

**THE ANNOTATED GUIDE TO
THE COMPLETE
UN TRAFFICKING PROTOCOL***

Consisting of

**THE UN PROTOCOL TO PREVENT, SUPPRESS AND PUNISH
TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN,**

**THE UN CONVENTION AGAINST TRANSNATIONAL
ORGANIZED CRIME
(Relevant Sections)**

**THE TRAVAUX PREPARATOIRES
(Official Explanatory Notes)**

**ANNOTATIONS
(Unofficial)**

*May 2002
(Updated August 2002)*

*Ann D. Jordan
Director, Initiative Against Trafficking in Persons
International Human Rights Law Group
1200 18th Street, NW
Washington, DC 20036
Phone: 1-202-822-4600 ext. 27
Fax: 1-202-822-4606
trafficking@hrlawgroup.org
www.hrlawgroup.org/initiatives/trafficking_persons/*

* Copyright © 2002 International Human Rights Law Group. All Rights Reserved. Reproduction of this document for resale is strictly prohibited. This document, in its entirety and including the name of the author and the organization, may be reproduced and distributed, with no charge to recipients, for the promotion and protection of human rights.

<u>INTRODUCTION</u>	2
<u>THE UN PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS</u>	5
<u>PREAMBLE</u>	5
<u>I. GENERAL PROVISIONS</u>	6
Protocol Article 1 Relation with United Nations Convention against Transnational Organized Crime.....	6
Protocol Article 2 Statement of purpose.....	6
Protocol Article 3 Use of terms.....	7
Protocol Article 4 Scope of application.....	12
<i>Convention Articles 2 and 3.2 Use of Terms; Scope of application</i>	12
<i>Convention Article 34.2 Implementation of the Convention</i>	12
<i>Convention Article 10 Liability of legal persons</i>	14
Protocol Article 5 Criminalization.....	14
<i>Convention Article 8 Criminalization of corruption</i>	15
<i>Convention Article 9 Measures against corruption</i>	15
<i>Convention Article 12 Confiscation and seizure</i>	16
<i>Convention Article 14 Disposal of confiscated proceeds of crime or property</i>	17
<u>II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS</u>	19
Protocol Article 6 Assistance to and protection of victims of trafficking in persons.....	19
<i>Convention Article 24 Protection of witnesses</i>	23
<i>Convention Article 25 Assistance to and protection of victims</i>	25
Protocol Article 7 Status of Victim in Receiving States.....	26
Protocol Article 8 Repatriation of victims of trafficking in persons.....	26
<u>III. PREVENTION, COOPERATION AND OTHER MEASURES</u>	29
Protocol Article 9 Prevention of trafficking in persons.....	29
Protocol Article 10 Information exchange and training.....	30
Protocol Article 11 Border measures.....	31
Protocol Article 12 Security and control of documents.....	32
<u>IV. FINAL PROVISIONS</u>	34
Protocol Article 14 Savings clause.....	34
Protocol Article 15 Settlement of disputes.....	35
Protocol Article 16 Signature, ratification, acceptance, approval and accession.....	36
Protocol Article 17 Entry into force.....	36
<i>Convention Article 32 Conference of the Parties to the Convention</i>	37
Protocol Article 18 Amendment.....	38
Protocol Article 19 Denunciation.....	38
Protocol Article 20 Depositary and languages.....	39

INTRODUCTION

The Annotated Guide to the new UN Trafficking Protocol is a tool to assist advocates in the development of a human rights framework for national anti-trafficking laws and policies. In December 2000, the UN adopted international instruments to fight transnational organized crime and additional agreements or protocols to combat trafficking in persons, smuggling and firearms. The complete set of commitments made by governments regarding trafficking are found in the Convention Against Transnational Organized Crime¹, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children², and the Interpretative Notes (Travaux Préparatoires)³ to the Trafficking Protocol. Taken together, these three documents comprise the complete set of international obligations specifically addressing the trafficking of human beings.

However, the UN has not organized these three documents into one instrument, which forces readers to refer to the documents separately. The Annotated Guide solves this problem by combining the Trafficking Protocol, relevant portions of the Convention and the Interpretative Notes into one document. The text of Trafficking Protocol and relevant Convention provisions are contained in the main text while the Interpretative Notes (Travaux Préparatoires) are quoted in the footnotes. (Advocates are advised to read the entire Convention, however, as they may find additional provisions that are relevant in their national contexts.) Unofficial annotations to the Trafficking Protocol and the Convention are contained in the boxes.

All governments can sign the Convention and the Trafficking Protocol. However, only countries that sign the Convention can sign the Trafficking Protocol. As you will see in the list of signatory parties⁴, most but not all governments have signed both instruments. After ratifying the Convention and Trafficking Protocol, governments are obligated to adopt domestic laws implementing the Convention and the Trafficking Protocol. However, even prior to ratification, countries must not take actions that conflict with the purpose of the two instruments.

The Trafficking Protocol is not, unfortunately, a human rights instrument. The UN Crime Commission, which developed the Trafficking Protocol, is a law enforcement body, not a human rights body.⁵ Its Vienna location also physically isolates its members from the human rights bodies, which are located in Geneva and New York. For these reasons, the Trafficking Protocol is primarily a law enforcement instrument. From the human rights perspective, it would have been preferable if an international instrument on trafficking had been created within a human rights body rather than in a law enforcement body. However, the impetus for developing a new international instrument arose out of the desire of governments to create a tool to combat the enormous growth of transnational organized crime. Therefore, the drafters created a strong

¹ The Convention is found at http://www.odccp.org/crime_cicp_convention.html#final.

² The Trafficking Protocol is found at http://www.odccp.org/crime_cicp_convention.html#final. The Protocol against the Smuggling of Migrants by Land, Air and Sea was negotiated at the same time and is at the same website.

³ The Interpretative Notes (Travaux Préparatoires) (A/55/383/Add.1 Addendum) are found at http://www.odccp.org/crime_cicp_convention_documents.html.

⁴ The list of signatories and ratifications is found at http://www.odccp.org/crime_cicp_signatures.html.

⁵ Priority areas within the mandate of the UN Crime Commission are: international action to combat national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in protecting the environment; crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. For more information, go to: http://www.undcp.org/crime_cicp_commission.html

law enforcement tool with comparatively weak language on human rights protections and victim assistance.

Members of the Human Rights Caucus, which consists of non-governmental organizations (NGOs) from around the world⁶, attended all of the negotiations for the new Trafficking Protocol. Its main goals were to ensure that the Trafficking Protocol (1) defines trafficking to include all trafficking into forced labor, slavery and servitude, no matter whether it is within or across a country's borders, and (2) recognizes the rights and meets the needs of trafficked persons. The first goal was accomplished to the extent possible in an international instrument. The Trafficking Protocol has a broad definition of trafficking and covers most international trafficking and some internal trafficking. The second goal was almost accomplished. Government delegates concentrated on creating a strong law enforcement instrument and many of them did not believe that human rights are appropriate in the Trafficking Protocol. Consequently, readers will notice that the law enforcement provisions in the Trafficking Protocol contain mandatory language, such as "states parties shall," while the protections and assistance provisions (see Protocol Articles 6 and 7 and Convention Articles 24 and 25) contain weaker terms, such as "in appropriate cases" and "to the extent possible."

