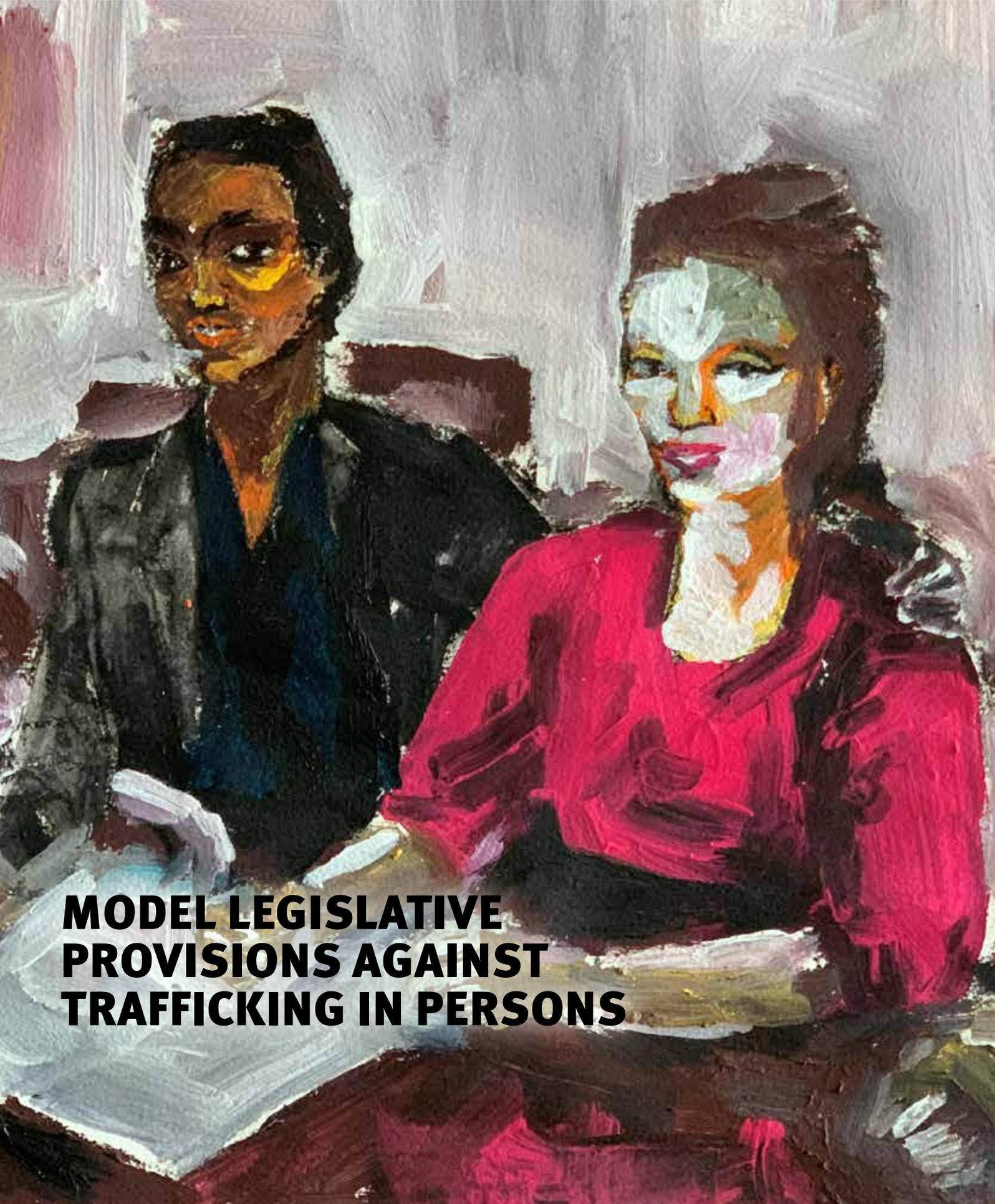




UNODC

United Nations Office on Drugs and Crime



**MODEL LEGISLATIVE
PROVISIONS AGAINST
TRAFFICKING IN PERSONS**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
VIENNA

MODEL LEGISLATIVE PROVISIONS AGAINST TRAFFICKING IN PERSONS



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1. INTRODUCTION

In 2009, the United Nations Office on Drugs and Crime (UNODC) published the Model Law against Trafficking in Persons in response to the request of the General Assembly to promote and support the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (“Trafficking in Persons Protocol”) by Member States. At the end of 2009, there were 135 States Parties to the Protocol; at the end of 2020, there were 178 States Parties to the Protocol. Despite the fact that the Trafficking in Persons Protocol is approaching universal ratification, there remains an ongoing need for implementation, and guidance to support such efforts. This revised document, the Model Legislative Provisions against Trafficking in Persons, is one way that UNODC supports Member States to better understand and apply the Trafficking in Persons Protocol.

Trafficking in persons remains a crime of significant concern, driven by underlying socio-economic and security factors, affecting the majority of countries worldwide. Trafficking in persons is endemic, impacting millions of people and generating billions of dollars in illicit revenue on an annual basis. Simultaneously, the realities of trafficking in persons continue to evolve as do the practices employed by traffickers. Accordingly, legislators from around the world must remain vigilant and constantly assess the efficacy of their anti-trafficking efforts.

HOW TO USE THIS DOCUMENT

The development of a single and comprehensive document that can be used by legislators with different legal systems, constitutional frameworks, and social, political, economic and cultural frameworks is challenging. Nevertheless, policy makers and legislators may find this as a useful reference tool as they draft, amend or review their relevant legislation.

The aim of this document is not to provide a “one-size-fits-all” or comprehensive set of provisions that can simply be replicated into domestic law. Rather, the model provisions and related commentary are designed to provide general guidance, along with relevant examples from different countries from around the world, of the major aspects of the Trafficking in Persons Protocol which can be implemented legislatively. When doing so, legislators must ensure that the proposed changes are drafted in a manner that reflects not only their obligations but also the core policy objectives reflected in the relevant articles of the Protocol. At the same time, national legislation has to be informed by and developed in a manner that reflects each State’s legal traditions and social, economic, cultural and geographic conditions. Simply copying either text from the Trafficking in Persons Protocol or the Model Legislative Provisions will likely be insufficient and may, unintentionally, impede efforts to effectively address this crime.

Parts of this document are presented in a way that might suggest the provisions are part of a stand-alone anti-trafficking statute. There is, however, no requirement that anti-trafficking provisions be contained in a distinct statute and many countries incorporate anti-trafficking provisions into existing statutes. Indeed, it may be preferable to incorporate provisions into existing legislation rather than create new stand-alone instruments. Whatever approach is taken, legislators should ensure that all provisions are harmonized with the existing domestic legal system. A failure to do so risks creating confusion and can undermine the efficiency and effectiveness of the justice system.

The Model Legislative Provisions should not be relied upon in isolation to support the development of domestic anti-trafficking responses. It is important to note that the Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organized Crime and should be interpreted together with the Convention. Further, UNODC has produced a number of additional tools to support implementation of the Protocol. In particular, the Model Legislative Provisions should be read in conjunction with the revised Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Legislative Guide”). The Legislative Guide provides detailed information, including on the negotiations of the Trafficking in Persons Protocol and, when read together with the model legislative provisions, provides comprehensive information to support the implementation of the Trafficking in Persons Protocol at the national

level. Additional information can also be found in various issue papers and other additional UNODC tools, which are included below under the section Other Relevant Tools.

The development of clear and comprehensive laws to address trafficking in persons provides a foundation for national action. At the same time, laws are only effective if their implementation is supported through robust, ongoing and concerted capacity strengthening among those responsible for responding to trafficking in persons. The responsibility for capacity building rests with the State, though many entities will play a role. Capacity building encompasses many elements, including training, resource allocation and skills development.

CHANGES FROM ORIGINAL VERSION

Most States have legislative and regulatory provisions addressing trafficking in persons. In the approximately ten years that have passed since the original Model Law was published, national governments and the international community have continued to improve their understanding of trafficking in persons and the types of responses that are effective in responding to it.

Concerted effort has been made to improve the understanding of certain core concepts that are contained in the Trafficking in Persons Protocol and how to effectively incorporate them into domestic legal frameworks. Similarly, greater attention has been given to developing and refining statements of principle - such as the non-punishment principle - and incorporating them into domestic law. Much of this work has benefitted from, and been informed by, the numerous resolutions on trafficking in persons passed by the General Assembly, the Security Council and by regional organizations.

The new model legislative provisions reflect these developments and will support further domestic action. This document will also facilitate and help systematize the provision of legislative assistance by UNODC and the review and amendment of existing legislation and the adoption of new legislation by Member States themselves.

STRUCTURE

The document is organised into nine chapters, each dedicated to a specific set of provisions that support the effective implementation of the Trafficking in Persons Protocol.

Each chapter proposes model legislative provisions and is accompanied by corresponding commentary. Examples from domestic legislation also are included.

Chapter 1: General Provisions

Chapter 1 sets out statements of principle that inform the interpretation of the model legislative provisions. It also includes a provision that sets out the scope of the legislative provisions and a savings clause.

Chapter 2: Definitions and Guidance on Key Concepts

Chapter 2 contains formal definitions as well as guidance on the interpretation of key terms that are used throughout the model legislative provisions and the commentary.

Chapter 3: Jurisdiction and Liability of Legal Persons

Chapter 3 sets out the different bases upon which prosecutorial jurisdiction can be asserted over alleged criminal conduct. It also discusses the basis for liability of both natural and legal persons.

Chapter 4: Criminal Offences and Related Provisions

Chapter 4 provides guidance on the development of an offence prohibiting trafficking in persons and guidance on the issue of consent in trafficking in persons cases. It also includes information on aggravating factors and the role they play in sentencing.

Chapter 5: Criminal Provisions and Ancillary Offences

Chapter 5 builds on the guidance contained in Chapter 4 and addresses a range of other concepts, including attempts and modes of participation (e.g., aiding, abetting) in trafficking in persons offences as well as on the enactment of offences targeting conduct linked to trafficking in persons. It provides advice on the implementation of the non-punishment principle. Finally, it provides guidance on how to ensure that commercial carriers are not involved in the trafficking of persons.

Chapter 6: Victim and Witness Protection, Assistance and Compensation

Chapter 6 includes guidance on measures to support the physical, psychological and social recovery of victims of trafficking in persons. This includes provisions on victim identification, and providing information to them, the granting of reflection periods, the provision of benefits and mechanisms to enable victims to seek compensation.

Chapter 7: Immigration and Repatriation

Chapter 7 provides guidance on the development of measures to enable foreign national victims of trafficking in persons to remain in the country where they were victimized, temporarily or permanently, as well as measures governing the repatriation of such persons to their country of nationality or permanent residence. It also includes provisions governing the verification of identity documents in the context of facilitating returns.

Chapter 8: Prevention, Training and Cooperation

Chapter 8 includes provisions governing the establishment of national coordinating structures, national rapporteurs and referral mechanisms.

Chapter 9: Regulatory Power

Chapter 9 provides examples of measures to enable the development and implementation of regulations focused on supporting the implementation of the Trafficking in Persons Protocol. Regulations typically provide more detailed measures on the implementation of their parent legislation.

In addition to the nine chapters, three separate annexes are included. These annexes are compilations of national laws on: (a) criminal offences against trafficking in persons and corresponding penalties; (b) the non-punishment principle; and, (c) compensation measures for victims of trafficking.

OTHER RELEVANT TOOLS

The Model Legislative Provisions should not be relied upon in isolation to support the development of domestic anti-trafficking responses.

In addition to the revised Legislative Guide, the following trafficking-specific tools developed by the UNODC should be consulted:

- (a) Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons (2012);
- (b) Guidance Note on abuse of a position of vulnerability as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2012);
- (c) Issue Paper: The Role of “Consent” in the Trafficking in Persons Protocol (2014);
- (d) Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol (2015);
- (e) Issue Paper: The International Legal Definition of Trafficking in Persons: Consolidation of research findings and reflection on issues raised (2018);
- (f) Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal (2015);
- (g) Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking (2010);
- (h) Case Digest on Evidential Issues in Trafficking in Persons Cases (2017).

Additional UNODC tools that should be relied upon to support the development and enhancement of anti-trafficking legislative responses include:

- (a) Model Legislative Provisions against Organized Crime (2012);
- (b) Model Legislation on Money-Laundering and Financing of Terrorism, prepared by UNODC and the International Monetary Fund (2005);
- (c) Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for common law legal systems), prepared by UNODC, the Commonwealth Secretariat and the International Monetary Fund (2009);
- (d) Model Law on Extradition (2004);
- (e) Model Law on Mutual Assistance in Criminal Matters (2007);
- (f) Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary (2009); and,
- (g) UNODC Model Law on Witness Protection (2008) (available upon request).

MODEL LEGISLATIVE PROVISIONS AGAINST TRAFFICKING IN PERSONS

PREAMBLE

The Government of [name of State],
Concerned with the problem of trafficking in persons into, within and out of [name of State],

Considering that trafficking in persons constitutes a serious criminal offence and a severe abuse of victims' human rights,

Considering also that measures must be taken to prevent trafficking in persons, to punish the traffickers and to assist and protect the victims of such trafficking, including by upholding and protecting their human rights as set out in the Universal Declaration of Human Rights and the core international human rights treaties,

Considering further the international obligations accepted by [name of State] when it ratified/acceded to [the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children], [the ILO Convention concerning Forced or Compulsory Labour], [the ILO Convention concerning the Abolition of Forced Labour], [the ILO Convention No. 189 Concerning Decent Work for Domestic Workers and its Recommendation (No. 201)], [the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,] [the ILO Protocol of 2014 to the Forced Labour Convention], [the Convention on the Rights of the Child and its Protocols], [the Slavery Convention], [the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery], [the Convention on the Elimination of All Forms of Discrimination against Women], [the Declaration on the Elimination of Violence against Women], [the International Convention on the Protection of the Rights of All Migrant Workers and Their Families],

Considering that all actions and initiatives against trafficking in persons must be non-discriminatory and be informed by gender, age and any special needs of victims,

Recognizing that, in order to deter traffickers and bring them to justice, it is necessary to appropriately criminalize trafficking in persons and related offences, prescribe and enforce appropriate punishment, give priority to the investigation and prosecution of trafficking offences and to assist and protect the victims,

Recognizing also that advocacy, awareness-raising, education, research, training, counselling and other measures are necessary to help those responsible for preventing trafficking in persons, in protecting and assisting the victims of such trafficking and in holding offenders to account,

Recognizing further that children who are victims or witnesses are particularly vulnerable and need special protection, assistance, support and care appropriate to their age, gender, level of maturity and special needs in order to prevent hardship and trauma that may result from their participation in the criminal justice process,

Recognizing also that trafficking in persons occurs domestically and transnationally and that therefore States must cooperate bilaterally and multilaterally to effectively suppress this crime,

Recognizing that trafficking in persons may be committed by individuals or by organized criminal groups

Believing that effective measures against trafficking in persons require national coordination and cooperation between government agencies, including different levels of government, as well as between government agencies and civil society, including nongovernmental organizations, and the private sector,

Be it enacted by the [National Assembly/Parliament/other] of [name of State] during its [number] session on [date]:

Commentary

The use, if any, of a preamble and its content and purpose will vary according to the legal culture and the local context.

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CHAPTER 1

GENERAL PROVISIONS

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1. [TITLE]

The present Law may be cited as the [Law against Trafficking in Persons] of [name of State] [year of adoption].

Commentary

Article 1 is redundant when there is a separate law promulgating the present law on trafficking in persons. In such a case the title of the law will be mentioned in the promulgating law. Examples of titles are:

- Combating Trafficking in Persons Act;
- Trafficking Victims Protection Act;
- Anti-Trafficking in Persons Act;
- Act to Prevent and Suppress Trafficking in Persons and to Protect and Assist Victims of Trafficking;
- Human Trafficking Act.

The title of an Act can help to explain the purpose of the legislation. For some legal systems, it may not have any legal impact. In some cases, a title may help to inform the interpretation of operative provisions of the Act, in cases where they may not be clear.

ARTICLE 2. COMMENCEMENT

The present Law shall come into force on the [date].

ARTICLE 3. GENERAL PRINCIPLES

Purpose of law

1. The purposes of this Law are to:
 - (a) prevent and combat trafficking in persons in [name of State];
 - (b) protect and assist the victims of human trafficking, while maintaining full respect for and protection of their human rights;
 - (c) enable the just, timely and effective investigation, prosecution and punishment of traffickers;
 - (d) promote partnerships, national accountability and awareness of human trafficking, including by providing trafficking identification training to relevant authorities; and,
 - (e) facilitate national and international cooperation in order to meet these objectives.

Non-discrimination

1. The measures set forth in this Law [in particular the identification of victims and the measures to protect and promote the rights of victims] shall be interpreted and applied in a way that is not discriminatory on any ground, such as race, colour, gender, religion, cultural or other belief or practices, immigration status, age, family status, culture, caste, language, ethnicity, national or social origin, citizenship, sexual orientation, political or other opinion, disability, property, birth, the fact that the person has been trafficked or the form of exploitation they have been subjected to, or that they have participated in the sex industry, or other status.

2. This Law shall be applied in a manner that takes into account the gender, age and any other relevant factor of victims of trafficking.
3. Child victims shall be accorded particular attention in view of their special needs as minors and shall also be treated fairly and equally, regardless of their or their parents' or their guardians' race, colour, gender, religion, cultural or other belief or practices, immigration status, age, family status, culture, caste, language, ethnicity, national or social origin, citizenship, sexual orientation, political or other opinion, disability, property, birth, the fact that the person has been trafficked or the form of exploitation they have been subjected to, or that they have participated in the sex industry, or other status.

Commentary

Article 3 helps to identify the objectives of the proposed legislation and how it is to be applied. It will need to be adjusted to reflect the particular content of the draft legislation. In some legal systems, a statement of purpose or the identification of principles underpinning the legislation can be used to help inform the interpretation of the operative paragraphs of the legislation.

Individuals may become, or be at greater risk of becoming, victims of trafficking through discriminatory policies or practices, which human traffickers can take advantage of. Further, the discriminate implementation of anti-trafficking measures may only exacerbate the harm suffered; for example, by prohibiting access to services for victims who were exploited in prostitution or by inappropriately denying specific types of services to victims based on their immigration status. For all these reasons it is extremely important that States apply their domestic laws in a non-discriminatory way.

Article 14, paragraph 2 of the Protocol provides that the measures set forth in the Protocol “shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non- discrimination” as, for example, contained in the International Covenant on Civil and Political Rights (article 2, paragraph 1).

At a minimum, the wording of article 14 should be included if a similar provision is not already included in the law as a general principle. An example is:

“The measures set forth in this law shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking and shall be consistent with the principle of nondiscrimination.”

Ensuring that States Parties comply with their obligations under article 6, paragraph 4 and article 14, paragraph 2 of the Protocol also requires consideration about how the implementation of domestic laws, programmes and policies will impact particular groups in different ways. It is widely understood that the principle of non-discrimination requires consideration of how laws, programmes or policies may be neutral on their face but have adverse impacts on particular groups of individuals.

This general principle is specifically reflected in the Protocol in Article 6, which requires that States Parties take into account the age, gender and special needs of victims of trafficking.

Addressing the needs of children

As the Protocol itself specifically addresses the special needs of children (article 6, paragraph 4), and should be consistent with existing human rights law (article 14, paragraph 2), such as the Convention on the Rights of the Child, the model legislative provisions contain child-specific wording, where appropriate.

Paragraph 4 is based on the internationally recognized principle of non-discrimination, as, for example, contained in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

ARTICLE 4. SCOPE OF APPLICATION

This Law shall apply to all forms of trafficking in persons, whether national or transnational and whether or not connected with organized crime.

Commentary

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, should be interpreted together with the Convention against Transnational Organized Crime (article 1).

Article 4 of the Protocol limits its application to the prevention, investigation and prosecution of offences that are **transnational in nature and involve an organized criminal group**, except as otherwise stated.

However, these requirements are not part of the definition of trafficking in persons, nor are they required elements for an offence enacted in domestic law (see the Protocol, article 3 and article 5, paragraph 1). This point is also emphasized in article 34, paragraph 2 of the Convention. This means that national laws should establish trafficking in persons as an offence independently of the transnational nature or involvement of an organized criminal group. By contrast, when relying upon the Trafficking in Persons Protocol and the Convention for the purpose of international cooperation, for example, a State may be required to show that the offence in question involved organized crime and was transnational.

The Model Legislative Provisions do not, however, distinguish between provisions that require these elements and provisions that do not in order to ensure the equal treatment by national authorities of all trafficking in persons cases.

ARTICLE 5. SAVING CLAUSE

Nothing in this Law 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 and where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement under international law.

Commentary

Article 14, paragraph 1 of the Trafficking in Persons Protocol makes clear that the measures contained therein are not meant to narrow, diminish or otherwise adversely impact upon the rights, obligations and responsibilities of States and individuals under international law. In other words, States Parties must take care to ensure that measures taken to implement the Protocol do not otherwise conflict with other international obligations that they have, including those contained in applicable regional instruments governing refugee protection.



CHAPTER II. DEFINITIONS AND GUIDANCE ON KEY CONCEPTS

CHAPTER II. DEFINITIONS AND GUIDANCE ON KEY CONCEPTS

INTRODUCTION

Some jurisdictions prefer to include definitions in their relevant anti-trafficking and/or criminal laws. In other cases, definitions may not be provided but the meaning of certain terms becomes clear based on the way those terms are used in a particular legislative provision. In common law jurisdictions, some terms may acquire meaning through applicable case law.

Many of the definitions provided below are derived from the Trafficking in Persons Protocol, the Convention against Transnational Organized Crime and other relevant international instruments.

The proposed definitions and related guidance may be helpful to legislators when developing or enacting anti-trafficking laws. Clearly drafted laws are critical to promoting the rule of law because clear laws ensure that the public can know what behaviour is and is not permitted, the roles and responsibilities of the State and those who act on behalf of it and the rights, services and entitlements that are available.

The chapter on definitions does not include every term that is included in the Trafficking in Persons Protocol. It does, however, include those terms that have the subject of significant attention, and are terms for which additional guidance has frequently been sought or that play critical roles in national legislation. No specific conclusions should be drawn on the exclusion of certain terms and decisions on whether to rely upon any of the definitions provided in the Model Legislative Provisions are, ultimately, the responsibility of national legislators who are better placed to make determinations as to what terms should and should not be defined in their national laws.

ARTICLE 6. DEFINITIONS

For the purposes of this Law the following definitions shall apply:

- (a) **“Abduction”** means intentionally taking a person and unlawfully restricting their movement so as to interfere with their liberty.

Commentary

The meaning of abduction can vary significantly from one jurisdiction to another. In some jurisdictions, abduction may be distinguished from kidnapping by the presence or absence of force. In some jurisdictions, abduction is confined to situations involving the taking of children with the intention of withholding them from their legal guardian(s).

- (b) **“Abuse of a position of vulnerability”** shall mean where a person intentionally uses or otherwise takes advantage of an individual’s personal, situational or circumstantial position of vulnerability.

Commentary

Many definitions of “abuse of a position of vulnerability” are possible. The example provided is drawn from the UNODC’s Issue Paper on Abuse of a position of vulnerability and other means within the definition of trafficking in persons. The Issue Paper provides that an individual’s personal, situational or circumstantial position of vulnerability includes, for example, having an illness, a physical or mental disability; being displaced within or

across a country's borders by any conflict, natural or other disaster; being irregularly in a country and/or being undocumented; being lawfully in a country, but without possession of identity or travel documents; being socially, culturally or linguistically isolated; being unemployed, destitute, impoverished, or otherwise in a precarious situation from the standpoint of survival; being vulnerable owing to age, gender, pregnancy, belief, psychology or family situation.

The term is comprised of two elements: (1) establishing a person's vulnerability; and, (2) establishing that someone else has used or taken advantage of that person's vulnerability.

Evidence must show that the individual's vulnerability was intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believed that submitting to the will of the abuser was the only real or acceptable option available to him or her, and that this belief was reasonable in light of the victim's situation.

For more information, please see:

Issue Paper: Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons (2012).

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

See also paragraph 63 of the Interpretative notes for the official records "Travaux préparatoires" of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000), which provides 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. This describes the effect of the abusive behaviour on the person to whom it is directed at.

- (c) **"Abuse of power"** shall mean using one's power over another in order to take advantage of that person.

Commentary

In some countries, the concept of abuse of power has been interpreted to include situations where a person has power over another person by virtue of their relationship (e.g., employer and employee, teacher and student, coach and athlete, parent or guardian and child) and uses that power to their advantage.

- (d) **"Child"** shall mean any person below the age of eighteen.

Commentary

This definition reflects definitions included in different treaties, including Article 3(d) of the Trafficking in Persons Protocol.

- (e) **"Commercial carrier"** shall mean any person engaged in transporting persons, goods or mails for remuneration, hire or any other benefit.

Commentary

This definition is drawn from Article 1 of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

(f) **“Coercion”** shall mean the use of physical or psychological pressure, force or threats of harm.

Commentary

The model provisions propose one example of how to define “coercion”. Many variations are possible. Some may focus on the conduct of the accused, while others may focus on the effect of that conduct on the victim, or the likely effect that such conduct would have. Some definitions may itemize coercive practices, such as blackmail, extortion and other forms of unjustified demand. The model text proposes a definition that focusses on the conduct of the accused, rather than its impact on the victim. The reason for this is because it will be factually easier to establish as compared to, for example, the effect of behaviour on the person coerced.

(g) **“Deception”** shall mean words or conduct that cause someone to believe something that is false.

Commentary

To “deceive” is to cause someone, through words or actions, to believe something that is false. In the context of trafficking in persons, deception can relate to the work or services that the trafficked person will engage in; for example, the person believes, based on the promise offered, he or she will be provided a job as a domestic worker but is then forced to engage in sexual activities. It can also refer to the conditions under which the person will be forced to perform this work or services. For example, the person is promised the possibility of legal work and a residence permit, proper payment and regular working conditions in the sex industry or any other field, but ends up not being paid, being forced to work extremely long hours, in unsafe and unhygienic conditions, being deprived of his or her travel or identity documents, has little or no freedom of movement and/or is threatened with reprisals if he or she tries to escape.

(h) **“Debt bondage”** shall mean the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt, or if the length of those services is not limited and defined.

Commentary

This definition is taken from Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

In some jurisdictions, this definition has been modified to capture the situation where the debt can be extinguished but the value of the services is not ‘reasonably’ assessed. This expands the concept of debt bondage from its original understanding to cover cases where it is not impossible to pay off the debt. See, for example, Australia’s Criminal Code Act which defines “debt bondage” as:

the status or condition that arises from a pledge by a person:

- (a) of his or her personal services; or
- (b) of the personal services of another person under his or her control; as security for a debt owed, or claimed to be owed (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:
- (c) the debt owed or claimed to be owed is manifestly excessive; or
- (d) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or
- (e) the length and nature of those services are not respectively limited and defined.

