

Using the Palermo Protocol as a Basis for Drafting and Amending Victim-Centered National anti-TIP Laws

A WARNATH GROUP PRACTICE GUIDE



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PRACTICE GUIDE
by The Warnath Group

AT A GLANCE

Intended Audience:

- Policymakers and lawyers writing or revising national anti-human trafficking laws.

Takeaway: The Palermo Protocol and its “3Ps” framework is the basis of writing or amending national anti-human trafficking laws that meet global standards. Each country’s national anti-human trafficking laws should be anchored in the legal provisions of the Palermo Protocol and augmented by the local context and legal system.

In This Practice Guide:

- Questions to consider when beginning to write or amend a national TIP law
- How to apply the victim-centered approach to legislative drafting
- Analysis of the articles of the Palermo Protocol
- Analysis of the obligatory and discretionary provisions of the Palermo Protocol

Introduction

The Palermo Protocol¹ is the first and most influential global legal instrument on human trafficking, and as such is the necessary starting point of analysis for drafting and amending national anti-human trafficking laws to meet global standards. Ratifying countries obligate themselves to enact legislation addressing trafficking in persons in line with global standards. The Protocol provides elements that *must be* and *should be* enacted in countries’ respective national legislations based upon the “3-Ps” framework for protection, prosecution, and prevention of TIP.

This Practice Guide will outline both the obligatory and discretionary provisions of the Protocol, and include key questions to consider when drafting or amending national anti-human trafficking laws. In addition, much has been learned about imbedding good practices into national legislation to achieve the intent of the legal obligations and policy framework

¹ The United National Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

imbedded in the Protocol and international laws that have followed.

The Protocol is not the only instrument providing legal obligations and guidance. Other international and regional protocols and conventions augment legal responsibilities and protections for victims of trafficking (VoTs) first addressed in the Protocol, building upon the Protocol's "3-Ps framework.

Initial Questions to Consider

When drafting or amending national anti-human trafficking laws to meet global standards as laid out in the Palermo Protocol, the goal is for a country's legislation to: 1) meet the needs and interests of victims of human trafficking; 2) successfully prosecute traffickers; and 3) effectively and meaningfully prevent trafficking.

As you begin the analysis necessary to draft or amend national TIP laws, the following questions can help guide your drafting or revisions:



How does this legal language or practical application advance protecting and assisting victims?



How does it provide (or fail to provide) the tools needed to investigate, prosecute and convict/sentence traffickers?



Are the prevention elements of a country's laws, policies and practices designed and targeted to reach prevention of the full range of forms of human trafficking in workable, effective and meaningful ways?



Is there more that the legal language or application of that language could or should do to achieve these objectives?



How can this legal language strengthen coordination and collaboration in institutional anti-trafficking efforts, within each country and transnationally?

Applying a Victim-Centered Approach to Legislative Drafting

Using the victim-centered approach in legislative drafting means considering how each provision positively or negatively impacts victims of trafficking (or potentially could negatively impact a victim if language is interpreted and applied in alternative, perhaps unintended or unexpected, ways). The following are examples of specific elements to consider.

- **Victims' Rights:** Do the national laws protect the identity and/or location of victims of trafficking (and their families) or crime victims in general? Are trafficking victims protected from prosecution for crimes (“non-criminalization”), such as prostitution (where it is illegal) or immigration-related violations committed during the course of their trafficking?
- **Remedies:** Can a trafficking victim file a civil suit for restitution independent of a criminal prosecution? Is there an opportunity for a financial remedy for victims as part of a criminal proceeding? What other types of remedies or financial assistance are available?
- **Asset Recovery:** In the event of a monetary award, what options does the victim have to recover assets? Can the accused’s assets be frozen or seized concurrent with arrest or filing of criminal charges to preserve resources for a subsequent monetary award? Are there recovered asset distribution hierarchy rules that favor or disfavor victims?
- **Criminal Procedure and Issues Relevant to Victims During Trial of Traffickers:** Victim testimony is often key to a successful prosecution. Do pre-trial detention procedures make it possible for the accused to go free pending trial (and potentially threaten and intimidate victims, other witnesses, or their family and friends)? Are charges dismissed if the case is not brought to trial within a particular period of time? Will victims be notified of all relevant court proceedings and case developments? If a victim leaves the country, are there barriers (including lack of government funds available for travel) that will make it difficult to return to testify? Are judges empowered to suspend sentences?