Despite the weakness of the protections language, advocates can rely upon other international and regional human rights instruments⁷ that obligate governments to protect the rights of trafficked persons. Information about which human rights and labor rights instruments governments have signed and ratified is available on the internet.⁸ Governments are obligated by those instruments to protect the rights of trafficked persons *even if* they do not sign the Trafficking Protocol. Furthermore, article 14 ensures that nothing in the Trafficking Protocol or the Convention can undermine international obligations to protect human rights. Accordingly, the Trafficking Protocol only establishes certain minimum standards and must be supplemented by human rights obligations contained in international and regional human rights instruments.

Anti-trafficking NGOs that work with, or advocate on behalf of, trafficked persons around the world have developed a document recommending practical measures governments can take to meet their international human rights obligations. These measures are contained in the "Human Rights Standards for the Treatment of Trafficked Persons."⁹ The Human Rights

⁶ Members of the Human Rights Caucus: International Human Rights Law Group, Foundation Against Trafficking in Women, Global Alliance Against Traffic in Women, Asian Women's Human Rights Council, La Strada, Ban-Ying, Fundacion Esperanza, Foundation for Women, KOK-NGO Network Against Trafficking in Women, Women's Consortium of Nigeria, Women, Law & Development in Africa (Nigeria).

⁷ For example, the UN Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention on the Rights of the Child and the accompanying Optional Protocol on the sale of children, child prostitution and child pornography, the International Labour Organization Conventions Concerning Forced or Compulsory Labour No. C29 and the Worst Forms of Child Labour No. 182, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the African Charter and Human and Peoples' Rights.

⁸ The UN instruments are at <http://www.unhcr.ch/html/intlinst.htm> and the International Labour Organization instruments are at <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?Lang=EN>. The European Convention for the Protection of Human Rights and Fundamental Freedoms is at <http://www.echr.coe.int/Eng/BasicTexts.htm> and the African Charter and Human and Peoples' Rights is at <http://www.hrcr.org/docs/Banjul/afhr.html>.

⁹ The Human Rights Standards is available in several languages at http://www.hrlawgroup.org/initiatives/trafficking_persons/ and at <http://wagner.inet.co.th/org/gaatw/index.html>.

Standards document contains specific legal and policy measures governments can and should take to avoid re-victimizing trafficked persons and to promote and protect the rights of trafficked person. Additionally, the High Commissioner for Human Rights has issued an important document titled “Recommended Principles and Guidelines on Human Rights and Human Trafficking,”¹⁰ which includes many recommendations similar to those contained in the Human Rights Standards, as well as a significant number of additional recommendations.

A strong and rights-based response to trafficking requires governments to (1) sign and ratify the Convention and the Trafficking Protocol, and (2) adopt domestic legislation implementing all provisions from the two instruments as well as the measures recommended in the Human Rights Standards and the Recommended Principles and Guidelines. A law enforcement response, by itself, may endanger trafficked persons and it often results in the immediate deportation of potential witnesses or else arrest and imprisonment. An approach that treats victims as criminals or immigrants without rights also is responsible for causing trafficked persons to disappear into the underground or to return home without any support. At its worst, it may also lead to their re-trafficking.

On the other hand, a human rights-based response to trafficking empowers trafficked persons to become witnesses. It provides them with safety and offers justice. It enables former victims to regain control over their lives in a safe manner. Thus, ending the cycle of impunity for traffickers and violence requires the broad spectrum of rights-protective legal, economic and social measures contained in the Trafficking Protocol and the Human Rights Standards.

¹⁰ Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (United Nations E/2002/68/Add.1) May 20, 2002. (Also available in Spanish and French.) <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/caf3deb2b05d4f35c1256bf30051a003?Opendocument>

**THE UN PROTOCOL TO PREVENT, SUPPRESS AND PUNISH
TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN**

Together with

UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

(Relevant sections, as indicated in text)

Travaux Préparatoires

(UN Interpretative Notes, in footnotes)

Annotations

(Unofficial, in boxes)

PREAMBLE

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. GENERAL PROVISIONS

Protocol Article 1 Relation with United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

Note: A corresponding provision, article 37.4 of the Convention, reads: “Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.”

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.¹¹

Protocol Annotation: Paragraphs 1 and 2 incorporate all relevant provisions of the Convention into the Trafficking Protocol. The Trafficking Protocol contains the majority of the commitments made by governments regarding trafficking in persons, but a number of very important provisions (for example, regarding protection of witnesses) are contained in the Convention.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Protocol Article 2 Statement of purpose

The purposes of this Protocol are:

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

Protocol Annotation: One of the three purposes of the Trafficking Protocol is to *protect and assist* victims according to human rights principles. Consequently, even though the protections provisions are relatively weak, the Trafficking Protocol does obligate governments to adopt domestic laws and policies to protect the rights of, and provide assistance to, trafficked persons, in accordance with international human rights standards. It recognizes that certain types of protections and assistance are necessary and dictates that they must be consistent with international human rights norms.

¹¹ UN Interpretative Note: “The *travaux préparatoires* should indicate that this paragraph was adopted on the understanding that the words “*mutatis mutandis*” meant “with such modifications as circumstances require” or “with the necessary modifications”. Provisions of the United Nations Convention against Transnational Organized Crime that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention.”

Protocol Article 3 Use of terms

Protocol Annotation: The UN definition of trafficking in persons in section 3(a) below describes in some detail the nature of the crime. However, this international definition is not appropriate for use in domestic criminal codes. It has too many elements that would have to be proven by prosecutors, thus making prosecutions more difficult. Also, some of the language is ambiguous, which could also lead legal challenges by defendants.

It is important first to read and understand the new international definition of trafficking in persons in the Protocol but then to incorporate the essence of that definition into national legislation using simple and clear language.

We propose just such a criminal law definition of trafficking. The following criminal law definition clearly states the nature of the crime but avoids using so many descriptive and potentially confusing elements:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by any means, for forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Under this criminal law definition, convictions would be easier to obtain and prosecutions would not open to attacks for vagueness by defendants. The proposed definition eliminates the necessity to prove that threats, coercion, fraud, etc., are used to move a person into the trafficking situation. The ‘means’ used to move someone into a trafficking situation are not important but the process of moving people from one place to another in order to hold them in forced, labor or slavery are essential to the crime. Lastly, the definition deletes all undefined and ambiguous terms, leaving only crimes that are defined in international law and in the domestic law of many countries. The criminal law definition is broad enough to cover each and every form of trafficking – from trafficking into forced begging or domestic work to trafficking into forced prostitution or farm labor.