- (i) **“Exploitation of prostitution of others”** means unlawfully obtaining a financial or other material benefit from the prostitution of another person.

Commentary

The term “exploitation of prostitution of others” was left undefined in the Trafficking in Persons Protocol in order to allow all States, independent of their domestic policies on prostitution, to ratify the Protocol. The Protocol addresses the exploitation of prostitution only in the context of trafficking (Interpretative notes for the official records “Travaux préparatoires” of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000, para. 64).

See also, UNODC’s Issue Paper, *The Concept of Exploitation* (2015), starting at page 27.

- (j) **“Forced begging”** means causing someone to beg, under the threat of any penalty and where that person has not offered themselves voluntarily.

Commentary

Anti-trafficking legislation in some countries explicitly includes forced begging as an exploitative purpose. For example, in Lao People’s Democratic Republic, the Law on Anti-Trafficking in Persons provides that forced begging shall mean “forcing, threatening or coercing another person to begging in order to gain benefits.”

In EU Directive 2011/36/EU, forced begging is understood as a form of forced labour or services, provided that the elements of forced labour are also present (work or service, exacted under threat of any penalty, that is not voluntary).

- (k) “Forced labour or services” shall mean all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered themselves voluntarily.

Commentary

This definition comes from the ILO Convention No. 29 Concerning Forced or Compulsory Labour of 1930.

- (l) **“Fraud”** can be understood as deceiving someone with the intent to deprive the person deceived of something.

Commentary

Fraud is defined in different ways in different legal systems. Some legal systems may treat fraud and deception as the same thing. Others commonly define fraud to be deception that is done with an intention to gain something from the person deceived or, alternatively, with the intention that the person deceived be deprived of something. The deprivation can relate to money, property, service or some other material benefit. The definition of trafficking in persons uses both the terms deception and fraud, which suggests an intention that they were meant to address different things. As such, the model provisions propose a definition of fraud that requires proof of an intention that the deception was done to deprive the person deceived of something.

- (m) **“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, in order to obtain, directly or indirectly, a financial or other material benefit.

Commentary

This definition is found at Article 2 of the UN Convention against Transnational Organized Crime.

- (n) **“National Referral Mechanism”** shall mean a co-operative framework through which State actors fulfil their obligations to respect, protect and fulfil the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society.

Commentary

The basic aims of a national referral mechanism are to identify, assist and reintegrate victims of trafficking, to ensure that the rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services and protection. See the OSCE’s Office for Democratic Institutions and Human Rights publication, *National Referral Mechanisms Handbook* (2004).

- (o) **“Person”** shall include natural or legal persons.

- (p) **“Practices similar to slavery”** shall include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.

Commentary

The Supplementary Convention on the Abolition of Slavery (1956) does not contain a definition of “practices similar to slavery,” but specifically prohibits debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. The Trafficking in Persons Protocol defines a child to be any person under the age of eighteen years of age.

The terms “debt bondage” and “serfdom” are defined in article 1 of the Supplementary Convention. Debt bondage is included in the list of defined terms in the model legislative provisions.

“Serfdom” is defined as:

the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his or her status.

“Servile forms of marriage” are described as:

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.

Finally, the “exploitation of children” is described in the Supplementary Convention as: 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.

The UN Special Rapporteur on Contemporary Forms of Slavery has advised that the four “institutions and practices similar to slavery” defined in the 1956 Supplementary Convention, referred to collectively as “servile status”, should be understood as conventional servitudes. They are: debt bondage; serfdom; forced marriage; and a category that has been subsequently known as “the sale of children.”¹ “Forced marriage” is not defined in inter-

¹ A/HRC/36/43, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Human Rights Council, 2 August 2017, para. 10.

national law. The sale of children is defined in Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

(q) **“Public official”** shall mean:

- (1) Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
- (2) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service.

Commentary

This definition comes from Article 2 of the United Nations Convention against Corruption.

(r) **“Recovery and Reflection Period”** shall mean a period of time granted to victims of trafficking in persons to allow them to recover and escape the influence of the perpetrators of the crime, and to give them the opportunity to make an informed decision as to whether to co-operate with the competent authorities.

Commentary

This definition is drawn from the guidance contained in: ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014), under “Principle 2: Due Process”.

(s) **“Revictimization”** means a situation in which the same person has been the victim of more than one offence over a specific period of time.

Commentary

This definition comes from the UNODC Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime (2009), page 5.

(t) **“Secondary victimization”** shall mean victimization that occurs not as a direct result of the criminal act but through the response of State institutions, other agencies and individuals to the victim.

Commentary

This definition comes from the UNODC Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime (2009), page 5.

(u) **“Servitude”** shall mean the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change.

Commentary

Servitude is prohibited by, among other instruments, the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Neither of these instruments contains an explicit definition of servitude.

In the case of *C.N v France* (2012) (Application no. 67724/09), the European Court of Human Rights held that servitude is an aggravated form of forced labour, finding that:

“servitude corresponds to a special type of forced or compulsory labour or, in other words, “aggravated” forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced compulsory labour within the meaning of Article 4 of the Convention lies in the victim’s feeling that their condition is permanent, and that the situation is unlikely to change. It is sufficient that this feeling be based on...objective criteria or brought about or kept alive by those responsible for the situation.”

In 2016, the Inter-American Court of Human Rights in its judgment in *Hacienda Brasil Verde Workers v Brazil*², concurred with the ECHR’s findings on the definition of servitude and held that the prohibition on servitude enshrined in the Inter-American Convention on Human Rights protects against both:

- (1) the obligation to perform work for others, imposed through coercion and
 - (2) the obligation to live on the property of another person without the possibility of altering one’s condition.
- (v) **“Sexual Exploitation”** shall include any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from sexual exploitation of another.

Commentary

This definition is drawn from section 1 of the UN Secretary General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse. Other examples of sexually exploitative behaviour are possible and may include, for example, other types of coerced sexual activity.

See also, UNODC’s Issue Paper, *The Concept of Exploitation*.

- (w) **“Slavery”** shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.

Commentary

This definition comes from Article 1 of the Slavery Convention (1926).

The Inter-American Court of Human Rights’ decision in *Hacienda Brasil Verde Workers v Brazil*³ explained that one of two elements of slavery needed to be present for a finding of slavery, either the status or condition of the individual as a slave or, secondly, the exercise of one or more of “the powers attaching to the right of ownership” such as to nullify the juridical personality of the individual.

The Court held that ‘powers attaching to the right of ownership’ can be assessed on the basis of eight elements, including: restriction or control over the individual’s autonomy; loss or restriction of freedom of movement; the obtaining of a profit by the perpetrator; and, the absence of the victim’s consent or its impossibility or irrelevance owing to the existence of violence or other means of threat or use of force or other forms of coercion, fraud or deception.

That said, the question of what constitutes “powers attached to the right of ownership” is not settled at the international level. Additional information can be found in UNODC’s Issue Paper on the Concept of Exploitation (2015), at page 33.

² *Hacienda Brasil Verde Workers v Brazil*, Judgment of 20 October 2016, Series C No. 31 available here in Spanish: <https://www.corteidh.or.cr/cf/Jurisprudencia2/overview.cfm?doc=1728&lang=en>, see para 280.

³ *Hacienda Brasil Verde Workers v Brazil*, Op. Cit.

⁴ *Ibid* at 272. These findings were informed by the crucial findings on ‘enslavement’ that were reached by the ICTY in *Prosecutor v Kunarac (Trial Chamber)* [2001], at para 542:

See <http://www.icty.org/x/cases/kunarac/tjug/en/kun-tjo10222e.pdf>

National Example:

Israel, Article 375A(c) of the Penal Code

“Slavery” means a condition under which authority is exercised against a person, such as is generally exercised toward a person’s property; for this purpose, actual control of a person’s life or denial of his freedom shall be deemed the exercise of said authority.

- (x) **“Support person”** shall mean a specially trained person designated to assist the victim throughout the justice process to prevent risks of duress, revictimization and secondary victimization.

Commentary

This is drawn from the UNODC Model Law and Related Commentary on Justice in Matters Involving Child Victims and Witnesses of Crime (2009), page 5.

- (y) **“Trafficking in persons”** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Commentary

This definition comes from Article 3 of the Trafficking in Persons Protocol.

- (z) **“Victim”** means a person against whom an offence has been committed or is alleged to have been committed.

or

“Victim” means an individual who has suffered physical or emotional harm or economic loss as the result of the commission or alleged commission of an offence.

Commentary

Conferring the status of “victim” on someone should not be dependent upon a charge being laid, a formal identification having taken place or the individual identifying themselves as such. Rather, the status of victim should be conferred where there is information available to indicate that an offence has allegedly taken place. See ODIHR, National Referral Mechanisms Handbook (2004). See also, the definition of victim contained in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985):

„Victims“ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term „victim“ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.



CHAPTER III. JURISDICTION AND LIABILITY OF LEGAL PERSONS

CHAPTER III. JURISDICTION AND LIABILITY OF LEGAL PERSONS

INTRODUCTION

Article 15 of the Convention against Transnational Organized Crime sets out provisions governing how States Parties are to assume jurisdiction over offences established under it and the Protocols thereto, including the Trafficking in Persons Protocol. The following model provisions provide guidance on these issues.

The ability to assume jurisdiction to prosecute trafficking in persons, on a variety of bases, ensures that perpetrators cannot act with impunity. It also addresses practical challenges that can arise in trafficking in persons cases, which may be transnational in nature and/or where technology has been used to facilitate such crimes. Cases where one element of trafficking in persons has occurred in one State and another element has occurred in a different State may mean that both States have jurisdiction to prosecute. In such cases, general principles of law, as well as practical considerations, will dictate determinations relating to the prosecution of such crimes.

General principles of criminal law in place at the domestic level may make specifying jurisdiction unnecessary. However, in some cases it will be necessary to do so.

ARTICLE 7. JURISDICTIONAL PROVISIONS GOVERNING APPLICATION OF CRIMINAL LAW

[name of State] shall have jurisdiction for any offence established under chapter III of this Law when:

- (a) The offence is committed in its territory;
- (b) The offence is committed on board a vessel or aircraft that is registered under its laws at the time the offence was committed;
- (c) The offence is committed outside its territory by its national and where extradition of its nationals is refused on the grounds of nationality.

Commentary

Territorial jurisdiction and jurisdiction on board a vessel or aircraft that is registered in the State (the so-called flag State principle) exists in all States. In common law countries, this may be the only basis for jurisdiction. The criterion is the place where the criminal act has been committed (i.e., the locus delicti is in the territory of the State). In the context of trafficking in persons, the flag State principle may be particularly important, for example, in cases involving trafficking in persons in the fishing industry.

According to the United Nations Convention on the Law of the Sea (1982), jurisdiction may also be extended by a State to permanent installations on the continental shelf as part of the territory.

Proposed Article 7(c) of the model provisions addresses the situation where an offence is committed outside of the territory of the State Party by one of its nationals, where that person is present in its territory and where the State does not extradite solely because the person is their national.

Source: Convention against Transnational Organized Crime, article 15, paragraphs 1(a) and (b) and article 15, paragraph 3

ARTICLE 8. ADDITIONAL JURISDICTIONAL PROVISIONS GOVERNING APPLICATION OF CRIMINAL LAW

1. [name of State] shall have jurisdiction for any offence established under chapter III of this Law when:
 - (a) The offence is committed outside its territory against its national;
 - (b) The offence is committed outside its territory by its national;
 - (c) The offence is committed outside its territory by a stateless person who has his or her habitual residence in [name of State] at the time of the commission of the offence;
 - (d) The offence is committed outside its territory by a person, and that person is present in its territory and it does not extradite him or her; or
 - (e) The offence is committed outside its territory but for the benefit of a legal person established in its territory.

2. [name of State] shall have jurisdiction to prosecute acts undertaken in another state with a view to the commission of an offence under this Law within its territory.

Commentary

Paragraphs 1(a) and (b) enable jurisdiction on the basis of the nationality of either the victim or the accused.

Paragraph 1(c) will apply to anyone who is habitually resident in the State, including stateless persons.

Paragraph 1(d) is based on article 15, paragraph 4 of the Convention against Transnational Organized Crime.

Paragraph 1(e) is modelled on the EU Trafficking Directive 2011/36/EU at Article 10(2)(b) which promotes the establishment of extra-territorial jurisdiction where “the offence is committed for the benefit of a legal person established in its territory.” In effect, this would enable the State to prosecute an individual who is alleged to have committed a trafficking in persons offence abroad where they did so for the benefit of a legal person (e.g., a business in the territory of the country). It should be further noted that domestic criminal laws might also be used to prosecute the legal person who benefited from the human trafficking offence committed abroad (e.g., receiving a financial or material benefit from the commission of a serious offence).

Paragraph 2 is a further extension of jurisdiction in line with paragraph 1. It extends jurisdiction to cases in which the acts have not led to a completed crime, but where an attempt has been made in the territory of another State to commit a crime in the territory of the jurisdictional State. It can also capture conspiracies committed abroad.

Source: Convention against Transnational Organized Crime, article 15.

Comparative Law: European Union

The EU Trafficking Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (“the Trafficking Directive”) requires the establishment of extra-territorial jurisdiction by States over human trafficking offences committed abroad by their nationals (Article 10(1)(b)). It also makes clear that States must ensure that they have jurisdiction to prosecute their nationals who are outside of their territory and incite, aid, abet, or attempt to commit human trafficking offences (Article 10(1)(b) in conjunction with Article 3).

Article 10 of the Trafficking Directive provides:

“Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:
 1. (a) the offence is committed in whole or in part within their territory; or
 2. (b) the offender is one of their nationals.”

The Directive confirms that the establishment of prosecutorial jurisdiction in respect of their nationals who commit human trafficking offences abroad is not dependent on the offence being a crime in the country where it was committed or upon a report having been filed by the victim in the country where the offence took place.

The Recital to the Trafficking Directive explains the rationale for the need to extend territorial jurisdiction: In order to ensure effective prosecution of international criminal groups whose centre of activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State. Similarly, jurisdiction could also be established where the offender is an habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.

The Directive additionally invites States to share information on establishing jurisdiction where:

- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
- (b) the offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is an habitual resident in its territory.

National examples:

Namibia, Section 24 of the Combating of Trafficking in Persons Act 1 of 2018

The High Court of Namibia has jurisdiction, in respect of an act committed outside Namibia which would have constituted an offence under this Act had it been committed in Namibia, regardless of whether or not the act constitutes an offence at the place of its commission, if the person to be charged -

- (a) is a citizen of Namibia;
- (b) is ordinarily resident in Namibia;
- (c) has committed the offence against a citizen of Namibia or a person who is ordinarily resident in Namibia;
- (d) is, after the commission of the offence, present in the territory of Namibia or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in Namibia;
- (e) is, for any reason, not extradited by Namibia or if there is no application to extradite that person; or
- (f) is a juristic person or a partnership registered in terms of a law in Namibia.

Canada, Section 7(4.11) of the Criminal Code:

7(4.11) Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01, 279.011, 279.02 or 279.03 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.

Nepal, Section 1(3) of the Human Trafficking and Transportation (Control) Act, 2007

This Act shall extend throughout Nepal and anyone committing an offence against Nepali citizen under this Act from foreign territory shall also remain within the scope of this Act.

Brazil, Section 1 of Law No. 13, 344 of October 6, 2016:

This Law provides on the trafficking of persons committed in the national territory against Brazilian or foreign victims and abroad against Brazilian victims.

ARTICLE 9. LIABILITY OF LEGAL PERSONS

1. Any legal person other than the State, on whose behalf or for whose benefit an offence under this Act has been committed by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person, acting in such capacity, shall be punished by [insert punishment, criminal, civil, administrative].
2. Notwithstanding subsection (1), the following measures may also be imposed on a legal person if there is criminal liability of directors, servants or agents acting within their authority:
 - (a) If the activity of the legal person was entirely or predominantly used for the carrying out of criminal offences or if the legal person was created to commit an offence under [this Act/insert applicable laws], order that the legal person be dissolved;
 - (b) Prohibit the exercise, whether directly or indirectly, of one or more social or professional activities [permanently] [for a maximum period of ... years];
 - (c) Order the [temporary] [permanent] closure of the establishment, or one or more of the establishments, of the legal person that was used to commit the offences in question;
 - (d) Make an order that the legal person be excluded from public bidding [and/or] from entitlement to public benefits or aid;
 - (e) Order the disqualification of the legal person from participation in public procurement whether on a temporary or permanent basis;
 - (f) Disqualify the legal person from the practice of other commercial activities [and/or] from the creation of another legal person;
 - (g) Order the legal person to publish the judgement by the court;
 - (h) [Make such further orders as it considers just].
3. The liability of any legal person does not preclude that of the natural person.

Commentary

Article 10 of the Convention requires States Parties (consistent with their legal principles) to ensure that legal persons can be found liable for participation in serious crimes involving an organized criminal group as well as the enumerated offences established in accordance with the Convention and the Protocols thereto. This means that States Parties are required, where their domestic law allows for it, to ensure that legal persons (e.g., corporations, associations, public entities) can be held liable for human trafficking offences.

The establishment of criminal liability over legal persons by a State's domestic laws would enable a State to prosecute, inter alia travel agencies, employment and recruitment agencies, adoption agencies and marriage brokers for human trafficking offences, amongst a raft of other complicit legal persons.

National Examples:

Thailand, Section 53 of the Anti-Trafficking in Persons Act (No. 3) BE 2560 (2017)

Any juristic person [that] commits an offence of trafficking in persons shall be liable to the punishment of a fine from one million Baht to five million Baht.

In case where the offence committed by a juristic person under paragraph one is caused by an order or an act of any director, managing director, or any person responsible for operation of such juristic person, or in case where the said person having a duty to issue an order or to perform an act refrains from issuing an order or performing an act leading to the commission of offence by such juristic person, such person shall be liable to the punishment

of imprisonment from six years to twelve years and a fine from six hundred thousand Baht to one million and two hundred thousand Baht...

Belgium, Section 5 of the Criminal Code

Every legal person is criminally responsible for offences that are inextricably linked to the realisation of their objectives or to the defence of their interests, or for infractions that were committed on their behalf.

Nigeria, Section 31 of the Trafficking in Persons (Prohibition), Enforcement and Administration Act, 2015

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed on the instigation or with the connivance of, or is attributable to any neglect on the part of, a Director, Manager, Secretary of the Body Corporate or any person purported to act in any such capacity, the officer shall be liable on conviction to the same punishment provided under this Act for individuals committing the offence.
- (2) Where a body corporate is convicted of an offence under this Act, it shall be liable to a fine of N10, 000,000.00 and the Court may issue an order to wind-up the body corporate and its Assets and Properties transferred to the Victims Of Trafficking Trust Fund.
- (3) Nothing contained in subsections (1) and (2) of this Section shall render any person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

Iraq, Section 9 of the Trafficking in Persons Law, 2012

A legal person who is proved to be an accomplice in a crime (committed in person, through an accomplice, or to his personal benefit) shall be punished by a fine not less than 5 million Iraqi dinars and not higher than 25 million Iraqi dinars, provided this punishment does not contravene a sentence determined against a person (authorized or responsible for) administering the legal person if this administrator was proven to have participated in the crime.

A court may permanently or temporarily revoke the status, stall the activities, or close the Office of a legal person if it were proven that he has committed a criminal act prohibited by this law.

For additional information, please see pages 51 and 52 of the UNODC Model Legislative Provisions against Organized Crime (2012).



CHAPTER IV. CRIMINAL OFFENCES AND RELATED PROVISIONS

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INTRODUCTION

The Trafficking in Persons Protocol requires States Parties to criminalize trafficking in persons as defined in Article 3. When enacting criminal law at the domestic level, it is important to ensure that the offence effectively addresses the concepts contained in the definition, rather than simply legislating the definition itself.

The enactment or amendment of criminal offences at the national level is highly context specific which makes the development of a model legislative provision difficult. A number of factors influence the development of legislation, including existing criminal laws, constitutional law considerations, political and philosophical considerations, international obligations and the identification of wrongful conduct that is sufficiently blameworthy that is deserving of criminal sanction.

In addition to the model provisions, which incorporate the definition of trafficking in persons in Article 3 into an offence provision, detailed guidance is found below on the key criminalization requirements that flow from Article 5 of the Trafficking in Persons Protocol. As with other parts of the model legislative provisions, national examples are also provided below and in Annex A.

ARTICLE 10. HUMAN TRAFFICKING OFFENCE AND ELEMENTS OF THE CRIME

(1) Any person who:

- (a) Recruits, transports, transfers, harbours or receives another person;
- (b) By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (c) For the purpose of the exploitation of that person;

shall be guilty of an offence and shall be subject to imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].

(2) For the purpose of subsection (1), exploitation shall include, at a minimum:

- a. The exploitation of the prostitution of others;
- b. Sexual exploitation;
- c. Forced labour or services;
- d. Slavery;
- e. Practices similar to slavery;
- f. Servitude; or,
- g. The removal of organs.

(3) Notwithstanding subsection (1), in cases where the person recruited, transported, transferred, harboured, or received is a child, it is not necessary to prove any of the means listed in paragraph (b).

In the case of civil law systems, the offence could be drafted as follows:

- (1) Trafficking in persons shall mean the act of recruiting, transporting, transferring, harbouring or receiving another person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person in order to exploit that person.
- (2) Exploitation, for the purpose of subsection (1) shall include, at a minimum, the exploitation of the prostitution of others; sexual exploitation; forced labour or services; slavery; practices similar to slavery; servitude; or, the removal of organs.
- (3) In the case of child victims, trafficking in persons shall mean the act of recruiting, transporting, transferring, harbouring or receiving another person in order to exploit that person.
- (4) Trafficking in persons is punishable by a period of imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].

Commentary

The definition of trafficking in persons in Article 3 of the Trafficking in Persons Protocol provides the foundation for the enactment of a criminal offence(s) targeting such conduct. The definition promotes consistency in addressing this conduct through the three constituent components of trafficking in persons (act, means and purpose).

The definition also provides certain flexibility to States Parties to legislate in a manner that best accords with their national context in the way that exploitation is addressed. In addition to the model provisions above, what follows is detailed advice on the essential elements of the offence which can be further used to assist in the formulation of country-specific offences.

The model provisions propose imprisonment and/or a fine as possible forms of punishment. Nevertheless, Article 11 of the Convention against Transnational Organized Crime makes clear that the offence of trafficking in persons must be punishable by sanctions that take into account the gravity of the offence. Moreover, Article 3 of the Convention provides that it applies to “serious crimes,” which are defined in Article 2 to mean offences punishable by a maximum deprivation of liberty of at least 4 years. A review of the national offences and penalties included in Annex A shows that the maximum penalties provided range from 5 years to life imprisonment.

Trafficking in Persons Offence

In general, criminal offences require proof of the physical element(s) (*actus reus*) with a corresponding state of mind (*mens rea*) in relation to the physical element(s). The *mens rea* of an offence may be subjective (i.e., the accused’s actual state of mind) or objective (i.e., the accused failed to appreciate something that a reasonable person, standing in the place of the accused, would have appreciated). The most widely recognized subjective *mens rea* concepts are intention and knowledge but other *mens rea* concepts are used in different legal systems around the world.

The Article 3 definition provides guidance on both the physical elements (*actus reus*) and mental elements (*mens rea*) that should be prescribed for the crime of trafficking in persons. Article 5 makes clear that States Parties must criminalize trafficking in persons when committed intentionally. States Parties are free to include other mental states in accordance with their domestic law.

Physical Element #1 (Corresponding with the “Act” component of the Definition of Trafficking in Persons)

In all cases, the Protocol requires that the accused engaged in one of the following acts:

- (a) Recruited a person;
- (b) Transported a person;
- (c) Transferred a person;
- (d) Harboured a person; or,
- (e) Received a person.

The Trafficking in Persons Protocol makes clear that these elements are disjunctive. This means that only one of the above noted acts must be established. National laws should, however, specify the various actions that can be committed by an accused towards another person with a view to that person being exploited. Doing so provides police and prosecutors with alternative ways of establishing this element of the offence while also ensuring all those involved in trafficking in persons cases can be punished, from recruiters to those who cause exploitation.

Physical Element #2 (Corresponding with the “Means” component of the Definition of Trafficking in Persons)

The Trafficking in Persons Protocol further specifies that, in the case of adult victims only, an accused must have accomplished physical element #1 through any of the following conduct:

- (a) Use of force;
- (b) Threat of force;
- (c) Coercion;
- (d) Abduction;
- (e) Fraud;
- (f) Deception;
- (g) Abuse of power;
- (h) Abuse of a position of vulnerability.

Like physical element #1, it is not necessary to prove more than one prohibited means to establish this element and national laws should be drafted in a way to reflect this. States are, however, encouraged to draft their offences in a manner that captures the various practices employed by traffickers to achieve their ultimate criminal objectives.

Some national examples of trafficking in persons offences have been drafted in a way so as to exclude physical element #2 (i.e., the prohibited means) in all cases. That is, some offences simply require proof of physical element #1 (i.e., the act element) and that it have been committed for the purpose of exploitation (mental element #1 discussed below). Such an approach has the effect of capturing a broader range of conduct than is contemplated by Article 3 of the Trafficking in Persons Protocol. While doing so will still allow State Parties to meet their obligations under the Protocol, there are significant benefits to closely aligning with the Protocol’s three-part definition. Doing so yields improvements in international cooperation in investigating and prosecuting cases, more effective and tailored victims’ services globally, and more accurate standardization of research and data gathering.

In some cases, evidence of any of the above-noted conduct may be sufficient to support a separate criminal charge (e.g., assault or kidnapping).

Child Trafficking

Article 3(c) of the Trafficking in Persons Protocol makes clear that, in cases of child victims, it is unnecessary to prove any of the prohibited means (i.e., physical element #2) to establish trafficking in persons.

There are different ways that legislators can bring about this result. One way is to draft two separate offences; the first offence would be applicable to all cases and would include physical element #2. The second offence would, by contrast, only apply in cases of child victims (i.e., a person under the age of 18 years) and would not

include physical element #2. It should be noted, however, that under this approach, it would also be necessary to prove that the victim was, in fact, under the age of 18 years, and the accused was aware of this fact (or some other specified mental state provided for in law), in order for the child-specific offence to apply. In a case where these additional elements could not be established beyond a reasonable doubt, resort could be had to the more general offence.

A second approach, reflected in the options above, could be to have one offence that applies equally to all persons but to include an additional clause making clear that in cases where the victim was under the age of 18 years, it is not necessary to prove the prohibited means. Reliance on such a provision would again require proof that the victim was under the age of 18 years and that the accused had the requisite mental state provided for under the law.