- **Protective Orders:** Are victims of trafficking eligible to apply? What are the procedures – are Protective Orders simple or onerous for victims to obtain? Does the law create obligations on the State to provide meaningful protection?
- **Evidence:** What kind of evidence can be obtained or introduced? Can depositions or sworn statements be used in place of live testimony? What are the subpoena powers for law enforcement? What legal authority does law enforcement have to acquire bank records, emails, phone records or other evidence related to the trafficking activities to corroborate victim’s testimony?
- **Family Law:** Are there special protections for unaccompanied minors who have been trafficked?
- **Labor and Employment Law:** In some countries, labor and employment law may afford trafficked persons legal redress for wrongs suffered. These claims may be based in part on unpaid wages, discrimination and breaches of rights relating to sick pay, holidays, work-related accidents or overtime.
- **Immigration:** Some countries address trafficking, in part, through immigration law and policy and outline specific rights of trafficking victims’ eligibility for visas/humanitarian relief, work permits, residence permits and other conditions for staying legally within a country’s borders upon being identified. Are victims required to pay a fee to apply for any of these types of permits or relief? Countries often find that the availability of such “immigration-related benefits” can significantly improve the prospects for both victims’ recovery and successful prosecution of traffickers.
- **Tax Law:** What are the tax consequences for a civil recovery or a labor law recovery for a trafficking victim?
- **Children:** In what ways does the law specifically address the special needs of children?

Articles of the Palermo Protocol

Article 3: Definition of Trafficking in Persons

The Protocol intends for countries to enact the scope reflected in the Protocol's language and spirit of the language. Countries that have ratified the Protocol obligate themselves to enact a criminal provision that matches or expands upon the scope of the Protocol's definition. Although enacting the language of Article 3 verbatim accomplishes technical compliance, ideally drafters should consider the unique circumstances of their country and clearly express the elements of the crime.

The definition provided in Article 3 outlines three interconnected elements pertaining to the scope of human trafficking:

“ACTS”: “...the recruitment, transportation, transfer, harbouring or receipt of persons;”

The use of the disjunctive “or” signifies that only one of the listed acts is required under the Protocol to constitute human trafficking. However, all variations of the “act” should be included in the language of the law. Any narrowing of the legal definition means that a range of perpetrators who are considered traffickers under international law would almost certainly escape identification, arrest and prosecution in country. A further consequence would be that a large range of victims of their crimes would not be eligible for protection and assistance as they would not be found to be victims of the crime of trafficking within the scope of that country's law.

“MEANS”: “... *the threat or use of force or **other forms of coercion**, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.*”

A country's legislation can specify means beyond what is listed in the Protocol. Abuse of position of vulnerability is sometimes defined as a situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved. This definitional language is sometimes used in substitution or to further define “abuse

of position of vulnerability” in legislation as the phrase is not clearly defined in international law or most major legal systems.²

Under international law, it is required that there be no “means” element in the case of child victims. Thus, for cases involving children any of the “acts” listed in the definition combined with the purpose of exploitation **must** be considered trafficking. The Protocol affords children this special status due to their unique position as vulnerable persons and their inability to consent as a matter of law.³ Under the Protocol, “child” is defined as any person, male or female, under the age of eighteen. The definition of child may be contained outside the trafficking law itself.

The consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means set forth in Article 3(a) are used.⁴ It is important to address consent in anti-trafficking legislation because in many trafficking situations, a defendant may assert -- and criminal justice actors (or others) often mistake -- the presence of consent for one thing (e.g. illegal migration) for the existence of “consent” to being trafficked (i.e. being exploited). The danger of the confusion about consent occurs, for example, because an individual may initially agree to be smuggled into a country. Or he or she may voluntarily accept employment and even sign a contract, but is then subsequently coerced into exploitation. For instance, a person may consent to work as a domestic worker, but this does not ever imply that the person consents to work in conditions of forced labor, slavery or servitude. In some countries, consent in these circumstances has been viewed as negating the possibility of a trafficking prosecution (or the finding that the individual was a victim). However, under international standards, apparent consent to being exploited (as defined in the trafficking offense) or to activities that lead to the exploitation (e.g. consent to being smuggled) do not constitute a defense to the crime of trafficking.