We encourage readers to reconsider the above definition after they have finished reading the UN definition and the Commentaries set out below.

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability¹² or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

¹² UN Interpretative Note: “The travaux préparatoires should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”

Protocol Annotation: The terms “abuse of a position of vulnerability” and the language in footnote 12 make it clear that trafficking can occur without any use of force. The definition recognizes that many trafficked people are told what to do by someone close to them, such as a parent, a spouse or a community leader. Persons in these situations may have no culturally acceptable or legal means to refuse and so they “submit” to the situation. They are still victims of trafficking.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation¹³,

Protocol Annotation: The terms “exploitation of the prostitution of others” and “sexual exploitation” are the only terms in the definition of trafficking that are intentionally left *undefined* and are also *not defined* anywhere else in international law.

The 100+ country delegations that negotiated the Trafficking Protocol at the UN Crime Commission were unable to agree upon definitions for these two terms and so they decided to leave them undefined. The majority of delegates and the Human Rights Caucus understood that countries have different laws and policies on adult sex work and that many countries would not want or be able to sign the Trafficking Protocol if it forced them to change their prostitution laws. A few delegates and NGOs at the negotiations insisted that all adult prostitution, including voluntary and even legal prostitution involving adults, should be classified as trafficking and so they forced a yearlong debate at the negotiations on the subject. The majority of delegates and the Human Rights Caucus rejected the notion that voluntary, non-coerced participation by adults in sex work, factory work or any other work is trafficking. While such work can be abusive and exploitative, it is only trafficking if it amounts to the internationally recognized human rights violations of forced labor, slavery or servitude.

The Human Rights Caucus advocated for a consensus solution that would allow all countries to sign the Trafficking Protocol, including countries that have laws criminalizing adult sex work and countries that have laws decriminalizing and/or regulating adult sex work. All delegations agreed that trafficking involves slavery, forced labor or servitude. However, since there is no international agreement on the meaning of ‘sexual exploitation’, Caucus members proposed to include the term but leave it undefined. In this way, all governments could sign the Trafficking Protocol because the compromise definition would allow each government to decide for itself on the legal treatment of voluntary adult sex work. This proposal was eventually adopted.

Thus, the official explanatory note contained in footnote 13 explains the compromise language and recognizes the existence of both coerced participation and non-coerced participation in adult sex work. It explains that the Trafficking Protocol takes no position on the treatment of non-coerced adult sex

¹³ UN Interpretative Note: “The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are *not defined* in the Protocol, which is therefore *without prejudice* to how States Parties address prostitution in their respective domestic laws.” [Italics in second sentence added.]

work and explicitly leaves its legal treatment to the discretion of individual governments.

Since forced or coerced adult sex work (and any other forced or coerced work) and all child participation in sex work is covered in the Trafficking Protocol in the context of slavery, forced labor or servitude, governments can omit the terms “exploitation of the prostitution of others or other forms of sexual exploitation” from their domestic laws. However, any government that decides to include these undefined terms in their domestic law will have to define them clearly. The preferred definitions would focus in the use of force or coercion (including psychological coercion) to hold people against their will. The following definitions could be considered:

“sexual exploitation” means the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, coercion, abduction, force, abuse of authority, debt bondage or fraud.”

“exploitation of the prostitution of others” could be defined as “the obtaining by a person of any financial or other benefit from the sexual exploitation of another person.”

forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs^{14,15},

Protocol Annotation: The term “forced labour” is defined in article 2.1 of the International Labor Organization Convention Concerning Forced Labour No. 29¹⁶ as follows: “For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

The term “slavery” is defined in article 1.1 of the UN Slavery Convention¹⁷ as follows: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

“Practices similar to slavery” are contained in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, article 1:

“(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not

¹⁴ UN Interpretative Note: “The *travaux préparatoires* should indicate that the removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.”

¹⁵ UN Interpretative Note: “The *travaux préparatoires* should indicate that where illegal adoption amounts to a practice similar to slavery as defined in article 1, paragraph (d), of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, it will also fall within the scope of the Protocol.”

¹⁶ ILO conventions are found at <http://ilolex.ilo.ch:1567/public/english/docs/convdsp.htm>.

¹⁷ All UN conventions are found at <http://www.unhcr.ch/html/intlnst.htm>.

applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

“(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

“(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

“(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

Servitude is not defined in international law but it is understood that the above practices are forms of servitude. The Supplementary Convention lists specific instances of servitude or practices similar to slavery. Other forms of servitude can be drawn from the principles evident in the Supplementary Convention, such as the use of customary practices to strip a person of any ability to refuse to submit to practices that otherwise would be considered slavery or forced labor.

Trafficking for body organs only occurs if a person is transported for the purpose of removing organs. The Trafficking Protocol does not cover the transportation of the organs alone.

The complexity of the definition of trafficking in persons in (a) should now be clear and we encourage readers to reconsider the simple and clear criminal law definition of trafficking proposed at the beginning of Article 3.

(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;^{18 19}

Protocol Annotation: This provision merely restates existing international legal norms. It is logically and legally not possible to ‘consent’ when any of the following are used: “force, coercion, abduction, deception, abuse of power or actions taken while one is in a state of vulnerability or while one is in the control of another person.” Delegates added footnote 19 to explain that defendants have a right to a defence but that, once the elements of the crime of trafficking are proven, any allegation that the trafficked persons ‘consented’ is irrelevant. Real consent is only possible, and legally recognizable, when all the relevant facts are known and a person is free to consent or not. The footnote also ensures that defendants do not lose their right to raise all defenses.

Thus, despite evidence that the victim consented to migrate, to carry false documents and to work illegally abroad, defendants cannot argue that the victim ‘consented’ to work in conditions of forced labor, slavery or servitude. By definition, these three crimes mean there is no consent. For example, a woman can consent to migrate to work in prostitution in a particular city, at a particular brothel, for a certain sum of money. However, if the defendant intended actually to hold the woman in forced or coerced sex work, then there is no consent because everything the defendant trafficker told the woman is a lie. No one can consent to a lie. Even if a person agrees to work in very bad conditions, for very little money, with very little freedom, he would still be a victim of trafficking if the trafficker intended to hold him in debt bondage, involuntary or forced conditions.

Nonetheless, consent can become confusing if the law is not clearly understood. However, the issue of consent is not and should not be a barrier to effective prosecutions. The real barriers to successful prosecutions in many countries are corruption, a lack of official willingness to take strong measures to prosecute traffickers and protect trafficked persons, as well as the presence of poorly trained and inexperienced law enforcement officials. Professionally trained investigators would provide prosecutors with better evidence, making it easier to convict traffickers. If prosecutors have evidence showing that the defendant lied to the victim, kept her passport, did not pay her, kept her in prison-like conditions, threatened her or her family, never allowed her to move about freely or forced her to work in debt bondage or slavery, then convictions should be obtained more easily.