A decision on whether to enact one or two offences may also be influenced by other factors, including whether:

- a) doing so would be consistent with existing criminal laws;
- b) there is a desire to have different penalties or sentencing consequences; or
- c) there is an interest in being able to better track particular types of offending.

Element #3: Mental State: For the Purpose of Exploitation

The final element necessary to criminalize trafficking in persons in domestic law is the associated mental state. The exploitative purpose and its attendant implications on the autonomy, dignity and liberty of a victim is what makes the crime so reprehensible and deserving of condemnation.

The Trafficking in Persons Protocol makes clear that whatever prohibited act(s) are alleged, they must also have been done for the purpose of exploiting the victim. Article 5(1) also makes clear that States Parties are obligated to criminalize conduct that is committed intentionally. As a mens rea standard in criminal law, the phrase “for the purpose of” can mean either knowledge or intention. This means that evidence that the accused engaged in the prohibited conduct (physical elements 1 and 2 in the case of adults or physical element 1 in the case of children) with either the intention that the victim be exploited or knowledge that they would be exploited will be sufficient to establish the offence. This also means that the accused need not be the one who exploits the victim. It further means that actual exploitation is not required to establish the offence of trafficking in persons, but rather a purpose to exploit, as the offence can be established when the requisite mental state can be proven, without requiring that the exploitation has occurred.

Trafficking in persons is a crime of specific intent (or special intent). Specific intent crimes require, for example and as in the case of trafficking in persons, an intention to bring about a specific consequence or knowledge that it will occur.

Additional mens rea elements

It remains open to legislators to include additional mens rea elements in their national offences, subject to the requirements of national legal systems. For instance, legislators could add recklessness to the offence, alongside knowledge/intention, would enable a prosecution in cases where the accused committed the physical elements and did not know for certain that the victim would be exploited but appreciated there was a risk that the victim would be and, despite knowledge of that risk, proceeded. Recklessness, in this context, would be, as an additional subjective mental state, and addresses the behaviour of an accused who proceeds in the face of the clear risk that the victim will be exploited.

Meaning of Exploitation

Establishing the mens rea element of the offence also requires an understanding of the meaning of exploitation. The definition of trafficking in persons provides a non-exhaustive list of examples of exploitative conduct. States Parties must ensure that the specific forms of exploitative conduct included in Article 3 of the Trafficking in Persons Protocol are captured by their offence. They are, however, free (but not required) to go beyond the list to include other examples of exploitation.

There are different ways for legislators to provide guidance on the meaning of exploitation. One approach, followed by a number of countries, is to define exploitation by reference to an itemized list of exploitative conduct (e.g., sexual exploitation, forced labour, slavery), as per the approach taken in the Trafficking in Persons Protocol. These exploitative practices may themselves also be defined in law. Common examples of exploitative practices not specifically itemized in the Trafficking in Persons Protocol and that are included in domestic laws include forced marriage, forced begging or forced criminality. In Europe, the EU Directive 2011/36/EU specifies that the concept of exploitation must also be interpreted to include the exploitation in criminal activities (e.g., drug trafficking) and forced begging.

Within those legislative examples that define exploitation by reference to an itemized list of exploitative conduct, some examples also include a more generic “catch-all” provision, such as “any other exploitation” or “other forms of exploitation.” The advantage of such an approach is that it provides flexibility and enables anti-trafficking laws to be applied to exploitative situations not explicitly contemplated by the legislation. On the other hand, this approach may not provide the necessary specificity to enable the public, police, prosecutors and the courts to understand the precise limits of what is and is not captured by the law.

Another approach is to specifically define exploitation through a qualitative description of the prohibited conduct. Rather than defining exploitation by reference to specific practices (e.g., sexual exploitation), this approach provides general guidance on the meaning of exploitation through a description of the conduct that the victim is intended to be subjected to.

Regardless of the approach taken, it is critical that national laws be drafted in a manner that provides sufficient clarity, not only on the meaning of exploitation but on all elements of a crime. Clear criminal laws, amongst other things:

- a) Ensure the public understands what is and what is not criminal;
- b) Support successful investigations and prosecutions;
- c) Contribute to efficient justice systems; and,
- d) Promote public confidence in the justice system.

National Examples:

Although a number of national examples are provided below, please also see Annex A, which includes a broad range of national examples of offences and penalties.

Sweden, Chapter 4, Section 1(a) of the Criminal Code

A person who [...] by the means of unlawful coercion, deceit, exploitation of another person’s vulnerable situation or by any other such improper means recruits, transports, transfers, harbours or receives a person with the intent that he or she shall be exploited for sexual purposes, the removal of organs, military service, forced labour or other activity in a situation that places that person in distress, shall be sentenced for trafficking in human beings to imprisonment, for at least two years and at most 10 years.

A person who commits an act referred to in the first paragraph against a person who is under 18 years of age shall be sentenced for THB even if none of the improper means described in that paragraph was used. If an offence referred to in the first or second paragraph is less serious, the sentence shall be imprisonment for at most 4 years.

South Africa, Section 4 of the Prevention and Combatting Trafficking in Persons Act, 2013

Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of-

- (a) A threat of harm
- (b) The threat or use of force or other forms of coercion
- (c) The abuse of vulnerability
- (d) Fraud
- (e) Deception
- (f) Abduction
- (g) Kidnapping
- (h) The abuse of power
- (i) The direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person or
- (j) The direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation is guilty of the offence of trafficking in persons.

Chile, Section 411 of the Criminal Code

Whoever through; violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependence on the victim or the granting or receiving payments or other benefits to obtain the consent of a person who has authority over another; recruit, move, welcome or receive people so that they are subject to some form of sexual exploitation, including pornography, forced labour or services, bondage or slavery or practices analogous to this, or extraction of organs, will be punished with the penalty of imprisonment in its minimum to medium grades and fine of fifty to one hundred monthly tax units.

If the victim is a minor, even if no violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependence of the victim, or the granting or receiving payments or other benefits for get the consent of a person who has authority over another, the highest imprisonment penalties will be imposed in its average grade and a fine of fifty to one hundred units monthly tributary

Anyone who promotes, facilitates or finances the execution of the behaviours described in this article will be sanctioned as the perpetrator of the crime.

Colombia, Section 188A of the Criminal Code

Whoever captures, transfers, harbours or receives a person, within the national territory or abroad, for purposes of exploitation, shall incur imprisonment of thirteen (13) to twenty-three (23) years and a fine of eight hundred (800) to one thousand five hundred (1,500) monthly legal minimum wages in force.

For the purposes of this article, exploitation means obtaining economic or other advantage for oneself or for another person, through the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, the exploitation of the begging of others, servile marriage, the removal of organs, sex tourism or other forms of exploitation.

The consent given by the victim to any form of exploitation defined in this article shall not constitute grounds for exoneration from criminal liability.

Sudan, Section 7 of the Combating of Human Trafficking Act, 2014

- (1) There shall be deemed to have committed the offence of human trafficking, whoever kidnaps, transfers, abducts, transports, harbors, receives, detains or equips a natural person, with intent to exploit or use the same in unlawful business, or any acts, as may by nature degrade his dignity, or achieve unlawful aims in consideration of any of the following:
- a. Material return, or promise therewith;
 - b. Moral gain, or promise therewith;
 - c. Granting any type of advantage.

Additional Resources:

UNODC: Issue Paper: The International Legal Definition of Trafficking in Persons: Consolidation of research findings and reflection on issues raised (2018).

UNODC: Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol (2015).

UNODC: Issue Paper: Abuse of a Position of Vulnerability and other „Means“ Within the Definition of Trafficking in Persons (2013)

ARTICLE 11. IRRELEVANCE OF CONSENT OF THE VICTIM IN ESTABLISHING GUILT

Option 1: The consent of the victim to the intended exploitation shall be irrelevant if one of the means listed in Article 10 is established.

or

Option 2: No consent to any activity that forms the subject matter of the charge is valid.

Commentary

The drafters of the Trafficking Protocol recognized that consent should have no bearing in determining whether or not someone had been trafficked. They also recognized that consent might be used by the defence as a method of deflecting attention away from their responsibility and that the means employed in trafficking in persons cases would preclude the possibility of consent.

The text of the Protocol shows the irrelevance of consent in establishing guilt in two ways. First, the definition of trafficking in persons does not include a reference to the victim's consent or lack thereof to any of the conduct captured by the definition. Rather, what is required is evidence of an act, committed by specific means and for a specific purpose. Second, article 3(b) further recognizes this point by specifying that consent to the intended exploitation is irrelevant when the means have been established.

Consent or, more specifically, the absence of consent can play a role in establishing some criminal offences. For example, proving that an assault has occurred will require, in many countries, evidence of the non-consensual application of force. In such cases, evidence that the victim consented to the offence will result in a finding of not guilty because the physical (actus reus) element that the contact be "non-consensual" will not have been established.

By comparison, trafficking in persons offences are established regardless of the consent, or lack thereof, of the victim. For additional background on the issue of consent, please see:

UNODC Issue Paper: The Role of “Consent” in the Trafficking in Persons Protocol (2014).

UNODC Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2004, revised in 2020)

State practice on this issue varies but shows that a victim’s consent to exploitation is irrelevant where the physical element #2 (i.e., the prohibited means) has been used, and always irrelevant in the case of child victims. Many jurisdictions have included provisions in their domestic criminal law legislation that make clear that consent is irrelevant. Such an approach sends a clear message to criminal justice system actors (police, prosecutors, judges) of the irrelevance of consent in establishing guilt. Other jurisdictions say nothing on this issue, a practice that can also be seen as acknowledging the irrelevance of consent to establish guilt. In both cases, it is important that those responsible for investigating and prosecuting human trafficking offences are aware of the irrelevance of consent in establishing guilt and ensure that they have the necessary evidence and arguments to refute any strategies pursued by the defence that seek to distract from the conduct of the accused on the basis that the victim consented

National Examples:

Australia, Section 270.11 of the Criminal Code

To avoid doubt, it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.

Kuwait, Article 2 of the Law of Kuwait No. 91 of 2013 on Combatting Trafficking in Persons and Smuggling of Aliens

The consent of the victim to exploitation is irrelevant in all cases.

ARTICLE 12. AGGRAVATING CIRCUMSTANCES

Option 1: When imposing a sentence, a court shall take into account any relevant aggravating factors relating to the offence or the offender, including:

Option 2: If any of the following circumstances are present, the offences under Article 10 shall be punishable by imprisonment for ... and/or a fine of/up to ... [a fine of the ... category]:

Examples of aggravating factors:

- (1) Where the offence involved serious injury or death of the victim or another person, including the threat of such harm;
- (2) Where the offence involves a victim who is particularly vulnerable, including by reason of gender, age, disability, illness or pregnancy;
- (3) Where the offence caused or exposed the victim to serious illness, including HIV/AIDS, or to long-term adverse health consequences;
- (4) Where the victim was subjected to emotional, psychological or physical harm by the offender, including through the use of harmful rituals and practices;
- (5) Where the victim is a child;
- (6) Where the crime was committed for the benefit of, at the direction of or in association with an organized criminal group or terrorist group;

- (7) Where weapons were used in the commission of the offence;
- (8) Where the offender has been previously convicted for the same or similar offences;
- (9) Where the offender, in committing the offence, abused a position of power, influence or vulnerability or their role in public office;
- (10) Where the offender, in committing the offence, abused the offender's spouse or partner;
- (11) Where the offender attempted to dispose of or conceal evidence;
- (12) Where the offence was committed over a prolonged period of time;
- (13) Where the offence involved multiple victims and/or repeated acts against the victim(s);
- (14) Where the offence was motivated by bias, prejudice or hate based on race, colour, national or ethnic origin, religion, sex, sexual orientation or any other similar factor.

Commentary

Where used in domestic law, aggravating factors signal to the courts that certain situations are indicative of a higher level of culpability.

In some cases, domestic law leaves it open to the sentencing judge to determine the appropriate sentence, having regard to the presence or absence of such aggravating factors with the idea that proof of aggravating factors will result in a higher sentence than cases where no such factors are proved. In other jurisdictions, the presence of an aggravating factor triggers a specific sentencing outcome, such as a mandatory jail sentence or a higher maximum penalty. The two examples provided above reflect these different approaches.

Aggravating factors may relate to the offender (e.g., is a repeat offender or public office holder), they may relate to the victim (e.g., the victim is a child) or they may relate to the circumstances (e.g., the crime was committed over a long period of time) surrounding the commission of the offence. In some countries, the prohibited means provided for in Article 3 of the Trafficking in Persons Protocol are treated as aggravating factors, rather than as elements of the crime. It is generally understood that factors which are integral to the offence cannot also be treated as aggravating. For example, in a case where an offender was sentenced to the specific offence of child trafficking, it should not be treated as an aggravating factor that the victim was a child. This fact should already be reflected in the penalty that is provided for the specific offence of child trafficking.

In all cases, sentences imposed should reflect the seriousness of the offence and the blameworthiness of the offender. Sentences prescribed through law and imposed by the courts should further reflect constitutional and human rights principles (e.g., punishments should not be cruel, inhuman or degrading).

National Examples:

Brazil, Section 149 of the Criminal Code

A: Human Trafficking, increases the sentence by one-third to one-half in the following circumstances:

- “I. - the crime is committed by a public official in the exercise of his functions or under the pretext of exercising them;
- II - the crime is committed against a child, adolescent or elderly person or person with disability;
- III - the agent prevails over family relationships, domestic relationships, cohabitation, hospitality, economic dependence, authority or hierarchical superiority inherent to the exercise of employment, position or function; or
- IV - the victim of human trafficking is removed from national territory.”

Where the offence was committed on the basis of race, colour, ethnicity, religion or origin, under the Brazil Criminal Code Article 149 (Slave Labour), the prison sentence is increased by half if the crime is committed either for that reason or if the crime is committed against children or adolescents.

Thailand, Section 52 of the Anti-Human Trafficking Act B.E. 2551

Any person commits an offence under section 6/1(trafficking in persons) shall be liable to imprisonment for a term of six months to four years or to a fine of fifty thousand to four hundred thousand Baht per one injured person or to both.

If the offence committed under paragraph one results in the victim being seriously injured or having a fatal disease, such person shall be liable to imprisonment for a term of eight years to twenty years and a fine of eight hundred thousand Baht to two million Baht or to life imprisonment.

If the offence committed under paragraph one results in the victim's death, such person shall be liable to life imprisonment or death penalty.

If the offence committed under paragraph one, two and three is the case where an ascendant forcing a descendant to work or provide services due to poverty or upon considering the offence or other ruthless circumstances, the Court may impose, against a defendant, a lesser sentence as provided by the law or may rule not to impose sentences on the defendant.

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**CHAPTER V.
CRIMINAL PROVISIONS
& ANCILLARY
OFFENCES**

ARTICLE 13. NON-PUNISHMENT OF VICTIMS OF TRAFFICKING IN PERSONS

INTRODUCTION

The non-punishment principle for victims of trafficking is a cornerstone of a victim-centred approach to trafficking in persons. A victim-centred approach places the priorities, needs and interests of the victim of the crime at the centre of the response; providing non-judgmental assistance, with an emphasis on self-determination, and assisting victims in making informed choices; ensuring that restoring victims' feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims. A victim-centred approach should also be trauma-informed, survivor-informed and culturally competent.

The implementation of the non-punishment principle at the national level will typically require a combination of legislative, operational and policy measures that encompass all stages of the justice system.

The model legislative provisions discussed below provide three separate examples of measures that can be taken (together or separately) to support the implementation of the principle. The first provision provides broad recognition in law of the principle, its scope and applicable threshold. The second provision focusses on the enactment of a statutory defence to charges. Both of these provisions can provide a foundation for further action at the national level, such as the development of charging and prosecution policies. The third provision focusses specifically on the situation of records expungement, which enables persons convicted of offences committed as a direct consequence of their situation as a trafficked person to have such convictions removed from their criminal records. Records expungement provisions provide an opportunity to correct historically unjust convictions, and to remove a barrier to the reintegration of victims. For example, criminal records may make it harder to find or maintain employment, to volunteer or to travel outside of one's country.

Statement of Non-Punishment Principle

Trafficked persons shall not be detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

Statutory Defence

A person is not guilty of an offence if:

- (a) They committed the act that constitutes the offence because they were compelled to do it and the compulsion was attributable to trafficking in persons; or
- (b) The act that constitutes the offence was committed as a direct consequence of their situation as a trafficked person.

or

A victim of trafficking in persons shall not be held criminally or administratively liable or liable under civil laws [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.

The provisions of this article shall be without prejudice to general defences available at law to the victim.

Records Expungement

If a person was arrested or convicted for an offence committed as a direct consequence of being a victim of trafficking in persons, the person may apply to the court for relief of his or her convictions and arrests.

Commentary

Victims of trafficking are subjected to exploitation in various ways. Sometimes, as a result of their victimization, they may engage in conduct that may be illegal in the place where it was committed. Common examples that occur include involvement in prostitution, involvement in drug production or trafficking, possession of fraudulent documents or entering into another country in a manner that does not comply with its immigration laws. In some cases, victims will have been forced or otherwise compelled, including through physical and psychological pressure, force, abuse or threat thereof, to commit these crimes and will constitute the exploitative purpose of trafficking (e.g., provision of sexual services or involvement in drug production). In other cases, the crime committed will relate to their situation of trafficking. This may include, for example, the possession or use of fraudulent documents as a means of escaping trafficking. In some instances, a victim may be unaware that he or she has broken the law. Non-punishment can apply to a broad range of offences, including criminal, immigration or administrative offences.

Against this backdrop, the non-punishment principle has emerged. It has been described in various ways but generally provides that trafficked persons should not be subject to arrest, charge, detention (e.g., criminal or immigration), prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.

Different reasons have been articulated to support this principle, including:

- (1) to maintain the interests of justice by ensuring that victims are not punished for conduct that they would not have otherwise committed but for their victimization;
- (2) to encourage victims to report crimes committed against them without fear of being criminalized themselves;
- (3) to safeguard the human rights of victims and not subject them to further trauma or victimization; and,
- (4) to not punish victims for the conduct of traffickers.

There are numerous references to the non-punishment principle in international law, resolutions, guidelines, directives and national law. For example, principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1)[1] states:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

Further, in the case of children, Recommended Guideline 8 recommends that States consider:

[E]nsuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

The Working Group on Trafficking in Persons of the Conference of the Parties recommended, at its first meeting in 2009, that States Parties to the Trafficking in Persons Protocol should:

Consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts.

Similarly, the Conclusions and Recommendations of the Meeting of National Authorities on Trafficking in Persons (Organization of American States, 2006) included the following recommendation:

The Member States must ensure, to the extent possible and in accordance with their respective domestic legislations, that the victims of trafficking in persons are not prosecuted for participating in illegal activities if they are the direct results of their being a victim of such trafficking.

Article 14(7) of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015) provides that:

Each Party shall, subject to its domestic laws, rules, regulations and polices, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) provides:

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

The EU Trafficking Directive 2011/36/EU also contains an express provision on non-prosecution and non-punishment. Article 8 provides:

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Recital 14 to the Trafficking Directive explains:

Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

A non-punishment provision has also been included in Article 4 of the 2014 Protocol to the Forced Labour Convention, 1930:

Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

Additionally, the General recommendation No. 38 on trafficking in women and girls in the context of global migration (2020) of the Committee on the Elimination of Discrimination against Women (CEDAW/C/GC/38), paragraph 98, states:

1. Ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking. The non-punishment principle must:
 - (a) Be enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief;
 - (b) Not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services;
 - (c) Provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.

National examples - Statutory Defences:

When developing statutory defences as a means of supporting the implementation of the non-punishment principle, a number of specific matters should be taken into consideration, including:

- (1) Who can invoke the defence: The defence is applicable to victims of trafficking. In the case of children who have reached the age of criminal responsibility, this means that it is not necessary to establish any of the prescribed means contained in Article 3 of the Trafficking in Persons Protocol in order for them to be able to advance the defence.
- (2) Scope: Some States have drafted their defences in a way that limits them to certain types of crime, while others make clear that the defence can be relied upon for any crime allegedly committed in connection with trafficking (in some cases, non-punishment provisions extend further to protect against civil liability).
- (3) Threshold: Different formulations for the basis that the defence can be invoked have been provided in national laws. Some national examples provide that the defence applies to crimes that were committed by victims of trafficking at a time that coincided with their status as a victim of trafficking and was otherwise connected to their victimization. Other examples require proof that the victim was compelled to commit the crime. These different approaches have been referred to as “causation-based” and “duress-based.” It should be noted, though, that so called “duress-based” defences (e.g., cases where the victim has been compelled to commit crimes) should not be interpreted as requiring the same evidence as the traditional defence of duress. Compulsion should be understood broadly to include the various means used by traffickers.
- (4) Burden and standard of proof: National laws should provide clarity as to who must invoke the defence (the burden) and the level of evidence necessary to establish it (the standard).

A number of national examples are provided below but please also see Annex B for additional examples from around the world.

Belgium, Section 433(5) of the Criminal Code

A victim of trafficking in persons who commits a crime as a direct consequence of their exploitation shall not be punished for such offences.

Namibia, Section 16 in the chapter on Protection and Assistance to Victims of Trafficking of the Combating of Trafficking in Persons Act 2018

Criminal prosecution may not be instituted against a victim of trafficking, for –

- (1) Entering or remaining in Namibia in contravention of the Immigration Control act;
- (2) Possessing any fabricated or falsified identity document, travel document or other document used for the facilitation of movement across borders; and
- (3) Being involved in an illegal activity to the extent that he or she has been compelled to do so, as a direct result of his or her situation as a victim of trafficking.”

Uganda, Section 12(1) of the Prevention of Trafficking in Persons Act, 2009

A victim of trafficking shall be legally recognized as such and shall not be penalized for any crime committed as a direct result of his or her trafficking.

United States

In the United States, at the federal level, there is no specific defence for victims of trafficking who have committed offences attributable to their trafficking. However, in the statement of purpose of the Trafficking Victims Protection Act, 2000, it states that “victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation”. (Section 102(b) (19)).

At the State level, there are numerous examples of statutory defences specific to the situation of victims of trafficking who have committed crimes. See, for example:

Wisconsin, Section 939.46(1m) of Wisconsin’s Statutes, Chapter 939, Crimes - General Provisions

A victim of a violation of s. 940.302 (2) or 948.051 (human trafficking offenses) has an affirmative defense for any offense committed as a direct result of the violation of s. 940.302 (2) or 948.051 without regard to whether anyone was prosecuted or convicted for the violation of s. 940.302 (2) or 948.051.

Pennsylvania, Section 3019(b) of the Consolidated Statutes, Title 18 – Crimes and Offenses, Chapter 30 - Human Trafficking

An individual who is charged with any violation under section 5902 (relating to prostitution and related offenses) may offer the defense at trial that he engaged in the conduct charged because he was compelled to do so by coercion or the use of or a threat to use unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

National example - Records Expungement or Vacatur Laws:

New York, Section 440.10(1)(i) (Criminal Procedure) of the Laws of New York

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) of the penal law, and the defendant’s participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution

crime that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

official documentation of the defendant's status as a victim of trafficking, compelling prostitution or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph;

See also: Issue Brief: Non-Punishment of Victims of Trafficking (The Inter-Agency Coordination Group against Trafficking in Persons – ICAT, 2020).

Organization for Security and Cooperation in Europe (OSCE): Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (2013).

The United Kingdom's Crown Prosecution Service's Guidelines on Human Trafficking, Smuggling and Slavery which provide a useful example of how to incorporate the non-punishment principle into prosecutorial decision making.

ATTEMPTS AND MODES OF PARTICIPATION IN TRAFFICKING IN PERSONS OFFENCES

INTRODUCTION

Article 5 of the Trafficking Protocol obligates States Parties to criminalize trafficking in persons. It also makes clear that States Parties are required to ensure that their criminal laws extend to the following situations:

- (a) Participating as an accomplice in a trafficking in persons offence;
- (b) Organizing or directing other persons to commit a trafficking in persons offence; and,
- (c) Attempting to commit trafficking in persons (where this is possible under domestic law).

ARTICLE 14. PARTICIPATING AS AN ACCOMPLICE

Option 1: Any person who participates as an accomplice to the offence of trafficking in persons is subject to imprisonment for ... and/or a fine of/up to ...

Option 2: A person is a party to an offence if they do or omit to do anything for the purpose of aiding any person to commit it or abets any person in committing it.

Option 3: Anyone who aids or abets the commission of an offence is punishable as its principal.

Commentary

States Parties approach the implementation of this requirement in different ways. In many jurisdictions, provisions on party liability are of general application and apply to all criminal offences. In such cases, it will be unnecessary to further specify party liability provisions applicable to trafficking in persons offences.

Source: Trafficking in Persons Protocol, article 5, paragraph 2(b).

ARTICLE 15. ORGANIZING AND DIRECTING TO COMMIT AN OFFENCE

Option 1: Any person who organizes or directs [another person] [other persons] to commit the offence of trafficking in persons is subject to imprisonment for ... and/or a fine of/up to...

Option 2: Anyone, who counsels another person to be a party to an offence and that person subsequently becomes a party to the offence, is also a party to the offence.

Option 3: Anyone who counsels the commission of an offence shall be liable to be tried, indicted and punished as a principal offender.

Commentary

States Parties approach the implementation of this requirement in different ways. In many jurisdictions, provisions on party liability are of general application and apply to all criminal offences. In such cases, it will be unnecessary to further specify party liability provisions applicable to trafficking in persons offences.

Source: Trafficking in Persons Protocol, article 5, paragraph 2(c).

ARTICLE 16. ATTEMPT

Option 1: Any attempt to commit the offence of trafficking in persons is subject to imprisonment for ... and/or a fine of/up to ...

Option 2: Everyone who intends to commit an offence and does or omits to do anything for the purpose of carrying out that intention is guilty of an attempt to commit the offence regardless of whether or not it was possible, under the circumstances, to commit the offence and is punishable by...

Option 3: Any person who attempts to commit an offence shall be subject to the same penalties as those prescribed for the offence attempted.

Commentary

States Parties approach the implementation of this requirement in different ways. Many countries will simply rely upon laws of general application governing attempts. According to the Interpretative notes for the official records “Travaux préparatoires” of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000, para. 70), references to attempting to commit the offences established under domestic law in accordance with article 5, paragraph 2, of the Protocol 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 punishable under domestic law.

Generally speaking, attempts require some positive action that goes beyond simple preparation; in this respect, they can be considered different than conspiracy. In some jurisdictions, “attempt” is further defined or qualified. This depends entirely upon national criminal practice. Examples of additional provisions that seek to qualify or clarify the meaning of attempt include:

“A person is not guilty of attempting to commit an offence if the facts are such that the commission of the offence is impossible.”

or

“A person does not commit an offence if, before the offence was committed, he or she:

- (a) Terminated his or her involvement;
- (b) Took reasonable steps to prevent the commission of the offence; and
- (c) Has no mens rea, that is, the intention/knowledge that the act he or she is committing is part of an offence or has no intention to commit the act that constitutes an offence.”