The recognition that traffickers can resort to “other forms of coercion” is a key concept included in the Palermo definition of trafficking in persons. While traffickers often resort to violence against victims to enforce and maintain their control, trafficking can also take place without the use of physical violence. It is preferable if a country’s legislation is

² For more background on this, see the United Nations Issue Paper: “Abuse of a position of vulnerability and other ‘means’ within the definition of trafficking in persons.”

³ Palermo Protocol, art. 3(c)

⁴ Palermo Protocol, art. 3(b)

clear and explicit in recognizing the expansive range of non-physical coercion that is possible. For more information on coercion, please see the Practice Guide “Coercion in the Human Trafficking Context.”⁵

“END-PURPOSES”: “...*at a minimum the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.*”

The words “at a minimum” are intended to create a floor on the different types of exploitation that could constitute trafficking in persons in a country’s legislation. The flexibility provided was intended by Protocol negotiators to permit countries to add other specific forms of human trafficking that were seen in their national context or might not have been anticipated at the time of the Protocol negotiations. It can be useful for a country to identify particular forms of trafficking explicitly and clearly to provide specific examples within the broad scope of the Protocol categories. This could include activities like forced begging, using victims as drug mules, or the systematic use of poor rural children as domestic workers in urban areas.

The drafters of the Protocol intended to address the exploitation of prostitution and sexual exploitation in so far as the other elements of the definition of trafficking are fulfilled, which, in particular, is to say that the “means” element is also required to be coupled with the exploitation of prostitution or sexual exploitation. This is what transforms exploiting prostitution or committing sexual exploitation – which may or may not be otherwise criminalized under a country’s laws - into a human trafficking offense. There is no requirement under the Protocol for a country to have criminalized prostitution. Sex trafficking occurs in countries where prostitution is criminalized, decriminalized or legalized, as do other forms of human trafficking.

⁵ Warnath Group Practice Guide *Coercion in the Human Trafficking Context* available at www.warnathgroup.com/publications.

Questions to Ask about the Definition of Human Trafficking in National Laws



how narrowly or broadly exploitation is defined



whether the law only criminalizes sex trafficking or addresses the full range of forms of human trafficking



whether a law equates all prostitution to sex trafficking



whether a country's law establishes all prostitution of minors (i.e. under 18) as sex trafficking⁶



whether other crimes such as illegal immigration and human smuggling are defined as trafficking or not clearly differentiated (they should not be conflated in the legislation)⁷



whether restrictive elements have been added to the scope of the definition such as “for the benefit or profit” that limit the applicability of the law. The negotiators of the Protocol deliberately declined to include making a profit as an element of the crime. Trafficking can occur without the traffickers getting financial or commercial gain from the exploitation.

⁶ See Article 3(b) (the prostitution of minors is sex trafficking).

⁷ Human smuggling is a distinct crime defined in a separate instrument- Article 3(a) of the *Protocol against the Smuggling of Migrants by Land, Sea and Air*. Smuggling is the illegal crossing of borders and is primarily a crime against the State, not against a person. Trafficking may involve smuggling or it may not. Trafficking may not involve crossing any borders. When trafficking is transnational, a victim's entry into the destination country may be legal or illegal – that is irrelevant for whether or not the crime of trafficking has occurred. There can be cases where smuggling becomes a trafficking case (where the elements of trafficking exist). It is not uncommon for smugglers to commit brutally violent and abusive acts against those who they are smuggling. Those are crimes and should be prosecuted, but they are not, simply because of the violence and abuse, human trafficking cases.

Article 5: Criminalization

Article 5 of the Protocol obligates countries to criminalize not only the conduct outlined in Article 3, but also a range of offenses including attempt (subject to the basic concepts of the country's legal system) participating as an accomplice, and organizing or directing other persons to commit trafficking.

