluntary offer,” refers to the free and informed consent of a worker to enter into an employment relationship and to the freedom to leave the employment at any time (i.e., to revoke the freely given consent to work).
131. The ILO identifies eleven elements that can point to a forced labour situation. The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases it may be necessary to look for several indicators which, taken together, point to a forced labour case. Overall, the set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker is a victim of forced labour.⁷⁶ Absence of these indicators, however, does not necessarily mean the situation is not one of forced labour.
- (a) Abuse of vulnerability.
 - (b) Deception.
 - (c) Restriction of movement.
 - (d) Isolation.
 - (e) Physical and sexual violence.
 - (f) Intimidation and threats.
 - (g) Retention of identity documents.
 - (h) Withholding of wages.
 - (i) Debt bondage.
 - (j) Abusive working and living conditions.
 - (k) Excessive overtime.
132. In addressing the forced labour of children, further guidance may be sought from the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 (No 182).⁷⁷ Under article 3 of this Convention, “the worst forms of child labour” comprises four situations, forms (a), (b), and (c) are considered to always constitute forced labour of children:

⁷⁴ ILO, Ending forced labour by 2030: A Review of policies and programmes (2018) 26.

⁷⁵ ILO, Human trafficking and forced labour exploitation: Guidance for legislation and law enforcement (2005) 20; ILO, Ending forced labour by 2030: A Review of policies and programmes (2018) 26.

⁷⁶ ILO, ILO Indicators of Forced Labour (2012) 3; see also, ILO, Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children (2012) 21–33.

⁷⁷ Opened for signature 17 June 1999, 2133 UNTS 161 (entered into force 19 November 2000).

- (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.⁷⁸

Slavery, practices similar to slavery, servitude

133. Slavery and the slave trade have been the subject of international treaties since the early 19th century. While early Conventions focused on banning the slave trade from Africa, gradually a prohibition of the institution of slavery itself developed, culminating in the Convention to Suppress the Slave Trade and Slavery [also “1926 Slavery Convention”], which abolished slavery in all its forms.⁷⁹
134. Slavery is defined in article 1 paragraph (1) of the Convention as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. This definition may cause some difficulties today, as there could be no rights of ownership for one person over another. Another definition of slavery that has been suggested that could be used is “reducing a person to a status or condition in which any or all of the powers attaching to the right of property are exercised”.⁸⁰ Both approaches provide guidance to national legislators for incorporation into their national laws.
135. The terms “practices similar to slavery” and “servitude” are not defined in international law. Servitude, a term that is also used in article 8 paragraph 2 of the International Covenant for Civil and Political Rights,⁸¹ generally includes egregious exploitation of one person over another that is in the nature of slavery but does not reach the very high threshold of slavery.⁸²
136. Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery lists four “institutions and practices similar to slavery,” which include:⁸³
- (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 [or her] status;

⁷⁸ See further, ILO, Human trafficking and forced labour exploitation: Guidance for legislation and law enforcement (2005) 25–26.

⁷⁹ Opened for signature 25 September 1926, 60 LTS 654 (entered into force 9 March 1927).

⁸⁰ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Analysis of key concepts of the Trafficking in Persons Protocol, UN Doc. CTOC/COP/WG.4/2009/2 (9 December 2009) 7 [21].

⁸¹ Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁸² UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 9 [25].

⁸³ Opened for signature 7 September 1956, 266 UNTS 3 (entered into force 30 April 1957).

⁸⁴ The original text of article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery uses gendered language which has been substituted in the following sentences by gender-neutral language, though it is recognized that women and girls are most affected by servile forms of marriage.

- (c) servile forms of marriage, i.e., any institution or practice whereby⁸⁴: (i) [a person], 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 [or wife], his [or her] family, or his [or her] clan, has the right to transfer her [or him] to another person for value received or otherwise; or (iii) A person on the death of their spouse 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 with a view to the exploitation of the child or young person or of his [or her] labour.
137. Further, article 7 subparagraph (b) of the Supplementary Convention defines “a person of servile status” to mean “a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention.”
138. Unlike forced labour, the international legal definition of debt bondage makes no reference to the concept of voluntariness. This means that the presence or absence of consent has no bearing on whether a situation of debt bondage exists. Debt bondage is said to be included within the prohibition on servitude under article 8 paragraph (2) of the International Covenant on Civil and Political Rights.⁸⁵

Removal of organs

139. Removal of organs is unique among the stipulated forms of exploitation in that it does not constitute a practice that is inherently exploitative.⁸⁶ The removal of organs may be lawful or unlawful depending on the purpose and circumstances of that removal. In most States, organ removal will be lawful under certain specified circumstances.⁸⁷ Some countries have, therefore, defined this practice as exploitative where additional indicia are present, including where the removal of the organs was accomplished through force, fraud or other coercive means.
140. The term “removal of organs” is not further defined in the Trafficking in Persons Protocol. Organs envisaged by the Protocol include kidney, liver, heart, lung, and pancreas.⁸⁸
141. From discussion during the development of the Protocol and, more recently, in the Working Group on Trafficking in Persons, it is clear that the removal of human cells and tissues is not covered by the Protocol.⁸⁹ The inclusion of tissues and cells was considered during the drafting of the Protocol but was ultimately rejected. Similarly, in October 2011 a draft report presented to the Working Group on Trafficking in Persons calling on States Parties to apply the laws and other measures relating to trafficking in persons to trafficking for the removal of tissues and cells was rewritten to limit the scope to organ removal.⁹⁰

⁸⁵ UNODC, The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, Issue Paper (2015) 34.

⁸⁶ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability consent, and exploitation, UN Doc. CTOC/COP/WG.4/2015/4 (25 August 2015) 9 [28].

⁸⁷ UNODC, The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, Issue Paper (2015) 37.

⁸⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Fourth Session, Trafficking in persons for the purpose of removal of organs, UN Doc. CTOC/COP/WG.4/2011/2 (29 July 2011) 3 [9].

⁸⁹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Fourth Session, Trafficking in persons for the purpose of removal of organs, UN Doc. CTOC/COP/WG.4/2011/2 (29 July 2011) 3 [9].

⁹⁰ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Fourth Session, Draft report, Trafficking in persons for the purpose of removal of organs, UN Doc. CTOC/COP/WG.4/2011/L.1/Add.1 (10 October 2011) 2.

142. Furthermore, “trafficking in persons for the purpose of organ removal” is technically and legally distinct from “trafficking in organs, cells, and tissues”.⁹¹ A distinction has been drawn between trafficking in persons for the purpose of organ removal, which is covered by the Trafficking in Persons Protocol, and trafficking in organs, which is not. This has been noted during the deliberations by the Ad Hoc Committee⁹² and, in 2006, the Commission on Crime Prevention and Criminal Justice confirmed that “[t]he Trafficking in Persons Protocol does not take into full consideration trafficking in human organs (for profit) alone; trafficking in organs only occurs if an individual is transported for the purpose of organ removal.”⁹³ This point was reiterated by the Working Group on Trafficking in Persons in October 2011.⁹⁴
143. Consequently, organ trafficking will fall under the Protocol, for example, where victims are coerced into entering an arrangement to sell their organs. Alternatively, victims may be deceived about the benefit or compensation they will receive, or they may not be fully informed about the procedures and health consequences of organ removal. Another method involves luring the donor abroad under false promises, such as employment opportunities.⁹⁵ What would not be covered by the Protocol is mere trafficking in separated organs for profit or any trafficking in tissue, cells, or body parts that are not organs.⁹⁶ The trafficking in organs is addressed through other conventions, most notably the 2014 Council of Europe Convention against Trafficking in Human Organs
144. An Interpretative Note to article 3 subparagraph (a) adds that “[t]he removal of organs from children with the consent of a parent for legitimate medical or therapeutic reasons should not be considered exploitation.”⁹⁷

(d) The role of consent in trafficking in persons (article 3 subparagraph (b))

145. While a lack of consent is not an express element of the definition of trafficking in persons in article 3 subparagraph (a) of the Trafficking in Persons Protocol, the presence, absence, and quality of the consent of a victim of trafficking in persons is nevertheless an important consideration in human trafficking cases and can feature prominently in both investigations and prosecutions. During the development of the Trafficking in Persons Protocol, particular concerns were expressed regarding the relevance of victim consent, for instance, where victims consent to an aspect of the trafficking process such as to migrate to work in another country, carry false documents, enter a country illegally, or to engage in prostitution.⁹⁸

Consent and the means element of trafficking in persons

146. Article 3 paragraph (b) of the Protocol states that the consent of the victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means (such as force, coercion, fraud) have been used. The Trafficking in Persons Protocol does not, however, say that the use of means invalidates or damages consent.⁹⁹ During the negotiations of the text of the Trafficking in Persons Protocol, most delegations agreed that the consent of the victim should not, as a matter of fact, be relevant to whether the victim had been “trafficked”¹⁰⁰, i.e., should not be an issue in determining whether or not the crime of trafficking had been es-

⁹¹ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 43; Anne T. Gallagher, *The International Law of Human Trafficking* (2010) 40.

⁹² UN General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.3/Rev.7 (19 July 2000) 4, fn 12; UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 344, fn 28

⁹³ UN Economic and Social Council, Commission on Crime Prevention and Criminal Justice, Preventing, combating and punishing trafficking in human organs, UN Doc. E/CN.15/2006/10 (21 February 2006) [6].

⁹⁴ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Fourth Session, Trafficking in persons for the purpose of removal of organs, UN Doc. CTOC/COP/WG.4/2011/2 (29 July 2011) 3 [8].

⁹⁵ UN Economic and Social Council, Commission on Crime Prevention and Criminal Justice, Preventing, combating and punishing trafficking in human organs, UN Doc. E/CN.15/2006/10 (21 February 2006) [73]–[74].

⁹⁶ See further, Andreas Schloenhardt & Samantha Garbutt, ‘Trafficking in persons for the purpose of organ removal’ (2012) 36 *Criminal Law Journal* 145, 146–151.

⁹⁷ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 347.

⁹⁸ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 344.

⁹⁹ UNODC, *The role of ‘consent’ in the Trafficking in Persons Protocol*, Issue Paper (2014) 25.

¹⁰⁰ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 344 [fn 26].

¹⁰¹ UNODC, *The role of ‘consent’ in the Trafficking in Persons Protocol*, Issue Paper (2014) 25.

established.¹⁰¹ This is borne out by the definition and the corresponding requirement to criminalize the conduct described in Article 3. Trafficking in persons is not defined by an absence of consent on the part of the victim; by contrast, crimes like assault or sexual assault, require proof of the non-consensual application of force.

147. The drafters of the Protocol were highly conscious of the danger that consent would become the first line of defence for those accused of trafficking offences, most particularly in cases where victims may have consented to certain conduct that may be linked to the commission of the crime. For example, they may have consented to travel to another location or to have engaged in a particular type of work but were unaware of the intended exploitation. This danger was considered particularly acute because the Protocol seeks to capture more subtle means of control that could be masked by apparent consent. In cases where the victim consented to the intended exploitation, this fact should not be used to defend or excuse the crime. This is because both the definition of trafficking in persons in article 3 and the obligation to criminalize it, in article 5, make clear that consent has no bearing on establishing whether or not trafficking in persons occurred.

Children; capacity to consent

148. Article 3 subparagraph (c) of the Trafficking in Persons Protocol (discussed in the following section) further makes the consent of a child irrelevant because children are seen as lacking the capacity to consent. Article 3 subparagraph (c) unequivocally rejects the relevance of consent to the offence of trafficking in children, whether or not means have been employed by the trafficker.

(e) Trafficking in children (article 3 subparagraphs (c) and (d))

149. Young children are particularly vulnerable to abuse and exploitation, including through trafficking, especially if they are dependent on adults who do not have their best interest in mind. Similarly, unaccompanied migrant children are particularly vulnerable to human rights violations and may be extorted for money, forced to work, or may be sexually or physically abused.¹⁰²
150. Article 3 subparagraph (c) alters the definition of trafficking in persons in cases involving children. The effect of the subparagraph is that trafficking, when it involves a child, consists of the recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation. Such trafficking may still involve the use of force, fraud, or one of the other means listed in subparagraph (a) in order to accomplish one of the acts but they are not required by the definition.
151. Article 3 subparagraph (d) defines “child” to mean “any person under eighteen years of age”. The definition of “child” can vary in different legal systems and instruments, and sometimes for different purposes within the same legal system.
152. Legislators should note that obligations in relation to trafficking in children also arise from several other international instruments:
- (a) Article 35 of the Convention on the Rights of the Child mandates that States Parties “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.”¹⁰³

¹⁰² UN Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development; Report of the Special Rapporteur on the Human Rights of Migrants Jorge Bustamante, UN Doc. A/HRC/11/7 (14 May 2009) [23].

- (b) Under article 1 of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography “States Parties shall prohibit the sale of children, child prostitution and child pornography” as defined in article 2 of the Optional Protocol.¹⁰⁴
- (c) The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 (No 182) requires States Parties “to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” “The worst forms of child labour” are further defined in article 3 of this Convention.¹⁰⁵
- (d) The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery obliges States Parties to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment”, inter alia, of “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.”

¹⁰³ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹⁰⁴ See III.A.3.(c) above.

¹⁰⁵ See III.A.3.(c) above.

¹⁰⁶ UNODC, The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, Issue Paper (2015) 40.

¹⁰⁷ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 343 [fn 22].

4. FURTHER MATTERS

Other forms of exploitation

153. The term “exploitation” in article 3 subparagraph (a) of the Trafficking in Persons Protocol is, as mentioned, not defined, although a non-exhaustive list of exploitative practices is provided. This is manifested in two ways: through the use of “at a minimum” in the definition of trafficking in persons and through the absence of definitions relating to concepts that are not otherwise defined in international law. The Travaux Préparatoires further note that [t]he words ‘at a minimum’ will allow States Parties to go beyond the conduct captured in the definition. It was also intended to make it possible for the [P]rotocol to cover future forms of exploitation (i.e., forms of exploitation that were not yet known).¹⁰⁷
154. Consequently, and in accordance with article 34 paragraph 3 of the Convention against Transnational Organized Crime, article 3 subparagraph (a) of the Protocol only sets the minimum conduct that must be captured, and States Parties are free to include other forms of exploitation in their domestic law. Based on information provided to the Working Group on Trafficking in Persons and a 2015 study undertaken by UNODC on the concept of ‘exploitation’ in the Trafficking in Persons Protocol, it appears that States Parties frequently take advantage of this option.¹⁰⁸ The following paragraphs set out some of the more common examples of exploitation found in regional agreements and national laws.¹⁰⁹ Domestic legislators should ensure that their laws are drafted in a manner that provides clear guidance as to what constitutes exploitation.
155. Forced or servile marriage. Forced marriage is not defined in international law. According to article 1(c) the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, servile marriage can amount to a practice similar to slavery.¹¹⁰ Some States Parties have opted to expressly include forced or servile marriage as a distinct element in their anti-trafficking laws and some have created separate offences targeting this conduct. Concepts of forced or servile marriage and definitions of these terms, insofar as they have been legislated, vary greatly between jurisdictions.¹¹¹
156. Forced begging. While not explicitly mentioned in the Protocol, forced begging may be interpreted as a form of forced labour or services. Where a child is required to beg (either by parents, or by an adult or by the institution where the child studies or resides, in return for upkeep and under the menace of penalty), it would be considered as forced child labour.¹¹² This is also the approach followed in Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, which notes in its recital 11 that “forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour.”¹¹³
157. Exploitation of criminal activities. Directive 2011/36/EU includes the exploitation of criminal activities as an example of exploitation.¹¹⁴ Recital 11 further provides that “exploitation of criminal activities should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shoplifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.”

¹⁰⁷ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 343 [fn 22].

¹⁰⁸ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN Doc. CTOC/COP/2005/3 (14 September 2005) 7 [24].

¹⁰⁹ See also, UNODC, The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, Issue Paper (2015) 38–39.

¹¹⁰ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Forms of exploitation not specifically mentioned in the Protocol, UN Doc. CTOC/COP/WG.4/2013/4 (23 August 2013) 5 [16].

¹¹¹ See also UNODC, Issue paper: Interlinkages between Trafficking in Persons and Marriage, 2020.

¹¹² UNICEF, Terms and concepts around trafficking in persons and children in migration, Technical Note (2012) 8.

¹¹³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA OJ L 101 p.1, 15 April 2011, [11].

¹¹⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA OJ L 101 p.1, 15 April 2011, [11].

158. Domestic work. Depending on the circumstance, domestic work or service may be subsumed under “forced labour or services” or “slavery, practices similar to slavery, servitude” that are expressly mentioned in the definition of exploitation under article 3 subparagraph (a) of the Trafficking in Persons Protocol. Domestic work continues to be under-valued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.¹¹⁵ Such situations mean that those who perform domestic work may be particularly vulnerable to being exploited. States may wish to ensure that their anti-trafficking laws are sufficient to cover exploitative labour or services that arise in the domestic context; prohibitions on forced labour or services are likely sufficient.
159. Obligations to protect the rights of domestic workers may also arise from the ILO Convention concerning Decent Work for Domestic Workers of 2011 (No. 189).¹¹⁶ Article 1 subparagraph (a) of this Convention defines the term “domestic work” to mean “work performed in or for a household or households” and obliges States Parties, *inter alia*, to set a minimum age for domestic work, consistent with international law, and to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment, and violence and that they enjoy fair terms of employment and decent working conditions (articles 4 to 6). The Convention further reiterates the obligation “to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation” (article 3 paragraph 2).
160. Debt bondage. As noted above, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery states that debt bondage, as defined in article 1 subparagraph (a) of the Supplementary Convention, is one of a number of listed practices or institutions that are similar to slavery. States may wish to be explicit in defining this conduct in their domestic laws, recalling that consent has no bearing on whether debt bondage exists.
161. Illegal adoption. The phrase “illegal adoptions” can be used to describe a situation where a child is sold to another person or where they are provided to another person with a view to the child being exploited. Such circumstances can fall within the meaning of exploitation in the Trafficking in Persons Protocol. It can also mean an adoption that is not done in accordance with applicable national laws; such cases will not necessarily amount to exploitation. An Interpretative Note to article 3 subparagraph (a) explains that: “[w]here illegal adoption amounts to a practice similar to slavery as defined in article 1 paragraph (d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery it will also fall within the scope of the Protocol.”¹¹⁷ While the Supplementary Convention does not use the term “illegal adoption”, it considers “[a]ny 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 with a view to the exploitation of the child or young person or of his labour” to be a “practice similar to slavery”.
162. Use of children by armed forces or groups. In conflict settings, children may be recruited into armed forces or groups to be sexually exploited and may also be exploited in supportive roles as domestic labourers, cooks, porters, messengers and lookouts. In addition to being exploited for sex or forced labour, children may also be exploited in combat roles, including for planting explosives, carrying out armed attacks and suicide bombings or as human shields. All of these situations may fit within anti-trafficking laws.¹¹⁸ This conduct is also prohibited by the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.¹¹⁹ Furthermore, as mentioned above,¹²⁰ the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 (No 182), includes the forced or compulsory recruitment of children for use in armed conflict as one of the worst forms of child labour.
163. It should be noted that the examples above are limited and selective. How a State Party chooses to define exploitation is a matter of their domestic law, but attention should be had to ensuring that it focusses on serious forms of criminal conduct and not to encompass less serious forms of conduct that may be more appropriately addressed through other legal mechanisms (e.g., labour law violations).¹²¹

¹¹⁵ See also Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38, 2020.

¹¹⁶ Adopted 16 June 2011, 53 ILM 250 (2014) (entered into force 5 September 2013).

¹¹⁷ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 347.

¹¹⁸ UNODC, *Countering Trafficking in Persons in Conflict Situations*, Thematic Paper (2018) 16.

¹¹⁹ Opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002).

¹²⁰ See III.A.3(b) above.

¹²¹ UNODC, *The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol*, Issue Paper (2015) 118.

B. CRIMINALIZATION OF TRAFFICKING IN PERSONS

Trafficking in Persons Protocol

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.

