

Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines: A Booklet

This booklet is a resource for stakeholders in government and civil society who desire to improve domestic legislation and policy that work to comprehensively address the crime of trafficking in persons.

December 2008



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Publisher: International Organization for Migration

17 route des Morillons 1
1211 Geneva 19
Switzerland

Tel: +41 22 717 91 11
Fax: +41 22 798 61 50
Email: hq@iom.int

1752 N Street NW, Suite 700
Washington, DC 20036
United States of America

+1 202 862 1826
+1 202 862 1879
mrfwashington@iom.int

Internet: <http://www.iom.int> <http://www.iom.int/unitedstates>

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In particular IOM thanks the legal experts from the aforementioned Caribbean countries, CARICOM and UNICEF who participated in the group sessions and contributed technical insight regarding their respective national legal frameworks.

Sincere appreciation is extended to Lidia Futter who facilitated the sessions and compiled the content of the model legislation and its accompanying explanatory guidelines. Additional acknowledgement goes to Amy Mahoney and Chissey Mueller for providing critical feedback and editing assistance.

CARIBBEAN CONTEXT

Overview of Migration in the Caribbean¹

The Caribbean is a region of extensive migration with a rate of movement in relation to population that may be one of the highest in the world. Despite migration being “a way of life” in the Caribbean, research on the impact of migration is limited. All states and territories have been affected by inflows and outflows, both historically through slavery, colonial relationships and industries such as sugar, and currently via globalization and regular and irregular transnational flows. The cultural histories of Caribbean nations have led to a variety of distinct migratory patterns. The different migration flows are also influenced by the diversity of the region (both culturally and in terms of economic and human development) and by geography.

While other forms of migration occur in the region, there are three primary migration flows in the Caribbean: internal migration (e.g. from rural to urban); intra-regional migration (e.g. movement within the region); and outward migration (e.g. movement to Latin America, Europe or North America). Some important factors influencing these flows are historical patterns of movement, socioeconomic opportunities or inequalities (both within the Caribbean and globally), natural disasters and tourism.

Introduction to Trafficking in Persons in the Caribbean²

Trafficking in persons is a modern-day form of slavery involving victims who are typically forced, defrauded or coerced into various forms of exploitation. Men, women and children are treated as inexpensive, expendable and profitable commodities used for benefit (financial or otherwise). Human traffickers often use existing migratory flows and look for migrants that can be potentially exploited. Trafficking has become one of the fastest growing and most lucrative crimes, occurring both worldwide and in individual countries, including those in the Caribbean region.

The region’s trafficking trends include intra-regional flows and extra-regional flows (e.g. movement from South Asia or East Asia to the region). Caribbean countries also can serve as a transit route for trafficking, often destined towards North America and Europe. Additionally, internal trafficking, which occurs within a country’s borders, exists in some Caribbean nations. IOM’s *Exploratory Assessment of Trafficking in Persons in the Caribbean Region* identified some level of human trafficking in the areas of forced labour, sexual exploitation and domestic servitude.³ The victims (men, women, boys and girls from within and outside the region) were found to be trafficked through legal methods, such as work permits and visas, and illegal methods, such as smuggling.

¹ This section is adapted from the *IOM Exploratory Assessment of Trafficking in Persons in the Caribbean Region*, 2005, p. 9-13. http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/studies_and_reports/exploratory_assess.pdf. The content was previously published in the *IOM HIV/AIDS and Mobile Populations in The Caribbean: A Baseline Assessment*, Santo Domingo, June 2004. http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/hiv_mobile_caribbean.pdf

² This section is adapted from the *IOM Exploratory Assessment*, p. 1.

³ *Ibid.*, p. 1.

Responding to the Challenge⁴

The complexity of human trafficking requires a holistic response that is both broad enough to address the problem on multiple levels and specific enough to make sense in the local context. Identifying the local context and the specific mechanisms of trafficking that are taking place within a country are essential to creating a strategic response. Prevention, protection and prosecution efforts tend to be the primary pillars on which many comprehensive counter-trafficking strategies are built.

Prevention activities are extremely important in combating trafficking. Countries of origin or with internal trafficking might, for example, strengthen education or create employment programmes to increase opportunities among people that could be vulnerable to trafficking in persons. A transit country could work on strengthening border control and provide training to officials to enable them to identify sub-groups of trafficked persons within larger migrant groups moving through their country, legally or illegally. Destination countries might look at exploitation taking place within their borders, and work to strengthen the labour rights of migrants or could work to facilitate legal flows of migrant workers to lessen the demand for irregular migrants.

In addition to activities designed to prevent trafficking in persons, protecting victims is an important part of any counter-trafficking response. Protection includes keeping identified victims safe while meeting their immediate basic needs (e.g. shelter, food, clothing and medical and psychological care). Keeping victims safe also requires a high level of confidentiality when managing cases; the identity of victims must be protected. This is necessary not only to protect victims and those individuals who help victims from traffickers, but also to protect the victims from potential stigma within their families or home communities.

Protection also means creating an environment (social, political and legal) that works to assist victims of trafficking. Emphasis must be given to the fact that victims of human trafficking are victims of a crime and must be recognized and treated as such, not as criminals themselves. Relevant legislation can be used to prosecute traffickers and protect victims. This could mean creating a special or temporary visa to allow victims who are foreign nationals to remain legally in the country of destination. Additionally, access to the judicial system offers victims the opportunity to seek justice and compensation. Protection could also involve helping victims return to their home community or country for safe voluntary return and reintegration.

Prosecuting traffickers is another important part of a comprehensive strategy to combat trafficking in persons. Strengthening legislation and policy is necessary to effectively disrupt and/or stop the trafficking process by holding traffickers accountable for their crimes. In some countries, for example, the assets of traffickers are confiscated and used to fund victim assistance programmes.

Finally, it is important to keep in mind the following crosscutting themes in the field of counter-trafficking:

⁴ This section is adapted from the *IOM Counter-Trafficking Training Modules*, "Basic Concepts – Responding to the Challenge," p. 11-13 (2006).

- a victim-centered approach;
- a gendered response; and
- cooperation and partnership.

The most successful strategies are those that address the root causes of human trafficking, strengthen the legal framework in place to prosecute traffickers and sensitize relevant actors to ensure that victims are at the center of counter-trafficking activities. A victim-centered approach is based on human rights, protection and safety, self-determination and participation, voluntariness, full information and consent, non-discrimination, confidentiality, individualized treatment and care and the best interest of the child. No one person, agency or organization alone can combat trafficking in persons effectively. Multi-sector cooperation is imperative given the complex nature of the crime, whether it is internal or international. Countries of origin, transit and destination must work together to recognize the mechanisms of trafficking, properly identify and assist victims, and prosecute and punish traffickers.

The Caribbean's Response to the Challenge

Caribbean governments and civil society have been working to better understand and respond to human trafficking.⁵ In partnership with IOM, their counter-trafficking activities have ranged from training and research to public awareness and victim assistance initiatives. Though much work remains to be done, the region has made considerable progress in preventative and protective efforts.

Yet, many Caribbean countries struggle to prosecute traffickers for committing the offence of trafficking in persons. A lack of national legislation tends to be the primary reason behind the struggle. Other reasons include the speed of the Caribbean's judicial systems and limited human and financial resources. At the end of 2007, four CARICOM member states, Belize, Guyana, Jamaica and Suriname, had enacted national counter-trafficking legislation.⁶ Six CARICOM member states, including these five countries, ratified or acceded to the main international instrument that deals with trafficking in persons, the *United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the *UN Convention against Transnational Organized Crime*.⁷

While all Caribbean countries have criminal provisions related to one or more elements of the trafficking process, such as procurement, forced detention, prostitution, sexual offences, kidnapping, and abduction, not having specific anti-trafficking legislation can pose a significant barrier. Police struggle to identify victims of trafficking without a clear legal definition. Prosecutors and judges are challenged by having human

5 Civil society is defined by the London School of Economics Centre for Civil Society as: Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. [...]Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group. http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm.

6 CARICOM has 15 member states. <http://www.caricom.org>. The Commonwealth of Dominica and Trinidad and Tobago have some provisions relating to human trafficking in immigration legislation.

7 As of December 2007, the six countries that have ratified the Trafficking Protocol are Belize, Grenada, Guyana, Jamaica, Suriname and Trinidad and Tobago. Barbados, Haiti and St. Vincent and the Grenadines are signatories. By October 2008, St. Kitts and Nevis had enacted national anti-trafficking legislation and The Bahamas had ratified the UN Trafficking Protocol. Of CARICOM's associate member states, the Cayman Islands has enacted national anti-trafficking legislation.

trafficking cases in court because other pieces of legislation do not adequately prescribe provisions.

Enacting comprehensive counter-trafficking legislation helps law enforcers overcome these impediments in prosecuting human trafficking cases.

Methodology of Developing the Caribbean Counter-Trafficking Model Legislation

In a series of regional meetings in recent years, Caribbean partners noted the need to enact counter-trafficking legislation as an essential tool in the fight against trafficking in persons. In response, IOM began a new initiative in 2008 to develop a regional model legislation that aimed to address this need.

The model legislation and explanatory guidelines in this booklet are products of group sessions that brought together distinguished legal experts from ten Caribbean countries, CARICOM agencies (the Secretariat, the Legislative Drafting Facility, and IMPACs) and UNICEF. The expert group meticulously reviewed and discussed each provision in the drafted IOM model legislation, and decided on the content and format.

The expert group decided to use language for the provisions in the Caribbean model legislation from the national anti-trafficking laws enacted in Belize, Guyana and Jamaica. Consequently, the legal language and grammar in the model legislation are derived directly from the one of the three aforementioned national laws, or some combination thereof. This means that the model legislation is written in British English unless a provision was quoted from a law that uses American English.

The Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Trafficking Protocol) served as the basis for anti-trafficking laws enacted in Belize, Guyana and Jamaica. Similarly the expert group agreed to use the Trafficking Protocol to structure the model legislation. Some of the provisions in the Caribbean Counter-Trafficking Model Legislation are non-negotiable to give effect to the Trafficking Protocol, which needs to be read in conjunction with the *UN Convention against Transnational Organized Crime*.

Like others States, Caribbean countries have a specific manner, unique to their nation, in how they draft, adopt and implement legislation; legislation pertaining to human trafficking is no different. Recognising this element, the expert group decided to put some terms in square brackets [...] to signal to the reader that the word or phrase should be adjusted to the preferred local legal context. Thus, for example, when a provision in the model legislation uses the pronoun “he” or the noun “Ministry of Home Affairs,” it is in square brackets, e.g. [he/she] or [Ministry of Home Affairs].

Additional reference material used to facilitate the expert group sessions included the *United Nations Office on Drugs and Crime (UNODC) Legislative Guide for Implementing the Trafficking Protocol*, the *Council of Europe Convention on Action against Trafficking*

in Human Beings, the US Model Law to Combat Trafficking in Persons and the anti-trafficking laws of Ireland, Moldova and Sierra Leone.⁸

The explanatory guidelines in this booklet are intended to be read concurrently with the model legislation. For each provision, the guidelines contain a corresponding explanation of the Trafficking Protocol's position, contextual information and the expert group's ultimate decision on language usage. The guidelines encapsulate the group's discussions, including divergent opinions on a particular topic and insight to the region's legislative systems. Lastly, the guidelines offer some tips and examples of best practices for conducting activities that would help to implement a particular provision.

This booklet is intended to serve as a reference resource for stakeholders in government and civil society who desire to improve domestic legislation and policy that work to comprehensively address the crime of trafficking in persons.⁹ The two major tools contained in this booklet, the model legislation and the explanatory guidelines, are a product of the collaborative efforts of Caribbean partners and IOM. In recognising that each country will use its own legislative format, this booklet aims to provide a counter-trafficking legal framework by suggesting provisions and sentencing guidelines. It must be underscored that States are expected to adjust the model legislation's content according to their national legal system and available human and financial resources, while upholding the Trafficking Protocol's obligatory provisions.

⁸ The bibliography lists the reference material used during the development of the model legislation and this booklet.

⁹ Counter-trafficking stakeholders could include agencies or organizations in government, law enforcement, civil society (NGOs, faith-based groups, and victim advocates), private sector, schools, media, etc.

The Caribbean Counter-Trafficking Model Legislation

CARIBBEAN COUNTER-TRAFFICKING MODEL LEGISLATION

ARRANGEMENT OF SECTIONS

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2. Interpretation
3. Object of the Act

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31. Responsibilities of [international commercial] transportation companies [or individuals]

PART V – PREVENTION OF TRAFFICKING IN PERSONS

32. National task force [for prevention of trafficking]
33. Exclusion of persons implicated in trafficking

PART VI - GENERAL

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36. Protocol to be part of the laws of [Country X]
37. Commencement

AN ACT to give effect to and to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to provide for matters connected therewith or incidental thereto.

TO BE ENACTED by [...].

PART I – PRELIMINARY

1. Short title

This Act may be cited as [...].

2. Interpretation

In this Act, unless the content otherwise requires –

1. “abuse of a position of vulnerability” means –
 - i. such abuse that the person believes [he] has no reasonable alternative but to submit to the labour or service demanded of the person; and
 - ii. includes, but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy, and physical or mental disease or disability of the person, including addiction to the use of any substance, or reduce capacity to form judgments by virtue of being a child.
2. “child” means a person below the age of eighteen years.
3. “child pornography” means –
 - i. audio or visual depiction of any kind, whether –
 - a. made or produced by electronic, mechanical or other means, or
 - b. embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable of being retrieved or reproduced therefrom, of sexually explicit conduct involving a child; or
 - ii. any representation of the genitalia of a child, where such audio or visual depiction or representation lacks genuine literary, artistic, or scientific value.
4. “coercion” means violent as well as some forms of non-violent or psychological coercion, including –

- i. threats of serious harm to or physical restraint against any person;
 - ii. any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - iii. the abuse or threatened abuse of the legal process.
5. “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of [his] personal services or those of the persons under [his] control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
6. “exploitation” means [at a minimum] –
 - i. keeping a person in a state of slavery;
 - ii. subjecting a person to practices similar to slavery;
 - iii. compelling or causing a person to provide forced labour or services;
 - iv. keeping a person in a state of servitude, including sexual servitude;
 - v. the exploitation of the prostitution of another;
 - vi. engaging in any form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;
 - vii. illicit removal of human organs.
7. “exploitation of the prostitution of others” means the deriving by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person.
8. “forced labour” means labour or services obtained or maintained through force, threat of force, or other means of coercion or physical restraint.
9. “illicit removal of human organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to such removal and is not a legitimate medical procedure for which proper consent has been obtained.
10. “minister” means the government minister responsible for implementing this Act.
11. “organized criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences established in this law in order to obtain, directly or indirectly, a financial or other material benefit;
12. “practices similar to slavery” means, in general, debt bondage, serfdom,

forced or servile marriages and delivery of children for exploitation.

13. “restitution” means financial or other compensation for the victim for damages suffered during the process of being trafficked.
14. “servitude” means a condition of dependency in which labour or services of a person are provided or obtained by threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm.
15. “sexual exploitation” means compelling the participation of a person in –
 - i. prostitution;
 - ii. the production of child pornography or other pornographic material;
 - iii. any other sexual activity;as a result of being subjected to threat, coercion, abduction, the effects of narcotic drugs, force, abuse of authority or fraud.
16. “sexually explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse.
17. “slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.
18. “trafficking in children” means the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, irrespective of whether any of the means described in the definition of “trafficking in persons” have been established.
19. “trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
20. “travel documents” means any document that can be used for travel between States such as –
 - i. a passport;
 - ii. a visa;
 - iii. a tourist card;
 - iv. an airline ticket; and
 - v. any other document used under the laws of a State to establish identity in that State.