In addition to requiring criminalization of human trafficking, the Protocol underscores the need for countries to incorporate an expansive scope of culpability. Thus, consider whether tools exist in the law to reach the full range of criminal actors in a trafficking case.

Note further whether there is criminal and civil liability for businesses or other legal entities for engaging in human trafficking or benefitting from forced labor in their supply chains (or, in some cases, engaging in activities that are closely associated with human trafficking, e.g. confiscating/holding an employee's passport).

The Palermo Protocol's parent instrument, the UN Transnational Organized Crime Convention, requires countries to establish liability for legal entities' roles and render companies accountable through meaningful criminal and non-criminal sanctions.⁸

Beyond this, Article 12 of the Transnational Organized Crime Convention provides for seizure and confiscation of assets associated with crimes covered by the Convention, which includes human trafficking. This language is primarily aimed at disabling and dismantling organized criminal enterprises, but it could apply equally to any entity found complicit in human trafficking crimes.

- **Culpability for legal persons.** Consider what due diligence is required, and what responsibility a company has for the activities of its suppliers, subcontractors, and/or labor recruiters if it is not directly involved in human trafficking activities.
- **Scope of Jurisdictional Authority.** Determine whether your country can assert criminal jurisdiction over its nationals who travel abroad to commit, attempt to commit, or conspire to commit human trafficking crimes and

⁸ See Article 10 Liability of Legal Persons.

- whether it has jurisdiction over defendants who commit trafficking crimes against victims who are nationals of the country.
- **Statute of limitations.** Although the Palermo Protocol does not address statutes of limitations, this issue impacts the practical effectiveness of the application of the law's criminal provisions and the possibility of obtaining justice in these cases and redress by victims.
 - **Victim non-criminalization.** A trafficked person should not be punishable in connection with his/her own trafficking. Examples of this would include prosecuting a sex trafficking victim for prostitution, a trafficked seafarer for illegal fishing, or an undocumented victim of trafficking for an immigration violation.

Article 6: Assistance to and Protection of Victims of Trafficking

The Protocol's Article 6 outlines the affirmative obligations of countries toward victims of trafficking. These obligations should be read as minimum standards for the provision of assistance and protections. The Protocol enumerated a broad list of assistance for victims but did not make the full range of benefits and protections mandatory so there is arguably a disparity between countries' relatively minimal obligations to provide assistance/protection in their legislation pursuant to the Protocol and what is commonly recognized as needed by victims for their recoveries and, many would further argue, what is now well-recognized as international standards.

PHYSICAL AND PSYCHOSOCIAL CARE AND SUPPORT: "Each State Party *shall consider* implementing measures to provide for the physical, psychological and social recovery of victims...in the provision of (a) appropriate housing; (b) counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) medical, psychosocial and material assistance; and (d) employment, education and training opportunities" (art. 6(3)).

Because the Protocol does not mandate the provision of assistance, the result has been that it is not automatic that all victims of all forms of trafficking receive support across all countries. Trafficked persons have a wide range of assistance needs and the duty to consider provision of care and support extends, at a minimum, to both receiving countries and victims' countries of origin (the question of the role of "transit" countries in

this regard remains largely unaddressed to date although even transit countries are likely to have victims – including some of their own citizens -- subjected to trafficking within their borders).

Also, many countries condition assistance on a victim's participation in the investigation and prosecution of the trafficker. While this requirement is not prohibited by the Protocol, the practice of countries making assistance (or any benefits) conditional for those who have escaped or been rescued from human trafficking is controversial and problematic. While governments have a strong interest in obtaining the cooperation of victims with authorities in getting traffickers convicted (an interest generally shared by victims but sometimes overcome by fear of reprisal or other significant considerations), numerous commentators have indicated that it is problematic for a country to use coercive practices (even for a good purpose) against those whose existence was recently defined and controlled by criminals coercing them.

The Protocol's fairly broad rendering of assistance and protections that countries should at least consider providing should be read in conjunction with Article 25 of the Protocol's parent instrument, the Transnational Organized Crime Convention, which appears to make (or arguably makes) protection and assistance measures mandatory at least for countries with means:

**Article 25 - Assistance to and protection of victims
(excerpted from Transnational Organized Crime Convention)**

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.