Source: Protocol, article 5, paragraph 2(a).

OTHER CRIMINAL OFFENCES

INTRODUCTION

Article 5 of the Trafficking in Persons Protocol obligates States Parties to criminalize trafficking in persons in accordance with the definition contained in Article 3. In addition to enacting trafficking specific offences, a number of States Parties also criminalize related conduct (e.g., slavery) or conduct that is associated with trafficking in persons (e.g., document-related offences); in many cases, these offences predated the enactment of trafficking-specific crimes. States Parties may wish to consider enacting, where necessary, other criminal offences in order to provide police and prosecutors with a broad range of tools to respond to criminally exploitative conduct. What follows are some common examples of these related criminal offences.

ARTICLE 17. USE OF SERVICES AND GOODS PROVIDED BY VICTIMS OF TRAFFICKING

Option 1: Anyone who makes use of the services or labour of a person or profits in any form from the services or labour of a person knowing that [or being reckless as to whether or ought to have known] such labour or services are performed or rendered as a result of trafficking in persons shall be guilty of an offence and, upon conviction, shall be liable to imprisonment for ... and/or a fine of/up to ...

Or

Option 2: Anyone who receives a financial or material benefit knowing that [or being reckless as to whether or ought to have known] it was derived from the commission of a trafficking in persons offence is guilty of an offence and liable to imprisonment for... and/or a fine of up to...

Commentary

Article 9, paragraph 5, of the Trafficking in Persons Protocol requires States Parties to take measures to discourage the demand that fosters all forms of exploitation. There are many ways that this can be done. The model provisions propose an approach that targets those who are the beneficiaries of exploitative labour or services. Option 1 of the model provision targets the person who receives labour or services or otherwise profits from the labour or services of trafficked persons.

Option 2 is limited to the receipt of a financial or material benefit.

Both options provide different mental states for establishing the offence: knowledge, and recklessness, which are subjective mental states and “ought to have known,” which is an objective mental state. Knowledge requires proof of actual knowledge, while recklessness would require proof that the accused who strongly suspects that the labour, service or profit they are receiving comes from a victim of trafficking. They appreciate the risk and simply do not care. The objective mental state would require evidence of what a reasonable person would have known, in the circumstances. The ability to rely upon this type of mental state will be, however, subject to domestic legal requirements, including constitutional considerations.

Both options could be used to prosecute members of an organized criminal group who orchestrate trafficking in persons but who are not otherwise liable as parties to the offences committed.

National Examples:**USA, 18 U.S. Code § 1593A**

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of this chapter (dealing with peonage, slavery, trafficking in persons), knowing or in reckless disregard of the fact that the venture has engaged in such violation shall be fined under this title or imprisoned in the same manner as a completed violation of such section.

The Philippines, Section 11 of the Anti-Trafficking in Persons Act

Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following [...]

ARTICLE 18. DOCUMENTS OFFENCES

1. Any person who without lawful authority makes, produces or alters any identity or travel document, whether actual or purported, in the course or furtherance of an offence under this Law, shall be guilty of an offence and, upon conviction, shall be liable to imprisonment ... [and/or] a fine of
2. Any person who obtains, procures, destroys, alters, replicates, possesses or facilitates the fraudulent use of another person's travel or identity document, with the intent to commit or to facilitate the commission of an offence under this Law, shall be guilty of an offence and, upon conviction, shall be liable to imprisonment of ... [and/or] a fine of
3. Any person who, for the purpose of committing or facilitating the commission of trafficking in persons, knowingly withholds, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, travel document or other government identification document, whether actual or purported, belonging to another person commits an offence and shall on [summary conviction / indictment] be fined [...] together with imprisonment for [...] years.

Commentary

Article 12(b) of the Protocol obliges States Parties to take measures to ensure that travel and identity documents are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued, and to prevent their unlawful creation, issuance and use. Such measures can be helpful in preventing trafficking in persons offences from occurring. In addition, offences targeting the taking or withholding of travel or identity documents from victims help to address one of the ways in which traffickers maintain control over their victims. However, as per the non-punishment principle, trafficked persons shall not be held liable for their involvement in unlawful activities that were a direct consequence of their situation as trafficked persons, such as the possession of fraudulent identity documents (See Chapter V above).

National Examples:**USA, 18 U.S. Code § 1597A**

It shall be unlawful for any person to knowingly destroy, conceal, remove, confiscate, or possess, an actual or purported passport or other immigration document of another individual in order to, without lawful authority, maintain, prevent or restrict the labor or services of the individual.

Canada, Section 279.03 of the Criminal Code

Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.

ARTICLE 19. DUTY OF COMMERCIAL CARRIERS

1. A commercial carrier has the following obligations:

- a. To report without delay to a police officer cases where they suspect, on reasonable grounds, that any of its passengers is a victim of trafficking;
- b. To verify that every passenger possesses the identity and/or travel documents required to enter the country;
- c. To provide training and undertake awareness raising for its staff on the identification of victims of human trafficking.

2. A commercial carrier who fails to comply with its obligations under (a) or (b) shall be liable to [to be inserted].

Commentary

Article 11 of the Protocol obliges States Parties to adopt legislative or other measures to prevent commercial carriers from being used in the commission of trafficking offences, including, where appropriate, requiring commercial carriers to ascertain that all passengers are in possession of proper travel documents. There are several ways to fulfil the obligation under article 11. Article 11(4) requires States Parties to provide for the possibility of sanctions for failures to comply with its obligations. One approach would be to rely upon criminal law and impose penalties, including fines or the possibility of imprisonment, for those who fail to comply with their obligations. It should also be noted that general criminal law provisions that make a person (legal or natural) liable for being a party to an offence or for having benefited from the commission of an offence might also apply, in appropriate cases, to commercial carriers. Another approach might be to impose administrative sanctions on those who do not comply with their obligations. The model legislative provisions do not specify the consequences for failure to comply with the obligations established under this section.

National Example:

South Africa, Section 9 of the Prevention and Combating of Trafficking in Persons Act, 2013

- (1) A carrier who transports a person within or across the borders of the Republic, and who knows that the person is a victim of trafficking or ought reasonably to have known that the person is a victim of trafficking, is guilty of an offence.
- (2) A carrier who, on reasonable grounds, suspects that any of its passengers is a victim of trafficking must immediately report the suspicion to a police official for investigation.
- (3) A carrier who fails to comply with the provisions of subsection (2) is guilty of an offence.

See also:

Guidelines for Training Cabin Crew on Identifying and Responding to Trafficking in Persons (2018), prepared by the International Civil Aviation Organization (ICAO) and the UN Office of the High Commissioner for Human Rights

Guidance on Human Trafficking (2018), prepared by the International Air Transport Association (IATA)



**CHAPTER VI.
VICTIM AND WITNESS
PROTECTION,
ASSISTANCE AND
COMPENSATION**

CHAPTER VI. VICTIM AND WITNESS PROTECTION, ASSISTANCE AND COMPENSATION

INTRODUCTION

Article 6, paragraph 3, of the Protocol obliges States Parties to 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.

ARTICLE 20. IDENTIFICATION OF VICTIMS OF TRAFFICKING IN PERSONS

1. The national coordinating body established in accordance with article 38 shall establish training and measures, including national guidelines/procedures for the prompt and accurate identification of victims of trafficking. Such training and other measures shall be provided on a regular basis.
2. The national coordinating body shall develop and disseminate to professionals who are likely to encounter victims of trafficking information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of victims of trafficking in persons.
3. With a view to the proper identification of victims of trafficking in persons, the [competent authorities] shall collaborate with relevant state and nonstate organizations.

Commentary

The timely and proper identification of victims is of paramount importance to ensure that victims receive the assistance they are entitled to, as well as for the effective prosecution of the crime. A person should be considered and treated as a victim, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of the victim (i.e., victims should be identified on the basis of reasonable grounds). This means that even where an investigation has not been initiated or a charge has not been laid, victim identification should be possible and a means for providing necessary support and assistance.

To enhance both the identification of trafficking victims and prosecution responses to the crime of trafficking in persons, a more inclusive first-level identification regime is needed that supplements traditional law enforcement-centred identification, a so-called “social path” for the formal identification of victims of trafficking in persons which involves the attribution of the status of victim of trafficking in persons by designated authorities outside the context of criminal proceedings and irrespective of a victim’s willingness to collaborate with law enforcement authorities.

Measures implemented to support victims should always proceed on the basis of the full and informed consent of the victim and, for children, should be in their best interests.

Persons who are likely to come into contact with victims of trafficking have a role to play in supporting timely identification. The development of legally mandated guidelines on victim identification for State entities, including law enforcement, border guards, immigration officials, labour inspectors, social welfare officers, child protection officers, educators, medical practitioners, diplomatic and consular staff is critical to the effective implementation of anti-trafficking responses, including the identification of victims. Formal victim identification mechanisms should include mechanisms for reviewing decisions relating to the conferring of victim status on individuals.

Such guidelines should be based on known indicators of trafficking, which could be reviewed and updated as needed at regular intervals.

For more information on victim identification, see, for example, the OSCE's Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region (2019).

National Example:

Ukraine, Article 15 of the Law on Combating Trafficking in Human Beings, 2011

1. The procedure for declaration of the status of a victim of trafficking in human beings is established by the Government of Ukraine.
2. A compulsory component of the procedure for declaration of the status of a victim of trafficking in human beings shall be the conduction by the local state administration of an interview with the applicant, and the filling-in of a questionnaire on the declaration of the status of a victim of trafficking in human beings. In the event when the person cannot be interviewed in view of such person's chronic mental disease, temporary mental disorder, dementia or other ill condition or minor age, the status of such person shall be declared on the basis of other data.
3. The overall term for conducting the procedure for declaration of the status of a victim of trafficking in human beings may not exceed one month from the moment of conduction of an interview with the person at the local state administration.
4. In case the declaration of the status of a victim of trafficking has been granted, the person shall be issued a respective certificate. In case the declaration of the status has been refused, the applicant may appeal against this decision in court.

ARTICLE 21. RECOVERY AND REFLECTION PERIOD

1. The [competent authority] shall, within [] days of having reasonable grounds to believe, based on the national guidelines/procedures established pursuant to article 20 of this Law, that a person is a victim of trafficking in persons, submit a written request to the [competent [immigration] authority] that the victim be granted a recovery and reflection period of not less than ninety days.
2. Any [natural] person who believes he or she is a victim of trafficking in persons shall have the right to submit a written request to the [competent [immigration] authority] to be granted a recovery and reflection period of not less than 90 days.
3. The [competent [immigration] authority] shall grant a recovery and reflection period where it has established that there are reasonable grounds to believe a person is a victim of trafficking in persons within [...] days of the submission of a written request.
4. The decision of the [competent [immigration] authority] regarding the granting of a recovery and reflection period shall be appealable by the [competent authority] or any natural person who believes he or she has been a victim of trafficking in persons.
5. A victim of trafficking in persons who is a non-national shall, not be removed from the territory of [name of State] until the identification process established in accordance with article 20 has been completed by the [competent authority].
6. Until the [competent [immigration] authority] decides whether to grant a recovery and reflection period, a victim of trafficking in persons shall not be removed or deported from [name of State] (and shall be entitled to the rights, benefits, services and protection measures set forth in this law). Where deportation proceedings have been initiated, they shall be stayed, or where an order of deportation has been made, it shall be suspended.
7. Paragraph 1 shall not prevent or prejudice the competent authorities from carrying out any relevant investigative activities.

Commentary

It is important that States strike a balance between their need to properly identify victims of trafficking in persons and the burden that lengthy bureaucratic procedures of identification and adjudication of status will place on a victim of trafficking in persons.

Recovery Periods

Recovery and reflection periods provide victims of trafficking a period of time in which they can begin to recover, consider their options and take an informed decision on whether or not they want to cooperate with the authorities and/or act as witnesses. It can also include, for example, a period of time in which victims may also consider whether to apply for refugee protection. During a recovery or reflection period, victims should not be required to provide information or evidence of a crime to any authorities. Recovery and reflection periods also prevent victims without immigration status in the country to remain there while they decide whether they want to assist authorities. The granting of a recovery and reflection period should not, however, be a substitute or impediment to also subsequently granting temporary or permanent resident status.

The provisions on identification, below, are also applicable to countries of origin and transit, which should commit to identifying victims of trafficking among returning nationals.

The guidelines should include timescales for the formal identification of victims of trafficking and a duty to inform victims of their eligibility for assistance.

Examples:

The UK Competent Authority Guidance for Trafficking Victim Identification and Assistance:

The United Kingdom follows a two-stage process for victim identification. The first stage is based on a reasonable grounds decision, where the decision maker has evidence to show that they suspect but cannot prove that the person is a victim. This first-stage identification test is passed following an assessment of human trafficking indicators in any given case, following which the victim is entitled to the basic assistance measures. This assessment and decision must occur within 5 days of the victim first consenting to be referred into the National Referral Mechanism, in the case of adults and five days from a child being compulsorily referred in, on account of obligations to protect the child's best interests.

The final conclusive grounds decision is to be reached, according to policy, within 45 days, although in practice may take longer. It is a decision made to the civil standard of proof, namely the balance of probabilities. This means that the evidence available must show that human trafficking is more likely than not to have happened.

The Provision should therefore ideally also set a timescale for reaching of the confirmed decision on trafficking victim status. Until that final decision, the victim shall have the recovery and reflection period. A proposed provision for this is:

Within [45] days of having determined that there are reasonable grounds to believe that a person is a victim of trafficking in persons], the [competent authority] shall, having consulted civil society experts where possible, evaluate and issue a decision confirming the trafficking status of the victim, including preparing any attendant crime report, and shall issue a letter of certification confirming the victim's entitlement to have access to the rights, benefits and services set forth in this Law.

Article 11(2) of the EU Directive 2011/36/EU:

Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 [i.e. human trafficking] and 3 [attempts and modes of participation].

Granting a recovery and reflection period, including corresponding rights, and regardless of whether or not there is prior agreement to give evidence as a witness, assists States to protect the human rights of all trafficked persons. The protection of basic rights also serves to raise the victim's confidence in the State and its ability to protect his or her interests. In such cases, a victim is more likely to make an informed decision and to cooperate with the authorities in the prosecution of traffickers. A recovery and reflection period is in the victim's and the authorities interests as it helps to enable proper identification and to start or proceed with investigations. It is also important that States recognize that trafficked persons who are non-nationals may risk or face immediate deportation or arrest on their detection by the authorities. Such victims will not be encouraged to come forward, report the crime or cooperate with the competent authorities unless there is a framework of safety in place to receive them.

ARTICLE 22. INFORMATION TO VICTIMS

1. Victims shall be provided information on the nature of protection, assistance and support to which they are entitled and the possibilities of assistance and support by State agencies and/or non-governmental organizations and other victim agencies, as well as information on any legal proceedings related to them.
2. Information shall be provided in a format and manner that ensures that the victim understands it.

Commentary

Article 6, paragraph 2(a), of the Protocol requires States Parties to ensure the provision of information to victims on relevant court and administrative proceedings. States Parties may consider providing other types of information that are valuable to the victims and take into account that victims should be able to give an informed consent at all stages of the process.

The types of information to be provided to victims could be included in regulations and guidelines. One option could be:

From their first contact with the authorities and throughout the justice process, the victim shall be informed about:

- (1) The degree and nature of the available benefits and services, the possibilities of assistance by state agencies, nongovernmental organizations and other victim agencies, and the way such assistance can be obtained;
- (2) The different stages and the role and position of the victim in court and administrative proceedings;
- (3) The possibilities of access to [free and/or low-cost] legal services;
- (4) The availability of protection for victims and witnesses [and their families] faced with threats or intimidation;
- (5) The right to privacy and confidentiality;
- (6) The right to be kept informed about the status and progress of the criminal proceedings;
- (7) The legal remedies available, including restitution and compensation in civil and criminal proceedings;
- (8) The possibilities of temporary and/or permanent residence status, including the possibilities and procedures for applying for asylum or residence on humanitarian and compassionate grounds.

ARTICLE 23. PROVISION OF BENEFITS AND SERVICES TO VICTIMS OF TRAFFICKING IN PERSONS

1. Competent authorities and victim service providers shall provide the needs-based benefits and services, including as described below to victims of trafficking in persons in [name of State], without regard to the immigration status of such victims, availability of the victim's identity and other personal documents or the ability or willingness of the victim to participate in the investigation or prosecution of his or her alleged trafficker.
2. Assistance shall include:
 - (a) Safe and appropriate accommodation;
 - (b) Health care and necessary medical services and treatment;
 - (c) Counselling and psychological assistance, on a confidential basis and with full respect for the privacy of the person concerned, in a language that he or she understands;
 - (d) Information regarding [free or low-cost] legal assistance to represent his or her interests in any criminal investigation, including the obtaining of compensation, [to pursue civil actions against his or her traffickers] and [, where applicable, to assist with applications for regular immigration status];
 - (e) Support with regard to employment, education and training opportunities; and
 - (f) Translation and interpretation services, where applicable.
3. In appropriate cases and to the extent possible, assistance shall be provided to the dependents of the victim.
4. Victims of trafficking in persons shall not be detained as a result of their status as victims or their immigration status.
5. All assistance services shall be provided on a consensual and informed basis and while taking due account of the special needs of children and other persons in a vulnerable position.
6. The assistance services set forth in paragraph 2 shall also be available for victims who are repatriated from another State to [name of State].

Commentary

Many countries already have laws, policies, regulations and guidelines in place to ensure that victims of crime are aware of their rights and able to access appropriate benefits and services. If this is the case, it should be ensured that these rights, benefits and services also apply to all victims of trafficking in persons and that they are applied in a non-discriminatory manner and based on the free and informed consent of the victim.

Some of these rights will need to be included in the law, while others may be more suitably implemented through regulations, policies or guidelines, for example, guidelines for the investigation and prosecution of trafficking in persons and the treatment of victims.

The provision of adequate victim assistance and protection is the responsibility of the State and benefits the victim and can also have positive impacts on the prosecution of the offenders. From a law enforcement perspective, poor victim assistance and protection may discourage victims from seeking assistance from law enforcement officials for fear of mistreatment, deportation or potential risks to their personal safety.

In appropriate cases, victim assistance should be extended to dependents, who can include family members for whom the victim has responsibility for.

Article 25, paragraph 1, of the Convention obliges States Parties to take appropriate measures to provide assistance and protection to victims, in particular in cases of threat of retaliation or intimidation, which in the case of victims of trafficking will often be the case.

Article 6, paragraph 3, of the Protocol obliges States Parties to consider implement measures to provide for the physical, psychological and social recovery of victims of trafficking, in cooperation with non-governmental orga-

nizations and other elements of civil society, in particular the provision of appropriate housing, counselling and information, medical, psychological and material assistance and employment, education and training opportunities. Such assistance shall be provided on the basis of free and informed consent.

According to the Interpretative notes for the official records “Travaux préparatoires” of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000, para. 71), the type of assistance set forth in article 6, paragraph 3, of the Protocol 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. Article 6, paragraph 3, of the Protocol 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.

Early Referral

Referral to assistance agencies should take place at the earliest moment possible. It is advisable that the agencies involved in the identification process rely upon procedures established by national coordination body or other competent authorities and/or establish their own procedures for agency-specific assistance to and referral of victims. Article 6, paragraph 3, of the Protocol specifically mentions cooperation with nongovernmental organizations and other stakeholders from civil society.

Provision of Information in a Manner that is Understandable

Article 6, paragraph 3(b), of the Trafficking in Persons Protocol obliges States Parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including the provision of counselling and information, in particular as regards their legal rights, in a language that the victim understands.

Article 6, paragraph 2(a), of the Protocol obliges States Parties to ensure that their domestic legal and administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases, information on relevant court and administrative proceedings. This could include information on the processes followed in the proceedings and special measures that might be available to support victims who are witnesses in such matters. Throughout criminal and other relevant judicial and administrative proceedings, the [competent authority] shall inform the victim about:

- (a) The timing and progress of the criminal proceedings and other relevant judicial and administrative proceedings, including claims for restitution and compensation in criminal proceedings;
- (b) The disposition of the case, including any decision to stop the investigation or the prosecution, to dismiss the case or to release the suspect(s).

Article 6, paragraph 2(b), of the Protocol obliges States Parties to ensure that their domestic legal or administrative system contains measures that provide to victims of trafficking in persons 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. Article 6 strongly underlines the importance of legal assistance to victims of trafficking, provided for by the State. If a system of free legal aid exists, this should also apply to victims of trafficking. If free legal aid is not possible, the victim should have the possibility to be assisted by a support person of his or her choice, for example from a non-governmental organization or a legal aid institution that provides victim assistance. In addition, workers’ organizations may play an important role in assisting (alleged) victims to bring complaints.

Assistance to dependents of the victim may be deemed appropriate, for example, when the victim has children.

According to article 6, paragraph 3(a) of the Protocol, holding victims of trafficking in prisons or other detention centres can by no means be considered to be appropriate housing.

It is important to ensure that all victims have access to assistance in order to enable them to recover and to make an informed decision about their options, including the decision to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims. Those victims who do not want or do not dare to act as witnesses—or are not required as witnesses because they do not possess any relevant information or because the perpetrators cannot be identified or taken into custody—require adequate assistance and protection on an equal footing with victims who are willing and able to testify. Some forms of long-term assistance may be dependent on whether the victim remains in the country and assists the authorities in the investigation and prosecution of the traffickers.

Source: Protocol, article 6, paragraphs 2-4; Convention, article 25, paragraph 1.

National Examples:

Ethiopia, Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178-2020

24. Protection and Rehabilitation of Victims

1/ Victims shall:

- a) receive the necessary protection and support; the protection and support accorded shall be in consideration of the victims' situation, particularly shall take in to account the vulnerability and special needs of women, children, person with mental problem and disabilities.
- b) be treated in a manner protective of their privacy and dignity and provided appropriate health, social services, legal and psychological counseling and support, temporary shelter, and other similar services.
- c) have the right to information on the nature of protection and support to be accorded, and status of the case during investigation and prosecution.
- d) not be placed in a police station, detention center or prison facility under any circumstances.

2/ Unless the situation of the victim so compels or the presence of the victim is necessary for the trial process and the victim is willing to give testimony, the victim shall not be placed in a temporary shelter for an extended period.

3/ The Authorities entrusted with power to prevent, investigate, prosecute or give judicial proceeding regarding crimes stipulated under this Proclamation shall have the responsibility to refer victim in contact, taking in to account situation of the victim, to an institution where the victim can get better support and care.

4/ The Federal Urban Employment Creation and Food Security Agency, in collaboration with the appropriate governmental and non-governmental bodies, provide necessary rehabilitation support to victims residing in urban areas.

5/ The Rural Employment Creation and Food Security Agency in collaboration with the appropriate governmental and non- governmental bodies, provide necessary rehabilitation support to victims residing in rural areas.

6/ Without prejudice to the provisions regarding refugees provided in other laws, where a victim who is a foreign national found in Ethiopia not having permanent residence permit shall receive the appropriate support with the exception victims economic empowerment rehabilitation service. He may also, as appropriate, be provided with a temporary residence permit.

Thailand, Section 37 of the Anti-Human Trafficking Act 2008

For the purposes of taking legal proceedings against the offender under this Act, the provision of medical treatment, the rehabilitation, or the claim for right of the victim, the competent authority may assist the victim to obtain a... temporary stay in the Kingdom and a temporary work permit in accordance with the law, doing so by taking into account the humanitarian reasons.

Brazil, Article 20 of Brazilian Law no. 7998 of 1990 – unemployment insurance for slave-like worker

The worker who is identified as being subjected to forced labour or reduced to a condition similar to that of a slave, as a result of an inspection action of the Ministry of Labour and Employment, will be rescued from this situation and entitled to the perception of three instalments of unemployment insurance in the amount of one minimum salary each...

The employee rescued...shall be sent by the Ministry of Labour and Employment for professional qualification and replacement in the labour market through the National Employment System, as established by the Deliberative Council of the Support to the Worker.

ARTICLE 24. GENERAL PROTECTION OF VICTIMS AND WITNESSES

1. The [competent authority] shall take all appropriate measures to ensure that a victim or witness of trafficking in persons, and his or her family, is provided adequate protection if his or her safety is at risk, including measures to protect him or her from intimidation and retaliation by traffickers and their associates.
2. Victims and witnesses of trafficking in persons shall have access to any existing witness protection measures or programmes.

Commentary

The Model Legislative Provisions address witness protection issues only to the extent that they are unique to trafficking in persons. For general provisions on witness protection, see UNODC, Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime (2008).

Article 6, paragraph 1, of the Protocol obliges States Parties, in appropriate cases and to the extent possible under its domestic law, to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. Article 24, paragraph 1, of the Convention pertains specifically to the protection of witnesses, stating that each State party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony and, as appropriate, for their relatives and other persons close to them. This may include establishing procedures for the physical protection of such persons, such as relocating them and permitting, where appropriate, nondisclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons (article 24, paragraph 2(a)). According to article 24, paragraph 4, of the Convention, this article also applies to victims insofar as they are witnesses. It is important to note, however, that when a victim of trafficking has been referred into the national referral mechanism, the person should not, as a result, be denied access to other existing channels of protection.

The various provisions are examples of how to provide for the protection of the privacy and identity of the victim and/or witness during such investigations.

Source: Protocol, article 6, paragraph 1; Convention, article 24.

ARTICLE 25. CHILD VICTIMS AND WITNESSES

In addition to any other guarantees provided for in this Law:

- (a) Child victims shall be given assistance, support and protection. In the application of this law, the child's best interests shall be a primary consideration;
- (b) When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;
- (c) Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;
- (d) If the victim is an unaccompanied minor the [competent authority] shall:
 - (i) Appoint a legal guardian to represent the interests of the child from the moment the child is identified by the authorities, in the event that the child's parents or those with parental responsibility of the child are unable to undertake that role by operation of law;
 - (1) Take all necessary steps to establish his or her identity and nationality;
 - (2) Make every effort to locate his or her family when this is in the best interest of the child;
- (e) Information may be provided to child victims through their legal guardian or, in case the legal guardian is the alleged offender, a support person;
- (f) Child victims shall be provided with information in a language that they use and understand and in a manner that is understandable to them;
- (g) In the case of child victims or witnesses, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person;
- (h) In the case of child victims and witnesses, court proceedings shall, to the extent possible, be conducted in camera away from the presence of media and public. Child victims and witnesses shall give evidence [testify] in court out of sight of the accused, unless doing so would be contrary to the proper administration of justice.

Commentary

A statement of principle such as the following could be inserted:

All actions undertaken in relation to child victims and witnesses shall be based on the principles set out in the Convention on the Rights of the Child and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, in particular the principle that the best interests of the child must be a primary consideration in all actions involving the child and the principle that the child's view must be considered and taken into account in all matters affecting him or her.