¹⁸ UN Interpretative Note: “The *travaux préparatoires* should indicate that this subparagraph should not be interpreted as restricting the application of mutual legal assistance in accordance with article 18 of the Convention.”

¹⁹ UN Interpretative Note: “The *travaux préparatoires* should indicate that subparagraph (b) should not be interpreted as imposing any restriction on the right of accused persons to a full defence and to the presumption of innocence. They should also indicate that it should not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the State or public prosecutor, in accordance with domestic law. Further, the *travaux préparatoires* will refer to article 11, paragraph 6, of the Convention, which preserves applicable legal defences and other related principles of the domestic law of States Parties.”

(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;

Protocol Annotation: This section is unclear. No force, coercion or deception is required when children are involved and so better language would be: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of prostitution or pornography shall be considered trafficking in persons.” This language would ensure that laws do not permit children, under any circumstances, to engage in prostitution or pornography.

Children are only mentioned here and briefly in Protocol section 6.4 below. Despite recommendations from the Human Rights Caucus, the UN High Commissioner for Human Rights, UNICEF, the International Organization for Migration and others to address the special needs and legal status of children, the delegates failed to do so.

To fill this gap in the Trafficking Protocol, governments should incorporate relevant provisions into their domestic trafficking legislation from the UN Convention on the Rights of the Child²⁰, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography²¹ and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182 (1999)²².

(d) “Child” shall mean any person under eighteen years of age.

Protocol Article 4 Scope of application

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

Convention Articles 2 and 3.2 Use of Terms; Scope of application Convention Article 34.2 Implementation of the Convention

2(a) Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established [by] the Convention [or Trafficking Protocol], in order to obtain, directly or indirectly, a financial or other material benefit.

3.2 ... an offence is transnational in nature if:

²⁰ The Convention on the Rights of the Child is found at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

²¹ The Optional Protocol to the Convention on the Rights of the Child is found at <http://www.unhchr.ch/html/menu2/dopchild.htm>

²² ILO Convention No. C182 is found at <http://iloex.ilo.ch:1567/english/convdisp2.htm>. Click on C182 in left menu.

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

34.2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 2, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

Convention Annotation: The first two sections establish who can be prosecuted and the scope of the crime. It is important to note that they do not cover trafficking by one or two persons or internal trafficking that has no international aspect. For example, traffickers of domestic workers are often a wife and husband who bring a worker from abroad and force her to work in a foreign country with little or no pay or freedom. They would not be covered by 2(a). Also not covered is trafficking that is done entirely within a country by nationals of the country.

Domestic legislation should go further than the Trafficking Protocol and include all domestic and cross-border trafficking and should punish individual traffickers as well as organized criminal groups. Trafficking within some countries is as serious as, or more serious than, cross-border trafficking. Furthermore, from the perspective of the victims, the harm can be just as great no matter whether there are one or ten traffickers and whether the trafficking is cross-border or internal. So the punishments for the traffickers and the protections for the rights of trafficked persons should be the same regardless of whether the trafficking is internal or across borders and whether there are one or twenty traffickers.

Convention article 34.2 states that certain crimes - belonging to an organized crime group (art. 5), money laundering (art. 6), corruption (art. 8) and obstruction of justice (art. 23) - do not need to be transnational or part of an organized criminal group. Governments must adopt laws ensuring that these crimes apply to every person who commits them. Arguably, this same provision applies to the crime of trafficking order to ensure that *all* traffickers can be prosecuted under domestic laws. Article 1 of the Protocol states that relevant Convention provisions are incorporated into the Protocol, which includes article 34.2. Governments, therefore, have an obligation under the Protocol to adopt a trafficking law that covers both internal and cross-border trafficking as well as trafficking by one or more persons.

Convention Article 10
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Convention Annotation: Not all traffickers are ‘natural persons.’ Some traffickers operate within a company or partnership and have assets that should be confiscated and used to pay compensation and damages to trafficked persons. This important provision ensures that all countries have domestic laws establishing the liability of ‘legal persons’.

Protocol Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.²³

Protocol Annotation: Law enforcement provisions throughout the Trafficking Protocol and the Convention are mandatory (“shall adopt”). Thus, all countries that sign the Trafficking Protocol must adopt legislation and other measures to combat trafficking.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences.²⁴
 - (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

²³ **UN Interpretative Note:** “The *travaux préparatoires* should indicate that the “other measures” mentioned here are additional to legislative measures and presuppose the existence of a law.”

²⁴ **UN Interpretative Note:** “The *travaux préparatoires* should indicate that references to attempting to commit the offences established under domestic law in accordance with this subparagraph are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.”

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

Protocol Annotation: Theoretically, section 5.2 could be used to prosecute trafficked persons who agree to work illegally and to travel with false or no documentation. Trafficked persons could be accused of “organizing” or “attempting” to traffic or knowingly “participating” or “assisting” in their own trafficking, which is not the intention of this section. The Trafficking Protocol is intended to punish the traffickers only and not the victims. So domestic legislation should clearly state that a trafficked person is *never* punishable in connection with her or his own trafficking. It should also ensure that trafficked persons are not prosecuted for “trafficking” someone else. For example, if several persons are trafficked together, none of the victims should be prosecuted as an accomplice to trafficking the other victims.

Convention Article 8
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Convention Article 9
Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion on inappropriate influence on their actions.

Convention Annotation: Many countries do not have any laws to investigate and prosecute corrupt officials despite the fact that trafficking cannot exist without the cooperation of corrupt government officials in most cases. Therefore, these anti-corruption provisions are extremely important in preventing trafficking and should be included in all domestic legislation.

Convention Article 12 Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

- (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
- (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

Convention Annotation: These provisions require governments to adopt laws to confiscate the assets of the traffickers. The assets will become the property of the state in which they are located. It is highly likely that a large proportion of the assets will be found in richer countries of destination and not in the poorer countries of origin.

(Sections 2-7 are omitted for the purpose of brevity. These sections contain important details, however, that should also be incorporated into domestic laws.)

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Convention Annotation: This provision ensures the ability of “bona fide third parties” to have access to the confiscated assets. Thus, it is important for domestic legislation to recognize that trafficked persons are always “bona fide third parties” who should be able to access the assets to pay compensation for abuses suffered. Governments should not be permitted to argue that trafficked persons are not “bona fide” simply because they entered the country without proper documents or they worked without documents.

Convention Article 14
Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

Convention Annotation: National laws in many countries will need to be revised in order to ensure that disposal of the assets is done in a manner that benefits trafficked persons. The assets should be used to pay compensation, restitution and damage awards to trafficked persons and to support services for trafficked persons in countries of destination, transit and origin.

Governments should not keep the assets for other purposes and those that do so are guilty of profiting from the traffickers' criminal acts. Assets from human trafficking represent the forced labor, suffering and human rights violations suffered by human beings and they should be distributed to and for the benefit of those victims.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

Convention Annotation: Trafficked persons will need some legal means to recover compensation, restitution and damages in countries of destination, as well as in countries of origin. They should not be prevented from financial recovery simply because the assets are located, for example, in the country of destination while they have returned (voluntarily or involuntarily) to another country.