1. INTRODUCTION

164. One of the cornerstones of the Trafficking in Persons Protocol is the obligation to criminalize trafficking in persons as defined in article 3 subparagraph (a). Criminalization is central to suppressing and punishing trafficking in persons and to give effect to the purposes of the Protocol. The Protocol also makes clear that the criminalization obligations are not limited to completed offences or to those who are the principal actors in the commission of these crimes. Criminal law must also extend to situations in which perpetrators attempt to traffic, to persons who knowingly participate as aiders or facilitators, and to organizers and directors who oversee trafficking ventures and instruct others to commit offences without necessarily becoming directly involved in trafficking themselves.

2. MAIN REQUIREMENTS

165. Article 5 of the Trafficking in Persons Protocol contains a mandatory requirement for States Parties to establish as criminal offences:
- (a) Trafficking in persons as defined in article 3 of the Protocol, when committed intentionally (article 5 paragraph 1);
 - (b) Subject to the basic concepts of its legal system, attempting to commit that offence (article 5 subparagraph 2(a));
 - (c) Participating as an accomplice in that offence (article 5 subparagraph 2 (b));
 - (d) Organizing or directing other persons to commit that offence (article 5 subparagraph 2 (c)).
166. States Parties to the Protocol are obliged by article 5 of the Protocol to criminalize trafficking, either as a single offence or a combination of offences that cover, at a minimum, the full range of conduct covered by the definition in article 3 subparagraph (a). An Interpretative Note to article 5 paragraph 1 adds that “[t]he ‘other measures’ mentioned here are additional to legislative measures and presuppose the existence of a law”¹²² against trafficking before the implementation of such other measures.¹²³

¹²² UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 364.

¹²³ American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 54.

3. IMPLEMENTATION

(a) Criminalization of trafficking in persons (article 5 paragraph 1)

167. The basic obligation to establish criminal offences is directly linked to the definition of “trafficking in persons”. The obligation is to criminalize trafficking as a combination of constituent elements and not the elements themselves. Doing so ensures a more complete and effective legislative response to the problem.
168. As mentioned earlier, it is not an essential requirement of trafficking in persons that the victim has been physically moved by the traffickers.¹²⁴ Placing too much emphasis on movement will result in cases being undetected as in many cases, at the time of movement or transportation, it can be difficult to determine whether the crime of human trafficking has been made out. Neither the victims themselves, nor border officials, may know the ultimate purpose for which they are being moved. It is often only at the place of destination, where persons are subjected to exploitation in its various forms, that trafficking can be easily made out.
169. Any conduct that combines any listed acts, accomplished through particular means and is carried out for the purpose of exploitation must be criminalized as trafficking. No exploitation actually has to occur for the crime to be made out. In addition, in many cases, individual elements of the crime, such as abduction or assault, may also be separate forms of criminal conduct deserving of additional charges.
170. It is important that the meaning of the Protocol, rather than the actual language used, be reflected in national law. Generally, simple incorporation of the definition into an offence provision will be insufficient; given the nature and complexity of trafficking, legislators are advised to consider, draft, and adopt the criminal offences and related provisions with great care having regard to their obligations under international law as well as their existing domestic criminal law framework.

(b) Additional criminalization requirements (article 5 paragraph 2)

171. Article 5 paragraph 2 requires States Parties to, criminalize: (a) “attempting” to commit trafficking in persons (where doing so is possible within their legal system), (b) participating in a trafficking in persons offence as an accomplice, and (c) “organizing or directing other persons to commit” a trafficking in persons offence established in accordance with paragraph 1 of this article. These requirements apply to both natural and legal persons.

Attempts (article 5 paragraph 2 subparagraph (a))

172. Criminalization of attempt is important since it ensures that individuals are punished for their actions even though a particular trafficking venture has not come to its full completion. Offenders should not avoid criminal responsibility simply because they were not successful in achieving their criminal objectives. An attempt to commit trafficking can be composed of some but not all the elements of the complete trafficking offence. A charge of attempt would be pertinent, for example, in a situation where an individual, who was supposed to receive trafficked victims in a receiving State, fails to do so either because such victims escaped or because she or he was arrested in the interim. Generally, establishing that someone attempted to commit a crime requires evidence that the traffickers engaged in more than merely preparatory activity with the intent to commit the illicit conduct. The type of evidence required to show that the accused’s conduct was more than preparatory will depend on the way the trafficking offence has been enacted domestically.

¹²⁴ See III.A.3.(a) above.

173. Attempting to commit the offence must be criminalized, but only “subject to the basic concepts” of the legal system of the State Party (article 5 paragraph 2 subparagraph (a)). This clause recognizes that different States have different approaches to inchoate liability; some jurisdictions do not have general legal principles relating to attempts.¹²⁵ Thus, the language “subject to the basic concepts of its legal system” was incorporated to create a general obligation on States Parties to criminalize attempts, while not making this fully mandatory for States where it would be inconsistent with basic systemic requirements for the application of the crime of attempt.
174. An Interpretative Note to article 5 subparagraph 2(a) further explains that: “[r]eferences to attempting to commit the offences established under domestic law in accordance with this subparagraph are understood in some countries to include both acts perpetrated in preparation for a criminal offence and these carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.”¹²⁶

Participation as an accomplice (article 5 subparagraph 2(b))

175. States Parties to the Protocol are further obliged to criminalize participating as an accomplice to commit the offence. The terms ‘participation’ and ‘accomplice’ are not defined in the Protocol, allowing for certain flexibility in domestic legislation. The point, however, is to ensure that States Parties criminalize the actions of those who assist the principal offender in the commission of trafficking in persons offences. Generally, party liability is found where the party engages in certain acts with the purpose of assisting the principal to commit the crime. Those who assist in the commission of offences are typically liable to conviction for those offences, rather than of a stand-alone offence, though in some cases this conduct may be addressed through separate offences. States Parties should refer to the way these forms of criminal liability are established in their domestic systems and ensure that they apply to offences established pursuant to this article.

Organizing or directing other persons (article 5 subparagraph 2(c))

176. States Parties to the Protocol are further obliged to criminalize organizing or directing other persons to commit the offence. Subparagraph (c) thus extends criminal liability to persons who plan or oversee trafficking in persons from a distance.¹²⁷ The terms ‘organizing’ and ‘directing other persons’ are not defined in the Protocol, allowing for certain flexibility in domestic legislation. Organizing may be captured under general party liability provisions whereas directing someone may not. As such, a stand-alone offence that focusses on directing another person to commit trafficking in persons may be necessary in domestic law. Where applicable, States Parties should refer to the way these forms of criminal liability are established in their domestic systems and ensure that they apply to offences established pursuant to this article.

¹²⁵ David McClean, *Transnational Organized Crime* (2007) 332.

¹²⁶ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 364.

¹²⁷ David McClean, *Transnational Organized Crime* (2007) 333.

(c) Application of mandatory provisions of the Convention against Transnational Organized Crime to the Trafficking in Persons Protocol

177. The Trafficking in Persons Protocol must be read in conjunction with the Convention against Transnational Organized Crime. As set out in Chapter II above, the provisions of the Convention apply to the Protocol *mutatis mutandis*. The offences established in accordance with the Protocol are to be considered offences established by the Convention. Application of these provisions creates an obligation on States Parties to further measures with respect to offences established in accordance with the Protocol, the implementation of which is discussed in greater detail in the Legislative Guide for the Implementation of the Convention against Transnational Organized Crime.

(d) Other general requirements concerning criminalization of trafficking in persons

178. The Convention against Transnational Organized Crime and the Trafficking in Persons Protocol contain specific requirements that must be considered when drafting criminal offences in accordance with the Protocol, in particular:
- (a) Non-inclusion of transnationality. The element of transnationality is one of the criteria for applying the Convention and the Protocols (article 3 of the Convention), but transnationality must not be drafted as an essential element of the offence of trafficking in persons established under domestic law;¹²⁸
 - (b) Non-inclusion of an organized criminal group in domestic offences. As with transnationality, the involvement of an organized criminal group must not be an essential element of the trafficking in persons offence established under domestic law. Thus, offences should apply equally, regardless of whether they were committed by individuals or by an organized criminal group (see article 34, paragraph 2, of the Convention and the Interpretative Note on article 34);¹²⁹
 - (c) Criminalization may use legislative and other measures but must be founded in law. Both the Convention and the Protocol refer to criminalization using “such legislative or other measures as may be necessary”, in recognition of the fact that a combination of measures may be needed in some States. For example, in some common law States, party liability is informed through jurisprudence, rather than set out in statutory language. The drafters of those instruments were concerned that the rule of law would generally require that criminal offences be prescribed by law, and the reference to “other measures” was not intended to require or permit criminalization without legislation. The Interpretative Notes therefore provide that other measures are additional to and presuppose the existence of a law.¹³⁰
179. At a minimum, only intentional conduct needs to be criminalized. All of the criminalization requirements of the Convention and Protocols require that the conduct of each offence must be criminalized when committed intentionally. Thus, conduct that involves lower standards, such as recklessness or negligence, need not be criminalized. Such conduct could, however, be made a crime under article 34 paragraph 3 of the Convention, which expressly allows for measures that are “more strict or severe” than those provided for in the Convention. The element of intention is meant to capture the conduct of those who deliberately (intentionally or knowingly) engage in conduct with a view to exploiting others, regardless of whether they knew what they were doing was illegal.
180. Description of offences. While article 11 paragraph 6 of the Convention states that the description of the offences is in principle reserved to the domestic law of a State Party, drafters should consider the meaning of the provisions of the Convention and the Protocol concerning offences and not simply incorporate the language of the Protocols verbatim. In drafting the domestic offences, the language used should be such that it will be interpreted by domestic courts and other competent authorities in a manner consistent with the meaning of the Protocol and the apparent intentions of its drafters. In some cases, the intended meaning may have been clarified in the Interpretative Notes.

¹²⁸ See further, II.C above.

¹²⁹ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 285; see further, II.C above.

¹³⁰ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 304.

4. FURTHER MATTERS

(a) Non-punishment of victims of trafficking in persons

181. The focus of the Trafficking in Persons Protocol is on the criminalization of traffickers and one of its purposes is the protection of victims of trafficking. More practically, however, there is also a general concern of victims who have been compelled or have otherwise committed crimes as a result of their trafficking being charged for their involvement in such crimes.
182. A principle of non-punishment of victims of trafficking in persons has emerged in recognition of such concerns and generally provides that victims should not be punished for conduct that they commit as a direct result of their being a victim.¹³¹
183. The rationale of such a principle is not to confer blanket immunity upon victims.¹³² It is, however, grounded in foundational criminal law principles that recognize that criminal liability should be based upon voluntary conduct. That someone has been caused to commit a criminal act as a result of their own victimization means that they have not acted freely. The non-punishment principle is also seen as an important tool to increase the likelihood that victims will exit their trafficking situation and cooperate freely with law enforcement and other authorities in the investigation and prosecution of their traffickers. Other reasons that have been provided and that underpin the principle include that it helps to safeguard the rights of victims, to ensure that they are provided immediate access to necessary support and services and to avoid subjecting them to further trauma or victimization.¹³³
184. The elaboration of the non-punishment principle has occurred over many years and can be traced back to the negotiations of the Trafficking in Persons Protocol,¹³⁴ even though the Protocol does not explicitly contain provisions on this point. In 1999, at the 4th session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, the United Nations High Commissioner for Human Rights submitted an informal note in which she noted that “States Parties should be directed to refrain from detaining or prosecuting trafficked persons for such status-related offences.”¹³⁵ Examples of status-related offences provided included immigration and prostitution-related offences.
185. Three years later, the United Nations High Commissioner for Human Rights released the Recommended Principles and Guidelines on Human Rights and Human Trafficking.¹³⁶ Principle 7 provides that “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.”¹³⁷ Principle 7 is clear that victims of trafficking in persons should not be charged or prosecuted for offences that have been committed in the course of their being trafficked. Principle 7 is supplemented by Guideline 2.5, which, in the context of the need for victims to be identified quickly and accurately, calls on States and others to ensure that “trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.” Guideline 4.5 also considers the issue of prosecution for status-related offences with reference to the need for an adequate legal framework, requiring States to consider 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.”¹³⁸

¹³¹ OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Report: Policy and Legislative Recommendations: Towards the Effective Implementation of the Non-Punishment Provision with regard to victims of trafficking (2013) 9.

¹³² OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010) 133.

¹³³ See, for example, Inter-Agency Coordination Group against Trafficking in Persons (ICAT): Issue Brief on Non-Punishment of Victims of Trafficking (2020).

¹³⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, UNGA Resolution 55/25 (2001).

¹³⁵ UN General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Informal Note by the United Nations High Commissioner for Human Rights, UN Doc. A/AC.254/16 (1 June 1999).

¹³⁶ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002).

¹³⁷ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) 3 [7]; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010) 131.

¹³⁸ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) 5, 6.

186. Additionally, the Committee on the Elimination of Discrimination against Women stresses in its General recommendation No. 38 on trafficking in women and girls in the context of global migration to “ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking.” It adds that “the non-punishment principle must be enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief; not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services and provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking”.¹³⁹
187. Several UN General Assembly resolutions have also considered the non-punishment principle. As early as November 2000, the General Assembly recommended that Member States “[c]onsider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation.”¹⁴⁰ The scope of the principle was expanded upon by the General Assembly in December 2010 when it “urged Governments to take all appropriate measures to ensure that victims of trafficking are not penalized or prosecuted for acts committed as a direct result of being trafficked and that they do not suffer from revictimization as a result of actions taken by Government authorities, and encourages Governments to prevent, within their legal framework and in accordance with national policies, victims of trafficking in persons from being prosecuted for their illegal entry or residence.”¹⁴¹
188. The Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime views the non-punishment of victims of trafficking as an extension of the principle to “protect and assist the victims of such trafficking, with full respect for their human rights” set out in article 2 subparagraph (b) of the Protocol.
189. Accordingly, with regard to addressing the non-punishment and non-prosecution of trafficked persons, States Parties should consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts.¹⁴² In some cases, States have drafted non-punishment provisions to apply to criminal and civil matters. Consideration should also be had to ensuring that individuals are not penalized in immigration proceedings as a result of crimes they committed as a consequence of trafficking. Furthermore, States Parties should ensure that provisions for the non-punishment and non-prosecution of trafficked persons contained in domestic legislation, guidelines, regulations, preambles, or other instruments are clearly stated.¹⁴³

¹³⁹ Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38, 2020. 98.

¹⁴⁰ UN General Assembly, Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action, UN Doc. A/RES/S-23/3 (16 November 2000) [70(c)].

¹⁴¹ UN General Assembly, Trafficking in women and girls, UN Doc. A/RES/65/190 (21 December 2010) [17]; see also, UN General Assembly, Trafficking in women and girls, UN Doc. A/RES/67/145 (20 December 2012) [20].

¹⁴² Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, UN Doc. CTOC/COP/WG.4/2009/2 (21 April 2009) 3 [12]; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/2010/6 (10 August 2010) 4 [16(b)].

¹⁴³ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc. CTOC/COP/WG.4/2010/6 (17 February 2010) 8 [50]–[51]; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/2010/6 (10 August 2010) 4 [73].

(b) Sanctions and sentencing

190. Neither the Trafficking in Persons Protocol nor the Convention against Transnational Organized Crime specify the type and severity of penalties and sanctions imposed for the offence of trafficking in persons. Article 11 paragraph 1 of the Convention against Transnational Organized Crime requires States Parties to make the commission of offences under the Convention, including offences under the Protocol, “liable to sanctions that take into account the gravity of that offence”. The primacy of domestic law in this respect is affirmed by article 11 paragraph 6. Paragraph 4 further requires each State Party to “ensure that its courts or other competent authorities bear in mind the grave nature of the offences [...] when considering the eventuality of early release or parole of persons convicted of such offences”. If legal persons are held liable, article 10 paragraph 4 of the Convention requires that they be “subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions”. Due consideration will need to be paid to the development of appropriate sentencing laws, consistent with domestic sentencing laws (e.g., similarly serious offences should be treated the same), for each of the ways in which States Parties are obligated to enact criminal laws pursuant to the Protocol (e.g., for those who commit, those who attempt or those who aid, organize or direct trafficking in persons offences).
191. The severity and type of punishment must also be in line with other relevant international obligations of the States Parties. In this context, it is important to consider that several international instruments restrict the severity of punishment and the types of sanctions that may be used.¹⁴⁴ These include article 16 paragraph 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment,¹⁴⁵ article 6 paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR), and article 37 of the Convention on the Rights of the Child.
192. Non-binding material designed to assist with the implementation of the Trafficking in Persons Protocol provide more detailed guidance on sanctions. For example, UNODC’s Framework for Action to Implement the Trafficking in Persons Protocol specifies a minimum standard that, in accordance with article 11 paragraph 1 of the Convention against Transnational Organized Crime, “penalties and sanctions are appropriate and proportionate to the gravity of the crime”. It should be recalled that the Convention against Transnational Organized Crime provides that “serious crimes” are crimes punishable by a maximum penalty of at least four years imprisonment. The Framework specifies five “operational indicators” of the implementation of the sanctioning aspect of the Trafficking in Persons Protocol as the:

(c) severity of sanctions imposed for trafficking in persons;

- (a) number of sanctions reflecting aggravating circumstances;
- (b) number of additional administrative and/or other non-criminal sanctions used;
- (c) number of penal sanctions applied; and,
- (d) number of recidivist/repeat offenders.¹⁴⁶

¹⁴⁴ See also, UN ECOSOC, Safeguards guaranteeing protection of the rights of those facing the death penalty, UN Doc. E/RES/1984/50 (25 May 1984) [1].

¹⁴⁵ Convention against Torture and other Cruel, Inhuman or Degrading Treatment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

¹⁴⁶ UNODC, International Framework for Action to Implement the Trafficking in Persons Protocol (2009). 24.

CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 2(b) – Serious crime

Article 3 – Scope of application

Article 5 – Criminalization of participation in an organized criminal group)

Article 10 – Liability of legal persons

Article 11 – Prosecution, adjudication and sanctions

Article 12 – Confiscation and seizure

Article 13 – International cooperation for purposes of confiscation

Article 14 – Disposal of confiscated proceeds of crime or property

Article 15 – Jurisdiction

Article 16 – Extradition

Article 18 – Mutual legal assistance

Article 20 – Special investigative techniques

Article 23 – Criminalization of obstruction of justice

Article 24 – Protection of witnesses

Article 25 – Assistance to and protection of victims

Article 26 – Measures to enhance cooperation with law enforcement authorities)

Article 27 – Law enforcement cooperation

Article 29 – Training and technical assistance

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

Article 34 – Implementation of the Convention

Article 37 – Relation with protocols

OTHER INTERNATIONAL INSTRUMENTS

Convention against Torture and other Cruel, Inhuman or Degrading Treatment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

Convention concerning Forced or Compulsory Labour, 1930 (No. 29), opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932)

Protocol of 2014 to the Forced Labour Convention of 1930, adopted 11 June 2014, 53 ILM 1232 (2014) (entered into force 9 November 2016)

Convention concerning Decent Work for Domestic Workers of 2011 (No. 189), 53 ILM 250 (2014) adopted 16 June 2011 (entered into force 5 September 2013)

Convention concerning the Abolition of Forced Labour, 1957 (No. 105), opened for signature 25 June 1957, 1959 UNTS 291 (entered into force 17 January 1959)

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No 182), opened for signature 17 June 1999, 2133 UNTS 161 (entered into force 19 November 2000)

Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature 21 March 1950, 96 UNTS 271 (entered into force 25 July 1951)

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2000)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002)

Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)

Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967)

Convention to Suppress the Slave Trade and Slavery, opened for signature 25 September 1926, 60 LTS 654 (entered into force 9 March 1927)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, opened for signature 7 September 1956, 266 UNTS 3 (entered into force 30 April 1957)

International Convention for the Suppression of the White Slave Trade of 1910, opened for signature, 4 May 1910, amended by the Protocol of 4 May 1949, 98 UNTS 101 (entered into force 19 August 1951)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

OTHER REGIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

ASEAN Convention against Trafficking in Persons, especially Women and Children, signed 21 November 2015 (entered into force 8 March 2017)

Article 2 – Use of Terms

Article 5 – Criminalisation of Trafficking in Persons

Article 6 – Criminalisation of Participation in an Organized Criminal Group

Article 7 – Criminalisation of the laundering of proceeds of crime

Article 8 – Criminalisation of corruption

Council of Europe Convention on Action against Trafficking in Human Beings signed 16 May 2005, 2569 UNTS (entered into force 1 February 2008).