The Trafficking in Persons Protocol urges States Parties to take comprehensive action to combat trafficking in persons, with particular attention to be paid to the situation of children. There are various references in the Protocol that address this point. In particular, Article 6, paragraph 4 requires States Parties to take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children. Various other international instruments and tools prescribe actions that States can take in order to address the particular needs of children, who are victims of crime, including the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. All of the following should apply to child victims of trafficking irrespective of their nationality or immigration status.

ARTICLE 26. PROTECTION OF VICTIMS AND WITNESSES IN COURT

INTRODUCTION

1. A judge may order on application, or where the judge determines it is in the interest of justice that:
 - (a) Court proceedings be conducted in camera,* away from the presence of media and public;
 - (b) Records of the court proceedings be sealed;
 - (c) Evidence of a witness, including a victim, be heard through a video link [or the use of other communications technology] [behind a screen] or similar adequate means out of view of the accused; and/or
 - (d) The witness, including victims, use a pseudonym [, and/or]
 - (e) The statement of a victim or a witness made during the pretrial phase in front of a judge be admitted as evidence.

2. Evidence that the victim has engaged in sexual activity with the accused or another person is not admissible to support an inference that the victim is less worthy of belief, or to establish their sexual predisposition.

* “In camera” is a legal term of art meaning “in private” and refers to a closed hearing, where the public, including the press are not allowed.

Commentary

Attending court as a victim or witness can be intimidating in any case, but particularly so in trafficking in persons cases. It is critical that victims and witnesses also be supported during the trial process. This can be accomplished in various ways, including through legislative provisions to enable their participation in a manner that takes into account their specific needs, supports the truth-seeking function of the courts and also respects the rights of accused persons. The model provision identifies a number of areas where legislation could be pursued; it is likely, however, that such areas will require more detailed legislative language.

National Examples:

Sections 17- 30 of the United Kingdom’s Youth Justice and Criminal Evidence Act, 1999 set out a broad framework enabling certain witnesses to use “special measures” while giving testimony, including testifying behind a screen, via live video link and testifying without the public present.

South Africa, Section 153 of the Criminal Procedure Act:

- (1) In addition to the provisions of section 63(5) of the Child Justice Act, 2008, if it appears to any court that it would, in any criminal proceedings pending before that court, be in the interests of the security of the State or of good order or of public morals or of the administration of justice that such proceedings be held behind closed doors, it may direct that the public or any class thereof shall not be present at such proceedings or any part thereof.

- (2) If it appears to any court at criminal proceedings that there is a likelihood that harm might result to any person, other than an accused, if he testifies at such proceedings, the court may direct
 - (a) that such person shall testify behind closed doors and that no person shall be present when such evidence is given unless his presence is necessary in connection with such proceedings or is authorized by the court;
 - (b) that the identity of such person shall not be revealed or that it shall not be revealed for a period specified by the court.

USA, Rule 412, United States Rules of Evidence

- (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:
- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
 - (2) evidence offered to prove a victim's sexual predisposition.
- (b) Exceptions.

- (1) Criminal Cases. The court may admit the following evidence in a criminal case:
- (A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
 - (B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and
 - (C) evidence whose exclusion would violate the defendant's constitutional rights.
- (2) Civil Cases. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy

ARTICLE 27. PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS

The [Ministry of Justice] [prosecutor] and/or [court] and/or [other competent authority] shall provide the victim with the opportunity to present his or her views, needs, interests and concerns for consideration at appropriate stages of any judicial or administrative proceedings relating to the offence, either directly or through his or her representative, without prejudice to the rights of the defence.

Commentary

Article 25, paragraph 3, of the Convention obliges States Parties, subject to their domestic law, to 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. Article 6, paragraph (2)(b), of the Protocol obliges States Parties to ensure that their domestic legal or administrative system contains measures that provide victims of trafficking in persons 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.

Judicial and administrative proceedings may include, where applicable, proceedings before labour courts.

Participation of victims in criminal proceedings can take different forms. In some civil law countries, victims may enjoy the status of participants throughout the proceedings (and they should be informed of this possibility). In common law countries, they may be allowed to participate at certain stages (for example, to present their views on plea bargains, that is cases where the prosecutor and defence agree to make a joint recommendation to the court involving the accused pleading guilty to certain offences, which is then taken into consideration as part of sentencing) or give a victim impact statement.

In providing victims with the opportunity to present their views, it is critical that victims are given information about this opportunity in a manner that they understand. This should include information on the implications of participating in such proceedings and the measures available to support them during the proceedings.

ARTICLE 28. PROTECTION OF DATA AND PRIVACY

1. All personal data regarding victims of trafficking shall be processed, stored and used in conformity with the conditions provided for by the [national legislation regarding the protection of personal data] and shall be used exclusively for the purposes for which they were originally compiled.
2. In accordance with [relevant national legislation], a protocol shall be established for the exchange of information between agencies concerned in victim identification and assistance and criminal investigation with full respect for the protection of the privacy and safety of victims.
3. All information exchanged between a victim and a professional [counsellor] providing medical, psychological, legal or other assistance services shall be confidential and shall not be exchanged with third persons without the consent of the victim.
4. Interviews [questioning] of the victim and/or witness during criminal [judicial and administrative] proceedings shall take place with due respect for his or her privacy, and away from the presence of the public and media.
5. The results of any medical examination of a victim of trafficking in persons shall be treated confidentially and shall only be used in a manner provided for by law.
6. The name, address or other identifying information (including pictures) of a victim of trafficking in persons shall not be publicly disclosed or published [by the media]. This includes the right to be anonymized in court proceedings and court judgments.
7. A violation of this article is punishable by [...].

Commentary

Procedures that regulate the exchange of personal and/or operationally sensitive information are particularly important in the case of victims of trafficking, as the misuse of information may directly endanger the life and safety of the victim and his or her relatives or lead to stigmatization or social exclusion. Moreover, it should be taken into account that trafficking in persons is a crime that can cause or be facilitated by corruption and is often linked to organized criminal groups. Increased cooperation and data exchange also lead to greater risk of misuse of information.

One way to protect data is the practice of so-called “restricted notes”, meaning that data of victims of trafficking are marked with a number, the identity of which is only known to selected officials. Furthermore, individuals who have access to such data should be bound by a duty of confidentiality. There may be legislative provisions in place that govern the disclosure of such information; proposed Article 29 is one example of such a provision.

For more information, see the NEXUS Institute’s Legal and Ethical Issues in Data Collection on Trafficking in Persons (2019).

ARTICLE 29. UNLAWFUL DISCLOSURE OF THE IDENTITY OF VICTIMS AND/OR WITNESSES

Option 1: Any person who discloses without lawful authority to another person any information acquired in the course of his or her official duties that enables or leads to the identification of a victim and/or witness of trafficking in persons shall be guilty of an offence and, upon conviction, shall be liable to punishment of ...

or

Option 2: Disclosure of the identity of a victim of trafficking in persons shall mean disclosing, without lawful authority, to another person any information acquired in the course of one's official duties and that enable or leads to the identification of a victim and/or witness of trafficking in persons.

Unlawful disclosure shall be punishable by....

Commentary

This article seeks to safeguard the identity of a victim of trafficking or a witness to such crimes. It has the following objectives:

- (a) Protecting the privacy of such persons;
- (b) Ensuring their security; and,
- (c) Contributing to an environment where others feel encouraged to come forward to report alleged crime.

For some jurisdictions, the enactment of a specific offence prohibiting disclosure may also require the enactment of a corresponding obligation to safeguard information.

In many jurisdictions, legislation exists to prevent the disclosure of information that could identify a victim in cases where that information is subject to a publication ban. Such an approach would be more limited in application than the model provision provided above which would make it an offence in any case to disclose the identity of a victim and/or witness.

ARTICLE 30. RELOCATION OF VICTIMS AND/OR WITNESSES

The [competent authority] may, when necessary to safeguard the physical safety of a victim or witness, at the request of the victim or witness or in consultation with him or her, take all necessary measures to relocate him or her and to limit the disclosure of his or her name, address and other identifying personal information to the extent possible.

Commentary

Article 24, paragraph 2(a), of the Convention provides that measures to protect a victim or witness from retaliation or intimidation may include relocating victims or witnesses and permitting nondisclosure or limitations on the disclosure of information on the identity. Article 24, paragraph 3, states that States Parties shall consider entering into agreements with other States for the relocation of victims and witnesses.

ARTICLES 31 - 33: COMPENSATION FOR VICTIMS OF TRAFFICKING

INTRODUCTION

Article 6, paragraph 6 of the Trafficking in Persons Protocol obligates States Parties to ensure that their domestic legal systems include provisions that offer victims of trafficking the possibility of obtaining compensation for damages suffered. There are different ways in which domestic legal systems reflect this requirement, including:

- (a) Restitution provisions in criminal law: a restitution order is an order made by a criminal court as part of a sentence and requires the offender to pay a sum of money to the victim for losses suffered as a result of the crime and that can be easily determined by the court. Restitution orders can be mandatory or permissive. In some jurisdictions, they may be referred to as compensation orders, but the defining feature is that the offender is required to pay the amount ordered and they are ordered as part of the criminal justice process.
- (b) Victim Compensation Funds: these are mechanisms that are funded by the State and which can be accessed by victims. In some cases, victims funds may also receive revenue through the payments made by traffickers pursuant to a court order. Victims funds may be separate from the criminal justice process.
- (c) Civil Remedies: providing victims with the right to initiate a private cause of action against an offender in order to obtain damages as a result of the harm suffered. Some jurisdictions have created stand-alone “torts” of human trafficking. These are separate from the criminal justice process and are paid, if ordered, by the defendant.

Restitution and compensation are discussed in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34, annex, 1985):

“Restitution

- 8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
- 9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- 10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
- 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

- 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.
13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”

Restitution, compensation and civil remedies are discussed below. It should be noted that all three approaches are reflected in many legal systems around the world. Consideration should be given, therefore, to providing for each possibility in domestic law. It should also be noted that some form of compensation may also be made possible through other domestic legislative means (e.g., through human rights or labour legislation). The adequacy of such measures will need to be considered to ensure that victims have the ability to seek compensation for the full range of losses suffered.

Importance of Compensation:

Too often, victims of trafficking are not provided meaningful access to remedies. In some legal systems, this may be because prosecutors have not sought restitution orders or not done so in a timely way, where prosecutors are required to do so, or it may be that the domestic legal system does not provide for the ability to seek restitution.

The below model provisions require a judge to consider awarding restitution to victims of trafficking. Moreover, the provisions require the judge to give reasons, in cases where an order has not been made. However, restitution should not be the only means in which victims seek to be compensated for the harm suffered. This is because, in some cases, criminal proceedings may not commence or findings of not guilty may be entered. In such cases, compensation will not be possible. Non-criminal (civil) mechanisms provide an alternative approach to seeking compensation; such approaches also follow the non-criminal standard of proof on a balance of probabilities. The model provisions below also provide examples of non-criminal compensation mechanisms. All measures that provide the possibility of obtaining compensation should operate without prejudice to the nationality or immigration status of the victim.

National examples of the different mechanisms for victim compensation are set out below under each of the relevant model provisions. For further examples, please see Annex C.

ARTICLE 31. COMPENSATION THROUGH RESTITUTION

1. Where an offender is convicted of an offence under the present Law, the Court must consider ordering the offender to pay compensation [restitution] to the victim, in addition to, or in place of, any other punishment ordered by the court.
2. An order for compensation [restitution] shall be favoured over an order or a fine.
3. The aim of an order for compensation [restitution] shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order may include payment for or towards:
 - (a) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
 - (b) Costs of physical and occupational therapy or rehabilitation required by the victim;
 - (c) Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
 - (d) Lost income and due wages according to national law and regulations regarding wages;
 - (e) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
 - (f) Payment for nonmaterial damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
 - (g) Any other costs or losses incurred by the victim as a direct result of being trafficked that can be reasonably assessed by the court.
4. When making such an order for compensation [restitution], the court shall take the offender's means and ability to pay into account.
5. An order for compensation [restitution] under this article may be enforced by the State with all means available under domestic law.
6. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation [restitution] under this article.
7. Where the offender is a public official whose actions constituting an offence under this Law were carried out under actual or apparent State authority, the court may order the State to pay compensation [restitution] to the victim [in accordance with national legislation]. An order for under this article may include payment for or towards all or any of the items under paragraphs 4 (a) to (g) above.
8. The Court must provide reasons if it decides not to make an order under this section.

Commentary

Like victims of crime generally, victims of trafficking are not effectively compensated for the losses suffered and harm endured as a result of their victimization. The draft provision obligates courts to consider making an order for compensation [restitution] independent of a request being made by the prosecutor. This approach also means that victims are not required to seek compensation through other legal proceedings. If the offender is unable to pay, however, state-funded compensation may be necessary (discussed in the next section).

While the model provision does not require the ordering of compensation [restitution], such an approach is possible.

For more information, please see the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) Issue Paper on Providing Effective Remedies for Victims of Trafficking in Persons (2016).

National Examples:

USA, 18 U.S. Code § 1593

- (a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense (i.e., peonage, slavery and trafficking in persons) under this chapter.
- (b)
 - (1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.
 - (2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.
 - (3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(c)(2) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).
 - (4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853).
- (c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

United Kingdom, Section 8 of the Modern Slavery Act, 2015

- (1) The court may make a slavery and trafficking reparation order against a person if—
 - (a) the person has been convicted of an offence under section 1, 2 or 4, and
 - (b) a confiscation order is made against the person in respect of the offence.

Thailand, Sections 34 and 35 of the Anti-Trafficking Act, 2008

(34) For the benefit of the assistance to a trafficked person, the inquiry official or public prosecutor shall, in the first chance, inform the trafficked person his (or her) right to compensation for damages resulting from the commission trafficking in persons and the right to the provisions of legal aid.

(35) In case where the trafficked person has the right to compensation for damages as a result of the commission of trafficking in persons and express his intention to claim compensation thereof, the Public Prosecutor, to the extent as informed by the Permanent Secretary for Social Development and Human Security or any person designated by him, shall, on behalf of the trafficked person, claim for compensation thereof.

The claim for compensation under paragraph one, may be brought by the Public Prosecutor either with the criminal prosecution or by way of motion filed at any time during the trial of the criminal case in the Court of the First Instance.

The judgment in the part of the claim for compensation shall be given as one part of the judgment in the criminal case. In case where the Court orders to compensate for compensation, the trafficked person shall be regarded as the creditor according to the judgment and the Director-General of the Legal Execution Department shall be bound to execute the judgment of such.

The hearing proceedings of claim for compensation under paragraph one and the execution of judgment under paragraph three are exempt from any costs. The provisions of the Criminal Procedure Code shall apply mutatis mutandis as far as they do not contravene to any provisions stipulated in this Act.

Nepal, Section 17 of the Trafficking and Transportation (Control) Act, 2007

- (1) A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender.
- (2) If the victim dies before receiving the compensation under Subsection (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation.
- (3) If there are no dependant parents and minor children to receive compensation under Sub-Section (2), the amount should be accrued in the Rehabilitation Fund.

Tunisia, Section 63 of Law No. 2016-61 on Preventing and Combatting Trafficking in Persons

Victims of trafficking in persons with final judgements of compensation rendered in their favour may, in the case of non-execution, claim reimbursement of these funds from the State treasury. The State takes responsibility for reimbursement of these funds as public debt.

ARTICLE 32. COMPENSATION THROUGH VICTIM FUNDS

1. Where a person is a victim of trafficking in persons [list specific offences], the [insert responsible body, court, decision maker], on application, may make an order that it, in its discretion exercised in accordance with this Act, considers proper for the payment of compensation to,
 - (a) the victim;
 - (b) a person who is responsible for the support of the victim;
 - (c) where the death of the victim has resulted, the victim's dependents or any of them or the person who was responsible for the support of the victim immediately before his or her death or who has, on behalf of the victim or his or her estate and not being required by law to do so, incurred an expense referred to in clause 7 (1) (a) or (e) arising from the act or omission.

2. Compensation may be awarded for:
 - (a) expenses actually and reasonably incurred or to be incurred as a result of the crime;
 - (b) pecuniary loss incurred by the victim affecting the victim's capacity for work;
 - (c) pecuniary loss incurred by dependents;
 - (d) pain and suffering;
 - (e) other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the [insert responsible body, court, decision maker], it is reasonable to incur.

Commentary

A victim fund can be established specifically for victims of trafficking or (as is the case in a number of countries) for victims of serious crimes in general. A general fund for all victims of serious crime is preferable as it will be easier

to administer a single fund than several different funds for different types of crime. Its objectives can be limited to assistance to and compensation of victims or to wider costs related to the prevention and combating of trafficking in persons. The model provision is, on its own, insufficient to address the full range of issues associated with the establishment of a victims fund any many countries have stand-alone laws addressing the full range of issues associated with establishing, administering and adjudicating claims brought under the fund. Consideration should be given to using seized proceeds of crime, or a part thereof, to fund these initiatives.

National Examples:

Argentina, Law 27.508 on the Trust Fund for Direct Assistance for Victims of Trafficking – (Law 26.364).

Article 1: Create the Public Trust Fund called “Fund for Direct Assistance for Victims of Trafficking - Law 26,364”, which will be established as an Administration Trust intended for direct assistance to victims of the crime of trafficking and exploitation, according to the provisions of article 27, second paragraph, of the aforementioned law, its amendment, and its regulatory decree III of January 26, 2015:

(The seizures applied under this law and those originating in money laundering cases stemming from the crimes provided for in this regulation, will have as their specific destination a Fund for Direct Assistance for Victims administered by the Federal Council for the Fight Against Trafficking and Exploitation of Persons and for the Protection and Assistance to Victims whose regime will be established by a special law).

The goods (assets) that make up the “Fund for Direct Assistance for Victims of Trafficking - Law 26,364” will not be computed for the calculation of the resources of the National Budget and are extrabudgetary in accordance with the specific destination established in article 27, second paragraph, of the Law 26,364 and its amendment.

Article 3: The resources of the “Fund for Direct Assistance for Victims of Trafficking - Law 26,364” will be used, according to the purpose established in article 27, second paragraph, of said law, for direct assistance to victims of the crime of trafficking and exploitation.

Article 12: Article 27 of Law No. 26,364 is hereby replaced with the following:

Article 27: The Nation’s General Budget will include annually the necessary items for compliance with the provisions of this law. Likewise, the organizations created by this law may be financed with resources from international cooperation agreements, donations or subsidies.

The seizures applied under this law and those originating in money laundering cases stemming from the crimes provided for in this regulation, will have as their specific destination a Fund for Direct Assistance for Victims administered by the Federal Council for the Fight Against Trafficking and Exploitation of Persons and for the Protection and Assistance to Victims whose regime will be established by a special law.

The provisions of the second paragraph of this article constitute an exception to the provisions of article 23, sixth paragraph in fine, of the Penal Code of the Nation.

Article 13: The following is incorporated as article 28 of Law 26,364 and its amendment:

Article 28: In cases of trafficking and exploitation of persons, the condemnatory sentence or equivalent judicial decision, which grants the suspension of the trial process, which admits the abbreviated trial agreement or which provides for confiscation without conviction, must order the economic restitution that correspond to the victim, as a measure aimed at restoring things to the state prior to the commission of the crime.

For this purpose and in order to ensure that the sentence that provides restitution and other economic reparations to the victim is effective, the magistrates or officials of the Judicial Power of the Nation or the Public Prosecutor’s Office must, at the first possible opportunity, identify the assets of the accused and request or adopt, where appropriate, all the precautionary measures that are necessary and effective, according to the nature of the property, to ensure the adequate satisfaction of such responsibilities.

The restitutions and other economic reparations that are ordered by virtue of this article, shall not prevent the victims from obtaining a comprehensive compensation for the damages caused by the crime, through the exercise of the corresponding civil action.

Botswana, Sections 27 and 28 of the Anti-Human Trafficking Act of 2014

27(1): There is hereby established a victims of trafficking Fund in this Act Referred to as “the Fund”, the object of which is to provide assistance to victims of trafficking in persons.

(2) The Chairperson shall be the public officer responsible for the administration of the Fund.

28: Payments into and out of the Fund.

(1) The sources of the Fund shall be –

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Fund;
- (b) any proceeds of crime confiscated and forfeited proceeds of crime under section 21; or
- (c) income generated by investments made by the Committee; and
- (d) any donation received by the Committee for purposes of the Fund.

(2) Without limiting the generality of section 23 (2), the Committee may make payments out of the Fund for –

- (a) the expenses arising out of assistance to the victims of trafficking in persons in the manner referred to in section 15;
- (b) the balance of damages under section 21 (2); and
- (c) such other purposes as may be required for purposes of this Act.

Georgia, Article 9 of the Law of Georgia on Combatting Human Trafficking

1. To efficiently carry out activities to protect, support and rehabilitate victims and persons affected by human trafficking, the Legal Entity under Public Law (LEPL) – the State Fund for Protection and Support of Victims and Persons Affected by Human Trafficking (“the Fund”) shall be established.
2. The Ministry for Labour, Health and Social Affairs of Georgia shall exercise state control over the Fund.
3. The Director of the Fund shall manage the Fund. The Prime Minister of Georgia shall appoint and dismiss the Director of the Fund.
4. To coordinate Fund activities, a Supervisory Board shall be established composed of representatives of state agencies, representatives of nonentrepreneurial legal persons conducting activities in a respective field, and of international organisations, as well as specialists and scientists of the same field.
5. The structure and rules of procedure of the Fund shall be defined under Regulations approved by the Government of Georgia upon recommendation of the Director of the Fund.
6. The purpose of the Fund shall be payment of compensations to victims and persons affected by human trafficking, and funding of activities for their protection, support and rehabilitation.
4. Sources of the Fund’s revenue shall be:
 - a. state budgetary resources
 - b. resources from international organisations
 - c. contributions from legal and natural persons
 - d. other revenue as permitted under the legislation of Georgia.

Israel, Section 377E, Penal Code - Establishment of a Special Fund

- a) The decision of the court on forfeiture according to section 377D shall serve as a basis for the Administrator General to seize the forfeited property; property that has been forfeited, or the consideration thereof, shall be transferred to the Administrator General and deposited by him in a special fund that shall be administered in accordance with the regulations that shall be promulgated according to subsection (d) (in this section – the Fund).

- b) A fine imposed by the court for an offense shall be deposited in the Fund.
- c) Where a victim of an offense presents, to an entity determined by the Minister of Justice for this purpose, a judgment for compensation and shows that he has no reasonable possibility to realize all or part of the judgment, according to any law, the victim of the offense shall be paid from the Fund the compensation set forth in the judgment that has not been paid, all or part thereof; for the purposes of this section, “judgment” means a judgment that may no longer be appealed.
- d) The Minister of Justice, with the approval of the Constitution, Law and Justice Committee of the Knesset, shall promulgate in regulations the methods of administering the Fund, the use to be made of the Fund’s assets, and the manner of their distribution for these purposes:
 - 1) Rehabilitation, treatment, and protection of victims of an offense; for this purpose, there shall be allocated annually an amount not less than one half of the Fund’s assets in one year;
 - 2) Payment of compensation awarded in a judgment to a victim of an offense, in accordance with the provisions of subsection (c);
 - 3) Prevention of the commission of an offense;
 - 4) Carrying out the functions of law enforcement authorities in enforcing the provisions of this Law in respect to an offense.

ARTICLE 33. COMPENSATION THROUGH CIVIL ACTION

1. A victim of trafficking in persons shall have the right to initiate civil proceedings to claim material and nonmaterial damages suffered by him or her as a result of acts specified as criminal offences by this Law.
2. The right to pursue a civil claim for material or nonmaterial damages shall not be affected by the existence of criminal proceedings in connection with the same acts from which the civil claim derives.
3. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.

Commentary

In some jurisdictions, civil actions may provide an opportunity for victims to seek compensation for damages that may not be possible under criminal law compensation schemes. In cases where it is possible to seek compensation under both criminal and civil schemes, national laws may include specific rules concerning the timing for bringing an action under a civil scheme while a criminal process is being conducted. The Model Legislative Provisions do not provide guidance on these specific issues.

National Examples:

USA, 18 U.S. Code § 1595 - Civil remedy

- (a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.
- (b)
 - (1) Any civil action filed under subsection (a) shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.
 - (2) In this subsection, a “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.

- (c) No action may be maintained under subsection (a) unless it is commenced not later than the later of—
- (1) 10 years after the cause of action arose; or
 - (2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.
- (d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as *parens patriae*, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

Cyprus, Section 8 of Law No. 3(1) of 2000- Combatting of Trafficking in Persons and Sexual Exploitation of Children

1. Notwithstanding and without prejudice to any other legal right which is provided under any legal or other provision, the victims of exploitation according to the meaning of this Law have an additional right for damages against any person who is responsible for their exploitation, and is liable for damages, special and general.
2. The above-mentioned general damages must be just and reasonable and in their assessment the Court may take into consideration the following:
 - a. the extent of the exploitation and the benefit the liable derived from such exploitation,
 - b. the future prospects of the victim and the extent to which such prospects were affected by the exploitation,
 - c. the culpability of the offender,
 - d. the relationship or the dominating position or influence of the offender with regard to the victim.
3. The Court may award punitive damages when the degree of the exploitation or the degree of relationship or the dominating position of the offender with regard to the victim so require.
4. The Court, in the award of special damages, takes into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners.

Oman, Article 17 of The Law of Oman No. 126 of 2008 on Combating Trafficking in Persons

A victim of a human trafficking crime shall be exempted from paying the fees for a civil suit he /she files to claim compensation for damages resulting from being abused in a human trafficking crime.



CHAPTER VII. IMMIGRATION AND REPATRIATION

INTRODUCTION

Articles 7 and 8 of the Trafficking in Persons Protocol concern the situation of foreign national victims of trafficking. Victims of trafficking may have no immigration status in the country in which they are found, and traffickers can use this fact as a means of further controlling victims with a view to exploiting them or maintaining them in a situation of exploitation. Article 7 recognizes this and encourages States Parties to implement measures to enable foreign national victims to legally remain in their territory, temporarily or permanently. The granting of temporary or permanent residence may coincide with the reflection and recovery period but will also frequently extend beyond this period.

Article 8 concerns the return of victims of trafficking to their home country in a manner that duly regards their particular safety needs. Article 8 imposes obligations on States Parties to cooperate when victims are being returned to their countries of nationality or permanent residence. The development of measures under Article 8 must also be done in accordance with Article 14(1) of the Trafficking in Persons Protocol, which preserves the effect of other international instruments such as, in particular, the principle of non-refoulement.