This section recognizes the need for governments holding confiscated assets to return them to another country to pay compensation to victims. It allows government A to ask government B to return the confiscated assets to government A. The requesting government A would then use the money to pay compensation, restitution and damages for the harms suffered. However, this section does not require governments to change their laws. So advocates, especially those in countries where assets are likely to be found, should work to ensure that domestic laws require their governments to return confiscated assets.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention [a fund for technical assistance to developing countries and countries with economies in transition] and to intergovernmental bodies specializing in the fight against organized crime;

Convention Annotation: This provision would allow a government with confiscated assets to contribute part or all of the assets into a fund set up at the UN to assist developing countries and countries with economies in transition to combat trafficking. While this provision is helpful and even necessary, the contributions should only be made *after* payment of compensation, restitution and damages to trafficked persons and after providing financial support to organizations that provide services and assistance to, or advocate on behalf of, trafficked persons.

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

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

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

Therefore, advocates should strongly urge their governments to distribute confiscated assets, in the following order:

1. To use the assets (a) to satisfy court orders for compensation, restitution and damages to trafficked persons and (b), if a court order is unavailable, to pay compensation, restitution and damages to trafficked persons. The payments should be made whether or not the trafficked persons are in the country in which the crime occurred and/or the assets are located.
2. To fund victim services in countries of destination and origin and in other countries in which trafficked persons are living.
3. To fund law enforcement efforts, including special units to fight corruption, human rights trainings for law enforcement officials, witness protection programs and specially trained anti-trafficking units to work with trafficked persons.
4. To fund programs to implement the trafficking prevention measures set out in Protocol article 9.

II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

Protocol Article 6

Assistance to and protection of victims of trafficking in persons

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

Protocol Annotation: Public disclosure of the person's identity increases the risk of retaliation. When the government releases the names of victims and then deports them, traffickers often retaliate against the victims and their family members and sometimes even re-traffic them. Nonetheless, delegates refused to adopt language ensuring protection of the privacy and identity of the victims (note the phrase "in appropriate cases and to the extent possible"), despite intense lobbying by the Human Rights Caucus.

Therefore, in order to ensure that confidentiality is 'possible' under domestic law, NGOs should urge their governments to adopt laws protecting the identity and privacy of trafficked persons. Government should forbid the release of the names, the addresses or other identifying information to the public.

If governments insist upon releasing the names of the victims, particularly those who testify against their traffickers, then those governments should be prepared to grant residency (even new identities) to the victims and, in some cases, family members as long as a risk of retaliation exists. If they do not protect the privacy and do not provide any type of residency protection, then NGOs and victims will not cooperate with the government.

Note that Convention section 24.2(a) below also calls upon governments to protect the identity and whereabouts of witnesses. It is similar to the Protocol provision, but not identical and provides a stronger basis for such legislation.

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

(a) Information on relevant court and administrative proceedings;

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

Protocol Annotation: Although this language is weak ("in appropriate cases") and appears to permit governments to provide assistance to some trafficked persons and not to others, it nonetheless requires governments to adopt such measures.

Governments must give information to trafficked persons through a translator or in writing in their own language about their legal status and the legal issues involved. Section 2(b) requires "assistance" in legal proceedings and this language must be interpreted to mean legal assistance because non-lawyers would not be competent to assist at "criminal proceedings". Thus, governments

must provide some legal assistance so that trafficked persons can protect their rights during the proceedings. This section also requires governments to enable trafficked persons to testify at the trial and at any sentencing hearings.

As for the words “in appropriate cases”, governments cannot argue that some trafficked persons have a right to understand the legal proceedings and others do not. Information and assistance are always “appropriate” when a person is involved in legal proceedings.

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

Protocol Annotation: This provision addresses the most important and urgent needs of trafficked persons. The language is weak (“shall consider” and “in appropriate cases”) but it does reflect a consensus that certain services are necessary. Delegates at the negotiations were unwilling to commit to providing basic or emergency services, despite the efforts of the Human Rights Caucus. Thus, the burden falls to local NGOs to convince their governments that these services are always appropriate and necessary in trafficking cases.

NGOs are in the best position to assist with the physical, psychological and social recovery of trafficked persons and so “cooperation with non-governmental organizations” is essential. NGOs can assist in providing services and also that they have expertise governments can use in adopting laws, policies and programs.

Convention section 25.1 below contains stronger language requiring governments to provide assistance and protection to victims. It could be used to overcome the weakness of section 6.3.

(a) Appropriate housing;

Protocol Annotation: In many countries, trafficked persons are deported immediately or held in prisons or detention centers because there is no appropriate shelter. Governments must recognize that, if trafficked persons are not provided any shelter and deported immediately, they may not report the crime to law enforcement. Thus, the lack of appropriate shelter results in revictimization and allows the traffickers to remain unpunished and continue trafficking.

This section recognizes that trafficked persons are victims who should be provided with “appropriate housing” and that they should not be held in detention centers or prisons. However, many governments do not have resources to provide long-term housing. However, at a minimum, all governments should be obligated to provide or fund appropriate short-term emergency shelters and security for the shelters. It should not place trafficked persons in detention centers. Most governments could also provide land or an empty building and then authorize and provide grants to local NGOs to operate a shelter.

Trafficking Protocol section 6.3(a) could be incorporated into domestic law in two parts. The first part would establish the principle that trafficked persons should never be held in detention centers, jails or prisons, unless absolutely no other shelter is available. Under no circumstances should trafficked persons be housed with other detainees or prisoners; they must be segregated from detainees and prisoners. The second part would be a commitment by the government to provide funding or resources for “appropriate housing”.

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

Protocol Annotation: Section 6.2(b) and this section 6.3(b) together strongly support a government commitment to provide legal assistance. Although the term “counselling” could be interpreted to mean legal advice only, it must have a broader meaning. Legal counselling must be provided by a lawyer and not by a layperson. It must be provided at all stages of any legal proceedings involving the trafficked person. However, if governments are unable to afford legal services for trafficked persons, then counselling should be provided by advocates with legal expertise on trafficking-related issues.

Trafficked persons can only realize their right of access to justice if they have a lawyer and, given that trafficked persons have no money, they cannot hire a private, non-government-funded lawyer. Trafficked persons are typically undocumented and do not understand the foreign legal system and they may face governments that are not interested in recognizing or respecting their fundamental human rights. Few trafficked persons have any legal representation and so most of them are deported, which effectively prevents them from recovering any financial redress or realizing any of their other rights. Legal representation, then, is essential.

(c) Medical, psychological and material assistance; and

Protocol Annotation: All trafficked persons require some level of medical and/or psychological assistance as well as basic resources such as food and clothing. Governments that are financially able to provide such assistance should make a commitment to do so and governments that lack resources should use their ‘best efforts’. All governments holding confiscated trafficking assets should have an absolute obligation to provide such assistance. Furthermore, all governments, rich or poor, should refer trafficked persons to appropriate NGO service providers.