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

THE SPECIAL NEEDS OF CHILDREN: "Each State Party *shall* take into account...the special needs of children, including appropriate housing, education and care" (art. 6(4)).

Within a country's legislation, the specific measures that are guaranteed to child victims of trafficking should be disaggregated from the general provision of protection and assistance. For example, a trafficked child that is either identified away from family or whose family was complicit in the child's trafficking, may require the appointment of a guardian. These circumstances are unique to children and the law(s) must address these concerns as such. The care and support for trafficked children should be made available as a right, and not conditioned on a child's willingness to cooperate with law enforcement.

SAFETY: "Each State Party *shall endeavor* to provide for the physical safety of victims of trafficking in persons while they are within its territory" (art. 6(5)).

This provision applies to all trafficked persons, not just to witnesses in legal proceedings, but the language "shall endeavor" does not appear to impose concrete duties, but rather obligates countries to make attempts to provide for the safety of victims.

Note that the Transnational Organized Crime Convention provides mandatory protection for all witnesses in human trafficking cases (and their relatives and other persons close to them). This requirement includes trafficking victims who serve as witnesses.⁹

RIGHT TO ACCESS COMPENSATION: "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 damaged suffered" (art. 6(6)).

⁹ **Article 24. Protection of witnesses** (excerpt from Transnational Organized Crime Convention)

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.

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;

(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.

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.

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

Countries are not obligated to provide compensation or restitution. Rather, they must offer the legal possibility of accessing compensation. In some countries, restitution may be mandated as part of criminal sentences, but other countries grant victims the right to bring a civil action against their traffickers. Another alternative toward satisfying this obligation would be a provision establishing a dedicated fund to allow victims to request restitution from the country. Restitution can extend to additional monetary damages for wage and hour violations, pain and suffering or mental anguish suffered by victims.

The right to compensation is not beneficial to victims unless it is coupled with enforcement mechanisms. National laws may provide for the freezing and confiscation of assets that are the proceeds of trafficking, and can be addressed through administrative procedures.

PRIVACY: "... 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 (art. 6 (1)).

To the extent possible under domestic law, countries must ensure that there is no public disclosure of the identity of trafficking victims and that special procedures are in place to protect the privacy and identity of victims. Later instruments and commentaries have further elaborated the importance of protecting against divulging information or images revealing identity or location of victims, their families or others significant to the victim. Some countries make it a criminal violation to reveal such information that could put victims and their families at risk of retaliation, intimidation, discrimination or stigmatization.

RIGHT TO INFORMATION: Ratifying countries *shall* ensure that its domestic legal or administrative system contains measures that provide victims of trafficking in persons "information on relevant court and administrative proceedings" (art. 6(1) (a)) and "assistance to enable their views to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence" (art. 6(1) (b)).

Countries are obligated to provide information and assistance so that victims can protect their rights during proceedings. These can include provisions to provide legal information and assistance **in a language the victim can understand** and whether victims have the **right and/or opportunity to testify** at trial and sentencing hearings. In some countries the right to provide testimony may include presentation of the victim's sworn statement if that is an acceptable practice under local law.

Procedures and financial resources to provide information to victims who are no longer in the country and to bring those victims back to testify should also be considered. These rights have real-world implications: There are many accounts of cases where victims were willing to participate in the prosecution of their traffickers, but were not informed of the relevant proceedings or did not have the financial resources to return to testify.

For more information on providing assistance and protection to victims, please see the Practice Guide "Providing Social Services Support for People Who Experienced Human Trafficking Acting as Witnesses in Legal Proceedings."¹⁰

Article 7: Status of Victims of Trafficking in Persons in Receiving Countries

Article 7 addresses the issue of whether victims – those who are not already nationals of the country within which they have been trafficked – may have the possibility of remaining in the country either temporarily or permanently. Indeed, one of the rationales for creating a new body of international and domestic human trafficking laws was to provide foreign national victims of trafficking with the possibility of not being categorized and treated immediately as migrants violating a country's immigration laws and therefore immediately deported back to their home country. At the time of the Protocol, detention and quick deportation of victims of trafficking was common. It was recognized (although even now this recognition is unevenly applied) that there were reasons that victims of trafficking should not be involuntarily removed immediately from a country if that country sought to increase human trafficking arrests and prosecutions.