21. “victim” means any person against whom the offence of trafficking in persons has been committed.

3. Object of the Act

The object of this Act is to prescribe measures to prevent and combat trafficking in persons with particular regard to victims who are women and children, by –

- a. protecting and assisting victims of trafficking, having due regard to their human rights;
- b. facilitating the efficient investigation of cases of trafficking in persons;
- c. facilitating the just and effective punishment of individuals and organizations involved in trafficking in persons;
- d. promoting cooperation between [Country X] and other States in order to prevent and suppress trafficking in persons and to punish offenders.

PART II - CRIMINAL OFFENCES AND RELATED PROVISIONS

4. Offence of trafficking in persons

1. A person who engages in, conspires to engage in, attempts to engage in, assists another person to engage in, or organizes or directs another person to engage in trafficking in persons commits an offence and is liable on [summary conviction / indictment] to imprisonment for a period of [...] years, or to a fine of [...].
2. The recruitment, transportation, harbouring, or receipt of a child, or giving of payment or benefits to obtain the consent of a person having control of a child, for the purpose of exploitation, constitutes trafficking in persons irrespective of whether any of the means described in the definition of “trafficking in persons” have been established.

5. Offence of unlawful withholding of identification papers

Any person [who for the purposes of trafficking in persons] and acting or purporting to act as another person’s employer, manager, supervisor, contactor, employment agent, or solicitor or clients such as a pimp, knowingly procures, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, or other government identification document, whether actual or purported, belonging to another person, commits an offence and shall on [summary conviction / indictment] be fined [...] together with imprisonment for [...] years.

6. Offence of transporting a person for the purpose of exploiting such a person's prostitution

1. Whoever knowingly transports or conspires to transport or attempts to transport or assist another person engaged in transporting any person in [Country X] or across an international border for the purposes of exploiting that person's prostitution commits an offence and shall be liable on [summary conviction / indictment] to be punished in accordance with subsection (2).
2. Persons convicted of the crime of transporting a person for the purpose of exploiting that person's prostitution shall be liable to a fine of [...] and shall be imprisoned for [...] years, but the presence of any one of the following aggravating factors resulting from acts of the defendant can permit a longer sentence up to [...] years, [together with forfeiture of the conveyance used for transporting the victim] –
 - a. transporting two or more persons at the same time;
 - b. causing permanent or life-threatening bodily injury to the person transported;
 - c. transporting of one or more children;
 - d. transporting as part of the activity of an organized criminal group.

7. Restitution

1. Where a person is convicted of the offence of trafficking in persons the court may order that person to pay restitution to the victim.
2. Restitution shall compensate, where applicable, for any of the following –
 - i. costs of medical and psychological treatment;
 - ii. costs of physical and occupational therapy and rehabilitation;
 - iii. costs of necessary transportation, temporary housing and child care;
 - iv. lost income;
 - v. attorney's fees and other legal costs;
 - vi. compensation for emotional distress, pain and suffering; and
 - vii. any other losses suffered by the victim which the court considers applicable.
3. Restitution shall be paid to the victim –
 - i. upon the conviction of the accused; and
 - ii. as far as possible, from any property forfeited under section 8 or the proceeds thereof.

4. The absence of the victim from the proceedings shall not prejudice the victim's rights to receive restitution.

8. Forfeiture

1. All property, including but not limited to money, valuables and other movable and immovable property, of persons convicted of the crime of trafficking in persons under this Act that was used or intended to be used, or was obtained in the course of the crime or benefits gained from the proceeds of the crime, shall be forfeited to the State.
2. Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent that they can be retrieved by the Government.

9. Aggravated circumstances

1. As factually appropriate, the following adjustments to the sentence of a person convicted [on indictment] of the crime of trafficking in persons may apply –
 - i. If the convicted person used, threatened to use, or caused another to use or threaten to use a dangerous weapon, [two] years may be added to the sentence;
 - ii. If a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against the trafficked person, [five] years may be added to the sentence;
 - iii. If the trafficked person had not attained the age of eighteen years of age, [five] years may be added to the sentence;
 - iv. If, in the course of trafficking, or subsequent exploitation, the convicted person recklessly caused the trafficked person to be exposed to a life threatening illness, or if the convicted person intentionally caused a trafficked person to become addicted to any drug or medication, [five] years may be added to the sentence;
 - v. If a trafficked person suffers a permanent or life-threatening injury, [ten] years may be added to the sentence;
 - vi. If the trafficking was part of the activity of an organized criminal group, [three] years may be added to the sentence; or
 - vii. If the trafficking was part of the activity of an organized criminal group and the convicted person organized the group or directed its activities, [five] years may be added to the sentence;
 - viii. If the trafficking occurred as the result of abuse of power or position

of authority, including but not limited to a parent or guardian, teacher, children's club leader, or any other person who has been entrusted with the care or supervision of the child, [four] years may be added to the sentence.

2. In this section –

- i. “dangerous weapon” means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) is used in such a way that it creates the impression that the object is an instrument capable of inflicting death or serious bodily injury;
- ii. “life-threatening illness” means any illness that involves a substantial risk of death, and included Human Immuno Deficiency Virus Infection (HIV/AIDS) and tuberculosis;
- iii. “permanent or life-threatening bodily injury” means injury involving a substantial risk of death, loss or substantial impairment of the function of a bodily member, organ or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. Maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function, constitutes life-threatening bodily injury;
- iv. “serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or requiring medical intervention such as surgery, hospitalization or physical rehabilitation;
- v. “sexual assault” means causing another to engage in a sexual act by using force against that person, threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, and engaging in a sexual act with an incapacitated person, or a person who cannot express consent or with a minor that constitutes statutory rape.

10. Consent or past sexual behaviour of a victim is irrelevant

1. In any prosecution for an offence of trafficking in persons under section [3], the alleged consent of the victim to the intended or realized exploitation is irrelevant once any of the means or circumstances set forth in the definition of “trafficking in persons” is established.
2. In a prosecution for trafficking in persons under section [3], the evidence of a victim’s past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim engaged in other sexual behaviour, or to prove the victim’s sexual predisposition.

11. Legal age of consent to sex not a defence to trafficking in persons

The legal age of consent to sex or to marriage is not a defence to the offence of trafficking in persons.

12. Victim to be immune from prosecution

A victim of trafficking in persons is not criminally liable for any immigration-related offence, [or any other criminal offence] that is a direct result of being trafficked.

13. Offences of bodies corporate

1. Subject to subsection (2), where a body corporate commits an offence under this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction [on indictment] before a [Circuit Court] to a fine of [...] or to imprisonment for a term not exceeding [...] years or to both such fine and imprisonment.
2. A director, manager, secretary or other similar officer concerned with the management of a body corporate shall not be liable for an offence under this Act unless the court is satisfied –
 - i. that the offence was committed with the person's connivance; or
 - ii. the person had not exercised all such diligence to prevent the commission, having regard to the nature of functions in that capacity and to all the circumstances.
3. A body corporate which commits an offence against this Act is liable [on conviction or on indictment] before a [Circuit Court] to a fine of [...].
4. In this section "director," in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

14. Receiving financial or other benefit knowing that it is as a result of trafficking in persons

Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable [on conviction or indictment] before a [Circuit Court] to a fine of [...] or to imprisonment for [...] years or to both such fine and imprisonment.

15. Entry, search and seizure

1. Subject to subsection (3), where a [Judge/Magistrate] is satisfied by

information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found on any premises specified in the information, a [Judge/Magistrate] may issue a warrant in accordance with subsection (2).

2. A warrant issued under subsection (1) may authorize a [constable] named therein to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to –
 - i. enter upon the premises;
 - ii. search the premises for evidence of or relating to an offence under this Act; and
 - iii. seize any article, vehicle or property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.
3. A warrant shall not be issued under this section unless the informant or some other person has given the [Judge/Magistrate], on oath, such further information as the [Judge/Magistrate] may require concerning the grounds on which the issue of the warrant is sought.
4. A warrant issued under this section shall include –
 - i. a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking;
 - ii. a description of the kind of article, vehicle or property to be seized;
 - iii. the time, not being later than [fourteen days], upon the expiration of which the warrant ceases to have effect; and
 - iv. a statement as to whether entry is authorized to be made at any time of the day or night, or during specified hours of the day or night.
5. For the purpose of this section “an offence under this Act” refers to an offence which has been committed or is about to be committed.

16. Offence of threatening, obstructing, etc., a constable

Any person who threatens, assaults or obstructs a [constable] acting in the execution of [his] duty under this Act commits an offence and is liable [on summary conviction] to a fine of [...] or to imprisonment for a period of [...] months.

17. Jurisdiction

A court in [Country X] shall have the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out –

- i. wholly or partly in [Country X];

- ii. by a citizen of [Country X] anywhere;
- iii. by a person on board a vessel or aircraft registered in [Country X].

PART III - ASSISTANCE AND PROTECTION OF VICTIMS OF TRAFFICKING

18. Protection for the safety of victims, including identification of victims

1. In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles shall apply –
 - i. all steps necessary to identify the victims of the trafficking shall be taken;
 - ii. reasonable protection to a victim of the trafficking shall be taken to prevent recapture, secure the victim from threats, reprisals and intimidation by the traffickers and their associates;
 - iii. reasonable protection shall be taken to secure the victim's family, if it resides in [Country X], from threats, reprisals or intimidation by the traffickers or their associates; and
 - iv. ensure that the victim has an opportunity to consult with a victim's advocate or other appropriate person to develop a safety plan.
2. [Country X's] law enforcement officials [Police, Immigration], and other investigative officers shall follow the guidelines specified in subsection (1).

19. Witness protection

Victims of trafficking who are witnesses or potential witnesses may be eligible for applicable witness relocation and protection programmes for victims of organized criminal activity or other serious offences, if it is determined that an offence involving a crime of violence directed at the witness or potential witness is likely to be committed. The programmes may include –

- i. relocation;
- ii. new identity, documents establishing identity;
- iii. new residence;
- iv. employment work permits;
- v. protection of confidentiality of identity and location.

20. Protection of the privacy of victims, including proceedings held in camera

1. In a prosecution for trafficking in persons under this Act [or unlawful use of documents under section 4], the identity of the victim and the victim's family should be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to the press or the public, including by the defendant.
2. A hearing under this section shall be held in camera if the court so orders.
3. A person who commits a breach of the confidentiality enjoined by this section shall be guilty of an offence and shall [on summary conviction] be fined [...].

21. Information for victims

The Minister shall inform victims of trafficking, in a language that they can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including but not limited to proceedings of the criminal offenders, proceedings for the return of the victims to their country of citizenship or lawful residence, and procedures for seeking legal immigration status under section [24].

22. Opportunity for the presentation of the victim's views and concerns

The court shall provide an opportunity to the victim of trafficking, if the victim desires it, to present [his] views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant. An interpreter who speaks a language the victim understands shall be made available to the victim during the course of legal proceedings.

23. Assistance to victims

1. The Minister [in conjunction with other relevant Ministries] shall develop a plan, in consultation with non-governmental organizations and other representatives of civil society, for the provision of appropriate services, from governmental and non-governmental sources, for victims of trafficking and dependent children accompanying the victims, including –
 - i. appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, food and personal hygiene;
 - ii. psychological counselling in a language the victim can understand;
 - iii. medical assistance in a language the victim can understand;

- iv. other medical assistance as appropriate;
 - v. employment, educational, and training opportunities; and
 - vi. legal assistance or legal information in a language the victim understands.
2. Victims of trafficking may be eligible to work and to receive proof of work authorization.
 3. Victims of trafficking and their accompanying dependent children may be entitled to receive social benefits for the duration of their stay in [Country X] as may be determined by the Minister [responsible for social security].
 4. Residence in shelters or other facilities established under this section may be voluntary, and victims may decline to stay in shelters.
 5. Victims may have the option to communicate with and receive visits from family, friends and attorneys-at-law.
 6. In the absence of exigent circumstances, victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.
 7. The authorities mentioned under subsection (1) shall take into account the age, gender and special needs of the victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.
 8. Plans developed in accordance with subsection (1) shall be submitted for approval to the [Cabinet/National Assembly] and the said authorities shall also undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights and dignity.

24. Immigration status of victims

1. The Minister [responsible for home affairs] may provide victims of trafficking and accompanying dependent children with appropriate visas or other required authorization to permit them to remain in [Country X] for the duration of the criminal prosecution against the traffickers, provided that the victim is willing to comply with reasonable requests, if any, to assist in the investigation or prosecution of the traffickers.
2. Victims of trafficking may be eligible for residence in [Country X] in the manner prescribed in the [law related to immigration], provided they have complied with reasonable requests, if any, for assistance in the investigation or prosecution of acts of trafficking. Dependent children accompanying the

victim also shall be eligible for resident status in [Country X] in the manner prescribed in the said Act.

3. A victim's spouse and children, and in the case of child victims, the parents or guardian, and the victim's siblings, may be eligible to join the victim in [Country X] as part of the victim's application for residence under the preceding subsections.

25. Assistance for citizen/permanent resident victims abroad

1. The Minister [responsible for foreign affairs], through [Country X's] diplomatic mission and consular offices abroad, where practicable, shall offer assistance to citizens of or persons holding permanent residency in another country and who are victims of trafficking in persons located abroad, including but not limited to –
 - i. assistance in understanding the laws of the foreign country to which they have been trafficked, including their rights as victims, options for reporting the crime, and opportunities for seeking restitution or other benefits that are available under the laws of that country;
 - ii. assistance in obtaining emergency services, including but not limited to medical care and counselling;
 - iii. at the request of either the victim or the appropriate authorities in the other country, replacement or provision of passports or other travel documents necessary for the victim to return to [Country X] without undue or unreasonable delay;
 - iv. material assistance in returning to their last place of residence in [Country X] in the same manner provided for other citizens or persons with the right to permanent residency for those who become stranded abroad when the country to which the victim was trafficked does not provide such assistance.
2. The Minister [responsible for foreign affairs], through [Country X's] diplomatic missions and consular offices abroad, shall publish and disseminate information on the rights of victims of trafficking under the laws of [Country X] and the country or countries for which the diplomatic mission has responsibility both to the appropriate authorities in that country and to possible victims of trafficking who are citizens of [Country X]. In the case of diplomatic missions and consular offices of countries of destination of trafficking victims, such information shall be provided to appropriate authorities and to potential trafficking victims who are citizens or lawful residents of the country for which the mission or office has responsibility.
3. Diplomatic missions of [Country X] abroad shall appoint an officer to be responsible for implementing and supervising plans, ensuring the provision

of services required under this section.

4. The Minister [responsible for foreign affairs] in cooperation with other appropriate authorities shall develop plans as are reasonably convenient for the safe, orderly return without undue or unreasonable delay of citizens or persons holding permanent residency in [Country X].

26. Verification of nationality/age of victims

1. Upon request by the appropriate authority representative of another State, the Minister [responsible for home affairs] shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is a citizen, or national of, or holds permanent residency in [Country X].
2. A request made under subsection (1) may include a request for the verification of –
 - i. the age and name of a person who is a victim of trafficking in persons and who is suspected of being a minor;
 - ii. whether the victim is a citizen or permanent resident of the country making the request; or
 - iii. any other immigration status the victim may have in [Country X].
3. The Minister [responsible for home affairs] shall designate an officer to deal with requests made under this section.