(d) Employment, educational and training opportunities.²⁵

Protocol Annotation: The Trafficking Protocol treats law enforcement as a shared responsibility of all governments but it treats victim issues as the individual responsibility of governments. Governments with adequate financial resources are able and should provide employment, education and training opportunities to trafficked persons who are allowed to remain in the country.

However, governments of countries of destination and origin often face an enormous burden in providing assistance to trafficked persons and many are financially unable to do so. In addition, some countries of destination are also countries of origin and thus face the double burden of providing assistance to non-citizens and citizens. To alleviate this burden in an equitable manner, governments of wealthier countries should establish a method for funding programs to ensure that trafficked persons are provided with employment, education and training opportunities in all countries of destination and origin. All governments must further ensure that all minors who are trafficked are provided with appropriate education and training.

Important mechanisms for government asset sharing are contained in Convention article 14 above.

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

Protocol Annotation: The provision requires governments to ensure that assistance and protections are gender and child sensitive, which is particularly important in cases involving sexual assault. This could even include the formation of special units to deal with child victims of trafficking and women who had been subjected to sexual violence. This provision must be implemented in a manner that is consistent with the provisions of the Convention on the Rights of the Child²⁶ and in accordance with the principle that decisions about the child are made in accordance with the “best interests” of the child.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

Protocol Annotation: This is an extremely important provision because it addresses the need to protect *all* trafficked persons, not just witnesses. However, it is very weak (“shall endeavor”) and domestic legislation should be much stronger.

Additionally, the provision only addresses protection from danger while trafficked persons “are within” the territory and does not impose any requirement to ensure

²⁵ UN Interpretative Note: “The *travaux préparatoires* should indicate that the type of assistance set forth in this paragraph is applicable to both the receiving State and the State of origin of the victims of trafficking in persons, but only as regards victims who are in their respective territory. Paragraph 3 is applicable to the receiving State until the victim of trafficking in persons has returned to his or her State of origin and to the State of origin thereafter.”

²⁶ The Convention on the Rights of the Child is found at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

the person's safety prior to repatriation. If it is dangerous for a trafficked person to return home, governments should develop a plan for witness relocation and change of identity.

Convention section 24.1 below contains much stronger language on protection measures and covers all witnesses, not just victim-witnesses.

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

Protocol Annotation: This measure only requires governments to offer the *possibility* of obtaining compensation, not the *right* to seek compensation and restitution for the harm suffered. It could also be interpreted to limit victims to compensation from a government created victim compensation fund, which could result in much less money than victims could recover directly from the traffickers in a court order to compensate for the harm suffered. Government compensation funds typically only pay a fixed amount, which may not be adequate for compensation *and* restitution. Compensation funds are very useful, however, in cases when the trafficker's assets cannot be located and confiscated or when the assets are insufficient to pay the full amount of any court-ordered awards.

An alternative and better model is in Convention section 25.2 discussed below.

Convention Article 24 Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

Convention Annotation: This section is excellent for the protection of witnesses and their "relatives and others persons close to them" before and during the trial. However, the danger may not end with the trial and so protections should extend beyond the end of the legal proceedings. It is often the case that traffickers or their friends are not captured and they remain free to threaten witnesses.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

Convention Annotation: In order to protect witnesses and their relatives and friends, governments should ensure that no one is deported if the threat of retaliation or intimidation by traffickers in the country of origin remains. Governments must not deport persons to countries in which their lives are in

danger.²⁷ Unfortunately, at present, most governments, in fact, do deport trafficked persons and witnesses to their countries of origin without any investigation into safety before the return.

Legal provisions to relocate witnesses are extremely important means to protect witnesses during and after the legal proceedings when the risk of retaliation or intimidation is considerable. Governments can relocate persons to another part of the country if the risk of danger exists. Furthermore, if a government is unable to ensure the safety of a person within its territory and it is unsafe for the person to return home, then relocation to a third country is essential.

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

Convention Annotation: Many witnesses are too young or too frightened to speak openly in court in front of their traffickers. This section provides a means to allow testimony from another location and yet still permit defendants' attorneys to cross-examine the witnesses.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

Convention Annotation: Relocation of witnesses and trafficked persons to a third country is sometimes necessary when it is too dangerous to remain in the country of destination or to return home. This often occurs when the countries of origin and destination are very small, making it difficult for people to slip back in unnoticed and undiscoverable. In these cases, third countries should offer residence.

Unfortunately, few third countries have offered to assist trafficked persons with a new residence and identity. The problem is more likely to occur when the person is trafficked into a poor country or small country. Persons trafficked into a richer country may be able to remain permanently in that country but persons trafficked into poor countries are usually deported. At present, governments in wealthier countries have not taken in many persons found at risk with no safe place to live. Third party governments have no incentive to take in immigrants when the trafficking did not occur in their territory. Advocates in wealthier countries then should seek to convince their governments to enter into the type of bilateral agreements recommended in this Convention section 24.3.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Convention Annotation: This provision ensures protections for all witnesses, whether or not they are victim, but the Trafficking Protocol only protects victim-witnesses. So, in order to ensure protections for all persons who can testify against the traffickers and who may be at risk of retaliation, advocates should

²⁷ See the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (http://www.unhcr.ch/html/menu3/b/h_cat39.htm) and the UN Convention Relating to the Status of Refugees (http://www.unhcr.ch/html/menu3/b/o_c_ref.htm).

ensure that their governments adopt legislation incorporating this Convention provision.

Convention Article 25
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

Convention Annotation: Section 25.3 below states that “these provisions do not add any additional protections” to those contained in Trafficking Protocol Article 6. This is not quite correct as Convention Article 25 and Trafficking Protocol Article 6 provisions are not identical. Article 25 actually contains stronger obligations than does Article 6 and is preferable to Article 6 in many respects.

The Trafficking Protocol is subordinate to the main Convention and so the stronger provisions in the Convention should apply in such cases. Thus, where the two articles overlap or conflict, governments must adopt the stronger provisions found in Article 25 of the main Convention unless the Trafficking Protocol provision is specifically related to trafficking. Where the Trafficking Protocol provisions are less favorable to trafficked persons, they should not be adopted if the Convention contains better protections or assistance provisions. Otherwise, witnesses and victims of non-trafficking offenses would be entitled to better protections under the Convention than witnesses and victims of trafficking would obtain under the Trafficking Protocol. Such a disparity of treatment is certainly not the intent of the drafters.