¹⁰ Warnath Group Practice Guide *Providing Social Services Support for People Who Experienced Human Trafficking Acting as Witnesses in Legal Proceedings* available at www.warnathgroup.com/publications.

REMAIN IN RECEIVING TERRITORY: “...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” (art. 7(1)).

One of the most important elements of the Protocol was to begin to reverse the common practice of countries to quickly deport victims of trafficking because they did not have any immigration status in the country (and were therefore categorized and treated as illegal immigrants). Ending this practice was critical to a country’s overall anti-trafficking strategy for several reasons: temporary stay or permanent status advanced the possibility of recovery of those who had been enslaved within a country’s borders as well as advancing the interests of the criminal justice process of continued access to victims in investigations and as witnesses.

Despite recognition of the issue, the Protocol does not impose an absolute obligation on countries to extend residency to victims of trafficking. Instead it goes part way and encourages considering the provision of some form of at least temporary, if not permanent, immigration status. Since the Protocol, international standards have continued to be refined to more explicitly recognize measures to effectuate this objective (e.g. recognizing that in some cases providing eligibility for a temporary work visa during the temporary residency is equally important).

There is the additional victim-centered consideration of whether a similarly situated victim that is not able to or does not agree to cooperate or testify for whatever reason – intellectual disability, post-traumatic stress, fear of violent retribution etc. - would be eligible to temporarily or permanently stay in the country if that was necessary for recovery or other factors.

Article 8: Repatriation of victims of trafficking in persons

- The country of origin of the trafficked person “shall facilitate and accept, with due regard for the safety of the person, the return of that person without undue or unreasonable delay” (art. 8(1)).

- The country of destination shall ensure that return is made “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” (art. 8(2)).
- Countries of origin “shall, without undue or unreasonable delay, verify whether a trafficked person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party” (art. 8(3)).
- In order to facilitate the return a trafficked person without proper documentation, the country of origin “shall agree to issue...such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory” (art. 8(4)).

If a victim chooses to return to his/her country of origin or is ineligible to apply for temporary residency, asylum or other immigration relief in the destination country, the Protocol requires that a safe repatriation plan be considered. It is still too often the case that involuntary repatriation or deportation involves a quick decision that does not consider the status or needs of the victim and little or no thought may have been given to a plan for the reintegration of the victim into society. If the repatriation process is not planned to ensure the victim’s well-being and to facilitate social integration, the victim will remain vulnerable to reprisals and re-trafficking.

Elements to look for in a superior anti-trafficking law include cooperation between countries of origin and countries of destination and ensuring safety and the provision of longer-term assistance as needed for recovery.

Article 9: Prevention of Trafficking in Persons

Article 9 obligates countries to implement comprehensive measures to prevent trafficking, addressing the factors that increase vulnerability to trafficking including poverty, underdevelopment and lack of equal opportunity (art. 9(4)). States are also

obligated to adopt or strengthen legislative or other measures to discourage demand for commercial sex services and exploitative labor (art. 9(5)).

The Protocol gives countries flexibility in implementing preventative measures. Prevention includes activities addressing root causes and contributing factors designed to pre-empt and reduce human trafficking. These measures could include, among others, raising awareness activities, employment and income-producing strategies, income generation and entrepreneurial programs, empowerment programs, safe migration programs and demand reduction. Many countries launch high profile human trafficking awareness campaigns but note that informational and mass media campaigns, while a popular approach of governments and NGOs alike, are not effective as the sole prevention strategy.

Acknowledgements

For more information about drafting or amending national anti-human trafficking laws contact the Warnath Group at info@WarnathGroup.com. This Practice Guide was created in collaboration with NEXUS Institute researchers. To access additional practical tools and resources, visit our website at www.WarnathGroup.com. Studies and background material are available at www.NEXUSInstitute.net.

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