27. Return of victims to country of citizenship or lawful residence

1. The Ministers [responsible for home affairs and foreign affairs] shall, in cooperation and after consultation with non-governmental organizations and international organizations, develop plans for the safe return of victims of trafficking in persons to their countries of citizenship or lawful residency.
2. Plans to develop under subsection (1) shall take due account that a victim of trafficking may elect to apply for citizenship or permanent residency of [Country X], or remain in [Country X] during the criminal proceedings against the traffickers.

28. Assistance to victims that are unable to prove their nationality status through normal means

1. Victims of trafficking abroad who claim to be citizens or persons holding permanent residency in [Country X], but whose identity cannot be verified through ordinary means, can establish their right to return to [Country X] by demonstrating significant connections to this country through such

factors as –

- i. place of birth;
 - ii. presence of family members;
 - iii. presence of friends;
 - iv. significant knowledge of specific geographical areas and neighbourhoods;
 - v. long-term residence in this country; or
 - vi. any other means.
2. This list of factors in subsection (1) is not exhaustive, and not every factor is required to make the determination. Determinations under this section are to be made with due concern for compassion and justice to victims. The fact that the victim would not be eligible for citizenship based on the showing made under this section shall not be a bar to re-entry.
 3. Diplomatic missions abroad shall assign a specific diplomat to make determinations under this section. Victims may appeal an adverse determination to the [Minister responsible for legal affairs].
 4. Where the [Minister responsible for legal affairs] determines an individual is eligible to re-enter [Country X] under this section, the diplomatic mission abroad shall issue a certificate of identity, permitting re-entry.

29. Services for returned victims of trafficking

Victims of trafficking who return from abroad shall have access to educational and training programmes provided by any governmental or private entity without being differentiated from other participants on the basis of having been trafficked.

30. Special consideration to be given to child victims

Assistance [in this Part] shall be provided to trafficking victims who are children in a manner that is in the child's best interest and appropriate to the child's situation. Child trafficked victims shall be provided with appropriate services, which may include understanding of their rights, privacy, housing, care and age-appropriate support and rights specified [in this Part]. Special programmes shall be developed to accommodate child witnesses including –

1. testimony of a minor conducted outside the court setting or by video;
2. all testimony and court proceedings take place with a parent, legal guardian, foster parent or social worker present;
3. whenever safe and possible, children shall be reunited with family members in [Country X] [or in their country of origin];

4. special mental and physical medical care tailored to children's needs;
5. upon return to [Country X], child victims of trafficking shall be guaranteed education which at least matches the general standard of education in [Country X].

PART IV - MISUSE OF [COMMERCIAL] TRANSPORTATION

31. Responsibilities of [international commercial] transportation companies [or individuals]

1. A[n] [international commercial] transportation provider shall verify that each passenger to any destination into or outside [Country X] possesses the necessary travel documents, including passport and visas, to enter the destination country and any transit countries.
2. Subsection (1) applies to the [international commercial] transportation provider, [his] agents, and any person selling or issuing tickets, boarding passes or similar documents allowing passengers to travel, and to persons collecting or checking such tickets, boarding passes or similar documents prior to or subsequent to boarding.
3. Any person referred to in subsection (2) who fails to comply with subsection (1) commits an offence and is liable on [summary conviction] to a fine of [...] or to imprisonment for a period of not more than [...] months.
4. Where an offence is committed under this section, the [international commercial] transportation provider shall bear the costs of returning the person to [his] initial point of embarkation.
5. Where a[n] [international commercial] transportation provider knowingly transports a victim of trafficking into or from [Country X], [he] shall be liable for costs associated with providing accommodation and meals for the victim and any accompanying children for the duration of the victim's stay outside or inside [Country X].

PART V - PREVENTION OF TRAFFICKING IN PERSONS

32. National task force [for prevention of trafficking]

1. The Minister shall establish an inter-agency task force to develop and implement a National Plan for the [Prevention of Trafficking in Persons]. Such a task force should include all aspects of trafficking including trafficking for sexual and labour exploitation.

2. The Minister shall appoint the members of the task force, which shall include representatives from the Ministries of [Legal Affairs, Foreign Affairs, Labour, Human Services and Social Security, Home Affairs], other appropriate high-level government officials with responsibility for law enforcement, immigration and human and social services and appropriate non-governmental organizations.
3. The task force shall carry out the following activities either directly or via one or more of the constituent ministries as appropriate-
 - i. develop the National Plan for the [Prevention of Trafficking in Persons];
 - ii. coordinate the implementation of the Plan;
 - iii. coordinate the collection and sharing of trafficking data among government agencies. All data collected shall respect the privacy of victims of trafficking;
 - iv. coordinate the sharing of information between agencies for the purpose of determining whether individuals crossing or attempting to cross the international border(s) of [Country X] with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; and detecting criminal groups engaged in trafficking;
 - v. identify and engage in efforts to facilitate cooperation with foreign countries, particularly those which are a significant source of victims, transit location, or destination of victims. This cooperation shall aim to strengthen bilateral, multilateral, local and regional capacities to assist trafficking victims, prevent trafficking, prosecute traffickers and assist in the appropriate reintegration of victims of trafficking;
 - vi. establish policies to enable [Country X's] Government to work with non-governmental organizations and other elements of civil society to prevent trafficking and provide assistance to victims;
 - vii. coordinate and provide training for law enforcement, immigration and other relevant officials in addressing trafficking in persons;
 - viii. in coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare public awareness programmes designed to educate potential victims of trafficking and their families to the risk of victimization;
 - ix. in coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare, disseminate and publish awareness raising material to discourage the demand that fosters the exploitation of persons, especially women and children, that leads to trafficking;

33. Exclusion of persons implicated in trafficking

1. The Minister shall periodically identify, in a public report, every person who is a trafficker in persons, or who had knowingly assisted or conspired with another to traffic in persons.
2. Persons identified in reports under subsection (1), or whom an overseas consular official knows or has reason to believe is a trafficker of persons, or who had knowingly assisted or conspired with a trafficker to traffic in persons, shall not receive an entrance or transit visa.
3. The visas of persons identified in reports under subsection (1) shall be revoked.

PART VI - GENERAL

34. Regulations

The Minister may make regulations for carrying into effect the objects and purposes of this Act either generally or in relation to any particular case.

35. Order to increase fines

1. The Minister may by Order published in the [*Gazette*] increase the fines provided under this Act.
2. An Order under subsection (1) shall be subject to [affirmative] resolution.

36. Protocol to be part of the laws of [Country X]

1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, [the text of which is set out in the Schedule of this Act], is hereby declared to form part of the laws of [Country X].
2. The Minister may make Regulations to give effect to the Protocol in [Country X].
3. Regulations made under subsection (2) shall be subject to [negative] resolution by the [Cabinet / National Assembly].

37. Commencement

This Act shall come into force on a day to be appointed by the Minister by Order published in the [*Gazette*].

The Explanatory Guidelines to the Caribbean Counter- Trafficking Model Legislation

PART I - PRELIMINARY

1. Short title

The Trafficking Protocol and its *travaux préparatoires* do not explain the technicalities, process or format of legislative drafting.¹⁰ In lieu of this, the expert group discussed what the introductory section of the Caribbean Counter-Trafficking Model Legislation would entail. It was noted that countries have their own methods of writing legislation, and that they will use a format most suitable to them. In the spirit of the group's discussion, the model legislation contains the standard provisions usually included at the beginning of any piece of legislation. Countries are encouraged to adapt this introductory section to suit their domestic policy on drafting legislation.

2. Interpretation

It should be noted that some definitions in this section may differ from the definitions found under international instruments (e.g. child pornography, exploitation, etc.)

The Trafficking Protocol defines trafficking in persons and trafficking in children in Article 3 as follows:

- 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 purposes 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; and
- d. "Child" shall mean any person under the age of eighteen years of age.

The expert group agreed to use the Trafficking Protocol's definition verbatim and the standard of a child to be under the age of 18 years.

¹⁰ The *travaux préparatoires* are interpretative notes of official records during the Trafficking Protocol's negotiation.

The group decided to add new terms to the interpretation section as a matter of clarification. The first added key terms were exploitation, position of vulnerability, coercion and practices similar to slavery. Next, the group added the word “minister” (section 2(10)), defined as the government minister responsible for implementing the Act. By using this broad definition, the group believed States would be enabled to amend the legislation and corresponding sections according to the different ministry portfolios.

Finally, the group added the term “restitution,” defining it as compensation for the victim in the model legislation. (Section 7 of the model legislation and explanatory guidelines elaborates on restitution further.)

Though the definitions provided in the model legislation were derived from existing counter-trafficking legislation in the region (i.e. Belize, Guyana and Jamaica), States should ensure that these definitions correspond to the others already used in domestic legislation.

3. Object of the Act

The purposes of the Trafficking Protocol are stated in Article 6 as follows:

- to prevent and combat trafficking in persons, paying particular attention to women and children;
- to protect and assist victims of such trafficking, in full respect for their human rights; and
- to promote cooperation among State Parties in order to meet those objectives.

Discussion during the expert group sessions confirmed that legislation does not always include a section specifying objectives. The model legislation reflects the object of the Act as it appears in the Jamaican legislation, which is the only enacted Caribbean counter-trafficking legislation with such a section. This section specifies what the Act aims to achieve. Recognizing that States have their own unique way of writing legislation, it is not mandatory to include this section.

PART II- CRIMINAL OFFENCES AND RELATED PROVISIONS

Article 5 of the Trafficking Protocol gives State Parties a directive to criminalize human trafficking as follows:

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

necessary to establish as criminal offences:

- a. subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
- b. participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- c. organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

The Trafficking Protocol's *travaux préparatoires* explain that the "other measures" referred to in Article 5(1) are complementary to legislation and operate under the assumption that counter-trafficking legislation has been enacted.

With that in mind, the expert group decided that the counter-trafficking legislation enacted in Caribbean countries could serve as a framework for developing the offences section in the model legislation. The group agreed that the legal system, which varies across the region, determines whether the offender will be convicted summarily or upon indictment in domestic legislation.¹¹

Because human trafficking is a serious offence, the group thought the penalties attached should be proportionate to its severity. The model legislation does not aim to dictate specific penalties for the offences established under this Act. To respect State sovereignty, the model legislation recommends penalties that pertain to the offences, but also as they relate to the aggravated circumstances. (Section 9 addresses aggravated circumstances).

The group agreed that, when the model legislation is adapted into domestic legislation, the penalties under this Act should be harmonized with those for other serious offences, such as rape, sexual assault and abduction, to name a few.

4. Offence of trafficking in persons

The expert group agreed that the model legislation's offences section would be derived from Belizean legislation as it relates to trafficking in persons (adults) and trafficking in children.

Some members thought that the subsection in Belize's legislation regarding the offence of trafficking in children should be dealt with as an aggravated circumstance. After much discussion, the group agreed to leave the decision about where to include the subsection to each State. If States choose to criminalize child trafficking only as an aggravated circumstance, then the law should carefully define the concept of child trafficking so as to not diminish the criminal liability of this offence.

The Council of Europe Convention on Action against Trafficking in Human Beings (hereafter the *Council of Europe Convention*) stipulates in Article 23(1) that criminal penalties should be "effective, proportionate and dissuasive." Moreover, the *Council of*

¹¹ Summary conviction refers to the case being heard in front of a magistrate/single judge with limited powers in setting the penalty. Indictment refers to the case being heard in front of a jury. The latter often hears more serious offences and hands down more severe penalties.

Europe Convention instructs State Parties to prescribe prison sentences that can give rise to extradition.¹²

The expert group agreed not to cover extradition in the model legislation. Instead, the group suggested that States should adapt the bilateral or multilateral extradition agreements already available in the region to include the offence of trafficking in persons. For example, the *Caribbean Treaty on Mutual Legal Assistance in Criminal Matters* defines a serious crime as “an act or omission under the under the law of a State Party which constitutes a criminal offence punishable by at least 12 month imprisonment or more...”¹³ The *UN Model Treaty on Extradition* serves as another example by stating that an offence is extraditable if considered unlawful in both State Parties and is punishable with imprisonment of one/two year(s), or by a more severe penalty.¹⁴

The expert group was indecisive about the number of years that could be prescribed for the offence of trafficking in persons. Some group members suggested a minimum of five years with the possibility of a higher sentence for aggravated circumstances. Others suggested a maximum of ten years that includes the aggravated circumstances. As a result, the range of aggravated circumstances in section 9 of the model legislation adds anything from two to ten years to the existing sentence.

In addition to the group’s suggestions, the penalties outlined in the counter-trafficking legislation already enacted in the region serve as a guide. They are as follows:

- Belizean legislation states that a person will be liable on summary conviction to imprisonment of a minimum of one year and a maximum of five years or to a fine. The representative from Belize explained that, during a recent review of their country’s counter-trafficking legislation, these penalties were determined not severe enough to act as a deterrent.
- Guyanese legislation has two different approaches: one for summary convictions and another for convictions on indictment. On summary conviction, a person is liable to a minimum of three years and a maximum of five years imprisonment. On conviction on indictment, a person will be sentenced to a minimum of five years to a maximum of life imprisonment. It should be noted that the Guyanese legislation also includes aggravated circumstances, allowing adjustments to the sentence of a person convicted on indictment.
- Jamaican legislation declares that a person is liable on conviction on indictment to imprisonment for a maximum of 10 years and/or a fine.

The expert group also reviewed counter-trafficking legislation from outside the region. Examples include:

- *US Model Law* states that a person be sentenced to imprisonment for any number of years to life. The US Model Law, like the Guyanese legislation, also

12 The *Council of Europe Convention* entered into force on 5 February 2008.

13 Article 1, definitions, of the *Caribbean Treaty on Mutual Legal Assistance*. CARICOM heads of government signed this treaty in June 2005.

14 Article 2(1) of the *UN Model Treaty on Extradition*, <http://www.un.org/documents/ga/res/45/a45r116.htm>

includes aggravated circumstances that may increase the penalty.

- Sierra Leone's *Anti-Trafficking in Persons Act* stipulates that a person will be liable to imprisonment of not more than 10 years and/or a fine.
- Republic of Ireland's *Criminal Law (Human Trafficking) Bill* prescribes imprisonment of life or a lesser term on indictment.

Often human trafficking is part of a larger organized crime structure, whether it is transnational in nature or not. Moreover, the organized criminal groups committing transnational crimes, like the trafficking of drugs or guns and money laundering, are often involved in the trafficking and smuggling of human beings. According to the UNODC *Legislative Guide for the United Nations Convention against Transnational Organized Crime* (hereafter the *Organized Crime Convention*), States should decide the penalties for a serious crime.¹⁵ At the same time, this Legislative Guide recommends that, when applying the *Organized Crime Convention* to such offences, a maximum penalty of at least four years imprisonment should be prescribed.¹⁶

On a final note regarding penalties or restrictions imposed on traffickers, it is important to keep in mind that trafficking operations generate substantial profits. As emphasized in the UNODC's Legislative Guide, traffickers can access large amounts of money and resources to, for example, post bail to avoid detention before trial or even to pay a fine if that was the only penalty.¹⁷ Article 11(3) of the *Organized Crime Convention* points to the conditions of release before trial and on appeal and requires States to take appropriate measures to ensure that the defendants do not abscond.¹⁸

5. Offence of unlawful withholding of identification papers

States are required to criminalize the offence of trafficking in persons to cover the full range of conduct defined in the Trafficking Protocol. However, many countries, including those that have counter-trafficking legislation in the Caribbean, have adopted a broader approach to also criminalize other activities associated with trafficking in persons. One such related offence is the unlawful withholding of identification papers.