Article 4 – Definitions

Article 18 – Criminalisation of trafficking in human beings

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

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

Article 21 – Attempt and aiding or abetting

Article 22 – Corporate liability

Article 23 – Sanctions and measures

Article 24 – Aggravating circumstances

Article 25 – Previous convictions

Article 26 – Non-punishment provision

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in hu-

man beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA OJ L 101, 15 April 2011

Article 2 – Offences concerning trafficking in human beings

Article 3 – Incitement, aiding and abetting, and attempt

Article 4 – Penalties

Article 5 – Liability of legal persons

Article 6 – Sanctions on legal persons

Council of Europe Convention against Trafficking in Human Organs, opened for signature 25 March 2015, 216 CETS (entered into force 1 March 2018)

Article 2 – Scope and use of terms

Article 9 – Aiding or abetting and attempt

Article 11 – Corporate liability

Article 12 – Sanctions and measures

Article 13 – Aggravating circumstances

Article 14 – Previous convictions

South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (entered into force 2002)

Article 1 – Definitions

Article 3 – Offences

Article 4 – Aggravating circumstances

Inter-American Convention on International Traffic in Minors, opened for signature 18 March 1994, 79 OAS (entered into force 15 August 1997)

Article 2 – Definitions

4 – Aggravating Circumstances

Article 7 – Criminalization

Arab Charter on Human Rights (entered into force 2008)

Articles 9 and 10- Prohibition on trafficking in persons

Arab Convention against Transnational Organized Crime (entered into force 2013)

Article 11- Definitions and Criminalization



PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

193. Trafficking in persons is a serious crime and involves victims whose rights need to be protected and who are in need of assistance and support. Many victims are severely traumatized by their experiences and may have special vulnerabilities and protection needs.¹⁴⁷
194. For these reasons, one of the stated purposes of the Trafficking in Persons Protocol under article 2 subparagraph (b) is the protection and assistance of victims of trafficking, with full respect for their human rights. Accordingly, the Protocol sets out specific protection and assistance standards for victims of trafficking in persons, together with measures relating to the status of victims in receiving States and their return to their home States, when applicable.¹⁴⁸ The protection measures in the Protocol are not exhaustive and should be read in light of other relevant binding and non-binding human rights instruments and guidelines. Victims of trafficking have rights available to all human beings,¹⁴⁹ independent of their status as victims of trafficking, and are entitled to general protection measures available to all victims of crime.¹⁵⁰ States must respect, protect and promote the rights of all victims of trafficking, consistent with their international obligations.¹⁵¹

A. ASSISTANCE AND PROTECTION OF VICTIMS

Trafficking in Persons Protocol

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.”*

¹⁴⁷ UN Security Council, Resolution 2331, UN Doc. S/RES/2331 (20 December 2016) Preamble.

¹⁴⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 4 [8].

¹⁴⁹ UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UN Doc. HCR/GIP/06/07 (7 April 2006) 9 [22].

¹⁵⁰ UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 (29 November 1985).

¹⁵¹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, UN Doc. E/2002/68/Add.1 (20 May 2002) Principle 1.

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.*

1. INTRODUCTION

195. Victims of trafficking who exit their trafficking situation may need accommodation, food, medical care, and other assistance and may require protection from their traffickers. In addition to any physical injuries and psychological or emotional trauma they may have sustained while trafficked, they often have few or no means of subsistence and may be afraid of retaliation against them or their families.
196. States Parties in whose territory victims are located are responsible for providing them with certain forms of assistance and protection, as prescribed by article 6 of the Trafficking in Persons Protocol. These measures seek to protect victims from further harm and retaliation, help their recovery, minimize stigmatization, protect their privacy, and assist in their rehabilitation and reintegration. Furthermore, article 6 seeks to facilitate victim participation in legal proceedings and enable victims to remain informed about proceedings. Victims of trafficking should be given the opportunity play a meaningful role in proceedings against their traffickers and receive compensation for the harm suffered. Measures to protect and assist victims must take into account their special needs, including those related to their age, gender or other status.
197. A further, important point relates to the status of victims without immigration status in the country where they are victimized. If a person is moved across borders, they may enter the receiving State illegally or, if they enter legally, their status may become irregular. Where victims have no legal status permitting them to stay in the host country, or believe this to be the case, they are at risk of removal. This causes many victims to remain in their trafficking situation for fear that they will be removed from the country if detected. Many traffickers instil or perpetuate this fear, which gives them greater control over their victims and facilitates their exploitation. The unwanted removal of victims from the host country may also reduce their ability and willingness to assist law enforcement in investigations, participate in proceedings against an accused, access compensation, and, in some cases, recover sufficiently from their experiences and trauma. Moreover, the return of victims of trafficking to their home country may heighten the risk of re-trafficking and further exploitation. For these reasons, article 7 of the Trafficking in Persons Protocol encourages States Parties to permit victims to remain in their territory, either temporarily or permanently, in appropriate cases.

2. MAIN REQUIREMENTS

198. States Parties shall:
- (a) Protect the privacy and identity of victims in appropriate cases and to the extent possible under domestic law (article 6 paragraph 1);
 - (b) Ensure that victims receive information on relevant court proceedings in appropriate cases and have an opportunity, if the victim desires, to have their views presented and considered (article 6 paragraph 2);
 - (c) Consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons (article 6 paragraph 3);
 - (d) Take into account the age, gender, and special needs of victims, in particular the special needs of children (article 6 paragraph 4);
 - (e) Endeavour to provide for the physical safety of victims while they are in their territory (article 6 paragraph 5);
 - (f) Ensure that measures exist to allow victims the opportunity to seek compensation for damages suffered (article 6 paragraph 6); and
 - (g) Consider, in appropriate cases, permitting victims of trafficking in persons to remain in its territory, temporarily or permanently, having due regard to humanitarian and compassionate factors (article 7).

3. IMPLEMENTATION

199. Articles 6 and 7 of the Trafficking in Persons Protocol include measures that must be taken or considered in respect of victims of trafficking. These articles should be read and implemented in conjunction with articles 24 and 25 of the Convention against Transnational Organized Crime, which set out provisions for victims and witnesses that apply to all offences covered by the Convention. States Parties should also bear in mind that victims of trafficking are victims of crime and should have access to all general protection measures available to such persons. Importantly, any assistance and protection provided to victims should be given with their consent and must not be made conditional on a victim's willingness to cooperate in legal proceedings.¹⁵²
200. The obligations under articles 6 and 7 of the Protocol apply equally to any State Party in which victims are located, regardless of whether this is a country of origin, transit, or destination. The provisions regarding the giving of assistance to and support for victims under article 6 paragraph 3, and status to victims under article 7, involve some degree of discretion. This reflects concerns about the costs and difficulties in delivering social assistance and providing status to all victims in States Parties with fewer available resources. Nonetheless, these provisions are not to be ignored simply because a State Party does not have resources to spare.¹⁵³ States Parties are required to consider implementing them.
201. In implementing the provisions of articles 6 and 7 of the Trafficking in Persons Protocol, States Parties must ensure that any measures taken do not conflict with their other obligations under international law. This is in accordance with the saving clause in article 14 paragraph 1 of the Protocol, which establishes that the Protocol does not narrow or diminish any rights, obligations, or responsibilities of States and individuals, including those under international human rights, humanitarian, and refugee law. The overall goal of all measures taken must be protection of victims, with due attention paid to the fact that victims are entitled to protection against any act that may violate their dignity and human rights.

¹⁵² OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010) (2010) 145.

¹⁵³ American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 75–76.

(a) Protecting the privacy and identity of victims (article 6 paragraph 1)

202. Article 6 paragraph 1 of the Trafficking in Persons Protocol requires that measures be taken to protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to such trafficking confidential.¹⁵⁴ The opening words of this paragraph “in appropriate cases and to the extent possible under its domestic law” qualify this mandatory requirement. This recognizes the fact that different legal systems follow different principles and practices. In some legal systems, the names of parties to litigation are routinely omitted from all published material; in others, the suppression of names is an exceptional step.¹⁵⁵
203. Measures taken to protect the privacy and identity of victims should also include protection of victims’ data, in accordance with relevant national data protection laws. Inappropriate disclosure of victim’s data may compromise recovery and reintegration efforts, may violate their human rights, and could adversely affect legal proceedings. It may also have negative consequences in respect of discouraging other victims to come forward to authorities and report their victimization.
204. The Protocol does not specify what the term “confidential” entails. There are a variety of ways in which the protection of the privacy and identity of victims of trafficking during court proceedings can be achieved. These may include, *inter alia*, conducting court proceedings away from the presence of media and the public, imposing bans on the publication of information that might identify a victim, sealing records of court proceedings, using pseudonyms for victims and witnesses, and restricting questions asked of the victim or witness. Where threats against victims are particularly imminent, it may also be necessary to take measures to ensure their physical protection, including to relocate the victim and take additional steps to limit the disclosure of personal information. Legislative changes may be required to implement these measures.¹⁵⁶
205. The measures to protect the privacy and identity of victims raise issues similar to those discussed under the obligation set out in article 24 subparagraph 2(a) of the Convention against Transnational Organized Crime to establish procedures for the “non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts” of witnesses, and in subparagraph 2(b), which permits witnesses to give evidence in safety.
206. The measures under article 6 paragraph 1 can potentially result in information being denied to the defence in criminal proceedings. Drafters should bear in mind that, where information is denied, this must be reconciled with applicable rights of the defence, including the right to confront witnesses or accusers and disclosure rights. Protection cannot be extended to victims at the expense of the basic rights of suspects.¹⁵⁷
207. Drafters should also consider that excluding the media or the public from legal proceedings limits openness and transparency, which acts as a safeguard to ensure the propriety of the proceedings and may infringe the rights of the media to free expression. Rather than requiring proceedings to be closed, domestic laws could provide authority to restrict access to the court room, in appropriate cases. For example, a law could provide that proceedings may be closed, in whole or in part, where it is in the interests of justice to do so.¹⁵⁸

¹⁵⁴ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 6 [15].

¹⁵⁵ David McClean, *Transnational Organized Crime* (2007) 338.

¹⁵⁶ UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2005) 52.

¹⁵⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 6.

¹⁵⁸ UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2005) 33.

(b) Participation of victims in proceedings (article 6 paragraph 2)

208. Victims of trafficking should have access to justice, including provision of information concerning legal proceedings affecting them and avenues through which their views and concerns can be presented.¹⁵⁹ Article 6 paragraph 2 of the Trafficking in Persons Protocol contains a mandatory requirement to provide victims with: (a) information on relevant court and administrative proceedings; and, (b) an opportunity and assistance to present their views and concerns at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.¹⁶⁰
209. The type of information under article 6 subparagraph 2(a) includes information concerning the victim's legal status and legal issues involved in the relevant proceedings. The reference to "assistance" in subparagraph 2(b) should be interpreted as legal assistance including, where appropriate, legal representation.¹⁶¹ The phrase "in appropriate cases" should not be construed as permitting States Parties to provide assistance to some victims but not others.¹⁶² Article 6, subparagraph 2(b) also contemplates other forms of assistance, however. This can include the use of screens or video-link when providing their testimony. Doing so may help to address concerns that the victim/witness may have about testifying in a manner where the accused can easily view them, and they can view the accused. Other jurisdictions enable witnesses to testify with a support person or animal near them in order to help them feel more confident during the giving of testimony.
210. The obligation to ensure that victims are permitted an opportunity to participate in criminal proceedings is also set out in article 25 paragraph 3 of the Convention against Transnational Organized Crime. Article 25 paragraph 3 of the Convention applies to all offences established in accordance with the Convention, which includes the offence of trafficking in persons. Article 6 paragraph 2 of the Protocol goes further than article 25 paragraph 3 of the Convention. It must not only be possible for the views and concerns of victims to be heard; the victim must, in appropriate cases, be helped to put them forward.¹⁶³ While victims must be provided an opportunity to participate, there is no obligation placed on victims in this regard. Victims should not be forced to participate in proceedings and doing so may have unintended adverse consequences, including on the success of those proceedings.
211. The obligation under article 6 paragraph 2 of the Protocol will not necessarily require legislative measures. In many cases, this can be implemented by administrative measures that require officials to provide victims with information and to furnish any practical assistance needed to support the presentation of "views or concerns". This may also require the use of interpreters so that victims can receive information in their own language.¹⁶⁴ However, legislators may consider provisions that ensure that judges cannot allow information or participation on any basis "in a manner prejudicial to the rights of the defence".¹⁶⁵
212. One way to reconcile these interests found in some States is the use of victim statements concerning the impact of the offence. These are delivered after a finding of guilt but prior to sentencing, at which point fundamental questions of guilt or innocence are no longer at issue. This process is separate and distinct from calling a victim to provide evidence concerning the alleged offence, which is subject to more restrictive rules of evidence.

¹⁵⁹ UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 (29 November 1985) [4]-[6].

¹⁶⁰ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, UN Doc. CTOC/COP/WG.4/2017/2 (3 July 2017) 8 [29].

¹⁶¹ UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2005) 52-53.

¹⁶² American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 81-82; Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 19; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 4.

¹⁶³ David McClean, *Transnational Organized Crime* (2007) 338.

¹⁶⁴ Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 19.

¹⁶⁵ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, UN Doc. CTOC/COP/WG.4/2017/2 (3 July 2017) 5 [15].

213. Drafters should also bear in mind the application of article 6 paragraph 4 of the Protocol, which requires factors such as age, gender and the special needs of victims to be taken into account (see also IV.A.3(d) below). These factors may influence any legislation on access to and participation in judicial proceedings. For example, the Conference of the Parties has asked States to consider providing, where appropriate, legal representation rather than legal assistance to victims who are children.¹⁶⁶
214. The Working Group on Trafficking in Persons further recommends that, where victims do participate in proceedings, such participation should not occur at the victim's expense.¹⁶⁷

(c) Social assistance and protection of victims (article 6 paragraph 3)

215. Article 6 paragraph 3 of the Trafficking in Persons Protocol requires States Parties to consider implementing certain measures that are intended to reduce the suffering and harm caused to victims and to assist in their recovery and rehabilitation. This provision expands on the obligation in article 25 paragraph 1 of the Convention against Transnational Organized Crime to provide assistance and protection to victims, within States Parties' means. Importantly, where support and protection is provided to victims, it must not be made conditional upon the victim's capacity or willingness to cooperate in legal proceedings.¹⁶⁸ Victims should also not be compelled to accept any such support but should instead receive information on their entitlements so that they can make an informed decision.¹⁶⁹ Fundamentally, assistance and protection measures must be provided consistent with the human rights of victims under international law; the aim of such measures should be the comprehensive protection of victims' human rights, dignity, and welfare.
216. As noted earlier, the high costs of these measures and the fact that they apply equally to all States Parties in which victims are found, regardless of the level of socio-economic development or availability of resources, precluded these measures from being made obligatory under the Protocol. States seeking to ratify and implement the Protocol are, however, required to consider implementing these requirements and are urged to do so to the greatest extent possible within resource and other constraints. Resolutions by the United Nations General Assembly have called on States to take all "appropriate measures to promote the physical, psychological and social recovery" of victims.¹⁷⁰
217. Apart from the goal of addressing the effects of crime on victims, there are also several other reasons for providing social assistance to victims of crime. Providing support, shelter, and protection for victims increases the likelihood that they will be willing to cooperate with and assist investigators and prosecutors, a critical factor in prosecutions of trafficking in persons given that the victims are able to provide evidence to help establish the crime which may not have been otherwise witnessed by other persons. Legislative measures may be needed to implement article 6 paragraph 3 of the Protocol to provide a mandate for these services and to ensure that the necessary resources are allocated.
218. An Interpretative Note to article 6 paragraph 3 further explains that: "[t]he type of assistance set forth in this

¹⁶⁶ UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/2010/6 (10 August 2010) [34]; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc. CTOC/COP/WG.4/2010/6 (17 February 2010) 3 [12].

¹⁶⁷ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 6 [16].

¹⁶⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 6 [16].

¹⁶⁹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010) 150.

¹⁷⁰ UN General Assembly, Trafficking in Women and Girls, UN Doc. A/RES/61/144 (1 February 2007) 5 [15]; UN General Assembly, Improving the Coordination of Efforts against Trafficking in Persons, UN Doc. A/RES/61/180 (8 March 2007) 3 [9].

paragraph is applicable to both the receiving State and the State of origin of the victim of trafficking in persons, but only as regards victims who are in their respective territory. Paragraph 3 is applicable to the receiving State until the victim of trafficking in persons has returned to his or her State of origin, and to the State of origin thereafter.”¹⁷¹

219. Article 6 paragraph 3 of the Protocol encourages the involvement of non-governmental organizations and other relevant elements of civil society in the delivery of assistance measures, where appropriate. A significant problem in trafficking cases is that offenders often control victims by convincing them that they will be arrested and prosecuted or deported if they approach authorities to complain or ask for help. Generally, the value of shelters, counselling, and other services offered by non-governmental organizations in this area is that victims may prefer to approach them rather than State-based agencies, particularly in situations where traffickers have told their victims that state agencies will not assist them, or worse, arrest and/or charge them for illegal conduct. For these reasons, States Parties are encouraged to engage with non-governmental organizations and other elements of civil society that support rights-based assistance measures. Nonetheless, while such organizations may assist victims of trafficking, States Parties remain responsible for implementation of their obligations under the Protocol. States Parties should actively cooperate with non-governmental organizations and other relevant elements of civil society.
220. While the Protocol makes provision for the assistance and support of victims, there is no specific requirement or process established whereby a trafficked person’s status as a “victim” can be established. Legislators should consider establishing some process or processes whereby victims or others acting on their behalf can seek such status. These might involve any or all of the following mechanisms:
- (a) Allowing courts or tribunals to certify any victims who are identified during the proceedings, whether or not they actually participate in those proceedings;
 - (b) Allowing a judicial or administrative determination to be made based on the application of law enforcement, border control, or other officials who encounter victims in the course of investigations or prosecutions; or
 - (c) Allowing a judicial or administrative determination to be made based on the application of the victim personally or a representative, such as a representative of a non-governmental organization, independent of any other proceeding being initiated.
221. It is important that any of the above processes, where established, should be conducted without undue delay and in a way that avoids any traumatization of victims.

¹⁷¹ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 373.

(d) Age, gender, and special needs of victims (article 6 paragraph 4)

222. Article 6 paragraph 4 of the Protocol provides that States Parties, in considering measures to assist and protect victims of trafficking, shall take into account the age, gender, and special needs of victims. This paragraph complements the provisions under paragraphs 1 to 3. While those paragraphs set out general measures in support of victims, paragraph 4 adds that differentiation of such support and individualised care, as appropriate, depending on the special needs of different categories of victims, is the next step.¹⁷²
223. Gender and age sensitive approaches are critical to effectively supporting victim-centred responses. Gender-sensitive approaches will be particularly important where victims have experienced sexual exploitation.¹⁷³ Sensitivities stemming from other circumstances, such as where victims have disabilities or are asylum seekers, should also be considered.
224. In recognition of the particular physical, psychological, and psychosocial harm child victims of trafficking may suffer, States Parties may also wish to consider:
- (a) Ensuring that procedures are in place for rapid identification of child victims of trafficking.¹⁷⁴
 - (b) Appointing, as soon as a child victim is identified, a guardian for the child until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim from identification to implementation of a durable solution;
 - (c) Ensuring that, during investigations, as well as prosecutions and trial hearings where possible, direct contact between child victims and suspected offenders be avoided. Unless it is not in the best interests of the child, child victims have the right to be fully informed about security issues and criminal procedures prior to deciding whether to testify in criminal proceedings. During legal proceedings, the right to legal safeguards and effective protection of child witnesses needs to be strongly emphasized. Child victims who agree to testify should be accorded special protection measures to ensure their safety, and their privacy must be protected as a matter of importance;¹⁷⁵
 - (d) Providing appropriate shelters for child victims in order to avoid the risk of revictimization. Child victims should be hosted in safe and suitable accommodation and separated from adults, taking due account of their age and special needs;
 - (e) Establishing special recruitment practices and training programmes to ensure that individuals responsible for the care and protection of the child victims understand their special needs, are sensitive to gender issues and possess the necessary skills both to assist children and to ensure that their rights are safeguarded.¹⁷⁶
225. Protection and assistance for child victims is particularly relevant when dealing with mixed movements, in particular of vulnerable groups such as asylum seekers and refugees, children with disabilities, and unaccompanied and separated children.¹⁷⁷ Absent appropriate safeguards and protection for child victims, the risks of child victims going missing and being re-trafficked increase.