For example, Convention section 25.1 says a government “shall” provide assistance and protection, “within its means”, which means if the government has the resources, it must act. Trafficking Protocol section 6.3 says governments “shall consider” and act “in appropriate cases”, which does not require governments to do anything. Thus, governments must provide some level of assistance and protection according to the commitment they made in section 25.1.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

Convention Annotation: This language is much stronger than the language contained in Trafficking Protocol section 6.6, which does not include the word ‘shall’. Section 25.2 recognizes that trafficked persons have a right to compensation and restitution. As stated previously, however, this right to compensation should not be limited to money from a government-operated victims compensation fund. Trafficked persons also must have the right to access the courts and seek compensation, restitution and damages from the traffickers’ assets.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. These provisions repeat sections of Article 6 of the Protocol and do not add any additional protections.

Protocol Article 7
Status of Victim in Receiving States

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

Protocol Annotation: The immigration status of trafficked persons must be addressed in a manner that ensures safety, provides time for recovery and reflection, and encourages cooperation with law enforcement. This section recognizes the need for legal immigration status but it does not actually require governments to do anything. It merely states that governments ‘shall consider’ temporary or permanent residence ‘in appropriate cases.’ Governments need to understand that trafficked persons who face immediate deportation or arrest will not report crimes or cooperate with investigations and NGOs will be unlikely to urge their clients to contact law enforcement.

Several governments have already recognized that it is always ‘appropriate’ to provide a short-term residence of 45-60 days to provide trafficked persons with time to begin physical and psychological recovery, to decide whether it is safe to cooperate with law enforcement, and to learn their rights and options. Some governments have also recognized it is ‘appropriate’ to provide longer temporary residence to trafficked persons who cooperate with the investigation or who are in danger due to threats of retaliation. In the latter situation, it would be appropriate to provide permanent residence if the threats continue.

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

Protocol Annotation: If domestic law does not allow trafficked persons to remain in the country temporarily or permanently, then it is quite important to include this provision in the law. Section 7.2 ensures that immigration laws are interpreted in a manner that takes into consideration the specific situation of the trafficked person prior to deciding whether or not she or he can remain in the country.

Protocol Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the

receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.²⁸

Protocol Annotation: The important language in this provision is the phrase “with due regard for the safety of that person.” This imposes a positive obligation upon governments to ensure that there is no danger of retaliation or other harm (such as arrest for leaving the country or working in prostitution abroad) that could meet the trafficked person upon returning home.

The phrase “without undue or unreasonable delay”, on the other hand, only mean that governments can arrange for the return of the trafficked person only after they have had the opportunity to access all of their legal rights to justice and their safety upon return is assured. It does not mean that governments can immediately deport all trafficked persons.

See the following section 8.2 for additional supporting language on these issues (“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.”)

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.²⁹

Protocol Annotation: Returns “shall preferably be voluntary” but footnote 29 makes it clear that they can also be involuntary. However, sections 8.1 and 8.2 also clearly limit involuntary returns to those that are safe and after legal proceedings are final.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.³⁰

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.³¹

²⁸ UN Interpretative Note: “The *travaux préparatoires* should indicate that the words “permanent residence” in this paragraph mean long-term residence, but not necessarily indefinite residence. The paragraph should be understood as being without prejudice to any domestic legislation regarding either the granting of the right of residence or the duration of residence.”

²⁹ UN Interpretative Note: “The *travaux préparatoires* should indicate that the words “and shall preferably be voluntary” are understood not to place any obligation on the State Party returning the victims.”

³⁰ UN Interpretative Note: “The *travaux préparatoires* should indicate the understanding of the Ad Hoc Committee that a return under this article shall not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.”

³¹ UN Interpretative Note: “The *travaux préparatoires* should indicate that the words “travel documents” include any type of document required for entering or leaving a State under its domestic law.”

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

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.³²

Protocol Annotation: This article was a priority for countries of destination at the negotiations because it requires countries of origin to accept the return of their citizens and residents. A number of governments do not cooperate with repatriations and so trafficked persons often are held in detention centers for long periods of time. This article should improve the situation because all countries that sign the Trafficking Protocol will be obligated to take back their citizens and permanent residents.

However, the Article does not address the problem of statelessness of trafficked persons. Some trafficked persons come from communities in which childbirths are not registered and others travel with false documents. In both situations, the trafficked persons do not have any legitimate travel documents and may find it very difficult to obtain new ones. As a result, countries of destination are sometimes faced with the situation in which no government will accept the trafficked person as a citizen, leaving the person stateless.

The Trafficking Protocol does not provide any guidance on how to handle these situations. However, trafficked persons are victims of serious crimes and should not be held in detention simply because they do not have legitimate travel documents, through no fault of their own. Ideally, countries of destination should treat all stateless trafficked persons in the same manner as refugees and provide them with a legal means to remain in the country.³³

³² UN Interpretative Note: “The *travaux préparatoires* should indicate that the references to agreements or arrangements in this paragraph include both agreements that deal specifically with the subject matter of the Protocol and more general readmission agreements that include provisions dealing with illegal migration.

“The *travaux préparatoires* should indicate that this paragraph should be understood as being without prejudice to any other obligations under customary international law regarding the return of migrants.”

³³ See the UN Convention relating to the Status of Stateless Persons at http://www.unhcr.ch/html/menu3/b/o_c_sp.htm.

III. PREVENTION, COOPERATION AND OTHER MEASURES

Protocol Article 9 Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

Protocol Annotation: Research is important in understanding trafficking and developing policies and responses. For example, research needs to be done in countries of destination to assess the manner in which restrictive immigration laws facilitate trafficking by preventing people from entering legally to work at jobs begging for workers. Research is also needed on best practices regarding prevention and reintegration.

Information and mass media campaigns have been carried out in many countries and the best ones do not use scare tactics to deter people from migrating. Governments should fund campaigns that provide information to potential migrants about their legal rights abroad and safe migration so that people can decide whether or not their travel and work plans are realistic and safe. The campaigns should also be linked to service providers and ways to obtain more information.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

Protocol Annotation: Governments that sign the Trafficking Protocol must find appropriate ways to collaborate and cooperate with NGOs. This provision supports NGO demands for a role in the development of policies, programs and measures related to the prevention of trafficking. Part of the cooperation should also include government funding of NGO activities.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

Protocol Annotation: Governments in many countries of origin do not have the resources to carry out poverty reduction programs but they can all adopt legislation ensuring equal opportunity in the law to all persons, regardless of race, ethnicity, gender, etc. The terms “shall take or strengthen measures” require all governments to take positive steps to address the underlying causes of trafficking. Governments in countries of destination and origin have a duty to

act. The richer countries could meet their duty through strategic development and other aid.

Other causative factors governments should take or strengthen measures to address are: violence against women in all of its forms, child abuse, lack of proper labor laws, restrictive immigration laws and poorly planned economic development strategies.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Protocol Annotation: Almost all persons who are trafficked start out as migrants seeking work. They are pulled into the migration stream by the demand for labor in other countries. This demand exists because citizens and residents of many countries refuse to take low wage jobs. Jobs exist but no one wants them except migrants.