The expert group agreed that this section should be included in the model legislation, pointing out that the withholding of travel and identification papers is often used by traffickers to control and coerce their victims. However, the group deliberated the phrase "for the purposes of trafficking in persons."

The legislation of Belize does not contain this phrase. In the Belizean context, it was explained, the phrase was deliberately left out to deter any person who is thinking about withholding or keeping another person's identification documents. The legislation from Guyana and Jamaica explicitly include this phrase, stating that the withholding of identification documents is directly related to the crime of trafficking in persons. The group agreed to use the provision from the Guyanese legislation, but made the phrase "for the purpose of trafficking in persons" optional.

15 UNODC, *Legislative Guide for the United Nations Convention against Transnational Organized Crime*, 2004, p. 133.

16 *Ibid.*, p. 133.

17 *Ibid.*, p. 134.

18 *Ibid.*, p. 134.

When developing penalties, legal drafters can refer to the existing counter-trafficking legislation in the Caribbean. Examples include:

- Belizean legislation which stipulates that a person will be liable on summary conviction to a fine and/or imprisonment of a period between six months and one year.
- Guyanese legislation which prescribes a summary conviction of imprisonment, up to a maximum of five years and a fine.
- Jamaican legislation states that a person on conviction on indictment will be imprisoned for a term not longer than ten years and/or a fine.

Outside of the region, the US Model Law offers another example stipulating that a person will be liable to a fine and imprisonment of not more than five years.

6. Offence of transporting a person for the purpose of exploiting such a person's prostitution

The expert group agreed that this section should be included in the model legislation as reflected in both the Belizean and Guyanese legislation. The group, however, suggested that States might want to consider including this offence under the aggravated circumstances instead.

It is important to note that the circumstances set out in section 6(2)(a) – (d) of the model legislation refer to the victim(s) being transported for the purposes of prostitution.

For penalties, the counter-trafficking legislation already enacted in the Caribbean can serve as a guide. Belizean legislation states that a person will be liable on summary conviction to imprisonment of a minimum of three years, but under certain conditions the sentence may be extended to eight years. Subsequently, section 6(2) of the model legislation contains these conditions.

Guyanese legislation states that a person is liable on summary conviction to a fine and imprisonment of a minimum of three years. When any of the circumstances stipulated in the model legislation's section 6(2) are present, a longer sentence of up to five years is permissible.

Outside of the region, the US Model Law confirms that a person is liable to imprisonment of not more than 10 years, but in the presence of any of the circumstances set out in model legislation's section 6(2), a maximum of up to 20 years can be permitted.

7. Restitution

The Trafficking Protocol states in Article 6(6) that "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 damages suffered."

The expert group agreed that, in order to include this section in the model legislation, a combination of the legislation from Belize, Guyana and Jamaica should be used. In this

context, restitution refers to compensation to the victim for damages suffered during the trafficking process. The group agreed that compensation to the victim is up to the State's discretion. However, compensation should be paid as far as possible from the proceeds of the trafficker's forfeited property, as explicitly set forth in Jamaica's legislation.

According to the *UN Recommended Principles and Guidelines*, Guideline 9 recommends victims of trafficking to have access to remedies, including compensation, for trafficking and related exploitation.¹⁹ These remedies may be criminal, civil or administrative. Narrowing the focus further, the Caribbean model legislation specifically refers to criminal remedies whereby the traffickers are ordered to pay restitution to the victim.

In other situations, if they received the appropriate legal guidance, victims of trafficking can pursue civil proceedings against the trafficker to receive compensation.

8. Forfeiture

The Trafficking Protocol does not have specific provisions addressing the confiscation or forfeiture of assets. The *Organized Crime Convention's* Articles 12 through 14 do address confiscation and seizure, international cooperation for the purposes of confiscation and disposal of confiscated proceeds or property of crime. Specifically, the *Organized Crime Convention* establishes clear conditions and procedures for confiscation as well as procedures for international cooperation where proceeds or property of crime is in a different State. Article 14 of the Convention refers to the disposal of confiscated property and proceeds in accordance with domestic law.

The expert group agreed on the importance of including forfeiture in the model legislation. There was consensus that the Guyanese legislation would serve as the basis for such a section. Moreover, it was noted that forfeiture has two purposes in the model legislation. The first purpose is to take away the proceeds of crime, while the second is for compensating the victim as set out in section 7 of the model legislation.

The expert group concluded that within States' domestic legislation, there probably are provisions for forfeiture relating to other crimes, like money laundering and drug or firearm trafficking. As such, it is important that those sections and laws are amended to include forfeiture for the trafficking of persons.

The group was concerned about the potential situation where there might be nothing for the trafficker to forfeit and thus nothing to offer for victim compensation. The Trafficking Protocol does not help to address this concern because it only refers to the possibility of compensation for the victims with such compensation being at the State's discretion. The *UN Recommended Principles and Guidelines*, in contrast, do offer a possible solution because it states that "trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies... including compensation, for trafficking and related exploitation."²⁰ Consequently, the expert group decided that section 7(3)(ii) of the model legislation would read

¹⁹ United Nations Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, p. 18-19.

²⁰ *Ibid.*, p. 18-19.

as follows: “restitution shall be paid *as far as possible*” from the property or proceeds forfeited by the traffickers.

9. Aggravated circumstances

The Trafficking Protocol does not make any specific provision for aggravated circumstances or sentencing guidelines. The more recent *Council of Europe Convention*, however, recognizes the need for countries to include aggravated circumstances in the determination of penalties related to trafficking in persons.²¹

The expert group affirmed the importance of guidelines for sentencing and aggravated circumstances because human trafficking is a relatively new area of law for the Caribbean. Because it would be problematic to prescribe specific penalties to the judiciary, the group decided that aggravated circumstances could be used as a benchmark in the sentencing phase. Therefore, this section in the model legislation allows the State discretion and enables it to choose whether to include aggravated circumstances in domestic legislation.

Guyana is the only Caribbean country that prescribes sentencing guidelines for aggravated circumstances in its counter-trafficking legislation. The Guyanese legislation states in section 8(1) that “...the following adjustments to the sentence of a person convicted on indictment of...” and then refers to the aggravated circumstances that will lead to a number of years being added to this sentence. In other words, according to Guyana’s law, if a person were convicted for trafficking in persons on indictment and sentenced for a period of between five years and life, the aggravated circumstances should be examined and a specified number of years should be added to the original sentence.

Similarly, the US Model Law states in section 205(a) states that “...the following adjustments to the minimum sentence, or enhancement of the sentence of a person convicted of...” For this law, then, each of the aggravated circumstances clearly states the number of years that should be added to the minimum sentence. The minimum sentence under the US Model Law is “any term.” Thus, “any term,” plus the specified number of years for the aggravated circumstances, would constitute the final sentence.

With the group’s approval, these two examples from Guyana and US law serve as the basis for the penalties in the model legislation’s section 9.

In the implementation of this section, it is recommended that States consider an aggravated circumstance as it relates to State or State actors’ involvement in trafficking in persons. The *Council of Europe Convention* recognizes the involvement of corrupt officials in the process of human trafficking and recommends in Article 24(c) that offences committed by a public official in the performances of her/his duties should be included as an aggravated circumstance.

²¹ Article 24 of the *Council of Europe Convention*.

10. Consent or past sexual behaviour of a victim is irrelevant

The Trafficking Protocol states very clearly in Article 3(b) that “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 for in subparagraph (a) have been used.” Simply, adult victims of trafficking might “agree” to accompany a trafficker under the impression that they will participate in a given activity, but their agreement is voided when traffickers have used the means of force, fraud or coercion, etc., articulated in Article 3 (a). This provision is also in Belizean, Guyanese and Jamaican legislation.

Although the Trafficking Protocol does not explicitly address the irrelevance of a victim’s past sexual behaviour, many States have incorporated this normative principle in legislation that deals with sexual assault, abuse and rape. CARICOM’s Model Law on Sexual Offences, which has been adopted by The Bahamas, contains similar language in section 23: “no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant.” Section 30(1) of Trinidad and Tobago’s Sexual Offences Act states that “In the proceedings in respect of an offence under this Act no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless the Court on an application made by or on behalf of the accused, in absence of the jury, thinks such evidence necessary for the fair trial of the accused.” Furthermore, Section 30(2) of Trinidad and Tobago’s Sexual Offences Act states that “save as provided in subsection (1), no evidence of sexual reputation is admissible for the purpose of challenging or supporting the credibility of the complainant.” Some countries, including Jamaica, have taken the precaution of adding this principle in the counter-trafficking law. Outside of the Caribbean, the US Model Law also has such a provision.

The expert group supported having the provision regarding the victim’s consent or past sexual behaviour in the model legislation as well. As such, the provision in model legislation is derived from Belizean and Guyanese legislation.

11. Legal age of consent to sex not a defence to trafficking in persons

The Trafficking Protocol states in Article 3(c) that “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.” The Protocol further defines a child as any person under 18 years of age. It is thus clear that the trafficking of children for the purpose of sexual exploitation is considered a criminal offence, regardless of the age of consent to sex. In other words, the fact that a person is legally old enough to agree to participate in sexual activity according to local laws does not constitute consent to being trafficked according to the Trafficking Protocol.²²

²² In some Caribbean countries, for example The Bahamas, Guyana, Jamaica and St. Lucia, the legal age of consent is 16 years.

Upholding this standard, the expert group agreed to include this section in the model legislation with the laws of Belize and Guyana as the basis.

12. Victim to be immune from prosecution

The Trafficking Protocol does not specifically contain a provision that creates the immunity from prosecution for a victim of trafficking. Yet, both the *UN Recommended Principles and Guidelines* and the *Council of Europe Convention* include a principle that victims of trafficking should be immune from prosecution for offences committed under compulsion.²³ Moreover, the counter-trafficking laws of Belize, Guyana and Jamaica allow the victim to be immune from prosecution for crimes committed as a direct result of the trafficking experience.

Immunity Principle – Best Practice

IOM strongly supports upholding the principle of immunity as best practice in helping victims of trafficking. Victims should be immune from prosecution of all crimes committed as a direct result of the trafficking experience because the “means” used to traffic a person and the exploitation a victim suffers automatically violates the individual’s human rights. Furthermore, traffickers frequently use control tactics – like threatening to report crimes committed by victims (i.e. immigration violations, prostitution or other illegal activities) to the local authorities – to deliberately scare victims into silence and submission. IOM recommends that countries do not prosecute victims of trafficking if they were forced to participate in unlawful activities as a direct result of the trafficking process.

The expert group, however, was concerned about the implication of such a provision. Some of their concerns focused on how an immunity provision could be abused or manipulated. Examples cited include a situation whereby persons who entered a country illegally and contravened immigration laws can potentially claim to be a victim of trafficking in order to escape penalty. Additionally, there was concern about defining from which crimes the victim would be immune, such as murder, and how far that immunity should reach if the provision were included. It was also noted that ascertaining what offences were a direct result of trafficking may be difficult, necessitating some kind of a preliminary determination to decide whether to charge the victim. It was further observed that then the Court too would be faced with determining whether or not such an offence was properly made out or whether the victim should not have been brought before the court.

Another topic of debate pertained to the phrase “and any other offences” stipulated in the Jamaican and Guyanese legislation. This broad definition surpasses offences

²³ The *Council of Europe Convention* enshrines the immunity principle in Article 26, by stipulating that “each State Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for the involvement in unlawful activities, to the extent that they have been compelled to do so.” Guideline 4 of the *UN Recommended Principles and Guidelines* declares that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry 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.”

related to immigration and could be construed to cover other crimes committed by the victim (such as murder) while in the trafficked State. The group thought that a provision containing this phrase could be problematic and, therefore, should be discretionary in order for countries to decide whether and which components to include in domestic legislation.

The outcome of the group's debate was to include the immunity provision, with the phrase "and any other offences" as optional.

13. Offences of bodies corporate

The Trafficking Protocol stipulates in Article 5(2)(c) that "State Parties shall adopt legislative and other measures as may be necessary to establish as criminal offences: [...] Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article." The *Council of Europe Convention* goes further in Article 22 by requiring State Parties to ensure that corporate liability exists for all offences established under the Convention.

The Jamaican legislation is the only counter-trafficking law in the Caribbean addressing bodies corporate. The suggested penalty attached to the Jamaican legislation is conviction on indictment for every director, manager, secretary, etc., to a fine or imprisonment of a maximum of 10 years. The liability for a body corporate is a fine upon conviction on indictment.

The expert group agreed to include this offence in the model legislation, using the provision from Jamaica's legislation. Some group members suggested that this section could be useful to apprehend employment agencies that knowingly place persons in a trafficked situation.

14. Receiving financial or other benefit knowing that it is as a result of trafficking in persons

The Trafficking Protocol states in Article 9(5) that "State 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."

The legislation for Jamaica was the only counter-trafficking law enacted in the Caribbean that reflected this provision.

The expert group agreed that a person who knowingly receives benefits (financial or otherwise) through the trafficking of persons supports the crime's perpetration and should be dealt with accordingly. The group noted that demand for services might be lowered by attaching a penalty for those individuals who benefit from the services trafficked persons provide. It was agreed to use the Jamaican provision in the model legislation.

Article 19 of the *Council of Europe Convention* also adheres to this principle, but acknowledges that proving “knowingly” might be difficult and thus does not make the provision mandatory. Departing slightly from this perspective, the *UN Recommended Guidelines and Principles* goes further by declaring that the demand is a root cause and prevention measures should be pursued.²⁴

15. Entry, search and seizure

Although it is not addressed in the Trafficking Protocol, the expert group agreed to include in the model legislation a section on “entry, search and seizure” as it appears in Jamaican law. However, the group cautioned that these provisions might already exist in a State’s domestic legislation. If so, this provision as contained in the model legislation must be in accordance to existing laws or the relevant provisions should be amended to include the offence of trafficking in persons. Other pieces of legislation should be amended to reflect the offence of trafficking in persons, including for example legislation that focuses on criminal proceeds or money laundering.

16. Offence of threatening, obstructing, etc., a constable

While the Trafficking Protocol does not refer to this kind of an offence, the expert group decided to incorporate it because officers of the law should be able to perform their duties without interference from any person or outside agency. Under Jamaican law, a person is liable on summary conviction to a fine and/or to imprisonment of not more than six months. The group thought that the penalty should be increased for the purpose of the model legislation.

The *UN Transnational Organized Crime Convention* can be a helpful resource for drafters. Article 23 of the Convention has a provision that focuses on the obstruction of justice, encouraging States to adopt legislative and other measures to criminalize the offence when committed intentionally. This Convention’s provision seems to have a broader spectrum than the section in the model legislation because it pertains not only to interfering with a law enforcement officer, but also to interfering with testimony and evidence.

17. Jurisdiction

Neither the Trafficking Protocol nor the other counter-trafficking legislations enacted in the Caribbean address jurisdiction. Despite this absence, the expert group decided to include in the model legislation a provision on jurisdiction, using Sierra Leone’s law as the basis.

²⁴ Prevention of trafficking in persons is one component of a comprehensive counter-trafficking approach. Refer to this booklet’s introduction for more information on prevention, protection and prosecution as it pertains to human trafficking.

The *Organized Crime Convention* requires State Parties to establish jurisdiction over the offences stated in the Convention and its Protocols. Article 15(1)(a) and (b) refers to territorial jurisdiction by the State Party, including its marine vessels and aircraft. These are considered mandatory obligations. Article 15(2)(b) of the *Organized Crime Convention* refers to the nationality principle, where the offence is committed by a national of the State Party in another territory. These two principles are reflected in the model legislation.