¹⁷² David McClean, *Transnational Organized Crime* (2007) 340.

¹⁷³ Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 22. See also, *The Gender Dimensions of Human Trafficking*, Inter-Agency Coordination Group against Trafficking in Persons (2017).

¹⁷⁴ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 8.

¹⁷⁵ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (2006) 32.

¹⁷⁶ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (2006) 22.

¹⁷⁷ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements*, UN Doc. CTOC/COP/WG.4/2017/2 (3 July 2017) 6 [22].

226. In dealing with child victims, States Parties should accord with any obligations they may also have as States Parties to the Convention on the Rights of the Child¹⁷⁸ and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.¹⁷⁹ The best interests of the child must be a primary consideration in all actions, at all levels, concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.¹⁸⁰ The right of child victims to have their views taken into account and given due weight in accordance with their age and maturity, in all matters affecting them, must also be ensured. States Parties should refer to other instruments they have signed or ratified that contain obligations relevant to children.
227. In many cases, children may not know their real age or may not want to disclose it. The Working Group on Trafficking in Persons has recommended that, where the age of a victim is uncertain and there are reasons to believe that the victim is under the age of 18, States Parties should, to the extent possible under their domestic law, presume that the victim is a child and treat him or her in accordance with the Convention on the Rights of the Child until the true age is verified.¹⁸¹

(e) Physical safety of victims (article 6 paragraph 5)

228. Under Article 6 paragraph 5 of the Trafficking in Persons Protocol, States Parties shall endeavour to provide for the physical safety of victims while they are present in their territory. This obligation may, in many cases, overlap with assistance and protection provided under paragraph 3. This obligation requires States Parties to take concrete steps in furtherance of the goal of protecting the safety of the victim.
229. In implementing article 6 paragraph 5 of the Protocol, States Parties should also recall the stronger obligations contained in articles 24 and 25 of the Convention against Transnational Organized Crime, which apply equally to trafficking in persons cases.¹⁸² Article 24 is focussed on the protection of witnesses; that is, those who provide or will provide testimony in criminal proceedings, as well as their relatives and other persons close to them. Obligations include taking measures within its means to provide effective protection from potential retaliation or intimidation and can include:
- (a) Establishing procedures for their physical protection, including relocating them and, where appropriate, permitting the non-disclosure or limitations on the disclosure of information that could identify them or their whereabouts (article 24 subparagraph 2(a));
 - (b) Establishing rules to permit witnesses to give testimony in a manner that ensures their safety, such as through the use of video links, from behind a screen or through other means (article 24 subparagraph 2(b));
 - (c) Entering into agreements with other States for the relocation of witnesses and their family members (article 24 paragraph 3). This may be important in small countries where it may be difficult to physically locate someone in a place where they will be safe.

¹⁷⁸ Opened for signature 20 November 1989, 1577 UNTS3 (entered into force 2 September 1990).

¹⁷⁹ Opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2000).

¹⁸⁰ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 8; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, UN Doc. CTOC/COP/WG.4/2017/2 (3 July 2017) 3 [7].

¹⁸¹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, UN Doc. CTOC/COP/WG.4/2017/2 (3 July 2017) 6 [22].

¹⁸² UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle, UN Doc. CTOC/COP/2006/6 (16 August 2006) 10 [29]; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010) 144.

230. Article 25 identifies obligations to assist and protect victims and, in particular, in respect of cases involving the threat of retaliation or intimidation (article 25 paragraph 1). In addition, States Parties must, subject to their domestic laws, establish mechanisms to enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders, such as a victim-impact statement (article 25 paragraph 3). This is in addition to any measures that would apply to victims who are also witnesses in the criminal proceeding against the accused.

(f) Possibility of obtaining compensation (article 6 paragraph 6)

231. Victims of trafficking in persons should be given access to remedies that are fair, adequate, and appropriate for harms committed against them.¹⁸³ Article 6 paragraph 6 of the Trafficking in Persons Protocol requires States Parties to ensure that their domestic legal systems contain mechanisms to provide victims of trafficking with the opportunity of obtaining compensation for damage suffered. It does not specifically require States Parties to provide remedies to victims.¹⁸⁴
232. This obligation is similar, but not identical, to the corresponding obligation under article 25 paragraph 2 of the Convention against Transnational Organized Crime. Article 25 paragraph 2 of the Convention requires States Parties to establish “appropriate procedures” to provide access to compensation or restitution. There is also a related requirement under article 14 paragraph 2 of the Convention that requires States Parties to, as permitted under domestic law, give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation to victims or for return to their legitimate owner.¹⁸⁵ The Special Rapporteur on trafficking in persons, especially women and children recommends that seized proceeds and confiscated assets of trafficking should “be used in the first instance to compensate trafficked persons and in the second instance for general provision of remedies to trafficked persons”.¹⁸⁶
233. Legislation will generally be required if appropriate schemes offering the possibility of obtaining compensation are not already in place. The Protocol does not specify any potential source of compensation. In accordance with the requirements of article 6 paragraph 6, State Parties should adopt at least one of the following mechanisms:
- (a) Allowing criminal courts, upon conviction of an offender, to order compensation be paid to a victim;
 - (b) Establishing dedicated funds or schemes whereby victims can claim compensation from the State for injuries or damages suffered as a result of a criminal offence;
 - (c) Allowing victims to sue offenders or others under statutory or common-law torts for civil damages.¹⁸⁷
234. The Working Group on Trafficking in Persons recommends that State-funded or court ordered compensation include payment towards the following:
- (a) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
 - (b) Costs of physical and occupational therapy or rehabilitation required by the victim;
 - (c) Lost income and wages due according to national law and regulations regarding wages;
 - (d) Legal fees and other costs or expenses incurred, including costs related to the participation of the victim in the criminal investigation and prosecution process;
 - (e) Payment for non-material damages resulting from moral, physical or psychological injury, emotional distress and pain and suffering of the victim as a result of the crime committed against him or her;

¹⁸³ UN Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo, UN Doc. A/HRC/17/35 (13 April 2011) Annex I; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 9.

¹⁸⁴ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 10 [32].

¹⁸⁵ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, National Approaches to Compensation of Victims of Trafficking in Persons, UN Doc. CTOC/COP/WG.4/2010/CRP.1 (22 September 2010) 4 [14].

¹⁸⁶ UN Human Rights Council, Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/17/35 (13 April 2011); UNODC, Providing Effective Remedies for Victims of Trafficking in Persons, Issue Paper (2016) 24; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 4.

¹⁸⁷ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Consolidated Recommendations of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/WG.4/2015/5 (25 August 2015) 8 [59].

- (f) Any other costs or losses incurred by the victim as a direct result of being trafficked, as reasonably assessed by the court or State-funded compensation scheme.¹⁸⁸
235. The Working Group further recommends that States Parties ensure “that the immigration status of the victim, the return of the victim to his or her home country or the absence of the victim from the jurisdiction for other reasons does not prevent the payment of compensation”.¹⁸⁹ The requirement in article 8 paragraph 2 of the Protocol that return of victims be undertaken with due regard for the status of any legal proceedings should be noted in this context.¹⁹⁰
236. The obligation to offer victims of trafficking the possibility of obtaining compensation for damage suffered may be linked to that under article 6 paragraph 2 to provide victims with information and assistance during legal proceedings.¹⁹¹ Victims should be fully informed of their right to seek compensation and given information on how to make a claim in a language that they understand.¹⁹²

(g) Status of victims (article 7)

237. The Trafficking in Persons Protocol calls on States Parties to consider adopting legislative or other appropriate measures that permit foreign trafficked persons to remain in the territory of the receiving State, temporarily or permanently, in appropriate cases.
238. Victims of trafficking may have no right to remain in the country where they are found, though in other cases they will be entitled to international protection. Moreover, exposure to immigration authorities is one weapon in the hands of the traffickers who exploit their victims. Article 7 reflects the view of the drafters of the Protocol that victims of trafficking who are not nationals or permanent residents of the receiving State and who have no other legal right to stay in that country deserve special consideration within the immigration system.¹⁹³ States Parties contemplating granting status to victims should consider the need to:
- (a) Ensure the safety of victims and protect them from retaliation;
 - (b) Prevent victims from being re-trafficked;
 - (c) Provide time for victims’ recovery and reflection;
 - (d) Provide a right to remain lawfully, temporarily or permanently, within the receiving State for victims who voluntarily agree to cooperate with law enforcement authorities.¹⁹⁴ The grant of legal status should not, however, be premised upon testimony against traffickers.
 - (e) Act in the best interests of the child, where the victim is a child.¹⁹⁵

¹⁸⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Consolidated Recommendations of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/WG.4/2015/5 (25 August 2015) 8–9 [60]; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 19 October 2010, UN Doc. CTOC/COP/WG.4/2010/7 (30 March 2011) 6 [Annex].

¹⁸⁹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Consolidated Recommendations of the Working Group on Trafficking in Persons, UN Doc. CTOC/COP/WG.4/2015/5 (25 August 2015) 8 [57]; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 10 [33].

¹⁹⁰ UNODC, Providing Effective Remedies for Victims of Trafficking in Persons, Issue Paper (2016) 17.

¹⁹¹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 19 October 2010, UN Doc. CTOC/COP/WG.4/2010/7 (30 March 2011) 5 [Annex].

¹⁹² OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 9; American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 90; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 10 [32].

¹⁹³ David McClean, *Transnational Organized Crime* (2007) 343.

¹⁹⁴ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 4.

¹⁹⁵ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (2006) 21.

239. In States where measures have been adopted for the temporary or permanent residence of victims of trafficking, such measures have generally had a positive effect on victims coming forward to testify against traffickers and on non-governmental organizations encouraging victims to whom they provide services to report incidents to the authorities.
240. In implementing such measures, article 7 paragraph 2 further calls on States Parties to give due consideration to humanitarian and compassionate factors. The view expressed during the drafting of the Protocol was that “humanitarian factors” referred to rights established in international human rights law instruments. “Compassionate factors” was seen as referring to personal circumstances such as family situation, age, gender, de-facto relationships, and other factors that should be considered on an individual and case-by-case basis.¹⁹⁶ Read together, this echoes the saving clause in article 14 paragraph 1 of the Protocol.

4. FURTHER MATTERS

Victims of trafficking in persons in need of international protection

241. States Parties to the Trafficking in Persons Protocol that are also Parties to the Convention relating to the Status of Refugees¹⁹⁷ and the Protocol relating to the Status of Refugees¹⁹⁸ (and any applicable regional instruments) are under additional obligations to victims of trafficking who are refugees within the meaning of these instruments. States also have obligations under international human rights law instruments where return of victims would put them at risk of torture or cruel, inhuman or degrading treatment or punishment.¹⁹⁹ States Parties must take into account their non-refoulement obligations under international refugee and human rights law, notwithstanding the provisions of the Trafficking in Persons Protocol, in accordance with the saving clause in article 14 paragraph 1 of the Protocol (see II.A.2 above).
242. Victims of trafficking may require international protection in various circumstances both unrelated and related to their experience as victims of trafficking, including, inter alia, where the victim is moved to a foreign country, where the victim escapes his or her trafficker and seeks protection in the State where he or she is present, or where the victim has been moved within a national territory, escapes, and flees abroad in search of protection.²⁰⁰ It is necessary that victims of trafficking have access to fair and efficient asylum procedures, as appropriate, and are able to lodge asylum claims effectively.²⁰¹ Importantly, no link must be made between evaluation of a claim to asylum and the willingness of a victim to give evidence in legal proceedings against his or her trafficker.²⁰² Anti-trafficking laws, policies, programmes and interventions must not affect the right or ability in practice of victims to claim asylum.²⁰³
243. Where victims of trafficking are stateless persons, States Parties to the Convention relating to the Status of Stateless Persons²⁰⁴ and the Convention on the Reduction of Statelessness²⁰⁵ must take into account their obligations under those instruments, including, inter alia, obligations to provide stateless persons with housing, education, employment, and identity papers.

¹⁹⁶ UN General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, UN Doc. A/AC.254/4/Add.3/Rev.6 (4 April 2000) nn [55].

¹⁹⁷ Opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

¹⁹⁸ Opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

¹⁹⁹ OHCHR, Human Rights and Human Trafficking, Fact Sheet 36 (2014) 25.

²⁰⁰ ICAT, Trafficking in Persons and Refugee Status, Issue Brief No. 3 (2017).

²⁰¹ UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UN Doc. HCR/GIP/06/07 (7 April 2006) 16.

²⁰² UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UN Doc. HCR/GIP/06/07 (7 April 2006) 17.

²⁰³ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 1.

²⁰⁴ Opened for signature 28 September 1954, 360 UNTS 170 (entered into force 6 June 1960).

²⁰⁵ Opened for signature 30 August 1961, 383 UNTS 175 (entered into force 13 December 1975).

B. REPATRIATION OF VICTIMS

Trafficking in Persons Protocol

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.”*

1. INTRODUCTION

244. Victims of trafficking may wish to return to their home State after exiting their situation of trafficking or once legal proceedings in the State they are located in are complete. Article 8 of the Trafficking in Persons Protocol affirms the right of victims to return to the country of which they are a national or where they held permanent residence and requires the home State and the receiving State to facilitate return.²⁰⁶
245. Article 8 is concerned with the protection of victims of trafficking. In some cases, return of victims to their home State can have serious consequences. It may be used by traffickers as a threat, for reprisals, and may involve risks of stigmatization and re-trafficking. Recognizing this, the Trafficking in Persons Protocol requires that return take place with due regard for the safety of victims and subject to their rights under international law, including the right to non-refoulement.²⁰⁷ Effective reintegration, or integration, of victims into the home State is a further, integral, consideration following any return, together with assistance and support necessary to ensure their well-being and prevent revictimization.²⁰⁸

2. MAIN REQUIREMENTS

246. States Parties shall:
- (a) Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety and for the status of any legal proceedings related to the fact that the person is a victim of trafficking (article 8 paragraphs 1 and 2);
 - (b) Verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence and issue the necessary travel documents for re-entry (article 8 paragraphs 3 and 4).
247. These obligations are mandatory, but they are subject to any other applicable bilateral or other agreements (article 8 paragraph 6) and any rights afforded to victims by applicable national laws (article 8 paragraph 5).

²⁰⁶ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 103.

²⁰⁷ See, II.A.2 above.

²⁰⁸ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 329; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 6.

3. IMPLEMENTATION

248. Article 8 of the Trafficking in Persons of Protocol concerns measures regarding the return of victims of trafficking. It should be read in conjunction with article 7, which covers situations where victims are permitted to remain temporarily or permanently in the host country (see IV.A.3.(g) above).²⁰⁹
249. Implementation of the obligations under article 8 must also be read with the saving clause in article 14 of the Protocol. Article 14 paragraph 1 preserves the effect of other international instruments and, specifically, the principle of non-refoulement.²¹⁰ Return of victims cannot violate their established rights that would otherwise prevent their removal or return to their home State.²¹¹ In the case of child victims, this includes rights under the Convention on the Rights of the Child; in particular, the right to have their best interests be a primary consideration in all decisions about possible return.²¹²
250. Any legislative provisions introduced to implement the requirements under article 8 may require additional measures and amendments to ensure that relevant officials have adequate resources and authority to carry out their functions in accordance with these legislative measures. For example, amendments might be needed to laws governing the issuance of passports or other travel or identification documents to ensure that they may lawfully be issued in return cases and that the appropriate officials have sufficient powers to issue them based on appropriate criteria. To implement the requirements that safety, the status of ongoing legal proceedings, and other factors be taken into consideration in making return decisions, laws and administrative practices may require amendment to ensure that the decision-making officials have the appropriate information and are legally obliged to consider such factors.

(a) Article 8 paragraph 1

251. Article 8 paragraph 1 of the Trafficking in Persons Protocol concerns the initial steps to be taken in the return of a victim of trafficking to his or her home State. In many cases, determining the home State will be unproblematic; in others, prior migration of the victim and the complexity of national immigration laws will make this determination less clear-cut.
252. Article 8 paragraph 1, as well as paragraphs 2, 3, and 4, refer to the home State as “the State Party of which the victim of trafficking is a national or in which the person had the right of permanent residence”. Because the emphasis is on the restoration of the victim’s position before they were trafficked, the relevant point in time for determining the victim’s home State is “the time of entry into the territory of the receiving State Party”.
253. The question of whether the person is a national of the home State is determined by the sending country’s nationality and citizenship laws. Determining whether the victim “had the right of permanent residence” in that country may be more difficult. An Interpretative Note to article 8 paragraph 1 further explains: “[t]he words ‘permanent residence’ in this paragraph mean long-term residence, but not necessarily indefinite residence.”²¹³
254. The obligation created by article 8 paragraph 1 is that the home State must facilitate the person’s return (paragraphs 3 and 4 deal with particular issues that may arise in that context) and accept the return of that person. This means, for example, that a victim who had the right of permanent residence before being recruited, transported or transferred to another State Party, and who may, by reason of absence for a period of time, have lost the right of permanent residence in the home State must nonetheless be allowed to return. This must be allowed without undue or unreasonable delay and with due regard for the safety of the victim.²¹⁴

²⁰⁹ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 103.

²¹⁰ See further, II.A.2 above.

²¹¹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Principle 3.

²¹² UN.GIFT, *The Effectiveness of Legal Frameworks and Anti-Trafficking Legislation* (2008) 23; ICAT, *The International Legal Frameworks Concerning Trafficking in Persons* (2012) 13.

²¹³ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 388.

²¹⁴ David McClean, *Transnational Organized Crime* (2007) 346.

²¹⁵ David McClean, *Transnational Organized Crime* (2007) 346–347.

255. The repatriation of victims of trafficking raises difficult policy issues for many governments, but in most countries conformity with the basic requirements involves primarily the issuance of administrative instructions to the appropriate officials and ensuring that the necessary resources are available to permit them to provide the necessary assistance. Legislative amendments might be required in some States, however, to ensure that officials are required to act (or in appropriate cases, to consider acting) in response to requests and that they have the necessary legal authority to issue visas or other travel documents when a national or resident is to be returned.
256. Once the victim has been returned to the home State, issues may have to be considered as to that person's future immigration status. It would clearly be contrary to the spirit of the Protocol for a person whose return has been accepted under article 8 paragraph 1 to be immediately expelled from the home State for reasons of immigration law. Equally, the fact of return after trafficking cannot guarantee for all time a right to reside in that State.²¹⁵ The Interpretative Note to this article states that paragraph 1 "should be understood as being without prejudice to any domestic legislation regarding either the granting of the right of residence or the duration of residence."²¹⁶

(b) Article 8 paragraph 2

257. Article 8 paragraph 2 of the Trafficking in Persons Protocol creates obligations on the receiving State concerning the victim's return.