At the same time, immigration laws in countries of destination are almost uniformly restrictive and prevent migrant workers from entering legally to work legally. Consequently, migrants are forced to find someone to help them migrate without documents. Often, that person is a trafficker who places the migrant into a situation of forced labor, slavery or servitude abroad.

In order to reduce the ability of traffickers to prey on migrant workers, governments should “adopt or strengthen legislative or other measures...to discourage the demand” for undocumented, vulnerable, exploitable migrant workers. They should adopt laws and measures to permit migrants to enter and work legally and to have access the same labor rights provided to other workers. The demand for labor exists and will be met one way or another. The question remaining to be answered is whether the demand will be met by workers with rights or by trafficked persons.

Protocol Article 10 Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:³⁴

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

³⁴ UN Interpretative Note: “The *travaux préparatoires* should indicate that the term “travel documents” includes any type of document required for entering or leaving a State under its domestic law.”

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

Protocol Annotation: The means and methods adopted must be applied in a non-discriminatory manner and must not infringe upon the rights of individuals to enter and leave their country freely, which is found in article 12 of the International Covenant on Civil and Political Rights. Governments must not adopt any laws or measures that would prevent anyone, particularly women, from leaving the country for the purpose of ‘protecting’ them from being trafficked. Unfortunately, some governments have adopted policies or measures that, in effect, ‘protect’ young women out of their right to travel.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

Protocol Annotation: NGOs and law enforcement need to work together. This section recognizes the need for governments to allow NGOs to participate in law enforcement trainings. Experience has shown that the input of NGOs is often extremely helpful in encouraging law enforcement officials to change their practices in a manner that protects the rights of trafficked persons and assists law enforcement.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Protocol Article 11 **Border measures**

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

Protocol Annotation: The “international commitments” mentioned above are those that guarantee all persons the right to enter and leave their countries freely.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.³⁵

³⁵ UN Interpretative Note: “The *travaux préparatoires* should indicate that victims of trafficking in persons may enter a State legally only to face subsequent exploitation, whereas in cases of smuggling of migrants, illegal means of entry are more generally used. This may make it more difficult for common carriers to apply preventive measures in trafficking cases than in smuggling cases and legislative or other measures taken in accordance with this paragraph should take this into account.”

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.³⁶
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Protocol Article 12 **Security and control of documents³⁷**

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

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

³⁶ UN Interpretative Note: “The *travaux préparatoires* should indicate that measures and sanctions applied in accordance with this paragraph should take into account other international obligations of the State Party concerned. It should also be noted that this article requires States Parties to impose an obligation on common carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents. It should further be noted that this paragraph does not unduly limit the discretion of States Parties not to hold carriers liable for transporting undocumented refugees.”

³⁷ UN Interpretative Note: “The *travaux préparatoires* should indicate that the term “travel documents” includes any type of document required for entering or leaving a State under its domestic law and that the term “identity documents” includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

“The *travaux préparatoires* should indicate that the words “falsified or unlawfully altered, replicated or issued” should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. They should also indicate that the intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder.”

Protocol Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.³⁸

³⁸ UN Interpretative Note: “The *travaux préparatoires* should indicate that the term “travel documents” includes any type of document required for entering or leaving a State under its domestic law and that the term “identity documents” includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.”

IV. FINAL PROVISIONS

Protocol Article 14 Savings clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.³⁹

Protocol Annotation: This provision ensures that the Trafficking Protocol does not alter any other obligation of governments under international humanitarian or human rights laws. Thus, all provisions of the Trafficking Protocol must be interpreted in a manner that is consistent with international instruments, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Protocol Annotation: Section 14.2 is excellent for most cases. It ensures no discrimination against victims of trafficking simply because they were trafficked and it also prohibits discrimination against trafficked persons on the grounds, such as race, religion, sex, nationality, etc. that are enumerated in existing international instruments.

However, it does not eliminate all possible bases for discrimination. Governments could still discriminate against a trafficked person who is or has been a sex worker or who is gay, lesbian or transgender. All persons who are trafficked suffer violations of their most fundamental rights and so governments should treat all of them the same, irrespective of other factors. Unfortunately, governments worldwide routinely discriminate against people in the sex industry, gays, lesbians and transgenders.

National legislation on trafficking should remedy this gap. Ideally, the first sentence of section 14.2 would read: "The measures set forth in this Protocol shall be interpreted and applied in a way that does not discriminate on the basis of race, religion, belief, age, family status, culture, language, ethnicity,

³⁹ UN Interpretative Note: "The *travaux préparatoires* should indicate that the Protocol does not cover the status of refugees.

"The *travaux préparatoires* should indicate that this Protocol is without prejudice to the existing rights, obligations or responsibilities of States Parties under other international instruments, such as those referred to in this paragraph. Rights, obligations and responsibilities under another instrument are determined by the terms of that instrument and whether the State concerned is a party to it, not by this Protocol. Therefore, any State that becomes a party to this Protocol but is not a party to another international instrument referred to in the Protocol would not become subject to any right, obligation or responsibility under that instrument."

nationality, gender (including gay, lesbian, transgender) and is not discriminatory to persons on the ground that they are victims of trafficking in persons.”

If not possible to enact legislation listing all the potential grounds of unlawful discrimination, then an acceptable alternative would be to simply state: “The measures set forth in this [name of domestic law] shall be interpreted and applied in a nondiscriminatory manner.”

Protocol Article 15 Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Protocol Article 16
Signature, ratification, acceptance,
approval and accession⁴⁰

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Protocol Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

<p><u>Protocol Annotation:</u> As of the publication date of this Annotated Guide, the Trafficking Protocol had not entered into force. Once the Trafficking Protocol has 40 ratifications and the Convention is also in force, the Trafficking Protocol will enter into force.</p>

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

⁴⁰ UN Interpretative Note: “The *travaux préparatoires* should indicate that, while the Protocol has no specific provisions or reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969 applies regarding reservations.”

Convention Article 32
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention [and the Protocol].

Convention Annotation: Once the Trafficking Protocol is in force, countries that ratify the Convention will establish a body to monitor implementation of the Convention and the Trafficking Protocol. This body will operate within the UN system.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

Convention Annotation: The first meeting of the monitoring body will meet within one year of the date that the Convention enters into force. If the Trafficking Protocol is also in force by then, the Conference will also monitor implementation of the Trafficking Protocol.

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention [and the Protocol];

(e) Making recommendations to improve this Convention [and the Protocol] and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

Convention Annotation: Governments will be reporting to the Conference on their steps to implement the Convention and the Trafficking Protocol. NGOs should also be able to submit information as nothing in this Article limits the sources of information the Conference may consider. Thus, NGO may want to submit “shadow reports” (unofficial reports) on the progress their governments have made in implementing the Trafficking Protocol, including their cooperation

with NGOs. No procedure for shadow reports is contained in the Convention; however, shadow reports are well-established means in the UN system for civil society to make their voices heard.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Protocol Article 18 Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Protocol Article 19 Denunciation

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

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Protocol Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.