ARTICLE 34. TEMPORARY OR PERMANENT RESIDENCE PERMIT

Option 1: (mandatory in all cases)

- 1.If the competent authorities [name the authority] have identified a person as a victim of trafficking who is not a national or habitual resident, he or she [and accompanying dependents] shall be issued a temporary residence permit for at least a period of six months, irrespective of whether he or she cooperates with the [competent authority], with the possibility of renewal.

Option 2: (mandatory upon cooperation with authorities, permissive in other cases)

1. If a victim cooperates with the competent authorities, and upon the request of the victim, the [competent immigration authority] shall issue a [renewable] temporary residence permit to the victim [and accompanying dependents] for the duration of any relevant legal proceedings [for a period of at least six months].
2. A victim may request a renewable temporary residence permit on grounds of his or her personal circumstances, regardless as to whether or not they co-operate with the competent authorities.
3. On the basis of the temporary or permanent residence permit the victim [and accompanying dependents] shall be entitled to the assistance, benefits, services and protection measures set forth in this law.
4. Nothing in this section shall impact upon the victim's right and ability to [and his or her accompanying dependents] apply for refugee status or permanent [long-term] residence status on humanitarian [and compassionate] grounds or for any other reason permitted under law.
- 5.The nonfulfilment of standard requirements (for the application for temporary/permanent residence status) as a consequence of the person being a victim of trafficking, such as a lack of a valid passport or other identity documents, shall not be a reason to refuse him or her temporary or permanent residence status.

Commentary

The Trafficking in Persons Protocol requires States Parties to consider adopting legislative or other appropriate measures to permit victims of trafficking to remain in their territory, temporarily or permanently. In cases where States have done so, it has been observed to have a positive effect on victims coming forward to testify against traffickers and on non-governmental organizations encouraging victims to whom they provide services to report incidents to the authorities. In appropriate cases, it will also be important to provide immigration status to a victim's accompanying dependent(s), such as a child or other family member the trafficked person is supporting. Procedures for granting temporary or permanent residence on the basis that the person is a victim of trafficking in persons must be applied in a manner that is not prejudicial to the person's ability to avail themselves of other measures, including the right to apply for refugee protection.

The model provisions' reference to "relevant legal proceedings" includes both criminal and civil proceedings.

It is in the interest of both the victim and the prosecution to allow the victim at least a temporary residence permit during criminal proceedings. Without the presence of the victim, it may be very difficult to prosecute the suspects successfully.

In considering applications for temporary or permanent residence, the following considerations will be relevant:

- (a) Ensuring the safety of victims and protecting them from retaliation;
- (b) Preventing victims from being re-trafficked; and,
- (c) Providing time for victims' recovery and reflection and/or to facilitate assistance and protection.

Refugee status or Humanitarian and Compassionate Considerations: The immigration authority or immigration judge considering the application of a victim of trafficking in persons for permanent or long-term residence status as a refugee or on humanitarian and compassionate grounds in the light of international refugee law, the principle of nonrefoulement, the right of protection against re-trafficking and the prohibition of inhuman or degrading treatment should keep the following in mind:

- (a) The risk of retaliation against the victim or his or her family;
- (b) The risk of prosecution in the country of origin for trafficking-related offences;
- (c) The mental health of the victim and the impact of return;
- (d) The prospects for social inclusion and an independent, sustainable and humane life in the country of origin;
- (e) The availability of adequate, confidential and nonstigmatizing support services in the country of origin;
- (f) The risk of re-trafficking;
- (g) The presence of children.

Article 7, paragraph 2, of the Protocol expressly states that in implementing the provision on temporary or permanent residence status, States Parties shall give appropriate consideration to humanitarian and compassionate factors.

National Example:

Brazil, Article 7 of the Law No 6.815 of August 1980, as amended by Law No 13,344 of 2016

Art 18-A Victims of trafficking shall be granted permanent residence on national territory, irrespective of their migratory situation and of their cooperation in administrative, police of judicial proceedings"

§1. A permanent visa or residence may be granted as family reunion [...]

Ukraine, Article 15 of the Law on Combating Trafficking in Human Beings, 2011

2. Foreigners and stateless persons, who have been declared victims of trafficking in human beings in the territory of Ukraine, in addition to the rights provided by Part 1 of this Article, also have the right to:
 - 1) interpreter's services at no charge;
 - 2) temporary stay in Ukraine for the term of up to three months, which may be extended when necessary, in particular in view of their participation as plaintiffs or witnesses in criminal proceedings;
 - 3) permanent residence in the territory of Ukraine according to the procedure established by the effective law.
3. The certificate on the person's status of a victim of trafficking shall constitute grounds for such person's registration with the central state executive authority which implements the state policy in the field of registration of natural persons.
4. If the anti-trafficking stakeholders have reasonable grounds to believe that the life, physical or mental health or freedom and integrity of the victim, who is a foreigner or a stateless person, will be threatened in case of such person's return to the country of his/her origin after the expiration of the term of such person's stay, his/her victim's status may be extended in accordance with due procedure, which shall constitute grounds for receiving a permit for staying in the territory of Ukraine until the above circumstances end.
5. The person, who was allowed to stay in Ukraine according to Part 4 of this Article and who has continuously lived in the territory of Ukraine during three years from the day of declaration of such person's status of a victim of trafficking, shall have the right to receive an immigration permit according to the procedure established by law.
6. The provision of assistance to a victim of trafficking shall not depend on:
 - 1) the application of such a person to law enforcement agencies and his/her participation in criminal proceedings;
 - 2) the existence with such a person of a personal identification document.

See also UNHCR's Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006).

ARTICLE 35. RETURN OF VICTIMS OF TRAFFICKING IN PERSONS TO [NAME OF STATE]

1. The [competent authority] shall facilitate and accept the return of a victim of trafficking in persons, who is a national of [name of State] or had the right of permanent residence in [name of State] at the time he or she was trafficked, without undue or unreasonable delay and with due regard for his or her rights and safety [privacy, dignity and health].
2. If the victim is without proper documentation the [competent authority] shall issue, at the request of the victim or the competent authorities of the State to which the person was trafficked, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter the territory of [name of State].
3. In case of the return of a victim of trafficking in persons to [name of State], no record shall be made in the identity papers of that person relating to the reason for his or her return and/or to the person having been a victim of trafficking in persons, nor shall personal data to that effect be stored in any database that may affect his or her right to leave the country or enter another country or that may have any other negative consequences.

Commentary

Article 8, paragraph 1, of the Protocol obliges States Parties to facilitate and accept the return of a national “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 the trafficked person could face upon returning home, such as arrest for leaving the country or working in prostitution abroad, when these are actions criminalized in the country of origin.

“Without undue or unreasonable delay” does not mean that Governments can immediately deport all trafficked persons. Governments should arrange for the return of the trafficked person only after they have had an opportunity to assess that all of their legal rights to justice and their safety upon return are assured.

Article 8, paragraph 2, of the Protocol states that if a State Party returns a victim to the State of which that person is a national, this 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. Return shall preferably be voluntary.

The Interpretative notes for the official records “Travaux préparatoires” of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000, para. 73) state that the words “and shall preferably be voluntary” must be understood not to place any obligation on the State party returning the victim, thus making it clear that returns can also be involuntary. However, this and the previous provisions also clearly limit involuntary returns to those which are safe and are carried out with due regard for legal proceedings.

The risk of re-trafficking must be given critical consideration. Moreover, the international principle of nonrefoulement and the prohibition of cruel, inhuman or degrading treatment under international human rights law must be respected.

Children should not be returned to their country of origin unless it is in their best interest and appropriate measures for their protection have been taken. States may consider complementary forms of protection for trafficked children when return is not in their best interest (see General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin (2005) of the Committee on the Rights of the Child).

ARTICLE 36. REPATRIATION OF VICTIMS OF TRAFFICKING IN PERSONS

1. When a victim of trafficking who is not a national of [name of State] requests to return to his or her country of origin or the country in which he or she had the right of permanent residence at the time he or she was trafficked, the [competent authorities] shall facilitate such return, including arranging for the necessary travel documents, without undue delay and with due regard for his or her rights and safety [privacy, dignity and health].
2. When, upon the decision of [competent authority] a victim of trafficking in persons who is not a national of [name of State], is returned to the State of which he or she is a national or in which he or she had the right of permanent residence at the time he or she was trafficked, the [competent authority] shall ensure that such return shall be with due regard for his or her safety and for the status of any legal proceedings related to the fact that the person is a victim of trafficking.
3. Any decision to return a victim of trafficking in persons to his or her country shall be considered in the light of the principle of nonrefoulement, the right to protection against re-trafficking and of the prohibition of inhuman or degrading treatment.
4. When a victim of trafficking raises a substantial allegation that he or she or his or her family may face danger to life, health or personal liberty if he or she is returned to his or her country of origin, the competent authority [name authority] shall conduct a risk and security assessment before returning the victim.
5. In case of the return of a victim [or witness] of trafficking in persons to his or her country of origin, no record shall be made in the identity papers of that person relating to the reason for his or her return and/or to the person having been a victim of trafficking in persons, nor shall personal data to that effect be stored in any database that may affect his or her right to leave his or her country or enter another country or that may have any other negative consequences.
6. Child victims or witnesses shall not be returned to their country of origin if there is an indication, following a risk and security assessment, that their return would not be in their best interest.
7. The [competent authority] shall to the extent possible, and, where appropriate, in cooperation with nongovernmental organizations, make available to the victim contact information of organizations that can assist him or her in the country to which he or she is returned or repatriated, such as law enforcement offices, nongovernmental organizations, legal professions able to provide counselling and social welfare agencies.

Commentary

A risk assessment should take into consideration factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the country of origin to protect the victim and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of the victim being arrested, detained or prosecuted by the authorities in his or her home country for trafficking related offences (such as the use of false documents and prostitution), the availability of assistance and opportunities for long-term employment. Critical consideration must also be given to the risk of re-trafficking. Nongovernmental organizations and other service agencies working with victims of trafficking should have the right to submit information on these aspects, which should be taken into account in any decision about the return or deportation of victims by the competent authorities.

ARTICLE 37. VERIFICATION OF LEGITIMACY AND VALIDITY OF DOCUMENTS UPON REQUEST

1. At the request of the appropriate authority or representative of another State, the competent authorities and the diplomatic and consular authorities abroad of [name of State] shall verify without unreasonable delay:
 - (a) Whether a person who is a victim of trafficking is a national of or had the right of permanent residence in [name of State] at the time of entry into the territory of the requesting State [the act of trafficking];
 - (b) The legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of [name of State] and suspected of being used for trafficking in persons.
2. If the victim is without proper documentation, the competent authority [name authority] shall issue such legal travel and/or identity documents as may be necessary to enable the repatriation of the victim.
3. The [competent authority] is designated to coordinate responses to inquiries described in paragraph 1 and to establish procedures for responding to such inquiries in a regular and timely fashion.

Commentary

The Trafficking in Persons Protocol obligates States Parties to take certain actions, at the request of another State Party, to confirm certain matters. Article 8(3) requires States Parties to confirm, at the request of another State Party where a victim is found, if that victim is a national or permanent resident of the country requested. Article 13 relates to documents that have been used in trafficking in persons cases. It requires a requested State Party to confirm, within a reasonable period of time, the legitimacy and validity of travel or identity documents that were purportedly issued by it. These obligations are important for helping to facilitate the return of trafficking persons, while also supporting intelligence gathering and the investigation of trafficking crimes.

According to paragraph 74 of the Interpretative notes for the official records “Travaux préparatoires” of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, 2000), Article 8(3) implies that a return should not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.

Article 8(5) and (6) of the Protocol clearly state that article 8 shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State party, and 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. The interpretative notes further specify that agreements or arrangements in this paragraph include both agreements that deal specifically with the subject-matter of the Protocol and more general agreements that include provisions dealing with illegal migration, as well as that this paragraph should be understood as being without prejudice to any other obligations under customary international law regarding the return of migrants.



CHAPTER VIII. PREVENTION, TRAINING AND COOPERATION

INTRODUCTION

The manner in which these articles may be implemented will depend on the legal system and framework of the particular State. In reality, the obligations relating to prevention, training and cooperation will be implemented through a mixture of legislative (acts and regulations), programming, policy and operational measures.

OBLIGATION TO TAKE PREVENTIVE MEASURES

Article 9, paragraph 1, of the Protocol obliges States Parties to establish comprehensive policies, programmes and measures to prevent and combat trafficking in persons and to protect victims from revictimization. Article 9, paragraph 2, obliges States Parties to endeavour to undertake research, information and media campaigns and social and economic initiatives to prevent and combat trafficking in persons. According to article 9, paragraphs 4 and 5, States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons vulnerable to trafficking and to discourage the demand that fosters all forms of exploitation that lead to human trafficking, thus requiring Governments to take positive steps to address the underlying circumstances that facilitate trafficking. According to article 9, paragraph 3, measures established on the basis of article 9 should include cooperation with non-governmental and other relevant organizations stakeholders of civil society.

Examples of measures to address the demand side are measures to broaden awareness, attention and research into all forms of exploitation, and the factors that underpin its demand; to raise public awareness on products and services that are produced by victims of trafficking; to regulate, register and license private recruitment agencies; to sensitize employers to prevent trafficking in persons in their supply chain, whether through regulations or policies related to recruitment, subcontracting or directly to production; to enforce labour standards through labour inspections and other relevant means; to support the organization of workers; to increase the protection of the rights of migrant workers; and/or to criminalize conduct that may contribute to the demand that fosters trafficking in persons, including the use or importation of goods derived from or services provided by victims of trafficking (see chapter IV). It is important for all those responsible for developing and/or implementing anti-trafficking measures to reflect on how their work can support the implementation of the measures contemplated by Article 9 of the Trafficking in Persons Protocol.

ARTICLE 38. ESTABLISHMENT OF A NATIONAL ANTI-TRAFFICKING COORDINATING BODY [INTER-AGENCY ANTI-TRAFFICKING TASK FORCE]

1. The [competent authority] shall establish a national anti-trafficking coordinating body [inter-agency anti-trafficking task force] to be composed of officials from [name State officials responsible for law enforcement, justice, health and welfare, labour, social affairs, education, legal services and border or immigration affairs], officials from other relevant State agencies and representatives of local governmental and nongovernmental service providers.
2. The National Anti-Trafficking Coordinating Body [Inter-agency Anti-Trafficking Task Force] shall carry out the following activities:
 - (a) Coordinate the implementation of this Law, including developing protocols and guidelines, and providing for their adequate implementation, including by raising awareness, skills and capacity of all anti-trafficking stakeholders through regular training and other means;
 - (b) Develop [within [one year] of the enactment of this Law] a national plan of action, consisting of a comprehensive set of measures for the prevention of trafficking, identification of, assistance to and protection of victims, including victims who are repatriated from another State to [name of State], the prosecution of traffickers and the training of relevant State and nonState agencies, as well as coordinate and monitor its implementation;
 - (c) Develop, coordinate and monitor the implementation of a national referral mechanism to ensure the proper identification of, referral of, assistance to and protection of victims of trafficking in persons, including child victims, and to ensure that they receive adequate assistance while protecting their human rights;
 - (d) Establish procedures to collect gender-disaggregated data, and to promote research on the scale and nature of all forms of trafficking in persons, the factors that further and maintain trafficking in persons and best practices for the prevention of trafficking, for assistance to and protection of victims and the prosecution of traffickers;
 - (e) Facilitate inter-agency and multidisciplinary cooperation between the various government agencies and between governmental and nongovernmental agencies;
 - (f) Facilitate cooperation among countries of origin, transit and destination;
 - (g) Act as a focal point for national institutions and other State and nonState actors, as well as international bodies and other actors, engaged in the prevention of trafficking in persons, the prosecution of traffickers and assistance to victims;
 - (h) Ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected. [; and]
 - (i) [Monitor the victim fund.]
3. The [competent authority] is authorized to appoint a Governmental Coordinator [Director] of the Coordinating Body [Task Force]. The Coordinator [Director] shall have as his or her primary responsibility to assist the Coordinating Body [Task Force] in carrying out its activities and may have additional responsibilities as determined by the [competent authority]. The Coordinator [Director] and Coordinating Body [Task Force] shall consult with nongovernmental, intergovernmental, international or any other relevant organizations, victims of trafficking in persons and other affected groups.
4. Annual report. The Coordinating Body [Task Force] shall issue an annual report on the progress of its activities and the implementation of the national plan of action, the number of victims assisted, including data on their age, sex and nationality and the services and/or benefits they received under this Law, the number of trafficking cases investigated and prosecuted, and the number of traffickers convicted.
5. All data collection under this chapter shall respect the confidentiality of personal data of victims and the protection of their privacy.

Commentary

A national coordinating body is a helpful mechanism for developing comprehensive and coordinated policies on trafficking in persons and to promote cooperation between the relevant governmental agencies and between governmental and nongovernmental agencies. Setting up a sustainable multidisciplinary anti-trafficking structure will enhance an adequate response to trafficking and enable the development of best practices.

Prevention Measures

States should design policies or programmes on prevention in order to:

- (a) prevent victims from being revictimized;
- (b) carry out information and awareness-raising campaigns, in cooperation with the media, nongovernmental organizations, labour market organizations, migrants' organizations and other elements of civil society, aimed in particular at sectors and groups that are vulnerable to trafficking in persons;
- (c) develop educational programmes, in particular for young people, to address gender discrimination and to promote gender equality and respect for the dignity and integrity of every human being;
- (d) include trafficking in persons in human rights curricula in schools and universities;
- (e) reduce the factors that further, maintain and facilitate the exploitation of persons, including legislative or policy measures to discourage the demand [for cheap, exploitative and unprotected labour or services] [that fosters all forms of exploitation that lead to trafficking], through research on best practices, methods and strategies, enforcement of labour standards, raising awareness of the responsibility and role of media and civil society, and information campaigns;
- (f) address the underlying causes of trafficking, including, but not limited to, poverty, underdevelopment, unemployment, lack of equal opportunities and discrimination in all its forms, and to improve the social and economic conditions of groups at risk;
- (g) reduce the vulnerability of children to trafficking by creating a protective environment; and
- (h) ensure effective action against traffickers as well as places of exploitation, because such action will be a deterrent to offenders and thus help in preventing trafficking.

Supply Chains

Increasingly, States are implementing measures to prevent trafficking in persons in supply chains. There are a number of ways that this can be done. One approach is to prevent the importation of goods into a country that have been produced as a result of trafficking in persons. Such an approach enables customs officials to inspect, seize and dispose of goods derived from trafficking in persons. Another approach is to implement supply chain legislation requiring both governments and the private sector to take steps to identify and prevent human trafficking in their supply chains.

For example, the United Kingdom's Modern Slavery Act, 2015 includes provisions requiring commercial organizations to prepare annual financial reports detailing the practices it has implemented to prevent slavery and human trafficking. California's Transparency in Supply Chains Act of 2010 is another early example of such legislation.

For more information, see also the OSCE's Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains (2018).

National Referral Mechanisms

Components of a national referral mechanism are:

- (a) Guidelines, protocols and standards for the identification and assistance of victims of trafficking in persons, including specific guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights;

- (b) A system to identify the needs of (possible) victims and that takes into consideration their age, gender and other needs and refers them to specialized and other agencies offering protection and assistance;
- (c) The establishment of mechanisms to harmonize the assistance of (possible) victims of trafficking in persons with investigative and criminal prosecution efforts.

National Example:

Philippines, Section 16 of the Republic Act No. 9208

Programs that Address Trafficking in Persons - The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) Department of Foreign Affairs (DFA) - shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. It shall provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country. The DFA shall repatriate trafficked Filipinos with the consent of the victims.

The DFA shall take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine passports, visas, and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

In coordination with the Department of Labor and Employment, it shall provide free temporary shelters and other services to Filipino victims of trafficking overseas through the migrant workers and other overseas Filipino resource centers established overseas under Republic Act No. 8042, as amended.

- (b) Department of Social Welfare and Development (DSWD) - shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community. It shall establish free temporary shelters, for the protection and housing of trafficked persons to provide the following basic services to trafficked persons:

- (1) Temporary housing and food facilities;
- (2) Psychological support and counseling;
- (3) 24-hour call center for crisis calls and technology-based counseling and referral system;
- (4) Coordination with local law enforcement entities; and
- (5) Coordination with the department of justice, among others.

The DSWD must conduct information campaigns in communities and schools teaching parents and families that receiving consideration in exchange for adoption is punishable under the law. Furthermore, information campaigns must be conducted with the police that they must not induce poor women to give their children up for adoption in exchange for consideration.

- (c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.
- (d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designates and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.
- (e) Philippine Commission on Women (PCW) - shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.
- (f) Bureau of Immigration (BI) – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) Philippine National Police (PNP) and National Bureau of Investigation (NBI) - shall be the primary law enforcement agencies to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. They shall closely coordinate with each other and with other law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. They shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.
- (h) Philippine Overseas Employment Administration (POEA) and Overseas Workers and Welfare Administration (OWWA) - POEA shall implement Pre-Employment Orientation Seminars (PEOS) while Pre-Departure Orientation Seminars (PDOS) shall be conducted by the OWWA. It shall likewise formulate a system of providing free legal assistance to trafficked persons, in coordination with the DFA.

The POEA shall create a blacklist of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking filed in the receiving country and/or in the Philippines and those agencies, illegal recruiters and persons involved in cases of trafficking who have been rescued by the DFA and DOLE in the receiving country or in the Philippines even if no formal administrative, civil or criminal complaints have been filed: Provided, That the rescued victims shall execute an affidavit attesting to the acts violative of the anti-trafficking law. This blacklist shall be posted in conspicuous places in concerned government agencies and shall be updated bi-monthly.

The blacklist shall likewise be posted by the POEA in the shared government information system, which is mandated to be established under Republic Act No. 8042, as amended.

The POEA and OWWA shall accredit NGOs and other service providers to conduct PEOS and PDOS, respectively. The PEOS and PDOS should include the discussion and distribution of the blacklist.

The license or registration of a recruitment agency that has been blacklisted may be suspended by the POEA upon a review of the complaints filed against said agency.

- (i) Department of the Interior and Local Government (DILG) - shall institute a systematic information and prevention campaign in coordination with pertinent agencies of government as provided for in this Act. It shall provide training programs to local government units, in coordination with the Council, in ensuring wide understanding and application of this Act at the local level.

- (j) Commission on Filipinos Overseas – shall conduct pre-departure counseling services for Filipinos in intermarriages. It shall develop a system for accreditation of NGOs that may be mobilized for purposes of conducting pre-departure counseling services for Filipinos in intermarriages. As such, it shall ensure that the counselors contemplated under this Act shall have the minimum qualifications and training of guidance counselors as provided for by law.

It shall likewise assist in the conduct of information campaigns against trafficking in coordination with local government units, the Philippine Information Agency, and NGOs.

- (k) Local government units (LGUs) – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses, of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with the DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community-based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (POs), civic organizations and other volunteer groups.

ARTICLE 39. ESTABLISHMENT OF THE OFFICE OF A NATIONAL RAPPOREUR [NATIONAL MONITORING AND REPORTING MECHANISM]

1. This Law hereby creates a National Rapporteur on Trafficking in Persons, which will be supported by an office.
2. The National Rapporteur [National Monitoring and Reporting Mechanism] shall be an independent body and shall report annually directly to Parliament.
3. The National Rapporteur [National Monitoring and Reporting Mechanism] shall be appointed by Parliament [other competent body] each time for a period of five years.
4. The main tasks of the National Rapporteur [National Monitoring and Reporting Mechanism] shall be to collect data on trafficking in persons, which should be gender-disaggregated, to monitor the effects of the implementation of the national action plan and other measures, policies and programmes concerned with trafficking in persons, to identify best practices and to formulate recommendations to improve responses to trafficking in persons.
5. To this end the National Rapporteur [National Monitoring and Reporting Mechanism] shall be authorized to have access to all available national data sources and to actively seek information from all State agencies, nongovernmental organizations and the private sector involved.

Commentary

States are advised to establish a central place where information from different sources and actors is systematically gathered and analyzed in an independent manner. This could be a national rapporteur or a comparable mechanism. The main task of such a mechanism would be the collection of data, which should be gender disaggregated, on trafficking in the widest possible sense, including monitoring the effects of the implementation of a national action plan and other policies and measures, and facilitation of research on specific issues related to trafficking in persons. The national rapporteur should have an independent status and a clear mandate and adequate competence to use, access and actively collect data from all involved agencies, including law enforcement agencies, and to actively seek information from nongovernmental organizations. The mandate to collect and analyze information in an independent manner must be clearly distinguished from executive, operational or policy coordinating tasks, which should be fulfilled by other bodies. It should further have the competence to report directly to the Government (national coordinating body) and/or parliament and to make recommendations on the development of national policies and action plans without it being itself a policymaking agency.

ARTICLE 40. NATIONAL COOPERATION

1. National authorities shall, as appropriate, cooperate with one another to prevent and prosecute trafficking crimes and to protect the victims of trafficking in persons, without prejudice to the victims' right to privacy, by exchanging and sharing information and participating in training programmes, in order, among other things:
 - (a) To identify victims and traffickers;
 - (b) To identify (the type of) travel documents used to cross the border for the purpose of trafficking in persons;
 - (c) To identify the means and methods used by criminal groups for the purpose of trafficking in persons;
 - (d) To identify best practices on all aspects of preventing and combating trafficking in persons;
 - (e) To provide assistance and protection to victims, witnesses and victim-witnesses.
2. In the development and implementation of policies, programmes and measures to prevent and combat trafficking in persons and to assist and protect its victims, State agencies shall cooperate, as appropriate, with nongovernmental organizations, other civil society institutions, international organizations, and the private sector.
3. In addition, State agencies shall seek the input, views and recommendations of individuals who have experienced trafficking in persons to inform the development and implementation of policies, programmes and measures to prevent and combat trafficking in persons and to assist and protect its victims.

Commentary

Article 10, paragraph 1, of the Protocol obliges law enforcement, immigration and other relevant authorities to cooperate by exchanging information.

Article 10, paragraph 2, of the Protocol obliges States Parties to provide or strengthen training for law enforcement, immigration and other relevant officials, including labour officials, in the prevention of trafficking and to encourage cooperation with nongovernmental organizations, thus recognizing the need for State agencies to work together with nongovernmental organizations.

States should also ensure that training programmes are designed in a child- and gender-sensitive manner and involve all relevant State and nonState agencies, including law enforcement, immigration, labour and other relevant officials, judicial officers, legal services, healthcare and social workers, local service providers and other relevant professionals and civil society partners in order to:

- (a) educate them on the phenomenon of trafficking in persons, relevant legislation and the rights and needs of victims of trafficking;
- (b) enable them to properly identify victims of trafficking in persons;
- (c) enable them to effectively assist and protect victims and advise them on their rights, with due regard to the specific needs of child victims and other particularly vulnerable groups;
- (d) encourage multidisciplinary and multi-agency cooperation.