Safety of the victim

258. The safety of the victim of trafficking in persons must be paramount in that person's return to the home State. This complements the obligation placed on a State Party by article 6 paragraph 5 to "endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory". Return of a victim is not a suitable option where there is a risk of re-trafficking or where the return would otherwise be unsafe for the victim or that person's family.²¹⁷ The obligation in article 9 subparagraph 1(b) of the Protocol to protect victims from revictimization should be noted. Individual risk assessments should be carried out prior to a decision regarding return (though victims may elect to leave the receiving State voluntarily prior to such an assessment).²¹⁸
259. In cases where child victims are involved, legislators should not return those child victims unless doing so is in their best interests and, prior to the return, having established that a suitable caregiver such as a parent, another relative, another adult caretaker, or a government agency in the country of origin has agreed and is able to take responsibility for the child upon return and to provide him or her with appropriate care and protection. Relevant judicial authorities and government ministries, in cooperation with the relevant social service authorities and/or parent or guardian, should be responsible for establishing whether or not the repatriation of a child victim is safe and should ensure that the process takes place in a dignified manner and is in the best interests of the child. Social service authorities, in cooperation with relevant government ministries or other relevant authorities or agencies should, where necessary, take all necessary steps to trace, identify, and locate family members and facilitate the reunion of the child victim with his or her family where this is in the best interest of the child. States Parties should establish procedures to ensure that the child is received in the home State by an appointed member of the social services of the country of origin and/or the child's parents or legal guardian.²¹⁹

²¹⁵ David McClean, *Transnational Organized Crime* (2007) 346–347.

²¹⁶ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 388.

²¹⁷ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *International cooperation in cases of trafficking in persons: considering the needs and rights of victims*, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 8–9 [28]; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 4.6.

²¹⁸ ICAT, *International Legal Frameworks Concerning Trafficking in Persons* (2012) 14.

²¹⁹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) 171–172.

260. In those cases where return is voluntary or in the best interests of the child, States Parties are encouraged to ensure that the child returns to his or her home State in a speedy and safe manner. In situations where the safe return of the child to his or her family and/or country of origin is not possible or where such return would not be in the child's best interests, social welfare authorities should make adequate long-term care arrangements to ensure the effective protection of the child and the safeguarding of his or her human rights. In this regard, relevant government authorities in countries of origin and in countries of destination should develop effective agreements and procedures for collaborating with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted to determine the best course of action for the child.

Timing of the return

261. Article 8 paragraph 2 further states that when returning the victim to the home State, due regard must be given to “the status of any legal proceedings related to the fact that the person is a victim of trafficking”.
262. The actual timing of any return may depend on a number of factors. Ideally, the receiving State will deploy the measures designed to secure the physical, psychological, and social recovery of victims as mentioned in article 6 paragraph 3, and it may well be best for the return of the victim to his or her home State to be delayed in order to allow at least some aspects of this recovery process to have been completed. More difficult is the question of legal proceedings, often criminal proceedings against the trafficker. Article 8 paragraph 2 should be read in light of article 6 subparagraph 2(b), which deals with provision of assistance to victims to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, and article 25 paragraph 3 of the Convention against Transnational Organized Crime, which provides for victims' views and concerns to be presented and considered at appropriate stages of criminal proceedings. In some cases, the victims will be needed as witnesses. The text of article 8 paragraph 2 recognizes that these considerations may affect decisions as to the timing of any return.²²⁰ Ongoing administrative proceedings concerning the legal status of the victim, or civil proceedings regarding claims for damages against an accused, should also be taken into account.²²¹ Nonetheless, victims of trafficking should not be required to participate in proceedings.
263. An important consideration in some countries will be ensuring that there are adequate links between law enforcement and prosecution officials who may be developing a criminal case against traffickers, and between these agencies and immigration authorities responsible for deporting and repatriating victims.²²²

Voluntary and forced return

264. Article 8 paragraph 2 further suggests that the return of a victim of trafficking in persons shall preferably be voluntary. An Interpretative Note to article 8 paragraph 2 explains that the words ‘and shall preferably be voluntary’ are understood not to place any obligation on the State party returning the victims.
265. The question of when to return victims of trafficking in persons to their home State, against their wishes, is contentious. It has been suggested that there is something offensive in the notion that a victim who was unlawfully compelled by traffickers to move to another State should then be compelled, albeit by legitimate force, to move once again.²²³ This explains the somewhat tentative statement in the text of the paragraph that the return shall “preferably” be voluntary.²²⁴ While forced returns are contemplated by the Protocol, they must be limited to those that are safe and carried out with due regard for legal proceedings involving the victim and for the rights of the victim under international law, in particular the right of non-refoulement.²²⁵

²²⁰ David McClean, *Transnational Organized Crime* (2007) 347.

²²¹ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 106.

²²² UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 388.

²²³ UN General Assembly, *Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Informal Note by the United Nations High Commissioner for Human Rights*, UN Doc. A/AC.254/16 (1 June 1999) [20].

²²⁴ David McClean, *Transnational Organized Crime* (2007) 347–348.

²²⁵ UN.GIFT, *The Effectiveness of Legal Frameworks and Anti-Trafficking Legislation* (2008) 24.

(c) Article 8 paragraph 3

266. To enable the return of a victim of trafficking in persons as envisaged by paragraphs 1 and 2, it will first be necessary to verify whether the person is indeed a national or had the right of permanent residence in the State to which the victim is to be returned at the time he or she entered into the receiving State. Article 8 paragraph 3 creates an obligation on the State to which the victim is to be returned to provide the necessary verification and to do so expeditiously; that is, without undue or unreasonable delay.
267. An Interpretative Note to article 8 paragraph 3 further states that: “[t]he understanding of the Ad Hoc Committee was that a return under this article shall not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.”²²⁶

(d) Article 8 paragraph 4

268. Article 8 paragraph 4 seeks to assist victims of trafficking whose passports or identity documents have been lost, stolen, or, as practiced by many traffickers, seized to exercise control over them. This not only prevents a victim from leaving the receiving State but also creates in the mind of the victim a fear—rightly or wrongly—that being “without papers” may create difficulties with law enforcement, immigration, and other authorities. There is a consequential fear of exposure if the trafficker’s orders are disobeyed. If the victim is to travel back to his or her home State, there may be difficulties caused by the lack of the right documentation.²²⁷
269. For this reason, article 8 paragraph 4 places an obligation on the home State “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.” This is primarily an administrative obligation, but it may require legislation to ensure that the appropriate officials or agencies issue the documents when the conditions set out in article 8 are met.
270. An Interpretative Note to article 8 paragraph 4 explains that the words ‘travel documents’ include any type of document required for entering or leaving a State under its domestic law.²²⁸ Where the victim is a child, any other requisite documentation relating to unaccompanied travel should also be issued.²²⁹

(e) Article 8 paragraph 5

271. Article 8 paragraph 5 notes that the right to return is not meant to prejudice any other right afforded to trafficking victims in the domestic legislation of receiving countries. If such countries establish certain rights for victims in already existing anti-trafficking legislation, such rights are not to be diminished or replaced by the right to return described in article 8 of the Protocol.²³⁰ Paragraph 5 further resolves any potential conflict between the provisions under article 8 and those under article 7 (see IV.A.3.(g) above). In particular, the provisions under article 8 do not prejudice the possible effect of article 7 that some victims of trafficking will be allowed to remain in the State to which they were taken by the traffickers.²³¹

²²⁶ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 388.

²²⁷ David McClean, *Transnational Organized Crime* (2007) 349.

²²⁸ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 388.

²²⁹ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 107.

²³⁰ American Bar Association & Central European and Eurasian Law Initiative, *An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime* (2005) 107.

²³¹ David McClean, *Transnational Organized Crime* (2007) 349.

(f) Article 8 paragraph 6

272. Article 8 paragraph 6 seeks to resolve any potential conflict between the provisions under article 8 and those under relevant bilateral or multilateral agreements or arrangements that govern, in whole or in part, the return of victims of trafficking in persons.
273. An Interpretative Note to article 8 paragraph 6 states that: “[t]he references to agreements or arrangements in this paragraph include both agreements that deal specifically with the subject matter of the Protocol and more general readmission agreements that include provisions dealing with illegal migration.”²³² A further Interpretative Note to article 8 paragraph 6 states that: “[t]his paragraph should be understood as being without prejudice to any other obligations under customary international law regarding the return of migrants.”²³³ This second Interpretative Note appears to refer to the norm of customary international law that all persons have a right to return to their country of origin.²³⁴ It may also be intended to ensure that article 8 paragraph 6 does not prejudice future developments of customary international law.

²³² UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 389

²³³ UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 389.

²³⁴ See also UN General Assembly, Universal Declaration of Human Rights, Resolution 217 (III), UN Doc. A/RES/3/217A (10 December 1948) article 13 paragraph 2; International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), article 12 paragraph 4.

4. FURTHER MATTERS

(a) Miscellaneous

274. States Parties should strongly consider training officials who are likely to be involved in the return of victims, both in the State where the victim is located and in the State of return, bearing in mind the requirements to ensure that basic rights are respected (article 8 paragraph 5 of the Protocol); the preservation of other rights, notably those associated with asylum-seekers, pursuant to article 14, paragraph 1; and the obligation of States Parties to ensure that the provisions of the Protocol are not applied in a discriminatory manner (article 14 paragraph 2).²³⁵ States Parties may wish to establish coordination structures to support the repatriation of foreign national victims.
275. The Convention and its Protocols are primarily criminal justice instruments and, apart from criminal proceedings against offenders, they do not set out formal judicial or administrative proceedings in which the status of victims of trafficking as such can be determined. States Parties may wish to consider amending legislation, including immigration and criminal law to incorporate the definition of “trafficking in persons” and allow those who claim to be victims an opportunity to do so in appropriate proceedings, including proceedings undertaken with a view to removing them from the country in cases where they have no apparent legal means of remaining.
276. States Parties may further wish to consider adopting legislative provisions requiring officials or tribunals responsible for matters relating to immigration and deportation not to order or carry out orders of deportation of a victim while that person was (or may be) required in criminal proceedings against alleged traffickers or in relation to other offences covered by the Convention against Transnational Organized Crime, or in civil proceedings against alleged offenders. Alternatively, legislation could direct such officials or tribunals to verify whether any relevant proceedings were ongoing and, if so, to take the status of such proceedings into consideration before deporting a victim. Article 25 paragraph 3 of the Convention and article 6 paragraph 2 subparagraph (b) of the Protocol both require States Parties to ensure that victims are able to present their views and concerns at appropriate stages of proceedings against offenders, which may require the deferral of deportations until that stage has been reached.
277. Regarding the safety of the victim, legislative measures are not specified, but essentially the same provisions as may be needed to ensure the protection of witnesses in cases involving organized crime, such as powers to conceal identities, relocate the victim, or issue new identity documents, could be considered here. This is similar to the requirements of article 24 of the Convention, and drafters may find it possible to rely on legislation implementing that provision as a precedent for trafficking cases. In addition, article 8 paragraph 2 of the Protocol requires that any repatriation of victims must be with due regard for the safety of that person, and this requirement also applies to victims who have not been witnesses. It also applies to countries to which the victim is repatriated as a national or permanent resident, even where the victim has not testified or has done so in another country.

²³⁵ See II.A.3 above.

(b) Stateless Persons

278. Victims of trafficking may not be nationals of any State, may lack legitimate documents or may come from communities where childbirths are not registered. Receiving States may be faced with a situation where no other State will accept return of a victim. In such cases, States Parties to the Trafficking in Persons Protocol that are also Parties to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness must comply with their obligations under those instruments,²³⁶ including obligations to not expel stateless persons lawfully in their territory and to, as far as possible, facilitate the assimilation and naturalization of stateless persons.
279. Receiving States may also wish to consider permitting stateless victims to remain in their territory, in accordance with article 7 of the Trafficking in Persons Protocol.²³⁷

(c) Cost of Return

280. Article 8 of the Trafficking in Persons Protocol does not specify who is to bear the cost of returning victims to their countries of nationality or permanent residence. Nonetheless, the general view is that victims should not have to pay for their own return. Cooperation between States Parties, non-governmental organizations, and civil society should be encouraged with regard to the costs of return.

Related international instruments**CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

Article 24 – Protection of witnesses

Article 25 – Assistance to and protection of victims

OTHER INTERNATIONAL INSTRUMENTS

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2000)

Convention against Torture, opened for signature 10 December 1984, UNTS No. 1465 (pg. 85) (entered into force 26 June 1987)

Convention on the Reduction of Statelessness, opened for signature 30 August 1961, 383 UNTS 175 (entered into force 13 December 1975)

Convention relating to the Status of Stateless Persons, opened for signature 28 September 1954, 360 UNTS 170 (entered into force 6 June 1960)

Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)
Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967)
International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999

²³⁶ Opened for signature 28 September 1954, 360 UNTS 170 (entered into force 6 June 1960).

²³⁷ See further, IV.A.3.(g) above.

UNTS 171 (entered into force 23 March 1976)

Universal Declaration of Human Rights, GA Res 217 A (III), UN GAOR, UN Doc. A/RES/3/217A (10 December 1948)

OTHER REGIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

ASEAN Convention against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016)

Article 14 – Protection for victims

Article 15 – Repatriations and return of victims

Council of Europe Convention against Trafficking in Human Beings, opened for signature 16 May 2005, 197 CETS (entered into force 1 February 2008)

Article 11 – Protection of private life

Article 12 – Assistance to victims

Article 14 – Residence permit

Article 16 – Repatriation and return of victims

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA OJ L 101, 15 April 2011

Article 11 – Assistance and support for victims

Article 12 – Protection of victims in criminal investigations and proceedings

Article 13 – General provisions on assistance, support and protection measures for child victims of trafficking in human beings

Article 14 – Assistance and support to child victims

Article 15 – Protection of child victims of trafficking in human beings in criminal investigations and proceedings

Article 16 – Assistance, support and protection for unaccompanied child victims of trafficking in human beings

Council of Europe Convention against Trafficking in Human Organs, opened for signature 25 March 2015, 216 CETS (entered into force 1 March 2018)

Article 18 – Protection of victims

Article 19 – Standing of victims in criminal proceedings

Article 20 – Protection of witnesses

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (entered into force on 15 November 2005)

Article 9 – Care, treatment, rehabilitation and repatriation of the victims

Inter-American Convention on International Traffic in Minors, opened for signature 18 March 1994, 79 OAS (entered into force 15 August 1997).

Article 6 – Confidentiality

Article 16 – Protection

05



PREVENTION

281. The Trafficking in Persons Protocol, in conjunction with article 31 of the Convention against Transnational Organized Crime, requires States Parties to adopt comprehensive prevention strategies. Prevention measures to be taken against trafficking in persons complement those that must be taken against organized crime in general.

A. GENERAL PREVENTION MEASURES

Trafficking in Persons Protocol

Article 9 – Prevention of trafficking in persons

1. *States Parties shall establish comprehensive policies, programmes and other measures:*
 - (a) *To prevent and combat trafficking in persons; and*
 - (b) *To protect victims of trafficking in persons, especially women and children, from revictimization.*
2. *States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.*
3. *Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.*
4. *States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.*
5. *States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*

1. INTRODUCTION

282. Effectively addressing trafficking in persons must involve not only measures criminalizing and combating trafficking in persons but also measures aimed at preventing it from occurring in the first place. Article 9 of the Trafficking in Persons Protocol sets out several prevention measures that States Parties shall take or shall endeavour to take. These measures include general prevention measures, research and information campaigns, cooperation with non-governmental organizations and other parts of civil society, measures addressing the factors that make persons vulnerable to trafficking and discouraging the demand that fosters exploitation of persons.
283. Prevention measures are the responsibility of all states given the complex nature of push and pull factors that exist in countries of origin, transit, and destination.²³⁸

²³⁸ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 6 [19].

2. MAIN REQUIREMENTS

284. States Parties to the Trafficking in Persons Protocol shall:
- (a) Establish comprehensive programmes to prevent and combat trafficking in persons and to protect victims from revictimization (article 9 paragraph 1);
 - (b) Endeavour to undertake measures such as media campaigns and social and economic initiatives to prevent and combat trafficking in persons, including through cooperation with non-governmental organizations (article 9 paragraphs 2 and 3); and
 - (c) Take or strengthen measures to make persons less vulnerable to trafficking and to discourage the demand that fosters all forms of trafficking in persons (article 9 paragraphs 4 and 5).

3. IMPLEMENTATION

285. All of the obligations in article 9 are mandatory, but the Trafficking in Persons Protocol leaves States Parties with a great degree of flexibility as to how the obligations are to be implemented.
286. Some of the measures called for in article 9 of the Protocol may require legislation to ensure that the basic powers and resources are allocated to the appropriate entities. Reducing the vulnerability of potential victims, including by addressing “poverty, underdevelopment, and lack of equal opportunity” may also require legislative measures.
287. Efforts such as research into the nature and extent of the problem, the conducting of media or other public information campaigns, enhancing cross-border mobility, access to labour markets, and the alleviation of harsh social or economic conditions may not require legislation. Experience has shown that the more serious these matters are taken, the more effective they can be. Without a legal mandate, these initiatives may not be treated with the seriousness or permanence that is required, which can undermine their effectiveness over time. Well-crafted legislation — particularly migration and labour legislation — can play an important role in preventing trafficking in persons.

(a) General prevention measures (article 9 paragraph 1)

Prevention policies and programmes (article 9 subparagraph 1(a))

288. Policies, programmes, and other measures to prevent and combat trafficking in persons should be evidence-based. In developing such measures, it is critical that States Parties rely on accurate information regarding the nature, causes, and consequences of trafficking in persons, as well as the effectiveness of previous measures taken (including adverse effects of such measures), and learn from the experiences of other States.²³⁹
289. Furthermore, in developing prevention policies, programmes, and other measures, States should ensure effective cooperation and exchange between different government agencies in order to ensure a coordinated and holistic response to trafficking. In this context, it is also critical that States take a comprehensive look at trafficking in persons, including linkages to associated issues, including migration and labour policies and laws.
290. States Parties should ensure that policies, programmes, and other measures taken by them to prevent and combat trafficking in persons are neither harmful nor punitive to victims. Furthermore, prevention measures must not interfere with the rights of victims and persons vulnerable to being victimized under international

²³⁹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) 11; American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 117.

human rights law, including freedom of movement. Insofar as possible, States Parties should seek the active participation of those who have been victimized through trafficking in designing and implementing prevention strategies to ensure they are implemented in a manner that respects the human rights and dignity of victims of trafficking.²⁴⁰

291. Prevention measures should be systematically monitored and regularly evaluated to ensure that they are achieving their desired results. Proper evaluation of the impact of a measure requires assessment of the situation both before and after its implementation, together with identification of how the measure made a difference. Evaluations should also assess any unintended negative consequences on human rights, especially those of trafficked persons.²⁴¹

Protection of victims from revictimization (article 9 subparagraph 1(b))

292. The Trafficking in Persons Protocol recognizes that victims are often more vulnerable after their trafficking experience, especially if they are repatriated to a place where the risk of re-trafficking is high. In addition to the basic requirements to protect victims from intimidation or retaliation, article 9 subparagraph 1(b) of the Protocol calls for measures to protect victims from being revictimized. Protection from revictimization requires States Parties to make serious efforts to rehabilitate victims and help them integrate into society. In order to do so, effective support structures for victims must be in place, including support provided by non-governmental organizations and other parts of civil society.²⁴²

(b) Research and information campaigns (article 9 paragraph 2)

293. Article 9 paragraph 2 of the Trafficking in Persons Protocol sets out three types of measures that States Parties shall endeavour to undertake to prevent and combat trafficking in persons: (1) research; (2) information and mass media campaigns; and, (3) social and economic initiatives.
294. Research on trafficking in persons is important to document the changing dynamics of trafficking in persons and to establish the evidence upon which appropriate policies and responses to prevent and combat trafficking can be developed. Research initiatives should be carefully designed to ensure the collection of accurate data to achieve this objective, while giving all due respect for applicable legal requirements, and the privacy of participants, and for relevant ethical considerations, including considerations arising from working with human subjects and particularly vulnerable groups.²⁴³
295. States Parties should engage in the systematic collection, analysis, and dissemination of relevant data. This data should be disaggregated by, at a minimum, age, gender, national origin and forms of exploitation and, so far as possible, standardized between States.²⁴⁴ Data collection, analysis, and dissemination should be ongoing to monitor the changing dynamics of trafficking and to enable the impact of anti-trafficking measures to be assessed. With regard to conducting research into demand for the services and products derived from trafficking in persons, the Working Group on Trafficking in Persons has asked States Parties to consider collecting relevant data, including on the socio-economic factors increasing such demand and on the consumers of goods and services provided by victims of trafficking.²⁴⁵

²⁴⁰ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 16–17 [49]–[53]; UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/23/48 (18 March 2013) 21 [85].