One important element that is included in both the *Organized Crime Convention* (Article 2(a)) and the *Council of Europe Convention* (Article 31(1)(e)) refers to the implementation of legislative and other measures when the offence of trafficking in persons is committed against one of a Parties' nationals. In other words, under the passive personality principle, [Country X] can initiate legal proceedings if an offence of trafficking in persons was committed against one of its nationals while that national was in another country.

Cooperation and Jurisdiction

In the case of trafficking in human beings, it will sometimes happen that more than one Party has jurisdiction over some or all of the participants in an offence. For example, a victim may be recruited in one country, then transported and harboured for exploitation in another. In order to avoid duplication of effort, unnecessary inconvenience to witnesses and competition between law enforcement officers of the countries concerned, or to otherwise facilitate the efficiency or fairness of proceedings, the affected Parties are required to consult in order to determine the proper venue for prosecution. In some cases it will be most effective for them to choose a single venue for prosecution; in others it may be best for one country to prosecute some participants, while one or more other countries prosecute others.

*Excerpt from the Explanatory Report for the Council of Europe Convention*²⁵

PART III - ASSISTANCE AND PROTECTION OF VICTIMS OF TRAFFICKING

The Trafficking Protocol refers to the protection of victims in Part II, including the assistance to victims in Article 6, the status of victims in receiving States in Article 7 and the repatriation of victims in Article 8.

The topic of assistance to and protection of victims of trafficking generated robust discussion amongst the members of the expert group. One contending view was that States have a duty to protect and assist victims, therefore these provisions should be mandatory. The contrasting view held that Caribbean nations are small and have

²⁵ Council of Europe Convention, *Explanatory Report – Action against Trafficking in Human Beings*, 16.V, 2005, p. 72.

limited resources, thus the provisions should be discretionary. Additional conversation explored the nuance of phrases, e.g. endeavor to provide, obligation to consider, to the extent reasonable or to the extent practical as contained in the material examined. The group concluded that States have an obligation to consider assistance measures but not an obligation to make it contingent on available resources and services. Child victims of trafficking, the group agreed, should receive services at all times irrespective of the child's nationality.

When assisting and protecting victims of trafficking, IOM advocates an approach that is victim-centered, gender-balanced and fosters collaboration and partnership.

IOM's Recommend Principles for a Victim-Centered Approach:

- Respect for human rights
- Protection and safety
- Self-determination and participation; voluntariness
- Informed consent (for assistance, medical tests, interviews, etc.)
- Non-discriminatory practices
- Confidentiality and right to privacy
- Individualized treatment and care
- Best interests of the child

According to international standards, all trafficked persons have the right to:²⁶

- Be respected in their dignity
- Physical safety and protection
- Protection of privacy and identity
- Safe and adequate shelter
- Physical and psychological health care and support
- Legal assistance
- Legislative protection: temporary regularization of immigration status
- Access to diplomatic and consular representatives
- Education, training and employment

Additional reference on State Parties obligations to incorporate assistance and protection measures for victims of trafficking can be found in the UNODC Legislative Guide to the Trafficking Protocol.²⁶ The Trafficking Protocol also strongly recommends in Article 6(3) that “each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons to the extent possible within resource and other constraints.” The *UN Recommended*

²⁶ UNODC, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention on Transnational Organized Crime*, 2004, p. 282-283.

Guidelines and Principles reinforce this point by stating that “the trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.”²⁷

18. Protection for the safety of victims, including identification of victims

Article 6(5) of the Trafficking Protocol states that “each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.” While States are encouraged under this provision to “endeavour to provide” protection, the provision relating to the assistance and protection of victims under the *Organized Crime Convention* states that “each State Party shall take appropriate measures within its means to provide assistance and protection to victims[...], in particular in cases of threat or retaliation or intimidation.”²⁹

The expert group agreed that victims of trafficking should be protected. It was further agreed that States have a responsibility to identify victims of trafficking. The provision in the model legislation, therefore, should indicate that this action is mandatory, similar to Guyana’s law which includes the words “shall take all steps necessary to identify” or Jamaica’s law that uses the phrase “shall take all reasonable steps.” Consequently, the model legislation derives the words from the Belizean and Guyanese legislation.

Identifying Victims of Trafficking – Best Practice

It is important to screen for, identify and assist victims of trafficking. Some key reasons include:

- To avoid mistaking victims as irregular migrants and detaining or summarily deporting.
- To assist victims who are likely to have immediate and acute physical, sexual and psychological health needs.
- To protect victims from additional harm, such as that from criminals who may attempt to infiltrate support and assistance programmes to locate an escaped victim or stop the victim from testifying.

19. Witness protection

The Organized Crime Convention, which should be read in conjunction with the Trafficking Protocol, states in Article 24(1) that “each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give evidence concerning

²⁷ Guideline 6 of the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, p. 14.

²⁸ International standards are informed by, for example, the *Universal Declaration of Human Rights*, the *Trafficking Protocol*, conventions such as *Council of Europe Convention*, *Slavery*, and *Rights of the Child*, as well as the UN-OHCHR’s *Recommended Principles and Guidelines on Human Rights and Human Trafficking* and the World Health Organization’s *Ethical and Safety Considerations for Interviewing Trafficking Women*. See the bibliography for a longer list of key documents that help to shape international standards.

²⁹ Article 25(1) of the *UN Convention against Transnational Organized Crime*.

offences covered by this Convention and as appropriate, for their relatives and other persons close to them.”

If a witness protection programme successfully exists within a particular country, victims of trafficking can benefit from it, but it is not a requirement under the Trafficking Protocol. The expert group acknowledged that witness protection is a costly enterprise and many of the Caribbean nations often lack financial or human resources, and can be constrained by geographical and societal practicalities, to sustain an effective witness protection programme.³⁰ As such, the group agreed to have the model legislation incorporate the witness protection section as described in the Guyanese legislation.

Although this provision of the model legislation is discretionary, witnesses and their families should be provided with some form of protection to ensure their safety before, during and after criminal proceedings. Witness protection forms part of a comprehensive protection regime for victims of trafficking. It is particularly useful in cases where victims and their families’ lives are severely endangered through their participation in court proceedings against the trafficker.

³⁰ Practicalities include not much habitable land mass or small populations/communities that make anonymity or resumption of a normal lifestyle impossible.

Judicial Witness Protection - Best Practice

Most criminal justice systems make varying provisions for confidentiality and legal protection while victim-witnesses are cooperating with the investigation and giving evidence. They are quite complex and differ depending on the country, but the following issues are of relevance to the victim:

- Legal facility to open a criminal case with confidentiality guaranteed, such as the legal provision to act as an anonymous witness or under a pseudonym, or to withhold the victim identity from the trafficker and his legal team.
- Legal facility either to take the victim's deposition under a pseudonym or to withhold her or his identity from the trafficker and his legal team. (It is critical to emphasize that even with the use of a pseudonym and or the withholding of the real name from the deposition documents, the specific detail required to be included in the deposition will almost certainly enable the trafficker to deduce the source of the evidence, and the victim must be made aware of this fact.)
- Legal facility to exempt the victim from having to undergo a direct face to face investigative confrontation with the trafficker.
- Legal and practical facility to enable the victim to identify the traffickers from behind a one-way viewing screen.
- Legal facility to prevent any media reporting of the victim's identity.
- To give live testimony at either the preliminary hearing or the full trial by means of a video or audio link, from behind a screen, or in the absence of the trafficker (but not of his lawyer), or to be exempted from giving evidence at the full trial, with reliance being placed on the preliminary hearing testimony.
- Legal and practical facility to support the victim during the procedural phases by permitting the presence of an independent counsellor at every phase, and by the provision of escorts to, during and from each of the procedural stages.
- Agreement on the part of the police and prosecution that the victim will not be legally compelled to testify if any of the above judicial protection measures are compromised during the criminal proceedings, e.g. if the trial judge orders the disclosure of identity or orders the victim-witness to testify in the presence of the trafficker without the benefit of a screen.

Excerpt from the IOM Handbook on Direct Assistance for Victims of Trafficking³¹

20. Protection of the privacy of victims, including proceedings held in camera

The Trafficking Protocol states in Article 6(1) that each "State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia by making

³¹ IOM, *The IOM Handbook for Direct Assistance for Victims of Trafficking*, 2007 p. 284-285. <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674;jsessionid=3E7A9008B65820A921B14F489DF9045F.worker01?entryId=13452>

the legal proceedings relating to such trafficking confidential.”

The expert group agreed that victims of trafficking must be protected. This protection needs to focus on the victim’s privacy as well as physical security during shelter care and during their participation in criminal proceedings against the trafficker. The group decided to use a combination of Guyanese and Jamaican legislation to give effect to the Protocol’s protection provisions in the model legislation.

21. Information for victims

Article 6(2)(a) of the Trafficking Protocol states that “each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking, in appropriate cases, information on relevant court and administrative proceedings.”

The expert group observed that, under Belizean and Guyanese legislation, specific government agencies have a responsibility to provide information to the victim of trafficking. Apart from this provision being reflected in domestic legislation, the obligation can be attained through administrative measures whereby victims should be provided with information.

22. Opportunity for the presentation of the victim’s views and concerns

Article 6(2)(b) of the Trafficking Protocol states that “victims of trafficking, in appropriate cases, shall receive 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.”

Like in section 21 of the model legislation, the obligation to allow the views and concerns of the victims to be presented, can be implemented through administrative measures. Guyanese legislation contains a specific section that gives effect to this obligation and has been reflected in the model legislation as such.

The UNODC Legislative Guide for the Implementation of the Trafficking Protocol explains that judges can deny participation of the victim in criminal proceedings if it is prejudicial to the rights of the defence.³² The Legislative Guide suggests that one measure to overcome this conflict of interest is to allow a victim statement that highlights the impact of the offence on the victim.³³ This statement can then be presented to the court after a conviction is secured; it can also be a guide to the court during sentence consideration.³⁴

32 UNODC, *Legislative Guide for the Implementation of the Protocol to Suppress, Punish and Prevent Trafficking in Persons, especially Women and Children*, 2004, p. 284.

33 *Ibid.*, p. 284.

34 *Ibid.*, p. 284.

23. Assistance to victims

The Trafficking Protocol in Article 6(3) instructs State Parties to consider implementing measures that provide assistance to victims and aid their recovery. This provision is not mandatory because State Parties only need to “consider to provide” for assistance and recovery of victims. Basic assistance measures States should endeavor to include are housing, counseling, medical assistance, employment, as well as educational and vocational training.

The expert group agreed that general assistance measures for victims of trafficking, though discretionary in nature, should be in line with international obligations under the Trafficking Protocol. The group referred to the existing counter-trafficking legislation in the Caribbean that reflects this discretionary nature of the provision. For example, Guyanese legislation states that the government “shall develop plans,” while Jamaican legislation uses the phrasing “shall take appropriate steps where practicable.” The group recognized that the cost of implementing all of these assistance measures might be too high, particularly for the region’s economically smaller nations. In addition to the basic measures suggested in the Trafficking Protocol, the group decided to include legal assistance.

The *travaux préparatoires* of the Trafficking Protocol indicate that assistance measures apply to both countries of destination and origin, but only for as long as the victims are in their respective territories.

The *IOM Handbook on Direct Assistance for Victims of Trafficking* (hereafter the IOM Handbook) refers to the basic principles for protection and direct assistance. Though the IOM Handbook was specifically developed to share IOM’s best practices with a growing number of agencies and organizations that provide assistance to victims of trafficking, States can glean relevant and practical information from IOM’s experiences. Appendix A of this booklet explains the basic principles of victim protection and assistance.

24. Immigration status of victims

Article 7 of the Trafficking Protocol stipulates that 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. Each State Party shall give appropriate consideration to humanitarian and compassionate factors.”

The expert group agreed that victims of trafficking should not be deported and that their stay in the country of destination should be regularized in some way. Belizean, Guyanese and Jamaican legislation included sections on the immigration status of victims of trafficking, indicating that they should be provided with a permit or visa to allow them to stay in the territory for the duration of criminal proceedings against the trafficker(s). All three laws instruct that the permits or visas be contingent on the victim’s willingness to comply with reasonable requests for assistance, such as cooperating with law enforcement. One of the major concerns raised by the group

was that the judicial system in some of the countries is backlogged and it could be a few years before a case is finalized. This raised questions on whether it would be humane to revoke a person's status at the end of the proceedings after such an extended period of time.

Legal Status & Informing Victims – Best Practice

In countries where there is a mechanism for issuing permanent or temporary residence permits (or a temporary or humanitarian visa), victims of trafficking should receive information about the relevant procedures and next steps. Based on the victim's personal circumstances (e.g. qualifying for a visa due to participation in legal proceedings against the traffickers or some other relevant status) and service delivery organization's prior administrative experience (how long it usually takes to process the paperwork and receive a decision, the likely success etc.), the interviewer should assess the necessary steps required and the estimated length of time it will take to complete the process. Victims should be clearly informed about the process and about the average length of time it takes. They should also be informed about anything which could potentially speed up or delay the process so they are prepared and the potential for upsetting surprises is minimized.

Excerpt from IOM's Handbook on Direct Assistance for Victims of Trafficking³⁵

Fear of Persecution

Article 14 of the Trafficking Protocol acknowledges that some victims of trafficking are unable to return to their countries of origin due to fear of persecution by the traffickers. The *UN Recommended Principles and Guidelines* elaborates further that "trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or the safety of their families."³⁶ Similarly, the model legislation includes such a discretionary provision in section 24(2) and 24(3).

For circumstances when the victim cannot return to the home community because of fear of persecution, IOM recommends exploring other options such as providing a visa for stay in the destination country or identifying a third country that grants legal status for long term stay.

Appendix B provides more information on victims of trafficking in transit and destination countries that are seeking asylum.

25. Assistance for citizen/permanent resident victims abroad

The Trafficking Protocol in Article 8(1) states that the "State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent

³⁵ IOM, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 68.

³⁶ Guideline 11 of the *UN Recommended Principles and Guidelines*, p. 20-22.

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.”

The expert group thought that States have a responsibility to develop plans to assist their nationals who are identified as victims of trafficking in other countries. As such, the group recognized that this provision under the Trafficking Protocol is mandatory. The model legislation derives this provision from the Guyanese legislation. In addition to spelling out the obligation to facilitate and accept victims of trafficking, the model legislation refers to some practical arrangements that could aid this process. States should use their discretion when adopting this section, keeping in mind the international obligation and what kind of assistance can be provided reasonably considering the domestic situation.

26. Verification of nationality/age of victims

Article 8(3) of the Trafficking Protocol states that “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 has the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.”

This provision of the Trafficking Protocol is a minimum requirement. The expert group decided to use the provision from Belizean and Guyanese law in the model legislation to give effect to this obligation. Section 26(4) of the model legislation refers to the designation of a specific person to deal with such requests. The appointment of such a person is in essence a policy issue and States should use their discretion on whether to do the same.

27. Return of victims to the country of citizenship or lawful residence

Article 8(2) of the Trafficking Protocol states that 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.”

The expert group agreed that victims of trafficking should not be deported. However, the group did raise some concerns about the cost of repatriation and whether

countries would be able to absorb such costs. The outcome of this discussion was to use the section from Belize’s law in the model legislation.

Voluntary Return – Best Practice

The return of trafficked persons aims to ensure the safe and secure voluntary travel and/or transfer of the victim from the destination place to the home community. A victim should never be forced to return to the place of origin. To respect the rights of trafficked persons, civil society organizations and governments (including law enforcement) must ensure a victim’s return is voluntary and based on the victim’s informed consent. Where repatriation poses a serious risk to the victim’s safety, alternative options, such as residency in the country of destination or resettlement to a third country should be considered.