States should also strive to develop and implement their anti-trafficking policies, programmes and measures based on input from individuals who have survived trafficking. A "survivor-informed" program, policy, intervention, or product is one that is designed, implemented, and evaluated with intentional leadership, expertise and input from a diverse community of survivors to ensure that the programme, policy, intervention, or product accurately represents their needs, interests, and perceptions.

For more information on the development of child-specific measures, see UNODC's *Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary* (2009).



CHAPTER IX. REGULATORY POWER

ARTICLE 41. RULES AND REGULATIONS

Promulgating authority(ies)

1. The authority to promulgate regulations under this Law is vested in [name of authority(ies)] in close consultation with the National AntiTrafficking Coordinating Body of [name of State].

Issuing rules and regulations

2. Not later than one hundred eighty days after the date of the enactment of this Law, the promulgating authority shall issue rules and regulations for the effective implementation of this Law in order:
 - (a) To prevent trafficking in persons;
 - (b) To raise awareness on trafficking in persons;
 - (c) To identify, protect, assist and reintegrate victims of trafficking in persons, to provide them access to counselling, educational and vocational opportunities and other relevant services, to protect their rights and to prevent them from being revictimized or re-trafficked;
 - (d) To collect data on the scale and nature of trafficking in persons, its root causes and other relevant elements;
 - (e) To establish training programmes for the police, immigration, labour and other relevant officials, judicial officers, social workers and other relevant professionals and civil society partners;
 - (f) To address the factors that make persons vulnerable to trafficking and exploitation, such as poverty, underdevelopment, discrimination and lack of equal opportunities;
 - (g) To establish border control measures;
 - (h) To establish cooperation between State agencies, nongovernmental organizations and other elements of civil society, international organizations and other relevant organizations for the prevention of trafficking in persons, the prosecution of traffickers and assistance to and protection of victims.

Commentary

Implementing the strategies contemplated in the Trafficking in Persons Protocol will require a combination of laws, policies and programmes. In some cases, strategies implemented through Acts will also require complementary changes effected through regulations. The purpose of this model provision is to alert States to this fact and to identify some common issues that may be the subject of regulatory frameworks.

ANNEXES



ANNEXES

ANNEX A – TRAFFICKING OFFENCES AND PENALTIES

AFRICA – TRAFFICKING OFFENCES AND PENALTIES

| Legislation | Offence | Penalty | Notes |
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| English | | | |
| Botswana | | | |
| Anti-Human Trafficking Act 2014, Section 9(1) | Any person who recruits, transports, transfers, harbours or receives another person by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of that person commits an offence of trafficking in persons and is liable to a fine not exceeding P 500,000 or to imprisonment for a term not exceeding 25 years, or both. | Imprisonment: 25 years (maximum) Fine: BWP 500,000 (maximum) | |
| Anti-Human Trafficking Act 2014, Section 9(2) | Any person who during the commission of the offence under section (1): (a) removes an organ from a person's body; (b) forces a woman to fall pregnant and takes the child away; (c) subjects a person to slavery or forced labour; (d) instigates a person to commit an act of prostitution; (e) instigates a person to take part in an obscene publication or obscene display; or (f) commits a sexual offence against a person Commits an offence and is liable to a fine not exceeding P 1,000,000 or to imprisonment for a term not exceeding 30 years, or to both. | Imprisonment: 30 years (maximum) Fine: BWP 1,000,000 (maximum) | |
| Egypt | | | |

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| <p>Law No. (64) of 2010 regarding Combating Human Trafficking, Article 5</p> | <p>Aggravated imprisonment and a fine not less than 50,000 pounds and not to exceed 200,000 pounds or a fine equal to the value of the benefit gained, whichever is greater, shall be imposed on anyone who committed the crime of human trafficking.</p> | <p>Imprisonment: aggravated (length not specified)</p> <p>Fine: EGP 50,000 – 200,000, or equal to the benefit gained (whichever is greater)</p> | <p>Trafficking is defined in Article 2 of the Law No. (64) of 2010 regarding Combating Human Trafficking as:</p> <p>‘ A person who commits the crime of human trafficking shall be considered one who deals in any manner in a natural person, including: the sale, offer for sale, purchase, or promise thereof; or the use, transport, delivery, harboring, reception, or receipt, whether within the country or across its national borders; if this occurred through the use of force, violence, or threat thereof; or through abduction, fraud, deception, abuse of power, or exploitation of a position of vulnerability or need; or through a promise to give or receive payments or benefits in exchange for obtaining the consent of a person to traffic another having control over him; or if the purpose of the transaction was exploitation in any of its forms, including: exploitation of acts of prostitution and all forms of sexual exploitation, exploitation of children in such acts and in pornography, forced labor or services, slavery or practices similar to slavery or servitude, or begging or removal of human organs, tissues or a part thereof.</p> |
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| <p>Law No. (64) of 2010 regarding Combating Human Trafficking,</p> | <p>Life imprisonment and a fine not less than 100,000 pounds and not to exceed 500,000 pounds shall be imposed on anyone who committed the crime of human trafficking in the following cases:</p> <ol style="list-style-type: none"> 1) If the perpetrator established, organized, or managed an organized criminal group for the purposes of human trafficking, if he was a leader thereof, if he was one of its members or belonged thereto, or if the crime was of a transnational nature; 2) If the act was committed by way of threats of death, serious harm or physical or psychological torture; or if the act was committed by a person carrying a weapon; 3) If the perpetrator was the spouse, one of the ascendants or descendants, or custodian or guardian of the victim, or was responsible for the supervision or care or had authority over the victim; 4) If the perpetrator was a public official or was assigned to carry out a public service and committed the crime by exploiting the office or public service; 5) If the crime resulted in the death of the victim or caused him to suffer a permanent disability or an incurable disease; 6) If the victim was a child, was incapacitated or was a person with disabilities; 7) If the crime was committed by an organized criminal group. | <p>Imprisonment: life (maximum)</p> <p>Fine: EGP 100,000 – 500,000</p> | |
| Equatorial Guinea | | | |
| <p>Law No. 1/2004 of September 14, 2004 on the Smuggling of Migrants and Trafficking in Persons, Article 3</p> | <p>This offense shall be incurred by anyone who engages in the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, so that said person will engage in begging, or in any type of sexual exploitation, pornography, debt servitude, forced marriage, irregular adoption, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs, even with the consent of the victim; such action shall be punishable by imprisonment of 10 to 15 years and a fine of at least 50 million CFA francs.</p> | <p>Imprisonment: 10 – 15 years</p> <p>Fine: XAF 50,000,000</p> | |

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| <p>Law No. 1/2004 of September 14, 2004 on the Smuggling of Migrants and Trafficking in Persons, Article 10</p> | <p>The following shall be considered circumstances aggravating the offense of smuggling migrants or trafficking in persons:</p> <p>(a) When the death of the person who is the victim of the smuggling or trafficking results, or when the victim suffers physical or psychological harm, either temporarily or permanently;</p> <p>(b) When one or more perpetrators of the offense are officials, elected or otherwise, of the central government or of local associations, or are members of the Armed Forces or of the State Security Forces;</p> <p>(c) When a criminal group is involved and said group can be defined as a national or transnational organized criminal group, or one that has participated in the smuggling of migrants or the trafficking in persons;</p> <p>(d) When the commission of the offense results in more than one victim;</p> <p>(e) When the offense has been committed against persons suffering from mental distress or illness, either temporary or permanent, or persons under the age of 18;</p> <p>(f) When the person responsible is the spouse, partner, or relative to the third degree of consanguinity or first degree of affinity of the victim of the offense;</p> <p>(g) When the perpetrator or perpetrators commit the offense of smuggling migrants or trafficking in persons more than once;</p> <p>(h) When a person creates, alters, produces, or falsifies travel or identification documents, supplies or facilitates the possession of such documents or any others, or illegally obtains a visa for himself or another, or encourages another to do so.</p> <p>The penalty for offenses committed with the aggravating circumstances described in this Article shall be imprisonment of five years, added to the principal penalty for said offenses.</p> | <p>Additional imprisonment of 5 years</p> | |
| Ethiopia | | | |

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| <p>Proclamation No 909/2015: Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation , Article 3(1)</p> | <p>Any person, for the purpose of exploitation, within the territory or outside of Ethiopia: a) at the pretext of domestic or oversees employment or sending to aboard for work or apprenticeship; b) by concluding adoption agreement or at the pretext of adoption; or c) for any other purpose; using threat or force or other means of coercion, abduction, fraud, deception, promise, abuse of power or by using the vulnerability of a person or recruits, transports, transfer harbors or receives any person by giving or receiving of payments or benefits to achieve the consent of a person having control over another person shall be punishable with rigorous imprisonment from 15 years to 25 years and with fine from 150,000 to 300,000 Birr.</p> | <p>Imprisonment: Minimum of 15 years and a maximum of 25 years and Fine: ETB 150,000 – 300,000</p> | <p>In Amharic: ማንኛውም ሰው በኢትዮጵያ የግዛት ክልል ውስጥም ሆነ ከኢትዮጵያ የግዛት ክልል ውጪ ለብዝበዛ ዓላማ ሲባል፡ ሀ) በአገር ውስጥ ሥራና ሠራተኛን ለማገናኘት ወይም ለሥራ ወይም ለሥራ ልምምድ ወደ ውጭ አገር መላክ በሚል ሽፋን፤ ለ) የጉዲፊቻ ስምምነት በማድረግ ወይም በጉዲፊቻ ሽፋን፤ ወይም ሐ) ለሌላ ማንኛውም አይነት ዓላማ፤ ዛቻን፣ ሀይልን ወይም ሌላ የማስገደጃ ዘዴ በመጠቀም፣ በማገት፣ በመጥለፍ፣ በተንኮል፣ በማታለል ወይም የተስፋ ቃል በመስጠት፣ ሥልጣንን አላግባብ በመጠቀም፣ የሰዎችን ለጥቃት ተጋላጭነት በመጠቀም ወይም ስለሌላው ኃላፊነት ያለበትን ሰው ፈቃድ ለማግኘት መደለያ ወይም ጥቅም በመስጠት ወይም በመቀበል ሰዎችን የመለመለ፣ ያጓጓዘ፣ ያዘዋወረ፣ ያስጠለለ ወይም የተቀበለ እንደሆነ ከ፲፮ ዓመት እስከ ፳፮ ዓመት በሚደርስ ፅኑ እስራትና ከብር ፻፶፯ እስከ ብር ፫፻፺ በሚደርስ መቀጮ ይቀጣል።</p> |
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| <p>Proclamation No 909/2015: Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation , Article 3(2)</p> | <p>Where the crime stipulated under sub-article (1) of this Article: a) is committed against child, women or anyone with mental or physical impairment; b) resulted in physical or psychological harm on the victim; c) is committed by using drugs, medicine or weapons as a means; d) is committed by public official or civil servant in abusing of power; or e) is committed by a person who is parents, brother, sister, a guardian or a person having a power on the victim; the punishment shall be rigorous imprisonment not less than 25 years or life imprisonment and with fine from 200,000 to 500,000 Birr.</p> | <p>Imprisonment: Minimum of 25 years and a maximum of life imprisonment and Fine: ETB 200,000 – 500,000</p> | <p>In Amharic: በዚህ አንቀጽ ንዑስ አንቀጽ (፩) የተመለከተው የወንጀል ድርጊት የተፈፀመው፡- ሀ) በሕጻናት፣ በሴቶች ወይም በአዕምሮ ወይም በአካል ጉዳተኞች ላይ ከሆነ፤ ለ) ተጎጂው ለአካላዊ ወይም አዕምሯዊ ጉዳት ከተዳረገ፤ ሐ) አዲን ዛግ ፊት፣ መድሃኒት ወይም የጦር መሣሪያ በመጠቀም እንዲሆነ፤ መ) በመንግስት ባለሥልጣን ወይም ሠራተኛ ከሆነና ወንጀሉን የፈጸመው የተሰጠውን ኃላፊነት መከታ በማድረግ ከሆነ፤ ወይም ሠ) በተጎጂው ወላጅ፣ ወንድም፣ እህት፣ አሳዳጊ ወይም በተጎጂው ላይ ሥልጣን ባለው ሰው የሆነ እንዲሆነ፤ ከብር ፪፻፺ አስከ ብር ፮፻፺ በሚደርስ መቀጮ እና ከ፳፮ ዓመት በማያንስ ፅኑ እስራት ወይም እድሜ ልክ እስራት ይሆናል።</p> |
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The Gambia

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| <p>Trafficking in Persons Act 2007, Article 28(1)-(4)</p> | <p>(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3)</p> <p>(2) Trafficking in persons means-</p> <p>(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;</p> <p>(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or</p> <p>(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,</p> <p>For the purpose of exploitation within or across national borders.</p> <p>(3) Trafficking in persons also includes-</p> <p>(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and</p> <p>(b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution.</p> <p>(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis and not exceeding five hundred thousand dalasis in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.</p> | <p>Imprisonment: Minimum of 15 years and a maximum term of life imprisonment</p> <p>and</p> <p>Fine: GMD 50,000 – 500,000</p> | |
| <p>Trafficking in Persons Act 2007, Article 28(5)</p> | <p>(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking, or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to life imprisonment.</p> | <p>Imprisonment: life (mandatory)</p> <p>and</p> <p>Fine: GMD 50,000 – 500,000</p> | |

Ghana

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| Human Trafficking Act 2005, Section 2 | <p>(1) A person shall not traffic another person within the meaning of section 1 or act as an intermediary for the trafficking of a person.</p> <p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years.</p> | Imprisonment: 5 years (minimum) | <p>The definition of 'trafficking in persons' in the Human Trafficking Act 2005, under Section 1 is:</p> <p>(1) Human trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by</p> <p>(a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or</p> <p>(b) giving or receiving payments and benefits to achieve consent.</p> <p>2) Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, salary or practices similar to slavery, servitude or the removal of organs.</p> <p>3) Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking.</p> |
| Malawi | | | |

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| <p>Trafficking in Persons Act 2015, Section 14</p> | <p>A person who trafficks another person commits the offence termed trafficking in persons and shall, upon conviction, be liable to imprisonment for fourteen years without the option of a fine.</p> | <p>Imprisonment: 14 years</p> | <p>The definition of 'trafficking in persons' is set out in section 2 of the Trafficking in Persons Act 2015:</p> <p>"trafficking in persons" means recruiting, transporting, transferring, harbouring, receiving or obtaining a person, within or beyond the territory of Malawi, through-</p> <ul style="list-style-type: none"> (a) threats or use of force of coercion; (b) abduction; (c) fraud or deception; (d) abuse or threats of abuse of power or position; (e) abuse of threats of abuse of position of vulnerability; (f) abuse or threats of abuse of the law or legal process; or (g) giving or receiving of payments to obtain consent of a person having control of the trafficked person, for the purpose of exploitation of that person. |
| <p>Trafficking in Persons Act 2015, Section 15</p> | <p>Notwithstanding section 14, a person who trafficks a child commits an offence termed trafficking in children and shall, upon conviction, be liable to imprisonment for twenty-one years without the option of a fine.</p> | <p>Imprisonment: 21 years</p> | |
| <p>Mozambique</p> | | | |

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| Law No 6/2008, Article 10 | All those who recruit, transport, give shelter to, supply or receive a person, by any means, including under pretext of domestic work, or work abroad, training or apprenticeships, forced labor, slavery, indentured servitude or debt servitude will be punished by 16 to 20 years of imprisonment. | Imprisonment: Minimum of 16 years and a maximum of 20 years imprisonment. | A definition of trafficking in persons is included in the Glossary of Law No6/2008: Recruitment of persons or harboring persons in order to obtain illicit monetary profit or smuggling of persons across country borders to the same end, by resort to threats or use of force, or any other form of coercion, kidnapping, fraud, deception, forced marriage, abuse of authority or vulnerability, or rendering or accepting payment or advantages in order to obtain consent of a person holding authority over another, for purposes of exploitation, which includes prostitution or other forms of sexual exploitation, forced marriage, extraction of human organs, forced labor, slavery or similar practices, as well as servitude. |
| Law No 6/2008, Article 11 | All those who traffic in persons for money, profit or any other advantage, namely a Mozambican citizen dealing with a foreign citizen for purposes of marriage do acquire, buy, offer, sell or trade the person for involvement in pornography, sexual exploitation and forced labor, slavery, indentured servitude or debt servitude will be punished by 16 to 20 years of imprisonment. | Imprisonment: Minimum of 16 years and a maximum of 20 years imprisonment. | |
| Namibia | | | |

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| Prevention of Organised Crime Act 2004, Section 15 | Any person who participates in or who aids and abets the trafficking in persons, as contemplated in Annex II of the Convention, in Namibia or across the border to and from foreign countries commits an offence and is liable to a fine not exceeding N \$1,000,000 or to imprisonment for a period not exceeding 50 years. | Imprisonment: 50 years (maximum) or Fine: NAD \$1,000,000 (maximum) | The definition of 'trafficking in persons' is set out in section 1 of the Prevention of Organised Crime Act 2004: m e a n s t h e recruitment, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation and includes any attempt, participation or organising of any of these actions. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; |
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Nigeria

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| <p>Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, section 13(1)-(2)</p> | <p>All acts of human trafficking are prohibited in Nigeria</p> <p>Any person who recruits, transports, transfers, harbours or receives another person by means of—</p> <p>(a) threat or use of force or other forms of coercion;</p> <p>(b) abduction, fraud, deception, abuse of power or position of vulnerability; or</p> <p>(c) giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of that person,</p> <p>Commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine of not less than N 250,000</p> | <p>Imprisonment: 2 years (minimum)</p> <p>and</p> <p>Fine: NGN 250,000</p> | |
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Kenya

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| <p>Counter-Trafficking in Persons Act, Section 3(1) and (5)</p> | <p>(1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of—</p> <p>(a) threat or use of force or other forms of coercion;</p> <p>(b) abduction;</p> <p>(c) fraud;</p> <p>(d) deception;</p> <p>(e) abuse of power or of position of vulnerability;</p> <p>(f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or</p> <p>(g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.</p> <p>[...]</p> <p>(5) A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.</p> | <p>Imprisonment: 30 years (minimum)</p> <p>and/or</p> <p>Fine: KES 30,000,000 (minimum)</p> <p>Subsequent conviction: imprisonment for life (mandatory)</p> | |
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Senegal

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| <p>ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims, Article 1</p> | <p>The recruitment, transportation, transfer, harboring, receipt of persons by threat or use of violence, abduction, fraud, deception, abuse of authority or position of vulnerability or of the giving or acceptance of payment of benefits to achieve the consent of a person having authority over another, for sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude shall be punished by imprisonment of 5 to 10 years and a fine of 5 to 20 million francs.</p> | <p>Imprisonment: Minimum of 5 years and a maximum of 10 years imprisonment and Fine: XOF 5,000,000 – 20,000,000</p> | |
| <p>ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims, Article 1</p> | <p>Criminal detention from 10 to 30 years is incurred when the offense is committed by the use of torture or barbarism or for harvesting human organs or she exposes the victim to an immediate risk of death or injuries likely to cause permanent disability</p> | <p>Imprisonment: Minimum of 10 years and a maximum of 30 years imprisonment</p> | |
| <p>ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims, Article 2</p> | <p>The maximum penalty under paragraph 1 of Article 1 is always pronounced when the offense was committed either:</p> <ul style="list-style-type: none"> • in meeting; • in respect of a minor or a person particularly vulnerable because of her pregnancy, her advanced age or health status have led to a physical or mental disability; • with use of means of mass dissemination; • by a relative or a person having authority over the victim. | <p>Imprisonment: 10 years and Fine: XOF 20,000,000 (mandatory)</p> | |
| <p>ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims, Article 3</p> | <p>Whoever organizes begging others to benefit from hiring, entices or leads away a person in order to engage in begging or exert pressure on her to beg or continues to do so is punished imprisonment for 2 to 5 years and a fine of 500,000 francs to 2,000,000 francs.</p> | <p>Imprisonment: Minimum of 2 years and a maximum of 5 years imprisonment and Fine: XOF 500,000 - 2,000,000</p> | |
| Sierra Leone | | | |

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| Anti-Human Trafficking Act 2005, Section 22 | A person convicted of the offence of trafficking shall be liable to a fine not exceeding fifty million leones or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment. | Imprisonment: 10 years (maximum) and/or Fine: SLL 50,000,000 (maximum) | The definition of 'trafficking in persons' is set out in section 2 of the Anti-Human Trafficking Act 2005: A person engages in the trafficking in persons if he undertakes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation |
| Anti-Human Trafficking Act 2005, Section 21 | (1) Any person who knowingly transports any person across an international border for the purpose of exploiting that person's prostitution commits an offence. (2) Persons convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding five years but the presence of any one of the following aggravating factors can permit a longer sentence up to a maximum of 10 years: – (a) transporting two or more persons at the same time; (b) permanent or life-threatening bodily injury to a person transported; (c) transportation of one or more children; or (d) transporting as part of the activity of an organized criminal group. | Imprisonment: 5 years (maximum) Aggravated offence Imprisonment: 10 years (maximum) | |

French

Algeria

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| Code Penal, Article 303 bis 4 | La traite des personnes est punie d'un emprisonnement de trois (3) ans à dix (10) ans et d'une amende de 300.000 DA à 1.000.000 DA. | Imprisonment: Minimum of 3 years and a maximum of 10 years imprisonment and Fine: DZD 300,000 – 1,000,000 | The definition of 'trafficking in persons' is set out in Article 303 bis 4 Code Penal: Est considérée comme traite des personnes, le recrutement, le transport, le transfert, l'hébergement ou l'accueil d'une ou plusieurs personnes, par la menace de recours ou le recours à la force ou à d'autres formes de contrainte, par enlèvement, fraude, tromperie, abus d'autorité ou d'une situation de vulnérabilité, ou par l'offre ou l'acceptation de paiement ou d'avantages, afin d'obtenir le consentement d'une personne ayant autorité sur une autre aux fins d'exploitation. L'exploitation comprend, l'exploitation de la prostitution d'autrui ou toutes autres formes d'exploitation sexuelle, l'exploitation d'autrui dans la mendicité, le travail ou service forcé, l'esclavage ou les pratiques similaires à l'esclavage, la servitude ou le prélèvement d'organes. |
| Code Penal, Article 303 bis 4 | Lorsque la traite est exercée sur une personne dont la situation de vulnérabilité résulte, de son âge, sa maladie ou son incapacité physique ou mentale, apparente ou connue de l'auteur, la peine encourue est l'emprisonnement de cinq (5) ans à quinze (15) ans et l'amende de 500.000 DA à 1.500.000 DA. | Imprisonment: Minimum of 5 years and a maximum of 15 years imprisonment and Fine: DZD 500,000 – 1,500,000 | |

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| Code Penal, Article 303 bis 5 | La traite des personnes est punie de la réclusion à temps de dix (10) ans à vingt (20) ans et d'une amende de 1.000.000 DA à 2.000.000 DA, si l'infraction est commise avec au moins l'une des circonstances suivantes : - lorsque l'auteur est le conjoint de la victime ou son ascendant ou descendant ou son tuteur ou s'il a autorité sur la victime ou s'il s'agit d'un fonctionnaire dont la fonction a facilité la commission de l'infraction, - lorsque l'infraction est commise par plus d'une personne, - lorsque l'infraction est commise avec port d'armes ou menace de les utiliser, - lorsque l'infraction est commise par un groupe criminel organisé ou lorsqu'elle a un caractère transnational. | Imprisonment: Minimum of 10 years and a maximum of 20 years imprisonment and Fine: DZD 1,000,000 – 2,000,000 | |
| Cameroon | | | |
| Loi N° 2011/024 du 14 Dec 2011 Relative a la Lutte Contre le Traffic et la Traite des Personnes, Article 4 | Est puni d'un emprisonnement de dix (10) à vingt (20) ans et d'une amende de cinquante mille (50.000) à un million (1.000.000) de francs CFA celui qui se livre, même occasionnellement, au trafic ou à la traite des personnes. | Imprisonment: Minimum of 10 years and a maximum of 20 years imprisonment and Fine: XAF 50,000 – 1,000,000 | The definition of 'trafficking in persons' is set out in Article 2 of the Loi N° 2011/024 du 14 Dec 2011 Relative a la Lutte Contre le Traffic et la Traite des Personnes |
| Loi N° 2011/024 du 14 Dec 2011 Relative a la Lutte Contre le Traffic et la Traite des Personnes, Article 5 | Le trafic et al traite des personnes sont punis d'un emprisonnement de quinze (15) à vingt (20) ans et a une amende de cent mille (100.000) a dix millions (10.000.000) de francs CFA, lorsque: - l'infraction est commise à l'égard d'une personne mineure de quinze (15) ans; - l'auteur des faits est un ascendant légitime, naturel ou adoptif de la victime; - l'auteur des faits a autorité sur la victim ou est appelé à participer de pas ses fonctions à la lutte contre la traite ou au maintien de la paix; - l'infraction est commise en bande organisée ou par une association de malfaiteurs; - l'infraction est commise avec usage d'une arme; - la victime a subi des blessures telles que décrites à l'article 277 du Code pénal; - ou lorsqu'elle est décédée des suites des actes liés à ces faits. | Imprisonment: Minimum of 10 years and a maximum of 20 years imprisonment and Fine: XAF 100,000 – 10,000,000 | The definition of 'trafficking in persons' is set out in Article 2 of the Loi N° 2011/024 du 14 Dec 2011 Relative a la Lutte Contre le Traffic et la Traite des Personnes |

| Niger | | | |
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| <p>Ordonnance N° 2010-86 du 16 décembre 2010 relative à la lutte contre la traite des personnes, Article 10</p> | <p>Constitue l'infraction de traite des personnes le fait de recruter, transporter, transférer, héberger ou accueillir des personnes, par la menace de recours ou le recours à la force ou à d'autres formes de contrainte, par enlèvement, fraude, tromperie, abus d'autorité ou d'une situation de vulnérabilité ou par l'offre ou l'acceptation de paiements ou d'avantages pour obtenir le consentement d'une personne ayant autorité sur une autre aux fins d'exploitation.</p> <p>L'exploitation comprend, au minimum, l'esclave ou les pratiques analogues à l'esclavage, la servitude ou le prélèvement d'organes, l'exploitation de la prostitution d'autrui ou d'autres formes d'exploitation sexuelle, l'exploitation de la mendicité d'autrui, l'exploitation du travail ou des services forcés.</p> <p>Le recrutement, le transport, le transfert, l'hébergement ou l'accueil d'un mineur de moins de 18 ans aux fins d'exploitation sont considérés comme une traite des personnes même s'ils ne font appel à aucun des moyens énoncés au premier alinéa.</p> <p>Quiconque commet intentionnellement l'infraction de traite des personnes est puni d'un emprisonnement de cinq (5) à dix (10) ans et d'une amende de 500 000 à 5 000 000 de francs.</p> | <p>Imprisonment: Minimum of 5 years and a maximum of 10 years imprisonment</p> <p>and</p> <p>Fine: XOF 500,000 – 5,000,000</p> | <p>The definition of 'trafficking in persons' is set out in Article 2 of the Ordonnance N° 2010-86 du 16 décembre 2010 relative à la lutte contre la traite des personnes</p> |
| Tunisia | | | |