²⁴¹ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 19–20 [61]–[62]. See generally ICAT, *Harnessing accumulated knowledge to respond to trafficking in persons: A Toolkit for guidance in designing and evaluating counter-trafficking programmes* (2016).

²⁴² UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2009) 82–83.

²⁴³ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 19 [60].

²⁴⁴ UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2009) 68.

²⁴⁵ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the Meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc. CTOC/COP/WG.4/2010/6 (17 February 2010) 7 [45].

296. Information and mass media campaigns are an important tool to prevent and combat trafficking in persons because persons vulnerable to situations of trafficking are often disadvantaged by a lack of information. Such campaigns must be based on accurate and adequate information and evidence and should make use of the powerful role of the media, including new forms of media. Campaigns that raise awareness about the potential dangers and consequences of trafficking must be complemented by programmes that reduce the vulnerability of potential victims and must provide them with viable alternatives.²⁴⁶
297. Information and media campaigns as a measure to prevent transnational organized crime are also dealt with in article 31 paragraph 5 of the Convention against Transnational Organized Crime. These provisions are worded to encompass campaigns intended to raise awareness of trafficking in persons and mobilize support for measures against it among the general population, as well as more targeted efforts directed at warning specific groups or even individuals believed to be at high risk of victimization.
298. Information campaigns should be addressed at potential victims, potential traffickers, the general public, law enforcement authorities and other professionals who are likely to be in contact with potential victims. Information campaigns addressed to potential victims and potential traffickers should be targeted on the basis of identified risks.²⁴⁷ Regardless of the target audience, information campaigns should seek to empower the viewer/recipient to take active steps against trafficking in persons or to avoid situations in which trafficking is likely to arise.
299. The content of information and media campaigns will depend on the type of trafficking that the campaign is directed against and different content, messages, and calls for action will be required for different campaigns.
300. Insofar as campaigns seek to reduce trafficking across borders, the campaigns should include information about the phenomenon of trafficking, about existing possibilities and requirements for legal migration and employment in destination countries, as well as information about earning possibilities in order to give potential migrants a basis upon which to evaluate job offers. In a negative sense, such campaigns should not send a message instructing people to stay put or dissuading them from leaving places where they experience discrimination, persecution, violence, or other hardship.²⁴⁸
301. Information and mass media campaigns, if done poorly, can be ineffective or have otherwise negative impacts. All too frequently, such campaigns do not reach groups and individuals most at risk of trafficking, use images of women and children that are based on stereotypes or false perceptions, portray victims as naïve or over-simplify their situations and reactions, or convey distorted messages about the risks entailed in trafficking.²⁴⁹ In many instances, big and expensive campaigns have been run, but their impact, if any, was not appropriately monitored and evaluated.²⁵⁰ Some campaigns had counter-productive consequences, especially if they were designed to create fear and deter victims. States Parties should be mindful of these issues when designing their campaigns and seek input from experts, including from within civil society.

²⁴⁶ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 15–16 [46]–[48].

²⁴⁷ UNODC, Countering Trafficking in Persons in Conflict Situations, Thematic Paper (2018) 42.

²⁴⁸ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 15 [45]. See also, Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 29.

²⁴⁹ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 15 [45].

²⁵⁰ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 14–15 [44].

302. 'Social and economic initiatives' have been understood as measures tackling the underlying and structural causes of trafficking in persons. While such measures may require long term investment, improvement of economic and social conditions, including initiatives to deal with extreme poverty, are effective means of preventing trafficking. Examples of measures may include improved training and increased employment opportunities for people vulnerable to trafficking.²⁵¹

(c) Cooperation with non-governmental organizations and other parts of civil society (article 9 paragraph 3)

303. The implementation of the Trafficking in Persons Protocol and achieving its objectives, including the protection of victims of trafficking and the prevention of trafficking, is more likely to be effective where there is strong cooperation with civil society. Article 9 paragraph 3 recognizes the importance and added value of cooperation between State entities and civil society, including non-governmental organizations. Such organizations are often better placed to understand and cater to the needs of victims of trafficking in persons; many organizations have developed substantial expertise and capacity.
304. Accordingly, the policies, programmes, and other measures established in accordance with article 9 shall include cooperation with non-governmental organizations and other elements of civil society, where appropriate. Such groups can support the implementation of article 9 in a number of ways, including through research, awareness-raising, advocacy, monitoring, networking and coordination, developing policy, identifying victims, and providing direct services and support to victims.²⁵²
305. The Working Group on Trafficking in Persons has called upon States Parties to recognize the role of civil society as partners in developing and implementing activities to prevent and combat trafficking in persons and, in particular, to protect and assist victims of trafficking.²⁵³ It has also been suggested that part of the cooperation with non-governmental organizations under article 9 paragraph 3 should include government funding of activities of such organizations.²⁵⁴
306. Experience shows that States are well advised to identify relevant civil society stakeholders and to build trust with them. These are important steps to enhance and diversify the capacity to respond to complex challenges associated with preventing and combating trafficking in persons. For these reasons, States are encouraged to engage with non-governmental organizations and other elements of civil society that support rights-based responses to trafficking. The role of these groups should complement the mandate and activities of State entities in preventing and combating trafficking in persons; it cannot substitute the involvement of State authorities and key responsibilities of the State must not be delegated to non-State actors.

(d) Addressing the factors that make persons vulnerable to trafficking (article 9 paragraph 4)

307. Trafficking in persons is fuelled by social, economic, cultural, political and other factors that make persons vulnerable to trafficking and facilitate exploitation. Article 9 paragraph 4 of the Trafficking in Persons Protocol serves to identify these concerns and requires States Parties to take or strengthen measures addressing them. The need to address the factors that can make persons vulnerable to trafficking has also been repeatedly stressed by the United Nations General Assembly, the Human Rights Council, and the Committee on the Rights of the Child.²⁵⁵

²⁵¹ Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (2005) [103].

²⁵² UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2009) 104.

²⁵³ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report of the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 November 2013, UN Doc. CTOC/COP/WG.4/2013/5 (26 November 2013) 2 [5].

²⁵⁴ Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 29.

²⁵⁵ See, for example, UN General Assembly, *Trafficking in women and girls* UN Doc. A/RES/67/145 (27 February 2013) 6 [10]–[12], 7–8 [22]; UN Human Rights Council, *Resolution 4/2, Trafficking in persons, especially women and children: regional and subregional cooperation in promoting a human rights-based approach to combating trafficking in persons*, UN Doc. A/HRC/RES/14/2 (23 June 2010) 4 [7].

308. The nature of a person's vulnerability to trafficking should be understood broadly. A vulnerability to trafficking can be personal, such as a physical or mental disability, situational, such as being forced to flee their home, or circumstantial, such as poverty and underdevelopment.²⁵⁶ A vulnerability may be pre-existing or may be created by traffickers.²⁵⁷ Typically, it is a combination of several factors that places particular individuals at a higher risk of being trafficked.²⁵⁸
309. Article 9 paragraph 4 requires States Parties to take or strengthen measures to alleviate the factors that make persons, especially women and children, vulnerable to trafficking. The provision expressly refers to measures taken through bilateral and multilateral cooperation. Poverty, underdevelopment, and lack of equal opportunity are specifically identified by article 9 paragraph 4. The provision is, however, not exhaustive as to the factors that can make persons vulnerable to trafficking.
310. Trafficking in persons is frequently driven by a demand for cheap labour.²⁵⁹ Other relevant factors contributing to vulnerability include a lack of adequate labour and migration laws, limited mobility, restrictive migration laws and policies, war and conflict, natural disasters, gender and sex discrimination and inequality, gender-based violence, child abuse, and failures to protect fundamental human rights and civil liberties.²⁶⁰
311. Social prevention measures, including addressing the adverse social and economic conditions that contribute to the desire to migrate and hence to the vulnerability of victims to traffickers, are also dealt with in article 31 paragraph 7 of the Convention against Transnational Organized Crime.

(e) Discouraging demand (article 9 paragraph 5)

312. Trafficking in persons is often fuelled by a demand for cheap labour, especially in industries such as agriculture, construction, manufacturing, garments, fisheries and domestic services. Article 9 paragraph 5 of the Trafficking in Persons Protocol calls on States Parties to adopt and strengthen measures that discourage the demand that fosters all forms of exploitation of persons that leads to trafficking. Cheap labour is the main source of profit for many traffickers and globalization has made it easier to source labour from abroad or carry out trafficking-related conduct abroad. This underscores the importance of bilateral and multilateral cooperation to address demand.²⁶¹
313. While it is difficult to find a universally agreed definition of "demand" in this context, it is generally understood to include the demand for sexual and other services, for cheap goods and labour and domestic workers, and for organs.²⁶²
314. Several further points are worth emphasizing. Demand must be understood in relation to the labour or services that are being exploited. Measures aimed at discouraging demand may therefore be found in legislation and other initiatives that are not targeted solely at trafficking in persons, but at curbing the labour or services that are being exploited more broadly. Demand must also be understood as demand that fosters exploitation

²⁵⁶ UNODC, *Countering Trafficking in Persons in Conflict Situations*, Thematic Paper (2018) 42.

²⁵⁷ UNODC, *Countering Trafficking in Persons in Conflict Situations*, Thematic Paper (2018) 42.

²⁵⁸ UN General Assembly, *Trafficking in persons, especially women and children*, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 8 [26]

²⁵⁹ See further, III.A.3.(e) below.

²⁶⁰ UN General Assembly, *United Nations Global Plan of Action to Combat Trafficking in Persons*, UN Doc. A/RES/64/293 (12 August 2010), 7 [12]; UN General Assembly, *Trafficking in persons, especially women and children*, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 6–7 [21]; UNODC, *Trafficking in Persons for the Purpose of Organ Removal, Assessment Toolkit* (2015) 46; Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (2002) 30.

²⁶¹ UN Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo UN Doc. A/HRC/10/16 (20 February 2009) 18 [51]; UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, UN Doc. A/HRC/23/48 (18 March 2013) 15 [58].

²⁶² UN Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo UN Doc. A/HRC/10/16 (20 February 2009) 18 [51].

and not necessarily as direct demand for exploitation.²⁶³ Conduct which “fosters” exploitation should be understood as conduct which supports, encourages, helps to grow or promotes the growth of such exploitation, and does not necessarily require direct participation in the exploitative market.²⁶⁴

315. In the context of discouraging demand, “legislative or other measures, such as educational, social or cultural measures” should be understood as encompassing a broad range of initiatives that go beyond criminal justice responses. The limitations of criminal justice responses in this context are well noted. In this context, the UN General Assembly also stressed that “measures to prevent trafficking will not be effective or sustainable unless the underlying social, economic and political factors that create an environment conducive to trafficking are addressed.”²⁶⁵
316. Measures targeted at discouraging demand may include:
- (a) Measures addressing the root causes of and factors contributing to trafficking, including poverty, lack of education, and social norms that enable exploitative practices, such as norms permitting discrimination against women and other traditionally disadvantaged groups, with a view to reducing vulnerability to trafficking;
 - (b) Measures increasing opportunities for legal, gainful and non-exploitative labour migration and other legal and safe pathways for movement and promoting access to information about such opportunities;
 - (c) Measures sanctioning those who use the goods or services exacted from victims of trafficking;
 - (d) Measures and mechanisms to improve labour conditions in sectors vulnerable to labour exploitation through strengthening and enforcing labour standards and regulations through labour inspections and other means;
 - (e) Measures against exploitation associated with the migration process, including through improved regulation of private recruitment agencies, strengthening protections and rights of migrant and refugee workers, and support for the organization of workers;
 - (f) Measures increasing access to protection and asylum systems;
 - (g) Measures increasing access to education and employment for refugees, internally displaced persons, and stateless persons;
 - (h) Measures raising awareness and attention about the risks associated with trafficking and research into all forms of exploitation and the factors that foster demand;
 - (i) Private sector and State initiatives to address exploitative labour practices;²⁶⁶
 - (j) Measures addressed at disrupting supply chains that involved exploitative labour practices;
 - (k) Provide, by law, a civil cause of action in both the country of operation and the country of corporation, for workers in global supply chains who suffer harm due to non-fulfilment of mandatory due diligence laws;²⁶⁷
 - (l) Consumer-based action against products made from trafficked labour; and
 - (m) In the case of trafficking for the purpose of organ removal, promoting organ donation.²⁶⁸

²⁶³ UN ECOSOC, Commission on Human Rights, Integration of the Human Rights of Women and a Gender Perspective, report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, UN Doc. E/CN.4/2006/62 (20 February 2006) 10–11 [51]; UN Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo UN Doc. A/HRC/10/16 (20 February 2009) 18 [52]; UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/23/48 (18 March 2013) 5 [12].

²⁶⁴ UN ECOSOC, Commission on Human Rights, Integration of the Human Rights of Women and a Gender Perspective, report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, UN Doc. E/CN.4/2006/62 (20 February 2006) 11 [53]–[54].

²⁶⁵ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 6 [20].

²⁶⁶ See also, UN Human Rights Council, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/8/5 (7 April 2008); OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011).

²⁶⁷ Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38, 2020. [63.b]

²⁶⁸ UN General Assembly, Trafficking in persons, especially women and children, Note by the Secretary-General, UN Doc. A/65/288 (9 August 2010) 5–6 [18]; Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Good practices and tools for reducing demand for trafficking in persons, including by fostering public-private partnerships, Background paper by the Secretariat, UN Doc. CTOC/COP/WG.4/2013/3 (23 August 2013) 3–4 [15]–[16]; ICAT, Preventing Trafficking in Persons by Addressing Demand (2014) 9, 27; UNODC, Trafficking in Persons for the Purpose of Organ Removal, Assessment Toolkit (2015) 46.

B. BORDER MEASURES

Trafficking in Persons Protocol

Article 11 – Border measures

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

1. INTRODUCTION

317. Article 11 of the Trafficking in Persons Protocol deals with border measures for preventing trafficking in persons through detecting traffickers and victims of trafficking. While cross-border movement is not a necessary element of trafficking in persons, many victims of trafficking in persons cross international borders. International borders are thus potentially the first point of contact between victims of trafficking and State authorities. Nevertheless, in many cases it is difficult, if not impossible, for victims of trafficking to be detected at border control points.
318. Article 11 of the Trafficking in Persons Protocol, which is identical to article 11 of the Smuggling of Migrants Protocol, sets out several measures that States Parties must take with respect to preventing and detecting trafficking in persons generally, denial of entry or revocation of visas of persons implicated in trafficking in persons, and measures concerning commercial carriers.

2. MAIN REQUIREMENTS

319. States Parties have an obligation to meet the following mandatory requirements:
- (a) Strengthen border controls as may be necessary to prevent and detect trafficking in persons without prejudice to international commitments in relation to the free movement of people (article 11 paragraph 1);
 - (b) Consider taking measures that permit the denial of entry or revocation of visas of persons implicated in trafficking in persons (article 11 paragraph 5);
 - (c) Adopt measures to prevent commercial carriers from being used in the commission of offences relating to trafficking in persons offences (article 11 paragraph 2);
 - (d) Establish measures requiring commercial transportation carriers to ascertain that all passengers have the required travel documents, including sanctions for failure to do so (article 11 paragraphs 3 and 4).

3. IMPLEMENTATION

(a) Border measures (article 11 paragraphs 1 and 5)

320. Article 11 paragraph 1 of the Trafficking in Persons Protocol obliges States Parties to strengthen such border controls as may be necessary to prevent and detect trafficking in persons. The extent of this obligation is subject to certain qualifications. The words “to the extent possible” limit this obligation to the means and resources available to each State Party. Practical limitations may also arise from the geographical settings of a State’s land or sea borders, which can make effective border control difficult.²⁶⁹ Further, border controls must be “without prejudice to international commitments in relation to the free movement of people.”²⁷⁰ Additionally, the obligation under article 11 paragraph 1 is limited to border controls “as may be necessary to prevent and detect trafficking in persons”.
321. These qualifications limit the use of border controls as a measure to combat trafficking in persons. The Protocol does not promote the tightening of immigration laws and rigid inspections of cross-border movements. Instead, it advocates the use of border controls as an additional tool to prevent and detect trafficking in persons.
322. In addition, when adopting and strengthening border control measures, States need to be mindful of their human rights obligations, including the principle of non-refoulement. This means that the human rights of all persons at international borders must be respected in the pursuit of border control, law enforcement and other State objectives, regardless of which authorities perform border governance measures and where such measures take place. Every person who approaches an international border has different motivations and it is important to remember that under international human rights law, States have obligations towards all persons at international borders, regardless of those motives. Respecting the human rights of all migrants regardless of their nationality, migration status or other circumstances, facilitates effective border governance. Policies aimed at curtailing migration at any cost exacerbate risks posed to migrants, to create zones of lawlessness and impunity at borders, and are, ultimately, ineffective and harmful.²⁷¹
323. Strengthening border controls also includes measures aimed at detecting traffickers, which requires coordinated interaction between agencies in different States. This is specifically addressed by article 11 paragraph 6 of the Trafficking in Persons Protocol and is further discussed in Part VI.B below.
324. In relation to traffickers, article 11 paragraph 5 further obliges States Parties to consider, in accordance with their domestic laws, taking measures that permit the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with the Protocol. The words “implicated in” serve to include persons suspected of being involved in the commission of trafficking-related offences; article 11 paragraph 5 is not limited to persons who have been charged with or convicted of such offences.²⁷²

²⁶⁹ David McClean, *Transnational Organized Crime* (2007) 358.

²⁷⁰ See, for example, International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) article 12 paragraph 2.

²⁷¹ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014) 1–2.

²⁷² David McClean, *Transnational Organized Crime* (2007) 361.

(b) Commercial carriers (article 11 paragraphs 2, 3, and 4)

325. Under article 11 paragraph 2 of the Trafficking in Persons Protocol, States Parties must adopt legislative or other measures to prevent, to the extent possible, commercial carriers from being used by traffickers.
326. The Protocol does not define “commercial carrier”. Article 11 paragraph 2 adopts the language of article 15 paragraph 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.²⁷³ Article 1 of this Convention defines “commercial carrier” as “any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit.”²⁷⁴
327. An Interpretative Note to article 11 paragraph 2 acknowledges the difficulties with preventing the use of means of transport operated by commercial carriers from being used for trafficking in persons: “[v]ictims of trafficking in persons may enter a State legally only to face subsequent exploitation, whereas in cases of smuggling of migrants, illegal means of entry are more generally used. This may make it difficult for common carriers to apply preventive measures in trafficking cases than in smuggling cases and legislative or other measures taken in accordance with this paragraph should take this into account.”²⁷⁵ Additional guidance on measures which can be taken by airlines and airline personnel to identify and prevent trafficking in persons has been issued by the International Air Transport Association (IATA), the International Civil Aviation Authority (ICAO), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).²⁷⁶
328. The exact nature of measures to prevent means of transport operated by commercial carriers from being used in offences established under the Protocol is left to the discretion of each State. Such measures shall include, where appropriate and without prejudice to applicable international conventions, requirements that commercial carriers check the travel documents of passengers (article 11 paragraph 3) and provision for appropriate sanctions if that is not done (article 11 paragraph 4). Article 11 paragraph 4 does not further specify the nature of the sanctions to be provided for breach of the obligation established pursuant to article 11 paragraph 3.
329. An Interpretative Note adds that: “[i]t should also be noted that this article requires States Parties to impose an obligation on common carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents.”²⁷⁷ Likewise, such a carrier would not be obliged to determine whether the documents had been validly issued to the possessor.
330. In practice, commercial carriers commonly place an obligation on passengers to have all necessary travel documents and visas, and as between the passenger and the carrier the former will bear the costs incurred if entry is refused for want of such documents. That does not, of course, preclude the State imposing sanctions on the carrier.²⁷⁸ States may establish liability for having transported undocumented passengers, but the Protocol does not require this.
331. An Interpretative Note to article 11 paragraph 4 adds that: “[m]easures and sanctions applied in accordance with this paragraph should take into account other international obligations of the State party concerned. [...] It should further be noted that this paragraph does not unduly limit the discretion of States Parties not to hold carriers liable for transporting undocumented refugees.”²⁷⁹ Such a statement acknowledges that commercial carriers should not be held liable for transporting persons who were provided protection against refoulement and/or access to a country’s asylum system.