When returning a victim, security and safety are among the highest of concerns. The victim should be assisted throughout the entire process; those responsible returning the victim need to explore and weigh all risks related to travel and means of transport carefully.

Excerpt from the IOM Counter-Trafficking Training Modules, Direct Assistance³⁷

28. Assistance to victims that are unable to prove their nationality status through normal means

The Trafficking Protocol states in Article 8(4) that “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.”

This provision is a minimum protection requirement stipulated by the Trafficking Protocol. The expert group observed that most States have some measures in place to assist with verifying the nationality of their citizens. The factors listed in the model legislation’s section 28 (i-iv) could be applied to such existing law or policy. The decision was to use the Guyanese legislation to give effect to this obligatory provision in the Trafficking Protocol.

29. Services for returned victims of trafficking

Article 6(3) of the Trafficking Protocol enumerates assistance measures States should consider implementing to help victims of trafficking recover. The *travaux préparatoires* of the Trafficking Protocol explains that these assistance measures apply equally to

³⁷ IOM Counter-Trafficking Training Modules, Direct Assistance, p. 22-23 of the participant workbook.

countries of destination and countries of origin. In other words, destination countries should provide assistance to victims until the person returns to his or her country of origin. Thereafter, the country of origin should provide assistance and reintegration. Additionally, IOM recommends that these services are made available to all victims of trafficking, including those who have been trafficked internally.

The expert group agreed with this notion in the Trafficking Protocol. As such, the model legislation reflects this section as it appears in the Guyanese legislation.

While the model legislation focuses on returned victims of trafficking having access to education and training programmes, IOM recognizes that the reintegration of victims is a long-term and multifaceted process that aims to enable the individual to resume life as an active member of the social, economic, civil, political and cultural aspects of a society. Successful reintegration should also diminish the vulnerability for re-trafficking and re-victimization.

Reintegration Services for Victims – Best Practice

Reintegration services for victims of trafficking may vary from country to country, and are often linked to the availability of programmes and funds. Some types of reintegration assistance include:

- medical/health care services (including counselling);
- financial assistance;
- legal assistance;
- access to education;
- vocational training;
- micro-enterprise and income generating activities;
- job placement, wage subsidies, apprenticeship programmes; and
- housing and accommodation.

When creating a reintegration package for a victim, it is important to assess the wants and needs of the individual along with the actual situation in the country/ community of return. The options available to the individual may be limited. For instance, certain types of medical services or educational opportunities may not be accessible in the particular region of origin or cannot be provided because of a lack of the necessary funds. Likewise, the relevance of the proposed assistance needs to be considered. For example, vocational training as an accountant would be misplaced if there is unemployment among accountants or if accounting is not a typical feature in the victim's region.

*Excerpt from the IOM Counter-Trafficking Training Modules, Direct Assistance*³⁸

30. Special consideration to be given to child victims

Article 6(4) of the Trafficking Protocol states that “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.”

The expert group confirmed that child victims of trafficking should receive services irrespective of whether they are foreign nationals. There was agreement that services and assistance should be in the best interest of the child and should be brought in line with existing child protection legislation, policy and procedures in each country. The Guyanese legislation, therefore, is the basis for this provision in the model legislation.

In addition to the Trafficking Protocol, there are several other international instruments from inter-governmental organizations addressing the protection of child victims of trafficking.³⁹

Perhaps one of the most widely ratified is the *UN Convention on the Rights of the Child (CRC)* which stipulates the legal obligations of governments towards children. In particular, Article 35 of the CRC addresses trafficking and obligates State Parties to take all “appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form.”⁴⁰

In Annex II of the CRC’s *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, State Parties are expected to undertake efforts to eliminate the sale of children as well as the use of children in prostitution and pornography. The Optional Protocol encourages State Parties, in Article 3, to include the specific acts involved in the sale of children, child prostitution and pornography in domestic criminal legislation, specifically referring to the fact that some of these acts could be performed in other countries.

According to IOM’s victim-centered approach, the best interest of the child is paramount and should guide all actions concerning the protection of child victims of trafficking. This principle should strongly inform all relevant authorities – especially law enforcement, judicial officials and public and private social welfare institutions – who decide and apply procedures when working to protect trafficked children.⁴¹ IOM’s general principles of protection relating to child victims of trafficking are in Appendix C.

³⁹ First example, the *ILO Convention on the Elimination of the Worst Forms of Child Labour* No. 182 identifies trafficking for sexual and labour exploitation as a worst form of child labour and requires State Parties to conduct programmes of action and monitor the implementation of related provisions. Second example, the United Nations Children’s Fund (UNICEF) *Guidelines on the Protection of Child Victims of Trafficking* offers governments, state actors, and NGOs benchmarks for developing and implementing policy and programmes to identify, assist and integrate child victims of trafficking. Third example, Article 1 of the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption* refers to the need for cooperation to ensure that those safeguards are respected and thereby prevent the abduction, the sale of or traffic of children.

⁴⁰ Article 35 of the *UN Convention on the Rights of the Child*, UN Doc A/44/49 (1989). Additionally, Article 32 of the CRC urges State Parties to protect children from ‘economic exploitation and performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.’ Article 34, meanwhile, refers to the child’s right to be protected from all forms of sexual exploitation and sexual abuse.

⁴¹ *IOM Counter-Trafficking Training Modules, Children*, p. 30 of the participant workbook.

PART IV - MISUSE OF [COMMERCIAL] TRANSPORTATION

31. Responsibilities of [international commercial] transportation companies [or individuals]

Article 11 of the Trafficking Protocol refers to the potential use of commercial carriers by traffickers in order to transport their victims, under the broader section of “border measures.” Enumerating six points, the provision’s purpose is to make commercial carriers accountable if they knowingly transport victims of trafficking. Some expert group members thought that the offence of trafficking in persons already covered the misuse of commercial transportation, while others noted that immigration authorities already hold airlines responsible for the transportation of passengers who lack required documents. It was suggested that this provision serves as a preventative measure by educating transport carriers on the risks of their enterprises being used to facilitate trafficking in persons. As such, the model legislation reflects the laws of Belize and Guyana as it relates to transportation carriers. Taking it an extra step, the Belizean legislation suggested that the penalty for this section should be a fine or imprisonment of not more than six months.

The expert group further agreed that commercial carriers should not only refer to those that travel across international borders, but also to those that provide transportation services within a country. One example pertained to Guyana where companies often transport individuals to and from the land border, but do not actually cross into the neighbouring country. In order to address the problem of internal trafficking, where local transport carriers and individuals act as agents to facilitate the movement of victims and potential victims to and from the borders, Guyanese law does not define transportation carriers as only international in nature.

The expert group agreed that the obligation under the Trafficking Protocol is for transportation companies to check whether a person travelling on that carrier has the required documents needed to enter the country of destination. The carriers do not have an obligation to ascertain the documents’ validity or authenticity. The expert group affirmed that within the Caribbean region the *CARICOM Advanced Passenger Legislation* has been enacted, though it refers to international and not domestic travel. The group recommended that States harmonize their immigration legislation with this section.

The Trafficking Protocol refers to the security and control of documents in Article 12 and the legitimacy and validity of documents in Article 13. The expert group decided that the model legislation did not need to have these two provisions because the *Caribbean’s Advanced Passenger Legislation* prescribes similar ones.

PART V - PREVENTION OF TRAFFICKING IN PERSONS

Article 9 of the Trafficking Protocol outlines five crucial points for States to prevent trafficking in persons. The requirements range from research and awareness raising to involving non-governmental organizations, fostering bilateral and multilateral cooperation and discouraging demand for trafficking in persons.

These points do not necessarily require States to develop legislative measures. Rather, the Protocol encourages States to pursue legislative and non-legislative measures, or some combination thereof, such as policies, programmes and codes of conduct. The Protocol outlines actions States should pursue to prevent trafficking in persons. At the same time, States have the flexibility to apply the measures they deem most effective in the local context.

The expert group observed that some of the existing legislation in the Caribbean (such as Belize's and Guyana's) emphasizes the development of a national task force, data collection, training and public awareness as preventative components of a comprehensive counter-trafficking approach. These components appear as separate sections within the laws of these countries, with the relevant ministries responsible for the different tasks. The group suggested that, in order to have a more coordinated response, States should consider a provision for establishing a task force, and then add data collection, training and public awareness, together with others, as specific functions of the task force.

Based on the recommendation from the expert group, the model legislation focuses on establishing a national task force with specific objectives and activities, including those that focus on prevention. The laws from Belize and Guyana were used to give effect to this section of the model legislation and the guidelines.

32. National task force for prevention of trafficking

The Trafficking Protocol does not specifically mention the establishment of a task force. In general, however, the expert group agreed with the usefulness of having a task force established to prevent trafficking in persons.

In Belize, for example, the Cabinet established the task force as a policy decision, rather than as a part of their legislation. In contrast, Guyana's national anti-trafficking task force and its activities were developed as part of the legislation. Guyana's legislation is used as a framework for the model legislation.

Caribbean countries can implement the measures that best suit their domestic conditions. Section 32(1) of the Caribbean model legislation also offers some objectives of the task force. As stated before, preventative activities are only one component of a comprehensive counter-trafficking approach. States should consider broadening the functions and objectives of the task force to include other activities that focus on protection of victims and prosecution of traffickers as well. Appendix D has more

information on suggested objectives and functions of a counter-trafficking task force excerpted from Sierra Leone's counter-trafficking legislation.

Another element States should consider is the actual name of the task force. An observation from the expert group was that the term "task force" gives an impression that it is transitional in nature and not a permanent fixture. The group also discussed the terms "commission" and "committee." These terms connote an inter-agency entity that has a long term objective of addressing trafficking in persons. Whatever the body's name, it should be representative of all agencies (governmental and non-governmental) with a strong enough voice and clout to direct and order other agencies in their interventions. For the model legislation's purpose, task force is used with the understanding that States will adopt a name appropriate for their situation.

Establishing and operating a task force will undoubtedly impact the human and financial resources of any State. Sierra Leone's legislation is one example that addresses the financial matters of the task force. The law obligates financial resources to the task force and compels it to be accountable for these funds through proper bookkeeping and audits, as well as the provision of annual reports.

An alternative to a new task force would be the use of an existing task force that focuses on, for example, other migration-related issues (like refugees) or other victim-centred fora. States should allocate enough authority and resources to the task force or its leaders for optimum functionality and effectiveness.

When adopting the *Caribbean Counter-Trafficking Model Legislation*, States should use their discretion in how they will appropriate resources for the task force.

The development of a national plan of action, data collection, cooperation and networking, training and public awareness are some of the potential activities that a task force can become involved in to help ensure that trafficking in persons is prevented, victims are protected and traffickers are prosecuted.

1. National plan of action

Though the Trafficking Protocol does not stipulate an action plan, the expert group decided to include this component in section 32(3) of the model legislation. Section 32(3)(i) and 32(3)(ii) suggest that one of the task force's functions is to develop a national plan of action and coordinate and implement such a plan.

A Plan of Action – Best Practice

Articulating a plan of action is useful both as a road map for action and as a barometer by which to gauge progress against the stated goals and objectives. As such, it should be both task- and time-bound, so that it can be used as an evaluation and monitoring tool. Once a plan of action has been defined, progressive steps can be taken to implement those activities or changes.

While a national plan of action should involve many aspects of a comprehensive counter-trafficking response, States should keep in mind the identified gaps in their current response and priorities unique to their specific domestic situation. Suggested key areas of the plan could include information, capacity building and development, victim support and integration, legislation and policy, monitoring and evaluation and liaison and consultation. A diverse group of stakeholders should help develop the plan: different government departments, NGOs, service providers, academics and experts in counter-trafficking. This participatory approach allows the different levels of victim services, law reform and policing of trafficking in human beings to be considered. The plan of action should be a working document, with very clear and realistic tasks, achievable within a specific timeframe.

Excerpt from the IOM Counter-Trafficking Training Modules, Capacity Building⁴²

2. Data collection

Article 9(2) of the Trafficking Protocol says that States shall endeavour to undertake research. The terminology, data collection, is consistent with the national anti-trafficking laws in the Caribbean. Consequently, section 32(3)(iii) and (iv) of the model legislation refer to data collection and information sharing between government agencies as a task force function. The expert group agreed to the necessity of collecting and disseminating data, particularly because the information can be used as a benchmark for future comparisons, can inform policy development and assist countries in their reporting requirements (if any). The group decided not to include a separate provision on data collection in the model legislation because subsidiary regulations can be used by States to lay down the requirements for data collection. The group thought that a timeframe should be attached to data collection in order to help with annual comparisons, police development and improvement and to give an indication of the scope of the problem. States should use their discretion on whether it will be appropriate to include a separate provision for data collection in their domestic legislation.

The Belize and Guyanese counter-trafficking legislation instruct the publication of collected data. The laws also advise that the cooperation and assistance of other governmental agencies, NGOs and other elements of civil society should be sought out to assist in data collection. Both of these pieces of legislation propose that the information collected on trafficking in persons should include, but not be limited to,

⁴² IOM Counter-Trafficking Training Modules, Capacity Building, p. 33-34 of the participant workbook.

the following:

- numbers of arrests, prosecutions and successful convictions of traffickers and those who committed trafficking-related crimes (pimping, pandering, procuring, maintaining a brothel, visa fraud, document fraud and other crimes related to trafficking);
- statistics on the number of victims, including age, method of recruitment and other relevant information;
- trafficking routes and patterns (country of origin, transit countries);
- method of transportation (car, boat, plane, on foot); and
- records of border crossing without legal travel documents.

3. Cooperation and networking

The Trafficking Protocol strongly encourages States to cooperate and network with each other. As such, section 32(3)(v) and (vi) of the model legislation refer to facilitating cooperation with other countries, NGOs and other elements of civil society to prevent trafficking in persons, assist, protect and integrate victims and prosecute traffickers.

The discussion within the expert group meetings focused on two elements: 1) cooperation for criminal investigations and 2) cooperation for victim assistance, return and reintegration. In terms of the criminal investigation, the group pointed out that within the Caribbean, there is a *Mutual Legal Assistance Treaty*. It was further suggested that bilateral agreements between countries and existing diplomatic relationships can be used for the criminal aspect of human trafficking. The group thought that cooperation cannot be forced upon States, however it can be suggested that countries adopt, for example, a *Memorandum of Understanding (MOU)*, to cooperate with each other more effectively. Countries should also be encouraged to appoint a central authority whose function will be to facilitate or instigate the flow of information between States. It does not necessarily have to be a new position, but can be part of an existing framework.

Additionally, the group agreed that cooperation between States and NGOs requires specific mention to help ensure effective assistance for victims of trafficking. It was suggested that countries need to develop some kind of Standard Operating Procedure (SOP) to ensure that all victims are treated in the same manner. Again, this does not necessarily have to be in the model legislation, but can be part of one of the suggested activities of the task force. Appendix E consists of the Trafficking Protocol's expectations, information on how to facilitate cooperation and some examples of cooperation.

Cooperation and Networking – Best Practice

The complexity of human trafficking necessitates a multi-disciplinary, coordinated response involving all sectors of society, whether in countries of origin, transit or destination.

The first step in building coalitions to combat human trafficking is to recognize that trafficking in persons is a complex problem, and that only by working together can a community, country or region effectively respond. The basis of cooperation and networking is recognizing the need to join forces in order to achieve an objective, in this case to prevent and respond to trafficking in persons. Those involved can include local, national, or regional governments, as well as civil society and international organizations (among others).