²⁷³ Opened for signature 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990).

²⁷⁴ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990), article 1.

²⁷⁵ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 409.

²⁷⁶ IATA, *Guidance on Human Trafficking* (2018); ICAO & OHCHR, *Guidelines for Training Cabin Crew on Identifying and Responding to Trafficking in Persons*, Circular 352 (2018).

²⁷⁷ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 409. It is not clear whether the reference to “common carriers” in this Interpretative Note, as opposed to “commercial carriers” as in the text of article 11 of the Protocol, is deliberate. The distinction may in some systems be related to the standard of care, or the extent of the carrier’s liability, but it seems doubtful whether the classification of a carrier as a common or private carrier has much effect on the carrier’s ability to take the steps referred to in the article: David McClean, *Transnational Organized Crime* (2007) 360.

²⁷⁸ David McClean, *Transnational Organized Crime* (2007) 360.

²⁷⁹ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 409.

C. TRAVEL AND IDENTITY DOCUMENTS

Trafficking in Persons Protocol

Article 12 – Security and control of documents

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

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

1. INTRODUCTION

332. Trafficking in persons may involve the use of fraudulent travel or identity documents, particularly when committed across international borders. The Protocol seeks to prevent trafficking in persons by requiring measures intended to make it more difficult for traffickers to use conventional means of transport and enter into countries by requiring States Parties to take measures to prevent the misuse of passports and other travel or identity documents. Measures aimed at preventing trafficking in persons through combating the proliferation of fraudulent documents are set out in article 12 of the Trafficking in Persons Protocol.

2. MAIN REQUIREMENTS

333. States Parties are obliged to carry out the following mandatory requirements, within available means:
- (a) Ensure that travel and identity documents are of such quality that they cannot be altered or misused (article 12 subparagraph (a)); and
 - (b) Prevent the unlawful issuance of a State Party's travel documents (article 12 subparagraph (b)).

3. IMPLEMENTATION

334. Article 12 of the Trafficking in Persons Protocol (which is identical to article 12 of the Smuggling of Migrants Protocol) requires States Parties to adopt, within available means, such measures as may be necessary to ensure the adequacy of the quality and the integrity and security of travel or identity documents, such as passports. The language makes it clear that this includes measures such as technical measures to make documents more difficult to alter and administrative and security measures to protect the production and issuance process against corruption, theft, or diverting of documents.
335. An Interpretative Note to article 12 explains that: “[t]he term ‘travel documents’ includes any type of document required for entering or leaving a State under its domestic law. The term ‘identity documents’ includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.”²⁸⁰ A further Interpretative Note adds that: “[t]he words ‘falsified or unlawfully altered, replicated or issued’ should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. The intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder.”²⁸¹ It is also worth noting that the Smuggling of Migrants Protocol imposes obligations on States Parties concerning fraudulent travel or identity documents.
336. The obligation in article 12 subparagraph (b) to prevent the unlawful creation, issuance, and use of travel or identity documents could be achieved, in part, through the introduction of additional supplementary offences to deal with theft, falsification, and other misconduct in relation to travel or identity documents, if more general offences covering such conduct (e.g., fraud, corruption) do not already exist.
337. One concern raised during the negotiation of article 12 of the Trafficking in Persons Protocol was the cost and technical problems likely to be encountered by some countries seeking to implement such systems. The development of systems and technologies that minimize the amount of sophisticated maintenance and high-technology infrastructure needed to support and maintain such systems will be critical to the success of deployment of these systems and technologies in all countries and, in some cases, it may be necessary for technical assistance to be provided pursuant to article 30 of the Convention against Transnational Organized Crime.

²⁸⁰ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 413.

²⁸¹ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 413.

Related international instruments

CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 10 – Liability of legal persons

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

Article 31 – Prevention

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS

Article 11 – Border measures

Article 12 – Security and control of documents

OTHER INTERNATIONAL INSTRUMENTS

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990)

OTHER REGIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

ASEAN Convention Against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016)

Article 11 – Prevention of trafficking in persons

Article 13 – Cross-border cooperation, control and validity of documents

Council of Europe Convention against Trafficking in Human Beings, opened for signature 16 May 2005, 197 CETS (entered into force 1 February 2008)

Article 5 – Prevention of trafficking human beings

Article 6 – Measures to discourage demand

Article 7 – Border measures

Article 8 – Security and control of documents

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA OJ L 101, 15 April 2011

Article 18 – Prevention

Council of Europe Convention against Trafficking in Human Organs, opened for signature 25 March 2015, 216 CETS (entered into force 1 March 2018)

Article 21 – Measures at domestic level

Article 22 – Measures at international level

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (entered into force on 15 November 2005)

Article 8 – Measures to prevent and interdict trafficking in women and children

Inter-American Convention on International Traffic in Minors, opened for signature 18 March 1994, 79 OAS (entered into force 15 August 1997).

Article 7 – Prevention and punishment

06



COOPERATION

338. Comprehensive, multi-agency, and flexible cooperation, within and across borders, is essential to ensure effective investigation and prosecution of trafficking in persons, protection of victims of trafficking, and for the prevention of trafficking in persons.²⁸² For these reasons, the Trafficking in Persons Protocol contains several obligations for States Parties to cooperate with one another and, in some instances, obligations to cooperate with other entities.
339. In this context, the provisions of the Protocol must be read and applied together with relevant provisions of the Convention against Transnational Organized Crime that deal with cooperation more comprehensively and that domestic legislation and policies reflect obligations under both instruments. The provisions under the Trafficking in Persons Protocol relating to cooperation concern specific matters such as information exchange, cooperation among border control agencies, and cooperation to verify the legitimacy and validity of travel and identity documents. These provisions complement the more general provisions under articles 16, 18, 19, 20, and 27 of the Convention.

A. INFORMATION-SHARING

Trafficking in Persons Protocol

Article 10 – Information exchange and training

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

²⁸² See generally OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 11.

1. INTRODUCTION

340. Cooperation between States to prevent and combat trafficking in persons is critical due to the often-transnational nature of this crime, which can involve the movement of perpetrators and victims across national borders. The most general obligation to cooperate with other States Parties is found in article 10 of the Trafficking in Persons Protocol, which requires the sharing of information about a range of relevant matters, including the identification of possible victims and/or traffickers in transit and information about the various means and methods used by offenders, including the misuse of travel or identity documents.

2. MAIN REQUIREMENTS

341. Under article 10 of the Trafficking in Persons Protocol, States Parties shall:
- (a) Cooperate with each other by exchanging information concerning the identification of possible victims and traffickers in transit and the means and methods used by organized criminal groups for the purpose of trafficking in persons, including use of travel and identity documents (article 10 paragraph 1);
 - (b) Provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons (article 10, paragraph 2); and
 - (c) Comply with use restrictions placed on information received from another State Party (article 10 paragraph 3).

3. IMPLEMENTATION

(a) Information exchange (article 10 paragraphs 1 and 3)

342. Effective law enforcement efforts regularly involve the exchange of information between law enforcement, immigration, and other relevant authorities within and between States. Article 10 paragraph 1 establishes an obligation for such authorities of States Parties to cooperate with one another, as appropriate, by exchanging information concerning:
- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
343. Article 10 paragraph 1 should be read in the context of provisions of the Convention against Transnational Organized Crime dealing with information exchange, including articles 18, 27, and 28.
344. The exchange of information under article 10 paragraph 1 must occur “in accordance with domestic law” which may restrict the type of information that can be shared. Domestic privacy and data protection laws, for instance, may limit the type and extent of information that can be disclosed, and precautions may be needed to maintain confidentiality.²⁸³ In this regard, article 10 paragraph 1 should be read in conjunction with article 6 paragraph 1,²⁸⁴ which requires States Parties to protect the privacy and identity of victims of trafficking in persons in appropriate cases and to the extent possible under domestic law.²⁸⁵

²⁸³ UNODC, Toolkit to Combat Trafficking in Persons (2nd ed, 2008) 153.

²⁸⁴ American Bar Association & Central European and Eurasian Law Initiative, An Introduction to The Human Trafficking Assessment Tool: An Assessment Tool Based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2005) 132.

²⁸⁵ See IV.A.3(a) above.

345. Article 10 paragraph 3 of the Protocol further obliges States Parties that receive information to comply with any restrictions placed on the use of the information by the sending State Party. Article 18 paragraph 5 of the Convention against Transnational Organized Crime likewise obliges competent authorities of a State receiving information to comply with a request that such information remain confidential, whether temporarily or permanently, and with restrictions on the use of such information. Restrictions on the use of information may include, for example, restrictions on the cases or types of cases in which the information could be used as evidence as well as more general restrictions intended to prevent disclosure to the public or to potential suspects.²⁸⁶
346. In some States, prosecutors and other authorities may be under obligations to disclose potentially exculpatory information to the accused. Article 18 paragraph 5 of the Convention makes it clear that the obligation to comply with restrictions on the use of information shall not prevent the receiving State Party from disclosing exculpatory information to an accused person. In such cases, article 18 paragraph 5 requires that the receiving State notify the transmitting State prior to disclosure to the accused person and, if so requested, consult with the transmitting State Party. In exceptional cases where advanced notice is not possible, the receiving State shall inform the transmitting State of the disclosure without delay.²⁸⁷ An Interpretative Note to article 18 paragraph 5 of the Convention against Transnational Organized Crime also raises the need for prior consultations between a potential disclosing State and a potential receiving State, such as where the first State is considering whether to spontaneously provide information of a particularly sensitive nature or considering placing strict restrictions on the use of information.²⁸⁸
347. Where national laws implementing article 18 of the Convention are of sufficient scope regarding the types of information covered, further amendments may not be needed to implement the Trafficking in Persons Protocol. Alternatively, amendments to expand that legislation or parallel provisions might be sufficient.
348. The Working Group on Trafficking in Persons has, on several occasions, encouraged States Parties to share particular types of information, including information on good practices in reducing demand for all types of goods and services through which trafficking victims are exploited²⁸⁹ and information on the impact of legislation criminalizing, decriminalizing or legalizing prostitution on trafficking in persons.²⁹⁰ The Working Group expressly promotes the appropriate exchange of information, domestically and internationally, among criminal justice practitioners, including prosecutors, investigators, police officers, judges and task forces, regarding trafficking cases.²⁹¹ The Working Group has also recommended that States Parties consider establishing national databases for information-sharing between government agencies on trafficking in persons cases, subject to privacy considerations.²⁹²

(b) Training of law enforcement, immigration and other officials (article 10 paragraph 2)

349. Article 10 paragraph 2 of the Trafficking in Persons Protocol establishes an obligation for States Parties to provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. Article 10 paragraph 2 further specifies that training should focus on methods used in preventing trafficking in persons, prosecuting traffickers, and protecting the rights of victims, including by protecting victims from traffickers. Furthermore, the training should take into account the need to consider human rights and child- and gender-sensitive issues, as well as encourage cooperation with non-governmental organizations, other relevant organizations, and other elements of civil society.

²⁸⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2nd ed, 2008) 153.

²⁸⁷ See also Convention against Transnational Organized Crime, article 18 paragraph 19.

²⁸⁸ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 198.

²⁸⁹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 November 2013, UN Doc. CTOC/COP/WG.4/2013/5 (26 November 2013) 3 [23].

²⁹⁰ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc. CTOC/COP/WG.4/2010/6 (17 February 2010) 7 [46].

²⁹¹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 September 2017, UN Doc. CTOC/COP/WG.4/2017/4 (18 September 2017) 2 [7].

²⁹² Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 September 2017, UN Doc. CTOC/COP/WG.4/2017/4 (18 September 2017) 2 [7].

350. Training should build upon existing knowledge, prior experience, and lessons learned.²⁹³ While significant resources have been invested into training programmes on trafficking in persons for officials, in some instances, there is little evidence that these programmes have made a meaningful impact on preventing and combating trafficking in persons, protecting victims of trafficking, and disrupting criminal networks.²⁹⁴ The term “relevant officials” in article 10 paragraph 2 highlights the need for training to be directed at officials who are in positions to meaningfully apply the training to prevent trafficking in persons. The Working Group on Trafficking in Persons has noted that States Parties should provide training to ‘front-line law enforcement officials (police officers, labour inspectors, immigration officers and border guards), soldiers involved in peacekeeping missions, consular officers, prosecutorial and judicial authorities, medical service providers and social workers’.²⁹⁵ Training programmes should also be evaluated to assess their impact.²⁹⁶
351. Article 10 paragraph 2 also emphasises the role of cooperation of civil society in the development and delivery of training to relevant officials. This is important to capture a broader range of experiences and perspectives and to foster communication and collaboration between State and non-State actors.
352. Article 10 paragraph 2 of the Trafficking in Persons Protocol supplements article 29 of the Convention against Transnational Organized Crime concerning training and technical assistance. Article 29 paragraph 1 of the Convention requires States Parties, to the extent necessary, to initiate, develop or improve specific training programmes for law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection, and control of offences covered by the Convention, which also includes trafficking in persons. Article 29 paragraph 1 of the Convention is more detailed than article 10 paragraph 2 of the Protocol and sets out a broader range of matters that training programmes should deal with.

²⁹³ See, for example, ICAT, *Harnessing accumulated knowledge to respond to trafficking in persons: A Toolkit for guidance in designing and evaluating counter-trafficking programmes* (2016) 43–51.

²⁹⁴ ICAT, *Harnessing accumulated knowledge to respond to trafficking in persons: A Toolkit for guidance in designing and evaluating counter-trafficking programmes* (2016) 44.

²⁹⁵ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, UN Doc. CTOC/COP/WG.4/2009/2 (21 April 2009) 3 [9].

²⁹⁶ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (2010) 198.

B. COOPERATION AMONG BORDER CONTROL AGENCIES

Trafficking in Persons Protocol

Article 11 – Border measures

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

1. INTRODUCTION

353. Article 11 of the Trafficking in Persons Protocol contains several obligations relating to border measures for the purposes of preventing and detecting trafficking in persons, that are discussed in V.B above. Article 11 paragraph 6 further requires States Parties to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. This obligation exists in addition to taking measures concerning law enforcement cooperation pursuant to article 27 of the Convention against Transnational Organized Crime.

2. MAIN REQUIREMENTS

354. Pursuant to article 11 paragraph 6 of the Trafficking in Persons Protocol, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication, without prejudice to article 27 of the Convention against Transnational Organized Crime.

3. IMPLEMENTATION

355. The strengthening of cooperation between agencies and the establishment of direct channels of communication may require some legislation to establish that the agencies concerned have the authority to cooperate and to allow the sharing of information that might otherwise be protected by confidentiality laws.
356. Article 11 paragraph 6 of the Trafficking in Persons Protocol, which is identical to article 11 paragraph 6 of the Smuggling of Migrants Protocol, makes express reference to article 27 of the Convention against Transnational Organized Crime and must be read together with this provision. Many of the issues raised by cooperation between border control agencies will be similar to those raised by cooperation between other law enforcement agencies and, as such, legislation implementing these two provisions should be harmonised.
357. Article 27 subparagraph 1(a) of the Convention requires States Parties to adopt effective measures to enhance and, where necessary, establish channels of communication between their competent authorities, agencies, and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by the Convention. Article 27 subparagraph 1(d) requires States Parties to adopt effective measures to facilitate effective coordination between their competent authorities, agencies, and services. Article 27 is broad enough to cover cooperation between border control agencies in many States, but in other States border control agencies form a special category of authorities, such as military or naval units, which are distinct from the usual law enforcement agencies; for this reason, article 11 paragraph 6 was included in the Protocol.²⁹⁷

²⁹⁷ David McClean, *Transnational Organized Crime* (2007) 362.

C. LEGITIMACY AND VALIDITY OF DOCUMENTS

Trafficking in Persons Protocol

Article 13 – Legitimacy and validity of documents

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

1. INTRODUCTION

358. One of the specific areas in which cooperation is required by the Trafficking in Persons Protocol is the verification of the legitimacy and validity of travel and identity documents. An obligation to cooperate when a request for verification is made by another State Party is established by article 13 of the Protocol. This provision is identical to article 13 of the Smuggling of Migrants Protocol.

2. MAIN REQUIREMENTS

359. Article 13 of the Trafficking in Persons Protocol establishes an obligation for States Parties, in accordance with their domestic laws, to verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons when requested to by another State Party.

3. IMPLEMENTATION

360. Article 13 of the Trafficking Protocol, which is closely related to article 11 concerning border measures,²⁹⁸ recognizes that the State which issued a passport is best placed to confirm its authenticity or, as the text puts it, its “legitimacy and validity”.²⁹⁹

361. An Interpretative Note to article 13 explains that: “[t]he term ‘travel documents’ includes any type of document required for entering or leaving a State under its domestic law. The term ‘identity documents’ includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.”³⁰⁰

²⁹⁸ See further, V.B above.

²⁹⁹ David McClean, *Transnational Organized Crime* (2007) 365.

³⁰⁰ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 413.

D. RELATED PROVISIONS

1. COOPERATION RELATING TO REPATRIATION OF VICTIMS (ARTICLE 8)

362. In support of repatriation of victims under article 8 of the Trafficking in Persons Protocol, cooperation on specific matters relating to repatriation is also required by the Protocol. States Parties shall facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety and without undue or unreasonable delay (article 8 paragraph 1). States Parties must assist in verifying the nationality and residence status of victims of trafficking on request (article 8 paragraph 3) and agree to issue any travel documents or other authorizations needed to permit the victim to travel for repatriation (article 8 paragraph 4). These obligations are mandatory, but they are subject to any other applicable bilateral or other agreements (article 8 paragraph 6).
363. In this context, it is important to remember that repatriation of victims of trafficking is intended to serve the protection of the victim. Accordingly, article 8 is located in the Protocol under the heading “protection of victims of trafficking in persons”. Furthermore, article 8 is without prejudice to any rights afforded to victims by applicable national laws (article 8 paragraph 5), and return must be undertaken with due regard for the safety of the victims involved (article 8 paragraphs 1 and 2). The obligation to facilitate and accept return without undue or unreasonable delay also needs to be considered in this context (article 8 paragraph 1). Cooperation in return is critical to avoid delays to repatriation. States Parties should endeavour to cooperate with each other to effect timely returns, consistent with the rights of victims. Repatriation of victims under article 8 is further discussed in Part IV.B above.

2. COOPERATION WITH ENTITIES THAT ARE NOT STATES PARTIES TO THE TRAFFICKING IN PERSONS PROTOCOL (ARTICLE 6 PARAGRAPH 3 AND ARTICLE 9 PARAGRAPH 3)

364. The experience of implementing the Trafficking in Persons Protocol demonstrates the benefits of cooperation between State and non-State actors, in particular, non-governmental organizations and other civil society groups, in achieving the purposes of the Protocol.³⁰¹ Non-governmental organizations and other civil society groups possess specialised knowledge and expertise relating to trafficking in persons that can assist States in their efforts to prevent and combat trafficking in persons and to protect victims of trafficking.
365. A further benefit of cooperation with non-governmental organizations and other civil society groups is the independence of these organizations from the State. Many victims of trafficking fear deportation or prosecution in their host country and are thus reluctant to come forward and approach State officials or agencies. The independence of non-governmental organizations and civil society allows them to reach more victims of trafficking and act on the behalf of victims, often serving as a bridge between otherwise isolated victims and officials.
366. The Trafficking in Persons Protocol recognizes the importance of such organizations and contains several obligations for States concerning cooperation with them, where appropriate, in relation to assistance to victims and policies, programmes, and other measures to prevent and combat trafficking in persons. Article 6 paragraph 3 requires States Parties to consider implementing, in appropriate cases, measures to provide for the physical, psychological and social recovery of victims in cooperation with such organizations. Article 9 paragraph 3 requires that policies, programmes and other measures established in accordance with article 9 include, as appropriate, cooperation with these organizations.