Excerpt from the IOM Counter-Trafficking Training Modules, Cooperation and Networking⁴³

4. Training

Article 10(2) of the Trafficking Protocol stipulates that:

“State 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.”

Section 32(3)(vii) of the model legislation pertains to training. The expert group suggested that training should not be included as a separate section of the model legislation, but rather as part of the functions of the task force. The legislation from Belize and Guyana provide specific suggestions on training topics. These should include, but are not limited to the following:

- methods used in identifying victims of trafficking;
- methods for prosecuting traffickers;
- methods for protecting the rights of victims, taking into account human rights and the special needs of women and children victims, and that victims should be treated as victims rather than as criminals;
- methods for promoting the safety of victims, including, for example, the training of police and immigration officers to recognize victims of trafficking quickly; and

⁴³ IOM Counter-Trafficking Training Modules, Cooperation and Networking, p. 14 of the participant workbook.

- education and training on measures to ensure the safety of children travelling unaccompanied over international borders.

IOM offers training on various topics through its *Caribbean Counter-Trafficking Initiative*, funded by the U.S. Department of State, Bureau of Population, Refugees, and Migration (PRM). As of June 2008, over 1000 persons in the Caribbean have participated in one of IOM's Counter-Trafficking Modules Trainings. The seven available training topics include: *Capacity Building, Children, Cooperation and Networking, Direct Assistance, Information Campaigns, Return and Reintegration and Victim Identification and Interviewing Techniques*.

5. Public awareness

The Trafficking Protocol refers to information and mass media campaigns in Article 9(2), stating that “State 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.”

The expert group raised some concerns about legislating on something like public awareness, when very little can be done if it is not implemented. The group decided that model legislation would not include public awareness as a separate provision, but rather include it as a task force function.

The discussion also focused on how public awareness can discourage the demand for services by trafficked persons. The group agreed that an outreach strategy should include measures to address factors that create the demand for services provided by trafficked persons. The counter-trafficking legislation of Belize, Guyana and Jamaica suggest the following public awareness topics:

- Prepare public awareness programmes designed to educate potential victims of trafficking in persons and their families of the risk of victimization that include but are not limited to:
 - Information about the risk of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure of HIV/AIDS and other sexually transmitted diseases and psychological harm related to the victimization in trafficking cases; and
 - Information about potential victims’ rights in [Country X] and in major destination countries and under international law, as well as methods for reporting suspected recruitment activities.
- Prepare and disseminate educational materials designed to inform victims of trafficking in [Country X] of their rights, the measures in place to ensure their

safety, recovery and safe return to their home countries or places of residence in [Country X], and how to contact appropriate law enforcement authorities;

- Prepare and disseminate public awareness materials to discourage the demand that fosters the exploitation of persons, especially women and children, and that leads to trafficking. Such materials may include:
 - Information on the impact of trafficking in individual victims, aggregate information on trafficking world-wide and domestically, as well as warnings of the potential for criminal consequences for taking part in trafficking;
 - Information on the impact of trafficking on individuals victims. However, any information on the experiences of individual victims shall preserve the privacy of the victims and the victim's family.
- Educate citizens about the dangers of sex tourism.

These programmes and campaigns should be developed in conjunction with relevant governmental agencies and NGOs. Material may include pamphlets, brochures, posters or advertisements in mass media.

Ongoing in nine countries since 2005, IOM's Caribbean Regional Information Campaign continues to expand. Campaign materials range from posters and brochures to public service announcements (PSAs) for broadcast on TV and radio. The material features the national hotline numbers available in the Caribbean.

33. Exclusion of persons implicated in trafficking

The Trafficking Protocol does not contain a specific provision on the creation of a public register for traffickers. The expert group decided, however, to include such a provision in the model legislation as it appears in the Guyanese legislation. Guyana, a country that has some internal trafficking, uses a public register to help create awareness among the people living in rural areas and to look out for known traffickers.

The expert group agreed that using a public register is a reasonable approach for Guyana, but it might not be suitable for other Caribbean countries. It was noted that States should consider the implications of such a step because publically announcing offenders could violate their human rights as they will effectively be punished twice.

PART VI - GENERAL

34. Regulations

As with the Preliminary section of the model legislation, the Trafficking Protocol does not provide a structure for the technicalities and format of the final sections of any counter-trafficking legislation. During the discussion, the expert group agreed that a section on regulations is a standard component that is both necessary and generally included in national legislation in the Caribbean. The group suggested that as they are both similar, either Belizean or Jamaican legislation should be used. The model legislation, therefore, mirrors the section in the Jamaican legislation; however, States can adapt the text to comply with their local policies on legislative development.

35. Order to increase fines

This section was adapted from Jamaica's law for the model legislation as a result of the expert group's discussion. The Jamaican representative explained that this is a general section included in most newly developed Jamaican legislation in efforts to update the old criminal legislation and bring it into balance with similar pieces of legislation. It only relates to fines and not to imprisonment. As this is specific to the Jamaican situation, countries have the option whether to include it in their national law.

36. Protocol to be part of the laws of [Country X]

This provision generated a lot of discussion amongst the expert group members.

The majority of the group members did not recommend or advise this provision as a route of action because it does not allow for individual States to examine the international obligations under the Trafficking Protocol or to debate and discuss suggested draft legislation and its practical implications. If the Trafficking Protocol is blindly adopted, States might sign up to something that they will be unable to implement.

The Belizean representative explained that the provision was a policy decision to include in their domestic legislation, mainly to compensate for some possible oversight by the legislative drafters. Some of the group members agreed that this section could potentially be included in the model legislation to act as a safety net to compensate for potential drafting errors. Ultimately, the wording of this provision, derived from Belizean legislation, was added to the model legislation. Should States choose to include this section, they should be aware that this is not a traditional route to fulfil the obligations under international law and that such action is not recommended.

37. Commencement

The expert group agreed that a commencement provision should be included in the model legislation. The Belizean legislation served as the basis for this section in the model legislation. Again, States should decide whether or not to include the provision and whether it is best suited at the beginning or the end of the Act, in line with their domestic practice.

CONCLUSION

Developing regional counter-trafficking model legislation through the partnership between CARICOM, Caribbean countries and IOM is a tremendous step forward in the effort to combat trafficking in persons. This booklet equips Caribbean countries with another set of tools to use when responding to this crime.

The model legislation upholds the standards established by the *UN Trafficking Protocol*, while the guidelines explain the group's decisions and offer examples of best practice. Additionally, the participatory approach used to develop the model legislation has helped to ensure that the local and regional contexts are reflected to the extent possible. By implementing this model legislation, countries have an opportunity to harmonize the penalties for human trafficking on a regional level, resulting in a more effective deterrent for traffickers and would-be traffickers.

Until national anti-trafficking legislation is enacted, Caribbean countries can still take legal action by applying other penal codes that address some aspects of human trafficking, such as labour laws, procurement, forced detention, prostitution, sexual offences and abduction. Additionally, CARICOM has extensive experience in the development and implementation of regional model legislation for different topics. *The Model Legislation on Sexual Offences* and the model laws on labour and other issues (such as citizenship, domestic violence, and equality for women in employment, equal pay or inheritance and maintenance) are an indication that CARICOM is well positioned to be a key partner in developing and institutionalizing legislation relating to human trafficking on a regional level.

In addition to prosecutorial efforts, it is important to remember that countries can pursue activities that work towards preventing trafficking and protecting victims of trafficking through identification and assistance. Such a comprehensive counter-trafficking strategy is necessary to address the various and complex challenges that human trafficking poses to government and civil society.

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APPENDIX A

Excerpt from IOM's Handbook on Direct Assistance for Victims of Trafficking, p. 56-61.

BASIC PRINCIPLES FOR PROTECTION AND DIRECT ASSISTANCE

Based on relevant human rights principles and the *United Nations Palermo Protocol*, the following key principles should guide all assistance and protection measures, including shelter activities, undertaken by service delivery organizations:

Respect for and protection of human rights

As trafficking in itself constitutes a serious human rights violation and often leads to further violations of the rights of victims of trafficking, all assistance and protection efforts should strive at the restoration of the victims rights and the prevention of further violations. Respect for human rights underpin all aspects of humanitarian work. Service delivery organizations should take care to respect the basic human rights of all assisted victims as expressed in the major global and regional human rights instruments, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, the *Convention on the Rights of the Child*, the *Convention on the Elimination of all Forms of Discrimination against Women*, and other relevant international instruments and standards, including General Comments from the human rights monitoring bodies and the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking. Victims of trafficking should also be made aware of their rights and responsibilities under these instruments.

Informed consent

All assistance provided to victims of trafficking should proceed on the basis of the victim's full and informed consent. From the initial admission of the trafficking victim to the service delivery organization programme, up to the victim's full reinsertion into society, it is incumbent on service delivery organizations and their partner organizations to explain relevant actions, policies and procedures in such a way that the victim can understand them before seeking consent to any proposal or action. Assuming the victim is literate it is recommended that at some stages in the assistance process, the victim be required to indicate her or his consent in writing. If staff cannot communicate in a language the victim understands, all necessary efforts should be made to secure the assistance of an interpreter for oral and written communication. In the case of a child victim, their guardian should be consulted on all matters and consent to any action taken. Pursuant to Article 12 of the *Convention on the Rights of the Child (CRC)*, a child's views and wishes should be elicited and taken into account. To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (CRC arts. 13, 17 and 22 (2)). In guardianship, care and accommodation arrangements, and legal representation, a child's view should also be taken into account. Such information must be provided

in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.⁴⁴

Non-discrimination

IOM recommends that service delivery organizations have a written policy of non-discrimination to ensure that staff provides the best possible assistance to victims of trafficking without discrimination on the basis of gender, sexual orientation, age, disability, colour, social class, race, religion, language, political beliefs or any other status. Service delivery organizations should also take care that partner organizations to which victims are referred observe the same obligation in regard to trafficking victims.

Confidentiality and right to privacy

All information and communication regarding the victim must be treated with due regard for the victim's right to confidentiality and privacy. From the first meeting with the victim up to the completion of the assistance process, staff should assure the victim that all personal information regarding the person and the particular case will be kept confidential. Confidential information includes, but is not limited to: information provided by the victim, information provided by health and other service providers and information regarding the victim's legal status. Service delivery organizations should ensure that staff handle all victim data responsibly, only collecting and sharing information related to the victim within the limits of the "need-to-know" principle and with the victim's informed consent.

IOM recommends that organizations have a stated policy that no information should be released without the prior knowledge and informed consent of the victim concerned, except where the victim's safety or the safety of others is at issue.

With regard to child victims of trafficking, the *Committee on the Rights of the Child* has, in paragraphs 29-30 of its General Comment No. 6, states that State parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (art. 16). This obligation applies in all settings, including health and social welfare. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the "best interests" of the child.

Self-determination and participation

In recognition of the right and need of victims to make their own informed choices and decisions, service delivery organization staff should encourage victims to participate as much as possible in the decision-making process. Staff should strive to work together with the victims towards the restoration of their self-respect and autonomy and to strengthen their confidence to assume responsibility for themselves and regain control over their lives and their future. With regard to the specific rights

⁴⁴ *Committee on the Rights of the Child*, General Comment No. 6, CRC/GC/2005/6, 1 September 2005, para 25.

and needs of children, please see section on “Informed consent” above.

Individualized treatment and care

While recognizing that trafficking victims share a number of common experiences and circumstances, staff should acknowledge the individuality of victims, including individual, cultural, gender and age differences and differing experiences of persons before during and after being trafficked, and, to the extent possible, provide personalized care and assistance. Throughout the assistance process, staff should strive to provide the most appropriate protection, assistance and support measures appropriate to the needs and circumstances of individual victims.

Comprehensive continuum of care

The services provided should be part of a holistic approach to aiding the recovery of trafficking victims, thereby offering a comprehensive continuum of care in accordance with their physical, psychological and social condition. In order to ensure the appropriate nature and quality of the assistance offered to trafficking victims, and to ensure that as many of the victim’s needs as possible are met, service delivery organizations should consider collaborating with other experienced assistance providers and establishing cooperation agreements and referral mechanisms regarding the provision of appropriate and comprehensive services to victims.

Equitable distribution of resources

Service delivery organizations should strive to distribute and provide all services, materials and resources equitably and according to the needs of the victims. Service delivery organization staff should keep in mind other services that might be available for victims and should assist victims in accessing all available resources and services, including services provided by non-governmental, intergovernmental and State organizations.

Best interests of the child

All assistance and protection provided to children should be based on the principle that the best interests of the child will always be the paramount consideration.

APPENDIX B

Excerpt from IOM's Handbook on Direct Assistance for Victims of Trafficking, p. 69-72.

VICTIMS IN TRANSIT AND DESTINATION COUNTRIES THAT ARE SEEKING ASYLUM

Service delivery organizations working with victims of trafficking need to be well aware that some victims may fear returning to their home countries and communities. Victims should thus be ensured access to asylum procedures and/or to other protection mechanisms in countries of destination or transit, depending on where they have managed to escape their traffickers and seek help. The fact that some victims of trafficking would be in danger if returned to their home countries is acknowledged through the inclusion of the savings clause in Article 14 of the Trafficking Protocol.

Article 14 of the Trafficking Protocol stipulates that “Nothing in this [Trafficking] 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.”

The principle of non-refoulement is often referred to as the cornerstone of international protection. The principle of non-refoulement as enshrined in the *1951 Convention Relating to the Status of Refugees* (hereafter the 1951 Convention) has acquired the status of customary international law. This means that, over time, this principle has become binding for all States, including those which have not yet become party to the 1951 Convention. All countries must respect the principle of non-refoulement which includes: (i) Not returning asylum seekers or refugees to a place where their life or liberty would be at risk; (ii) Not preventing asylum seekers or refugees – even if they are being smuggled or trafficked – from seeking safety in a country, as there is a chance of their being returned to a country where their life or liberty would be at risk; (iii) Not denying access to one’s territory to people fleeing persecution and who have arrived at their border (access to asylum).

Non-refoulement obligations also exist under international and regional human rights instruments, including in Article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Human rights obligations developed by the Human Rights Committee in its General Comment No. 31 (paragraph 12)⁶ may also be of particular relevance for victims of trafficking fearing inhuman or degrading treatment or punishment, including from non-State actors, in their home countries.

In regard to children, the Committee on the Rights of the Child explains, in its General Comment No. 6, that “...in fulfilling obligations under the Convention [on the Rights of the Child], States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such

as, but by no means limited to, those contemplated under Articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.”⁴⁵

The principle of non-refoulement could be violated if victims of trafficking who would fear persecution or other serious harm in their countries of origin, for example in the form of re-trafficking, reprisals from traffickers or criminal networks and/or ostracism, social exclusion or discrimination to the extent that it would amount to persecution, would be returned. For example, some victims may fear being re-trafficked in their countries of origin, or fear reprisals, harassment, threats or intimidation by traffickers or persons linked to the trafficking network. It is also not uncommon that victims of trafficking fear intimidation or discrimination by the authorities in their countries of origin, and/or social exclusion or ostracism by family members and the community. Child victims of trafficking who have been trafficked by their families may be at particular risk of various forms of ill-treatment if returned to their home communities.

Pursuant to the *1951 Convention Relating to the Status of Refugees*, a refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country. A victim of trafficking who has a well-founded fear of persecution in her or his country of origin on account of one or more of the five grounds in the refugee definition would thus qualify for refugee status. The experiences and human rights violations inherent in a trafficking scenario would always amount to persecution, reprisals, harassment, threats or other forms of intimidation. However, social exclusion or ostracism may lead to serious human rights violations and amount to persecution in the light of the opinions, feelings and psychological make-up of a particular victim. Given the serious violations of numerous human rights inherent in a trafficking scenario, a victim of trafficking may have experienced particularly atrocious forms of persecution which can impact on her or his subjective fear of returning home and thus her or his refugee claim.

In asylum cases involving child victims of trafficking, it is essential to apply the refugee definition in an age- and gender-sensitive manner, with an understanding of child-specific forms and manifestations of persecution. Child victims of trafficking, for example, may have been subjected to child-specific forms of exploitation such as child pornography, child sexual exploitation, forced labour, camel jockeying and forced adoption. UNHCR’s Guidelines on International Protection on the application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking or persons at risk of being trafficked provide detailed guidance on how to apply the refugee definition to victims of trafficking.⁴⁶

Victims of trafficking who fear returning home but do not qualify for refugee status pursuant to the 1951 Convention may nonetheless be eligible for other forms of permanent or temporary residence permits provided for by national laws

45 *Committee on the Rights of the Child*, General Comment No. 6, CRC/GC/2005/6, 1 September 2005, para 27.

46 UNHCR Guidelines on International Protection on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking or Persons at Risk of being Trafficked, HRC/GIP/06/07, 7 April 2006.

Interviewers and counsellors working for service delivery organizations should therefore be alert to identifying victims possibly at risk of persecution in their countries of origin. Relevant questions regarding potential threats or risks that a victim might fear should be asked during counseling sessions and in initial screening interviews. All victims should also be provided with information regarding the possibility to seek asylum and, where such a possibility exists, procedures for granting specific residence permits granted to victims of trafficking. A victim of trafficking who has been determined to be a refugee may additionally fear reprisals, punishment or re-trafficking in the country of asylum. If a refugee is at risk in her or his country of refuge or has particular needs which cannot be met in the country of asylum, she or he may need to be considered for resettlement to a third country.⁴⁷

⁴⁷ UNHCR Guidelines on International Protection on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking or Persons at Risk of being Trafficked, para 28 and UNHCR, Resettlement Handbook, November 2004 edition, Chapter 4.1.

APPENDIX C

Excerpt from the IOM Counter-Trafficking Training Modules, Children, p. 30-33.

GENERAL PRINCIPLES OF PROTECTION: BEST INTEREST OF THE CHILD

The following are some of the major principles of protection for trafficked children:

Take gender differences into account

Keep in mind that gender sensitivity means looking at how a society's attitudes about gender differences affect both boys and girls. "[I]n all societies, boys and girls are assigned different societal roles and experience different perspectives of life as a result of their being male or female. Such differences have an immense impact on their lives and need to be appreciated by all service providers."⁴⁸ These differences will not only impact their lives and opportunities, but may also impact their vulnerability to specific types of trafficking. Moreover, due to these factors, boys and girls may have different reactions to their trafficking experiences, which will affect the particular needs they have in terms of protection and assistance.

Action based on the child's consent/approval

A child's consent must be obtained prior to taking any action on the child's behalf. Without the child's explicit approval, nothing can be done to protect or assist that child unless they are in need of emergency assistance of a temporary nature. Children should be made to feel comfortable at every stage of assistance. Even if a service provider feels strongly that a certain action is in their best interest, it is the prerogative of the child (typically in coordination with their legal guardian) to decide whether or not to grant approval for the action.

Rights-based approach

Child victims of trafficking should be **protected and empowered** by informing them of their rights in accordance with the principles set out in the *Convention of the Rights of the Child*. These rights are to be available to all children regardless of their nationality or immigration status. Trafficked children should never be treated as criminals, but as victims, even if involved in criminal activities as a result of their exploitation.

Respect for the views of the child

A trafficked child, in accordance with his or her age and level of maturity, is capable of formulating their own views and should enjoy the right to express those views freely on all matters concerning that child. Children should be given the opportunity to express their views particularly within the framework of any administrative or judicial proceeding affecting them and due weight should be given to those views.

Recognition of the child's personality

Children should be regarded as individuals, as human beings endowed with their

48 International Labour Organization, *Child Labour: A textbook for university students*, op. cit.

own rights, and as members of a family and community with related rights and responsibilities appropriate to each individual's stage of development. Children are neither property of their parents nor should they be regarded as helpless objects of charity. It must be remembered that children develop at different rates and in different ways. They have different personalities and mannerisms. These differences are healthy and normal. Children should not be made to feel as if they need to change to suit someone else's conception of whom they should be. Children should be empowered to recognize their own sense of agency and how that can contribute to their growth and development.

Right to be brought up in a family environment

The role of the family in cultivating a natural environment for child growth is considered as the best and prime environment for child development. Parents and legal guardians have the primary responsibility for providing care and guidance for their children, by nurturing them, building their self-esteem and confidence and looking after their overall well-being. Governments are obliged to respect the role of parents and legal guardians and to prevent children from being separated from their families unless necessary for the child's best interest under the CRC.

Right to non-discrimination

Child victims of trafficking have the same rights, regardless of whether they are nationals, non-nationals, or residents of the country in which they are found. Child victims shall be protected from discrimination, regardless of their (or their family's) language, ethnicity, social origin, immigration status, sex or religion and must be considered first and foremost as children with specific rights to protection.

Right to information

Child victims of trafficking should be given all relevant information concerning their status, situation, rights, the procedures for accessing available services and the process of their protection, including procedures for, and possibilities related to, family reunification and repatriation. This information should be explained in the native language of the child or in a language which the child understands, and should be presented in simple and accessible manner. Appropriate interpretation should be made available whenever a child is being interviewed, questioned or consulted.

Right to confidentiality

Child victims of trafficking should be treated in a sensitive manner that respects their privacy. Relevant measures should be taken to ensure confidentiality regarding all information related to that child, especially if it could endanger the child or their family members. Service providers should not disclose the child's whereabouts or other information that could reveal the identity of the child to any person who is not directly involved with the protection and assistance process. Information should be protected from public or media disclosure.

Right to be protected

All child victims of trafficking have the right to access special protection, in accordance with their rights and needs. Child protection should be of an immediate nature. Voluntary participation in child protection activities is to be encouraged. Restrictive measures should be avoided and only taking place under extreme circumstances as a temporary solution.

Empower the child⁴⁹

The empowerment of children is a crucial element of working with child victims, and yet it is one element that is most often absent from anti-trafficking initiatives. Government policies and laws lack emphasis on the empowerment of children. Children should be seen as active participants, not mere recipients of assistance, and they should be given the opportunity to participate actively in claiming their rights. All service providers working to assist trafficked children should embrace each child's agency and strive to avoid presenting a trafficked child solely as a powerless victim.

All children have the right to determine what they want to do with their lives when they become adults, but many lack the means by which to achieve the goals they set for themselves or to make their aspirations become a reality. Given the vulnerability that comes with having undergone the trafficking experience, it is critical that a trafficked child's capacities to be self-reliant are strengthened through a combination of education and relevant and appropriate training. Children, especially girls, who are often at a disadvantage in societies due to cultural norms, traditions and a range of discriminatory practices, should be empowered to the fullest extent possible, which in turn helps facilitate their reintegration. Ultimately, it is crucial to empower the child not only to face his or her future after being trafficked, but also to choose against risky and questionable propositions that could lead to re-trafficking and further exploitation.

49 Adapted from, Pradhan, Gauri, "Rethinking Social Reintegration of Child Survivors of Trafficking and Sex Abuse: A Nepali Experience," Child Workers in Nepal (CWIN) and the "Conceptual and Legal Approaches to Trafficking in South Asia, with a Focus on India, Bangladesh, and Nepal." From the First International Forum on Child Development, Oct. 29-31, 2005, in Beijing.

APPENDIX D

Excerpt from Sierra Leone's 2005 Anti-Human Trafficking Law, Section 4.

FUNCTIONS OF A TASK FORCE

1. The object for which the Task Force is established is generally to coordinate the implementation of this Act, especially concerning the enforcement of the law against trafficking, including the prosecution of corrupt public officials who facilitate trafficking, the rendering of assistance to victims of trafficking, the prevention of trafficking through the adoption and encouragement of local initiatives to improve the economic well-being and opportunity for potential victims and increased public awareness of the causes and consequences of trafficking.
2. Without prejudice to the generality of subsection (1), it shall be the responsibility of the Task Force to –
 - a. receive and investigate reports of activities of trafficking from the public or otherwise coming to its notice;
 - b. monitor the immigration and emigration patterns of Sierra Leone for evidence of trafficking and to secure the prompt response of the police and other law enforcement agencies;
 - c. initiate measures to inform and educate the public, including potential victims, about the causes and consequences of trafficking;
 - d. cooperate with non-governmental organizations active in the field of trafficking;
 - e. advise the Government of trafficking, including the need to cooperate in any international efforts against trafficking, the adoption of the economic alternatives to prevent and deter trafficking contained in section 5; and
 - f. do all such things as will be conducive to the attainment of the object stated in subsection (1).

APPENDIX E

Excerpt from the UNODC’s Legislative Guide for Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, p. 306.

INTERNATIONAL COOPERATION AND COOPERATION WITH CIVIL SOCIETY

The Trafficking Protocol contains several provisions that encourage cooperation between States, but also within State departments and with non-State actors. The main requirements as set out in the protocol are:

- cooperation between State Parties by exchanging information concerning the means and methods of traffickers, including their use of travel documents (article 10(1));
- provide or strengthen training for law enforcement, immigration and other relevant officials (article 10(2));
- comply with use restrictions placed on information received from another State Party (article 10(3));
- facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety (article 8(1)); and
- verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence, and issue necessary travel documents for re-entry (article 8(3));

In addition, a State Party shall:

- consider implementing support measures in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society (article 6(3));
- where appropriate, consider including cooperation with non-governmental organizations, other relevant organizations and other elements of civil society in establishing preventive measures in accordance with article 9 (article 9(3)); and
- consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication, without prejudice to article 27 (Law enforcement cooperation) of the *Organized Crime Convention* (article 11(6) of the Protocol);

Excerpt from the IOM Counter-Trafficking Training Modules, Cooperation and Networking, p. 22-33.

Once a group of organizations and individuals decide to work together to counter trafficking, many decisions must be made in order to move forward, regardless of whether the group is homogeneous (e.g. all NGOs) or heterogeneous (e.g. government, civil society, and others represented). When working in a coordinated manner to combat trafficking in persons, decisions to be made include:

- The group objective(s)
- The available dedicated resources (financial and other)
- The strategy and methodology for activities (the work plan), including:
 - The roles and responsibilities of each actor
 - The concrete tasks to be accomplished
 - The timeline for each activity
 - The resources for each activity (human and financial)
- The cooperation mechanisms of the group, such as:
 - The communication strategy for the network (reporting, information sharing, meetings)
 - The administration of resources among partners
 - Codes of conduct or procedural guidelines
 - Decision-making method (consensus, majority vote, etc.)
- The level of formality of the group commitment (e.g. informal agreement, memoranda of understanding)

FACILITATING COOPERATION

Individuals and organizations that decide to cooperate to combat human trafficking often use coordination mechanisms to better work together towards common goals. There are many ways to collaborate on counter-trafficking, from loose networks that share information but work separately in their areas of expertise, to formal working groups that come together regularly to coordinate and improve their joint activities. How to collaborate depends on the coordination methodology agreed upon by the various actors and the strategy established to jointly carry out the work and achieve the desired impact. Some examples of tools to facilitate cooperation are described below.

Communication mechanisms

When working together as a group, it is essential to remain connected. Regular communication among the various group members should be facilitated, whether by email, telephone, periodic meetings or some combination.

Meeting mechanisms

A meeting mechanism can help ensure a smooth process. Determine what makes sense for your group and be consistent. Some hints to facilitate smooth meetings include: determining who takes the lead in convening and facilitating meetings;

thinking about space for meetings as well as staff support; and drawing up an agenda containing the key points to be covered at the meeting.

Codes of conduct and operational guidelines

The foundation of cooperation is respect and trust. On this basis, members of a group decide with whom they are willing to work, initially and in the long term based on experience. Cooperation demands a certain sharing of responsibility and effort. A code of conduct can help lay out the rules for particularly sensitive activities, such as managing victim information. Codes of conduct are designed to ensure that all members of the network are required to meet minimum standards as defined by the group when carrying out counter-trafficking activities. This goes beyond confidentiality of information and can include all aspects of a counter-trafficking response.

Administration of funding

Managing resources properly in a group setting is one of the most common challenges of working as a network. Each participant will bring to the group various resources, including human and financial resources. Often, each actor can monitor their own resources that they offer to support the joint activities, thus facilitating the administration of these resources as the activities are carried out. For this purpose a coordinating committee may be sufficient to meet their agreed upon commitments, to monitor such aspects, and to keep the other members informed of the progress made. Upon reaching a certain level of maturity, the group may seek joint resources for implementing its strategies.

Monitoring and evaluation

It is important that the group or network decide how activities will be monitored and evaluated. The mechanisms that exist for monitoring and evaluating group efforts to combat trafficking can be internal or external, that is, carried out by a member of the group or by an outside party. Constant monitoring can help identify problems while there is still time to make changes that will affect the final outcome. Evaluation is not only looking back after a programme has been completed; often it is necessary to compare information gathered before and after activities have been carried out.

FORMALIZING COMMITMENTS AND DECISIONS

Depending on the circumstances and objectives of the counter-trafficking network, it may be appropriate to formalize the commitment to cooperate. Mechanisms to formalize such commitments range from verbal agreements to public Memoranda of Understanding. The decision of whether and how to formalize a cooperative strategy will depend upon the context, the level of commitment between partners, and the political will of each participant. Generally, commitments can be formal or informal.

Informal agreements

In some cases, commitments are informal, in that the parties commit by word and by action. Such commitments often occur between comparable or similar organizations and are based on a shared trust and level of professionalism.

Formal agreements

Formal agreements generally fall into two categories, though they are sometimes combined:

1. documents which outline the commitment to work together on counter-trafficking; and
2. documents which detail the roles, responsibilities and actions of those involved in particular counter-trafficking activities.

Such documents can be as simple as a letter or as complicated as a detailed Memorandum of Understanding (MOU). Formal agreements can be made between individuals or sections of larger organizations (e.g. a letter signed by the counter-trafficking focal points of several organizations) or can involve the most senior levels of each agency. These decisions depend on the local context and the purpose of the document.

Standardized procedures

Standardized procedures represent an internal agreement among the parties regarding how particular activities will be carried out. Standardized procedures can be an effective way to outline operational guidelines for particular counter-trafficking activities, regardless of the level of formality of the network. They are often in the form of a document that sets forth the roles, tasks, responsible persons, and agreements reached for the purposes of carrying out a joint and coordinated action (e.g. assistance to identified victims).

Benefits and results

Documenting the network's plans to work together can help clarify areas of action and individual responsibilities. Such guidelines and commitments can help individuals overcome stereotypes and prejudices and benefit from the common project. Achieving concrete results through joint work stimulates other entities, organizations, and individuals to join the struggle, create public policies that bring about beneficial social change, and obtain resources that support ongoing and future activities. Successful joint activities lead to great achievements that would not be possible alone.



17 route des Morillons 1
1211 Geneva 19
Switzerland
Tel: +41 22 717 91 11
Fax: +41 22 798 61 50
Email: hq@iom.int
Internet: <http://www.iom.int>

1752 N Street NW, Suite 700
Washington, DC 20036
United States of America
+1 202 862 1826
+1 202 862 1879
mrfwashington@iom.int
<http://www.iom.int/unitedstates>