³⁰¹ See also OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1 (20 May 2002) Guideline 11.

367. In implementing these obligations, officials can be instructed to cooperate with relevant organizations using administrative means, reinforced by training where needed. If necessary, legislative amendments implementing these obligations might take the form of measures ensuring that these organizations have the resources and security needed to perform their functions as well as measures directing officials to cooperate with and protect facilities such as victim shelters. As noted earlier, legislation that ties victim-support organizations too closely to the State or that compromises their actual or perceived autonomy may prove counterproductive, since it may deter victims from coming forward.³⁰²
368. In addition to cooperation with non-governmental organizations and other civil society groups, the Working Group on Trafficking in Persons has frequently reiterated the need for cooperation between the public and private sectors in preventing and combating trafficking in persons, including by promoting cooperation among all relevant actors across and within countries, ensuring adequate private sector regulatory frameworks in the context of responding to abusive and fraudulent recruitment practices that may amount to trafficking in persons³⁰³ and in promoting due diligence in the recruitment of migrant workers,³⁰⁴ including of non-governmental service providers wherever possible in coordination mechanisms at local or district levels,³⁰⁵ encouraging public-private partnerships bringing together national authorities, businesses and civil society,³⁰⁶ and fostering multi-stakeholder cooperation including between labour inspectors and trade unions.³⁰⁷ Civil society organizations may also be included in efforts relating to the international coordination of health care, psychosocial services, or vocational training for victims of trafficking.³⁰⁸

Related international instruments

CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 16 – Extradition

Article 18 – Mutual legal assistance

Article 19 – Joint investigations

Article 27 – Law enforcement cooperation

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS

Article 11 – Border measures

Article 12 – Security and control of documents

Article 13 – Legitimacy and validity of documents

Article 18 – Return of smuggled migrants

OTHER REGIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

ASEAN Convention Against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016)

³⁰² See V.A.3.(c) above.

³⁰³ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Role of recruitment agencies and recruitment fees in trafficking in persons: Note by the Secretariat, UN Doc. CTOC/COP/WG.4/2015/2 (25 August 2015) 11 [47].

³⁰⁴ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 16 to 18 November 2015, UN. Doc CTOC/COP/WG.4/2015/6 (26 November 2015) 2 [11].

³⁰⁵ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, UN. Doc CTOC/COP/WG.4/2009/2 (21 April 2009) 4 [17].

³⁰⁶ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 November 2013, UN. Doc CTOC/COP/WG.4/2013/5 (26 November 2013) 3 [19].

³⁰⁷ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 16 to 18 November 2015, UN. Doc CTOC/COP/WG.4/2015/6 (26 November 2015) 2 [12].

³⁰⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, International cooperation in cases of trafficking in persons: considering the needs and rights of victims, UN Doc. CTOC/COP/WG.4/2018/2 (3 May 2018) 7 [23].

- Article 12 – Areas of cooperation*
- Article 13 – Cross-border cooperation, control and validity of documents*
- Article 18 – Mutual legal assistance in criminal matters*
- Article 20 – Law enforcement cooperation*
- Article 21 – International cooperation for purposes of confiscation*

Council of Europe Convention against Trafficking in Human Beings, opened for signature 16 May 2005, 197 CETS (entered into force 1 February 2008)

- Article 8 – Security and control of documents*
- Article 9 – Legitimacy and validity of documents*
- Article 32 – General principles and measures for international cooperation*
- Article 34 – Information*

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA OJ L 101, 15 April 2011

Council of Europe Convention against Trafficking in Human Organs, opened for signature 25 March 2015, 216 CETS (entered into force 1 March 2018)

- Article 17 – International Cooperation*

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (entered into force on 15 November 2005)

- Article 6 – Mutual legal assistance*

Inter-American Convention on International Traffic in Minors, opened for signature 18 March 1994, 79 OAS (entered into force 15 August 1997).

- Article 4 – Cooperation*
- Article 17 – Information exchange*

ANNEXES



ANNEXES

Annex I Notification requirements under the Trafficking in Persons Protocol

The following is a list of the notifications that States Parties are required to make to the Secretary-General of the United Nations:

Article 15 – Settlement of disputes

4. *Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.*

Article 16 – Signature, ratification, acceptance, approval and accession³⁰⁹

3. *This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.*
4. *This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.*

Article 18 – Amendment

1. *After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.”*
4. *An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.*

Article 19 – Denunciation

1. *A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.*

³⁰⁹ An Interpretative Note to article 16 adds that: “While the Protocol has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969 applies regarding reservations”: UNODC, Travaux Préparatoires de the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006) 429.

Annex II Relationship between The Trafficking in Persons Protocol and Regional Anti-Trafficking Agreements

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
I. General Provisions						
Art 1 Relation with UNTOC						
Art 2 Purpose	Art 1 Purposes of the Convention	Art 1 Purposes	Art 1 Subject matter	Art 1 Objectives		Art 1 Purpose
Art 3 Use of terms	Art 4 Definitions	Art 2 Scope and use of terms	Art 2	Art 2 Use of Terms	Art 1 Definitions	Art 2 Definitions
Art 3(a) trafficking in persons	Art 4(a) trafficking in human beings		Art 2	Art 2(a) trafficking in persons	Art 1(3)-(4) trafficking/traffickers	
Art 3(b) consent	Art 4(b) consent		Art 2(4)	Art 2(b) consent		
Art 3(c) trafficking in children	Art 4(c) trafficking in children		Art 2	Art 2(c) trafficking in children		Art 2(b) trafficking in minors
Art 3(d) child	Art 4(d) child		Art 2(6) child	Art 2(d) definition of child	Art 1(1) child	Art 2(a) minor
Art 4 Scope of application	Art 2 Scope	Art 2 Scope and use of terms	Art 1	Art 3 Scope of application	Art 2 Scope of the convention	Art 3 Scope
Art 5 Criminalisation	Art 18 Criminalisation of trafficking in human beings		Art 2 Offences concerning trafficking in human beings	Art 5 Criminalisation	Art 3 Offences	
Art 5(1)(a) trafficking in persons offence			Art 2(1) trafficking in persons offence	Art 5(1) trafficking in persons offence		

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 5(2)(a) attempts	Art 21 Attempt and aiding or abetting	Art 9 Aiding or abetting and attempt	Art 3 Incitement, aiding and abetting, and attempt	Art 5(2)(a) attempt	Art 3(3) attempt or abetment	
Art 5(2)(b) participation				Art 5(2)(b) participating		
Art 5(2)(c) organizing and directing				Art 5(2)(c) organising or directing		
<u>II. Protection of Victims of Trafficking in Persons</u>						
Art 6 Assistance and protection	Art 12 Assistance to victims Art 28 Protection of victims, witnesses and collaborators with the judicial authorities	Art 18 Protection of victims Art 20 Protection of witnesses	Art 11 Assistance and support for victims	Art 14 Protection for victims		Art 16 Protection
Art 6(1) protection of privacy and identity	Art 11 Protection of private life	Art 19(1)(d) effective safety measures	Art 12(3) access to witness protection etc.	Art 14(6) protect privacy and identity of victims		Art 6 Confidentiality
Art 6(2)(a) information on proceedings		Art 18(a) ensure victims have information on proceedings Art 19(1)(a) information on legal rights and proceedings Art 19(2) access to information on proceedings				
Art 6(2)(b) assistance to present views and concerns	Art 12(1)(e) assistance to present views and concerns	Art 19(1)(b) assistance to present views and evidence Arts 19(3)-(5) access to proceedings				

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 6(3) recovery measure						
Art 6(3)(a) housing	Art 12(1)(a) secure accommodation, psychological and material assistance		Art 11(5)	Art 14(10)(a) housing	Art 9(4) protective homes /shelters	
Art 6(3)(b) counselling, information on legal rights	Art 12(1)(c) translation and interpretation services Art 12(1)(d) counselling, information, and legal rights	Art 19(1)(a) information on legal rights and proceedings	Art 12(2) access to legal counselling and representation	Art 14(10)(b) counselling, information on legal rights	Art 9(2) provision of legal advice and health care Art 9(3) legal advice, counselling, job training, health care	Art 22 Free legal aid to entitled parties
Art 6(3)(c) medical, psychological, material assistance	Art 12(1)(b) access to emergency medical treatment Art 12(3) access to medical or other assistance	Art 18(b) assistance in physical, psychological and social recovery	Art 11(5)	Art 14(10)(c) medical, psychological, material assistance		
Art 6(3)(d) employment, education, training opportunities	Art 12(1)(f) access to education for children Art 12(4) access to the labour market, training, and education			Art 14(10)(d) employment, education, training opportunities		
Art 6(4) gender, age and special needs of victims	Art 12(7) take special needs of victims into account		Art 12(4) victims to receive specific treatment			
Art 6(5) physical safety	Art 12(2) victim safety and protection needs	Art 20 Protection of witnesses	Art 12(3) access to witness protection etc.	Art 14(5) physical safety		

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 6(6) compensation	Art 15 Compensation and legal redress	Art 18(c) right of victims to compensation	Art 17 Compensation to victims	Art 14(13) possibility of obtaining compensation		
Art 7 Status of victims						
Art 7(1) permit victims to remain	Art 14 Residence permit		Directive 2004/81/EC	Art 14(4) permit victims to remain		
Art 7(2) humanitarian and compassionate stay						
Art 8 Repatriation	Art 16 Repatriation and return of victims			Art 15 Repatriation and return of victims	Art 9 Care, treatment, rehabilitation and repatriation of the victims	
Art 8(1) facilitate and accept return (home country)	Art 16(1) facilitate and accept return (home country)			Art 15(1) facilitate and accept return (home country)		
Art 8(2) return with due regard to safety (host country)	Art 16(2) return with due regard to rights, safety and dignity (host country)			Art 15(2) return with due regard to rights, safety and dignity (host country)		
Art 8(3) verify nationality/ residence (host country)	Art 16(3) verify nationality/ residence (host country)			Art 15(3) verify nationality/ residence (host country)		
Art 8(4) issue travel documents/ authorisation	Art 16(4) issue travel documents/ authorisation			Art 15(4) issue travel documents/ authorisation		
Art 8(5) other rights under national law						

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 8(6) other bilateral/ multilateral agreements						
III. Prevention, Cooperation and Other Measures						
Art 9 Prevention	Art 5 Prevention of trafficking human beings		Art 18 Prevention	Art 11 Prevention of trafficking in persons	Art 8 Measures to prevent and interdict trafficking in women and children	Art 7 Prevention and punishment
Art 9(1) general prevention measures		Art 21 Measures at domestic level Art 22 Measures at international level		Art 11(1) general prevention measures		
Art 9(2) research, information, media	Art 5(2) research, information, media Art 5(4) education about legal migration		Art 18(1) Art 18(2)	Art 11(2) research, information, media	Art 8(8) awareness promotion	
Art 9(3) cooperation with NGOs and civil society	Art 5(6) cooperation with NGOs and civil society Art 12(5) cooperation with NGOs Art 35 Cooperation with civil society		Art 18(1) Art 18(2)	Art 11(3) cooperation with NGOs and civil society		Art 4 Cooperation with non- States Parties
Art 9(4) address root causes (poverty, underdevelop ment)				Art 11(4) address root causes		

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 9(5) reduce demand	Art 6 Measures to discourage demand		Art 18(1) Art 18(4)	Art 11(5) discourage demand		
Art 10 Information exchange and training					Art 8(5) parties to convention shall exchange information	Art 17 Information exchange
Art 10(1) information exchange between relevant authorities						Art 8(b) exchange of information
Art 10(2) training			Art 18(3)		Art 8(1) provide sufficient means, training and assistance	
Art 10(3) confidentiality of information						
Art 11 Border measures	Art 7 Border measures					
Art 11(1) strengthen border controls	Art 7(1) strengthen border controls					
Art 11(2) prevent use of commercial carriers for trafficking in persons	Art 7(2) prevent use of commercial carriers for trafficking in persons					
Art 11(3) commercial carriers to check documents	Art 7(3) commercial carriers to check documents					
Art 11(4) sanctions on commercial carriers	Art 7(4) sanctions on commercial carriers					

<i>Trafficking in Persons Protocol</i>	<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 11(5) deny visa of implicated traffickers	Art 7(5) deny visa of implicated traffickers					
Art 11(6) cooperation between border control agencies	Art 7(6) cooperation between border control agencies					
Art 12 Security and control of documents	Art 8 Security and control of documents					
Art 13 Legitimacy and validity of documents	Art 9 Legitimacy and validity of documents			Art 13 Cross-border cooperation, control and validity of documents		
<u>IV. Final Provisions</u>						
Art 14 Saving clause	Art 40 Relationship with other international instruments	Art 26 Relationship with other international instruments				Art 24 Relationship with other instruments Art 32 Relationship with other international instruments
Art 14(1) international humanitarian and human rights law						
Art 14(2) Non-discrimination clause	Art 3 Non-discrimination principle Art 17 Gender equality	Art 3 Principle of non-discrimination				

Provisions not included in the Trafficking in Persons Protocol

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
				Art 1(2) prostitution	
Art 4(e) victim			Art 2(e) victim	Art 1(5) persons subject to trafficking	
				Art 1(6) protective home	
				Art 1(7) repatriation	
					Art 2(c) unlawful purpose
					Art 2(d) unlawful means
			Art 2(f) organised criminal group		
			Art 2(g) serious crime		
			Art 2(h) transnational crime		
			Art 2(i) public official		
			Art 2(j) property		
			Art 2(k) proceeds of crime		
			Art 2(l) freezing/seizure		
			Art 2(m) confiscation		
			Art 2(n) predicate offence		
Art 10 Identification of the victims					
Art 24 Aggravating circumstances	Art 13 Aggravating circumstances		Art 5(3) Aggravating circumstances	Art 4 Aggravating circumstances	
	Art 4 Illicit removal of human organs				

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
			Art 4 Protection of sovereignty		
Art 5(5) reduce children's vulnerability			Art 11(4) reduce vulnerability of women and children		
Art 5(3) use gender/child-sensitive approach				Art 8(2) gender/child-sensitive approach	
	Art 5 Use of illicitly removed organs for purposes of implantation or other purposes than implantation				
					Art 5 Designation of central authority
Art 23 Sanctions and measures	Art 12 Sanctions and measures	Art 4 Penalties Art 6 Sanctions on legal persons			
			Art 18 Mutual legal assistance in criminal matters	Art 6 Mutual legal assistance	Art 8(a) mutual legal assistance in proceedings
	Art 6 Implantation of organs outside of the domestic transplantation system				
			Art 6 Criminalisation of participation in an organised criminal group		
		Art 9 Investigation and prosecution	Art 19 Extradition	Art 7 Extradition or prosecution	Arts 10-11 Extradition Arts 12-15 Extradition requests

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
		Art 7 Seizure and confiscation	Art 17 Confiscation and seizure		
	Art 7 Illicit solicitation etc.				
			Art 7 Criminalisation of the laundering of proceeds of crime		
Art 12(6) assistance not conditional on acting as witness Art 26 Non-punishment provision		Art 8 Non-prosecution or non-application of penalties to the victim	Art 14(7)-(8) Non-liability of victims of trafficking		
	Art 8 Preparation, preservation, transfer etc.				
			Art 8 Criminalisation of corruption		
			Art 9 Criminalisation of Obstruction of Justice		
Art 31 Jurisdiction	Art 10 Jurisdiction	Art 10 Jurisdiction	Art 10 Jurisdiction		Art 9 Jurisdiction
Art 22 Corporate liability	Art 11 Corporate liability	Art 5 Liability of legal persons	Art 5 Liability of legal persons		
			Art 12 Areas of cooperation		
Art 13 Recovery and reflection period					
Art 25 Previous convictions	Art 14 Previous convictions				
Art 16(5) establish repatriation programmes			Art 14(5) establish repatriation programmes		

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 16(6) measure to facilitate repatriation					
Art 16(7) return of child					
					Art 18 Annulment of adoption
					Art 19 Custody revocation
		Art 13 Assistance, support, protection provisions for child victims Art 14 Assistance and support to child victims Art 15 Protection of child victims Art 16 Assistance, support and protection for unaccompanied child victims			
		Art 19 National rapporteurs or equivalent mechanisms			
		Art 20 Coordination of the Union strategy against trafficking in human beings			
Art 19 Criminalisation of the use of services of a victim					
Art 20 Criminalisation of acts relating to travel or identity documents					

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
			Art 20 Law enforcement cooperation		
			Art 21 International cooperation for purposes of confiscation		
					Arts 20-21 Request for locating and returning minor
			Art 22 Disposal of confiscated proceeds of crime or property		
	Art 16 Criminal investigations	Art 9 Investigation and prosecution	Art 16 Law enforcement and prosecution		
Art 27 <i>Ex parte</i> and <i>ex officio</i> applications					
Art 29 Specialised authorities and coordinating bodies					
Art 30 Court proceedings	Art 15 Initiation and continuation of proceedings			Art 5 Judicial proceedings	
Art 32 General principles and measures for international co-operation	Art 17 International cooperation				
Art 33 Measures relating to endangered or missing persons					
Art 34 Information					
Art 36 Group of experts on action against trafficking in human beings					

<i>Council of Europe Convention against Trafficking in Human Beings</i>	<i>Council of Europe Convention against Trafficking in Human Organs</i>	<i>European Union Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims</i>	<i>ASEAN Convention against Trafficking in Persons</i>	<i>SAARC Convention against Trafficking Women and Children</i>	<i>Inter-American Convention on Trafficking in Minors</i>
Art 37 Committee of the Parties	Art 23 Committee of the Parties Art 25 Function of the Committee of the Parties				
	Art 24 Other representatives				
	Art 27 Amendments				
	Art 28 Signature and entry into force	Art 24 Entry into force			Art 33 Entry into force
	Art 29 Territorial application				
	Art 30 Reservations				
	Art 31 Dispute settlement				
	Art 32 Denunciation				
	Art 33 Notification				
Art 38 Procedure					
		Art 21 Replacement of Framework Decision 2002/629/JHA			
		Art 22 Transposition			
		Art 23 Reporting			
		Art 25 Addresses			

1. UNITED NATIONS TREATIES AND OFFICIAL DOCUMENTS

(a) Treaties

Convention against Torture and other Cruel, Inhuman or Degrading Treatment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

Convention concerning Decent Work for Domestic Workers of 2011 (No. 189), 53 ILM 250 (2014) adopted 16 June 2011 (entered into force 5 September 2013)

Convention concerning the Abolition of Forced Labour, 1957 (No. 105), opened for signature 25 June 1957, 1959 UNTS 291 (entered into force 17 January 1959)

Convention concerning Forced or Compulsory Labour of 1930 (No. 29), opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932)

Protocol of 2014 to the Forced Labour Convention of 1930, adopted 11 June 2014, 53 ILM 1232 (2014) (entered into force 9 November 2016)

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 (No 182), opened for signature 17 June 1999, 2133 UNTS 161 (entered into force 19 November 2000)

Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature 21 March 1950, 96 UNTS 271 (entered into force 25 July 1951)

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Reduction of Statelessness, opened for signature 30 August 1961, 383 UNTS 175 (entered into force 13 December 1975)

Convention relating to the Status of Stateless Persons, opened for signature 28 September 1954, 360 UNTS 170 (entered into force 6 June 1960)

Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)
Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967)

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002)

Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2000)

Convention to Suppress the Slave Trade and Slavery, opened for signature 25 September 1926, 60 LTS 654 (entered into force 9

March 1927)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Convention for the Suppression of the White Slave Trade of 1910, opened for signature, 4 May 1910, amended by the Protocol of 4 May 1949, 98 UNTS 101 (entered into force 19 August 1951)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, opened for signature 7 September 1956, 266 UNTS 3 (entered into force 30 April 1957)

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990)

Convention against Transnational Organized Crime, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003)

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005)

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