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| <p>Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 8</p> | <p>Est puni de dix ans d'emprisonnement et d'une amende de cinquante mille dinars, quiconque commet l'une des infractions relatives à la traite des personnes prévues par l'alinéa premier (1) de l'article 2 de la présente loi.</p> | <p>Imprisonment: 10 years and Fine: TND 50,000</p> | <p>The definition of 'trafficking in persons' is set out in Article 2(1) of the Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes:</p> <p>Est considérée comme traite des personnes, l'attirement, le recrutement, le transport, le transfert, le détournement, le rapatriement, l'hébergement ou l'accueil de personnes, par le recours ou la menace de recours à la force ou aux armes ou à toutes autres formes de contrainte, d'enlèvement, de fraude, de tromperie, d'abus d'autorité ou d'une situation de vulnérabilité ou par l'offre ou l'acceptation de sommes d'argent ou avantages ou dons ou promesses de dons afin d'obtenir le consentement d'une personne ayant autorité sur une autre aux fins d'exploitation, quelle qu'en soit la forme, que cette exploitation soit commise par l'auteur de ces faits ou en vue de mettre cette personne à la disposition d'un tiers.</p> |
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| <p>Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 23</p> | <p>La peine est de quinze ans d'emprisonnement et d'une amende de cinquante mille à cent mille dinars, lorsque l'infraction de traite des personnes est commise : • contre un enfant ou par son emploi, • contre une femme enceinte, • contre une personne incapable ou souffrante d'une infirmité mentale ou par son emploi, • contre un groupe de trois personnes ou plus, • lorsque l'auteur de l'infraction est le conjoint de la victime ou l'un de ses ascendants ou descendants, ou son tuteur, ou ayant une autorité sur elle, • si l'infraction est commise par celui qui abuse de sa qualité ou de l'autorité ou des facilités que lui confère sa fonction ou son activité professionnelle, • si l'infraction est commise par la falsification de documents d'identité ou de voyage ou de séjour, • si l'infraction est commise par l'utilisation de stupéfiants ou des substances psychotropes, • lorsqu'il résulte de l'infraction une invalidité ou une incapacité physique permanente de la victime ne dépassant pas vingt pour cent.</p> | <p>Imprisonment: 15 years and Fine: TND 50,000 – 100,000</p> | |
| <p>Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 24</p> | <p>La peine encourue est de quinze à vingt ans d'emprisonnement et d'une amende de cinquante mille à cent mille dinars : • si l'infraction de traite des personnes est commise par un groupe criminel organisé ou une entente, • si elle est commise par un récidiviste des infractions de traite des personnes, • lorsqu'il s'agit d'un crime transnational, • lorsqu'il résulte de l'infraction une invalidité ou une incapacité physique permanente de la victime supérieure à vingt pour cent, ou une atteinte par l'une des maladies sexuellement transmissibles.</p> | <p>Imprisonment: Minimum of 15 years and a maximum of 20 years imprisonment and Fine: TND 50,000 – 100,000</p> | |
| <p>Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 25</p> | <p>La peine encourue est l'emprisonnement à vie et de cent mille à deux cent mille dinars d'amende lorsque la commission de l'une des infractions de traite des personnes prévues par la présente loi entraîne la mort ou le suicide de la victime ou son atteinte d'une maladie mortelle aboutissant à son décès.</p> | <p>Imprisonment: life and Fine: TND 100,000 – 200,000</p> | |

ASIA – TRAFFICKING OFFENCES AND PENALTIES

| Legislation | Offence | Penalty | Notes |
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| Azerbaijan | | | |
| Criminal Code of the Republic of Azerbaijan, Article 144 | 144-1.1 Trafficking, i.e. recruitment, obtaining, keeping, harbouring, transportation, transfer or acceptance of a person with a purpose of exploitation under the threat of violence or using violence, threats or other means of coercion, abduction, fraud, deception by misusing ability to make pressure or helplessness, or providing or receiving material and other values, privileges or benefits to get a consent of the person that exercises control over another person — shall be penalized five to ten years imprisonment | Imprisonment: Minimum of 5 years and a maximum of 10 years imprisonment | |
| Criminal Code of the Republic of Azerbaijan, Article 144 | The same acts: 144-1.2.1. committed against two or more persons; 144-1.2.3. committed against an underage person; 144-1.2.4. committed against a pregnant woman whose pregnancy was evident to the defendant; 144-1.2.4-1. with movement of trafficking victim across the state border of the Republic of Azerbaijan; 144-1.2.5. committed by a group of preliminarily conspired persons, organized group or a criminal association (criminal organization); 144-1.2.6. committed by defendant using his official authority; 144-1.2.7. committed by use or threat of violence which represents a menace to life and health; 144-1.2.8. committed by means of torture or cruel, inhumane or degrading treatment against the victim; 144-1.2.9. committed with the purpose of making use of victim's organs or tissues — shall be punishable with imprisonment from eight to twelve years | Imprisonment: Minimum of 8 years and a maximum of 12 years imprisonment | |
| Criminal Code of the Republic of Azerbaijan, Article 144 | 144-1.3. Should the actions referred to in the ankles 144-1.1 and 144-1.2 be the cause of the death of a victim or other grave results due to negligence — shall be punishable with ten to fifteen years of imprisonment | Imprisonment: Minimum of 10 years and a maximum of 15 years imprisonment | |
| Bangladesh | | | |

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| <p>The Prevention and Suppression of Human Trafficking Act 2012, Section 6(2)</p> | <p>The person committing the offence of human trafficking shall be punished with an imprisonment not exceeding imprisonment for life but not less than 5 (five) years of rigorous imprisonment and with fine not less than taka 50 (fifty) thousand.</p> | <p>Imprisonment: Minimum of 5 years and a maximum of life imprisonment and Fine: BDT 50,000 (minimum)</p> | <p>The definition of 'human trafficking' is set out in Section 3 of The Prevention and Suppression of Human Trafficking Act 2012: "Human trafficking" means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of sexual exploitation or oppression, labour exploitation or any form of exploitation or oppression by means of – (a) threat or use of force; or (b) deception, or abuse of his or her socio-economic or environmental or other types of vulnerability; or (c) giving or receiving money or benefit to procure the consent of a person having control over him or her.</p> |
| Indonesia | | | |

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| <p>Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 2(1)</p> | <p>Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploiting the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).</p> | <p>Imprisonment: Minimum of 3 years and a maximum of 15 years imprisonment and Fine: IDR 120,000,000 – 600,000,000</p> | <p>The definition of ‘trafficking in persons’ is set out in Article 2 of Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007</p> |
| Laos | | | |
| <p>Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 89 (para 1)</p> | <p>Any person who has committed an offence of trafficking in persons shall be punished with five to fifteen years of imprisonment and shall be fined from 10,000,000 Kip to 100,000,000 Kip, and shall be subject to confiscation of property as stipulated in the Penal Law.</p> | <p>Imprisonment: Minimum of 5 years and a maximum of 15 years imprisonment and Fine: LAK 10,000,000 – 100,000,000 and Confiscation of property</p> | <p>The definition of ‘trafficking in persons’ is set out in Article 2 of Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007</p> |
| <p>Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 89 (para 2)</p> | <p>In cases this offence is committed in habitual manner, as part of organized crimes or by group of persons, where the victims are children, there are more than two victims, the victims are close relatives of the offenders, the victims are suffered from serious physical injury, becoming physically disabled or mentally disordered, the offender shall be punished with fifteen to twenty years of imprisonment and shall be fined from 100,000,000 Kip to 500,000,000 and shall be subject to confiscation of property as stipulated in the Penal Law</p> | <p>Imprisonment: Minimum of 15 years and a maximum of 20 years imprisonment and Fine: LAK 100,000,000 – 500,000,000 and Confiscation of property</p> | <p>The definition of ‘trafficking in persons’ is set out in Article 2 of Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007</p> |

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| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 89 (para 3) | In cases the victim has suffered a lifetime disability, or infected with HIV/ AIDS as result of trafficking in persons, the offender shall be punished with life imprisonment and shall be fined from 500,000,000 Kip to 1,000,000,000 Kip, and shall be subject to confiscation of property as stipulated in the Penal Law, or shall be subject to capital punishment. | Imprisonment: life (mandatory) Capital Punishment available and Fine: LAK 500,000,000 – 1,000,000,000 and Confiscation of property | The definition of 'trafficking in persons' is set out in Article 2 of Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007 |
| Lebanon | | | |
| Penal Code, Article 586.2(1) | The penalty for the crime stipulated in Article 586.1 shall be according to the following: 1- Imprisonment for five years and payment of a fine that can be from one hundred to two hundred times the official minimum wage if these actions were carried out in return for sums of money or any other benefits or the promise to grant or receive such sums or benefits. | Imprisonment: 5 years (mandatory) and Fine: 100 – 200 times the minimum wage | The definition of 'trafficking in persons' is set out in Article 586.1 of the Penal Code: Trafficking in Persons is: A) luring, transporting, receiving, detaining, or finding shelter for a person; B) by using force or threatening to use force against someone who is subject to one's power; by kidnapping or deceiving another person; by using one's power against another person or exploiting that person's vulnerability; by giving or receiving sums of money or benefits; and by utilizing such methods against another person who is subject to perpetrator's authority; C) for the purpose of exploiting said other person or facilitating his exploitation by others. The consent of a victim shall be given no consideration in case any of the methods shown in this Article are utilized. |

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| Penal Code, Article 586.2(2) | <p>The penalty for the crime stipulated in Article 586.1 shall be according to the following:</p> <p>2- Imprisonment for seven years and payment of a fine that can be from one hundred and fifty times to three hundred times the official minimum wage if these actions were carried out by using deception, violence, harsh acts or threats or by spending money on the victim or on a member of his family.</p> | <p>Imprisonment: 7 years (mandatory)</p> <p>and</p> <p>Fine: 150 – 300 times the minimum wage</p> | |
| Penal Code, Article 586.3 | <p>The penalty for a perpetrator of the crime stipulated in Article 586.1 shall be imprisonment for ten years and payment of a fine that can be from two hundred to four hundred times the official minimum wage if said perpetrator, partner, accomplice, or instigator to the crime is:</p> <p>1- A public official or any person charged with providing a public service, or a director of an employment office or an employee of such an office.</p> <p>2- One of the victim's legal or non-legal forefathers, one of the members of his family, or any person who exercises legal authority or actual direct or indirect authority over the victim.</p> | <p>Imprisonment: 10 years (mandatory)</p> <p>and</p> <p>Fine: 200 – 400 times the minimum wage</p> | |
| Penal Code, Article 586.4 | <p>The penalty for the crime stipulated in Article 586.1 shall be imprisonment for fifteen years and payment of a fine that can be from three hundred to six hundred times the official minimum wage if said crime was committed by:</p> <p>1- A group of two or more persons committing criminal acts in Lebanon or in more than one country.</p> <p>2- If the crime involved more than one victim.</p> | <p>Imprisonment: 15 years (mandatory)</p> <p>and</p> <p>Fine: 300 – 600 times the minimum wage</p> | |

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| Penal Code, Article 586.5 | <p>If any of the following conditions are present, criminal acts that are mentioned in Article 586.1 shall be punishable, and punishment shall be imprisonment from ten to twelve years and payment of a fine that can be from two hundred to four hundred times the official minimum wage:</p> <p>A) When the crime involves serious harm to the victim or to another person or when it involves the death of a victim or another person, including death as a result of suicide.</p> <p>B) When the crime involves a person who is in a state of special vulnerability, including pregnancy.</p> <p>C) When the crime exposes the victim to a life-threatening disease, including the HIV virus and the AIDS virus.</p> <p>D) When the victim is physically or mentally disabled.</p> <p>E) When the victim is under the age of eighteen.</p> | <p>Imprisonment: Minimum of 10 years and a maximum of 12 years imprisonment</p> <p>and</p> <p>Fine: 200 – 400 times the minimum wage</p> | |
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Malaysia

| Malaysia | | | |
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| Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 12 | Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine. | <p>Imprisonment: 15 years (maximum)</p> <p>Fine: RM 150,000</p> | <p>The definition of 'trafficking in persons' is set out in Section 2 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007</p> <p>The fine amount is specified in Section 63(1) of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007</p> |

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| <p>Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 13</p> | <p>Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means: (a) threat; (b) use of force or other forms of coercion; (c) abduction; (d) fraud; (e) deception; (f) abuse of power; (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.</p> | <p>Imprisonment: Minimum of 3 years and a maximum of 20 years imprisonment and Fine: RM 150,000</p> | <p>Section 2 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 states that:</p> <p>“trafficking in persons” means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act</p> <p>[The fine amount is specified in Section 63(1) of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007]</p> |
| <p>Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 14</p> | <p>Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.</p> | <p>Imprisonment: Minimum of 3 years and a maximum of 20 years imprisonment and Fine: RM 150,000</p> | <p>[The fine amount is specified in Section 63(1) of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007]</p> |

Oman

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| <p>Royal Decree No 126/2008 – Anti-Trafficking Law, Article 8</p> | <p>Whoever commits a human trafficking crime shall be punished by imprisonment for not less than three years and not more than 7 years, and a fine of not less than five thousand Rials and not more than one hundred thousand Rials.</p> | <p>Imprisonment: Minimum of 3 years and a maximum of 7 years imprisonment</p> <p>and</p> <p>Fine: OMR 5,000 – 100,000</p> | <p>The definition of ‘trafficking in persons’ is set out in Article 2 of the Royal Decree No 126/2008 – Anti-Trafficking Law:</p> <p>Any person shall be deemed committing a human trafficking crime if they intentionally or for the purpose of exploitation:</p> <p>a. Use, transfer, shelter, or receive a person by coercion, under threat, trick, exploitation of position or power, exploitation of weakness, by use of authority over that person, or by any other illegal means directly or indirectly.</p> <p>b. Use, transfer, shelter or receive a minor, even if the means mentioned in the preceding paragraph are not used.</p> |
| <p>Royal Decree No 126/2008 – Anti-Trafficking Law, Article 9</p> | <p>A human trafficking crime shall be punishable by imprisonment for not less than seven years and not more than 15 years, and a fine of not less than ten thousand Rials and not more than one hundred thousand Rials in any of the following cases:</p> <p>a. Where the victim is a minor or one of special need.</p> <p>b. Where the culprit carries an arm.</p> <p>c. Where the crime has been committed by more than one person.</p> <p>d. Where the culprit is spouse of the victim, one of their ascendants, descendants, their guardian or has power over them,</p> <p>e. Where the crime is committed by an organized criminal group, or the culprit is a member thereof.</p> <p>f. Where the culprit is a public employee or being assigned to public service, and exploited their post in committing the crime.</p> <p>g. Where the crime is transnational.</p> <p>h. Where because of being exploited in the human trafficking crime the victim becomes mad, contracts AIDS, or suffers an untreatable psychological or organic disease.</p> | <p>Imprisonment: Minimum of 7 years and a maximum of 15 years imprisonment</p> <p>and</p> <p>Fine: OMR 10,000 – 100,000</p> | |

| Pakistan | | | |
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| Prevention of Trafficking in Persons Act 2018, Section 3(1) | Any person who recruits, harbours, transports, provides or obtains another person, or attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion, commits an offence of trafficking in persons and shall be punished with imprisonment which may extend to seven years or with fine which may extend to one million rupees or with both | Imprisonment: 7 years (maximum) and/or Fine: PKR 1,000,000 (maximum) | |
| Prevention of Trafficking in Persons Act 2018, Section 3(2) | If the offence of trafficking in persons under sub-section (1) is committed against a child or a woman, the person who commits the offence shall be punished with imprisonment which may extend to ten years and which shall not be less than two years or with fine which may extend to one million rupees or with both | Imprisonment: Minimum of 2 years and a maximum of 10 years imprisonment and/or Fine: PKR 1,000,000 (maximum) | |
| Prevention of Trafficking in Persons Act 2018, Section 4 | Where an offence under section 3 involves: (a) serious injury, life-threatening illness or death of the victim or another person; (b) activity of an organized criminal group; (c) confiscation or destruction of any travel document of the victim; or (d) repetition of the offence by the same offender; The offender shall be punished with imprisonment which may extend to fourteen years and which shall not be less than three years and fine which may extend to two million rupees. | Imprisonment: Minimum of 3 years and a maximum of 14 years imprisonment and/or Fine: PKR 2,000,000 (maximum) | |
| Qatar | | | |

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| <p>Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 14</p> | <p>A person who has committed one of human trafficking offences provided by Article (2) of this Law shall be punished by imprisonment for a period not exceeding seven (7) years and a fine not exceeding two hundred fifty thousand (250,000) Riyals.</p> | <p>Imprisonment: 7 years (maximum)</p> <p>and</p> <p>Fine: QAR 250,000 (maximum)</p> | <p>The definition of 'trafficking in persons' is set out in Article 2 of the Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings:</p> <p>Whoever recruits , transports, submits, harbors, receives a natural person in any form, whether inside a state territory or across its national borders, through the use of force, violence or threat to use any of them or through abduction, fraud, misrepresentations or through the abuse of power or by exploiting a position of vulnerability or need or by promising to provide or receive of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation in whatever form, is committing the crime of trafficking in human beings. Exploitation shall include the exploitation of the prostitution of others or any forms of sexual exploitation and sex trafficking of children, pornography or begging, forced labour or services, slavery or practices similar to slavery servitude or removal of human organs, tissues or parts of it, commits a crime of trafficking in human beings.</p> |
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| <p>Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 15</p> | <p>A person who has committed an offence of human trafficking shall be punished by imprisonment for a period not exceeding fifteen (15) years and a fine not exceeding three hundred thousand (300,000) Riyals, in the following cases:</p> <ol style="list-style-type: none"> 1- If the victim was a female, a child, an incapable person or a person with disabilities. 2- If the crime resulted in the death of the victim or caused him to suffer a permanent disability or an incurable disease. 3- If the perpetrator was a spouse, one of the ascendants or descendants, custodian or guardian of the victim, or has authority over the victim. 4- If the act was committed by threat of death, serious harm or physical or psychological torture; or by a person carrying a weapon. 5- If the perpetrator was a public employee or was assigned to carry out a public service and committed the crime by exploiting this capacity. 6- If the crime was committed by an organized criminal group and the accused person was one of its members. 7- If the crime was of a transnational nature. | <p>Imprisonment: 15 years (maximum)</p> <p>and</p> <p>Fine: QAR 300,000 (maximum)</p> | |
| Singapore | | | |

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| Prevention of Human Trafficking Act 2014, Section 4(1) (a) | Any person who is guilty of an offence under section 3, upon conviction — (a) in the case of a first offence, shall be punished with a fine not exceeding \$100,000 and with imprisonment for a term not exceeding 10 years, and shall be liable to caning not exceeding 6 strokes; and | Imprisonment: 10 years (maximum) and Fine: SGD 100,000 (maximum) and Caning: 6 strokes (maximum) | The definition of 'trafficking in persons' is set out in Section 3 of the Prevention of Human Trafficking Act 2014: Any person who recruits, transports, transfers, harbours or receives an individual (other than a child) by means of — (a) the threat or use of force, or any other form of coercion; (b) abduction; (c) fraud or deception; (d) the abuse of power; (e) the abuse of the position of vulnerability of the individual; or (f) the giving to, or the receipt by, another person having control over that individual of any money or other benefit to secure that other person's consent, for the purpose of the exploitation (whether in Singapore or elsewhere) of the individual shall be guilty of an offence. |
| Prevention of Human Trafficking Act 2014, Section 4(1) (b) | Any person who is guilty of an offence under section 3, upon conviction — (b) in the case of a second or subsequent offence, shall be punished with a fine not exceeding \$150,000, with imprisonment for a term not exceeding 15 years and with caning not exceeding 9 strokes. | (repeat offender) Imprisonment: 15 years (maximum) and Fine: SGD 150,000 (maximum) and Caning: 9 strokes (maximum) | |
| United Arab Emirates | | | |

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| <p>Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015, Article 2, para 1</p> | <p>Whoever commits any of the human trafficking crimes provided for in Article (1) bis of this Law shall be punished by temporary imprisonment for a term of no less than five years, and a fine of no less than one hundred thousand dirhams.</p> | <p>Imprisonment: 5 years (minimum)</p> <p>and</p> <p>Fine: AED 100,000 (minimum)</p> | <p>The definition of 'trafficking in persons' is set out in Article 1 (1) bis of the Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015:</p> <p>Whoever commits any of the following shall be deemed a perpetrator of a human trafficking crime:</p> <p>A. Selling persons, offering persons for selling or buying, or promising the same.</p> <p>B. Soliciting persons, employing, recruiting, transferring, deporting, harbouring, receiving, receiving or sending the same whether within the country or across the national borders thereof, by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability the person for the purpose of exploitation.</p> <p>C. Giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of the latter.</p> |
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| Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015, Article 2, para 2 | The penalty of life imprisonment shall apply in any one of the following cases: 1. If the victim is a child or a person with disability. 2. If the act is committed by threat of murder or grave harm or involved physical or psychological torture, or if the perpetrator was armed. 3. The perpetrator of the crime has created or assumed a leading role in an organized criminal gang, has been a member therein or participated in the actions thereof while being aware of the purposes of such gang. 4. The perpetrator is the spouse, a relative, antecedent, descendant, or guardian of the victim. 5. If the perpetrator is a public servant, or assigned to public service, where he exploited the occupation or assignments thereof to commit the crime. 6. If the committed crime is trans-national. 7. If the victim has been inflicted, as a result of the crime, with an incurable disease or permanent disability. | Imprisonment: life (mandatory) | |
| Vietnam | | | |
| Criminal Code, Article 150(1) and (4) | Any person who uses violence, threatens to use violence, deceives, or employs other tricks to commit any of the following acts shall face a penalty of 05 - 10 years' imprisonment: a) Transferring or receiving human people for transfer for money, property, or other financial interests; b) Transferring or receiving human people for sexual slavery, coercive labor, taking body parts, or for other inhuman purposes; c) Recruiting, transporting, harboring other people for the commission of any of the acts specified in Point a or Point b of this Clause. The offender may also be liable to a fine of from VND 20,000,000 to VND 100,000,000 , be put under mandatory supervision, prohibited from residence for 01 - 05 years, or have all or part of his/her property confiscated. | Imprisonment: Minimum of 5 years and a maximum of 10 years imprisonment Optional: Fine: VND 20,000,000 – 100,000,000 Liable to mandatory supervision Liable to prohibition of residence: 1 – 5 years Liable to confiscation of property (all or part) | |

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| <p>Criminal Code, Article 150(2) and (4)</p> | <p>This offence committed in any of the following cases shall carry a penalty of 08 - 15 years' imprisonment:</p> <ul style="list-style-type: none"> a) The offence is committed by an organized group; b) The offence is committed by despicable motives; c) The victim suffers from 11% - 45% mental and behavioural disability because of the offence; d) The offence results in 31% physical disability or more of the victim, except for the case specified in Point b Clause 3 of this Article; dd) The victim is taken across the border out of Vietnam; e) The offence is committed against 02 - 05 people; g) The offence has been committed more than once. <p>The offender may also be liable to a fine of from VND 20,000,000 to VND 100,000,000 , be put under mandatory supervision, prohibited from residence for 01 - 05 years, or have all or part of his/her property confiscated.</p> | <p>Imprisonment: Minimum of 8 years and a maximum of 15 years imprisonment</p> <p>Optional:</p> <p>Fine: VND 20,000,000 – 100,000,000</p> <p>Liable to mandatory supervision</p> <p>Liable to prohibition of residence: 1 – 5 years</p> <p>Liable to confiscation of property (all or part)</p> | |
| <p>Criminal Code, Article 150(3) and (4)</p> | <p>This offence committed in any of the following cases shall carry a penalty of 12 - 20 years' imprisonment:</p> <ul style="list-style-type: none"> a) The offence is committed in a professional manner; b) The victim's body part has been taken; c) The victim suffers from 46% mental and behavioural disability or above because of the offence; d) The offence results in the death or suicide of the victim; dd) The offence is committed against 06 or more people; e) Dangerous recidivism; <p>The offender may also be liable to a fine of from VND 20,000,000 to VND 100,000,000 , be put under mandatory supervision, prohibited from residence for 01 - 05 years, or have all or part of his/her property confiscated.</p> | <p>Imprisonment: Minimum of 12 years and a maximum of 20 years imprisonment</p> <p>Optional:</p> <p>Fine: VND 20,000,000 – 100,000,000</p> <p>Liable to mandatory supervision</p> <p>Liable to prohibition of residence: 1 – 5 years</p> <p>Liable to confiscation of property (all or part)</p> | |

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| <p>Criminal Code, Article 151(1) and (4)</p> | <p>A person who commits any of the following acts shall face a penalty of 07 - 12 years' imprisonment:</p> <ul style="list-style-type: none"> a) Transferring or receiving a person under 16 for transfer for money, property, or other financial interests, except for humanitarian purposes; b) Transferring or receiving a person under 16 for sexual slavery, coercive labor, taking body parts, or for other inhuman purposes; c) Recruiting, transporting, harboring a person under 16 for the commission of any of the acts specified in Point a or Point b of this Clause. <p>The offender may also be liable to a fine of from VND 50,000,000 to VND 200,000,000, be prohibited from holding certain positions or doing certain works for 01 - 05 years, be put under mandatory supervision for 01 - 05 years, or have all or part of his/her property confiscated.</p> | <p>Imprisonment: Minimum of 7 years and a maximum of 12 years imprisonment</p> <p>Optional:</p> <p>Fine: VND 50,000,000 – 200,000,000</p> <p>Liable to mandatory supervision: 1-5 years</p> <p>Liable to prohibition from holding certain positions or doing certain works: 1 – 5 years</p> <p>Liable to confiscation of property (all or part)</p> | |
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| <p>Criminal Code, Article 151(2) and (4)</p> | <p>This offence committed in any of the following cases shall carry a penalty of 12 - 20 years' imprisonment:</p> <ul style="list-style-type: none"> a) The offence involves abuse of the offender's position or power; b) The offender commits the offence by taking advantage of child adoption; c) The offence is committed against 02 - 05 people; d) The offence is committed against a person for whom the offender is responsible for providing care; dd) The victim is taken across the border out of Vietnam; e) The offence has been committed more than once; g) The offence is committed by despicable motives; h) The victim suffers from 11% - 45% mental and behavioural disability because of the offence; i) The offence results in 31% physical disability or more of the victim, except for the case specified in Point d Clause 3 of this Article. <p>The offender may also be liable to a fine of from VND 50,000,000 to VND 200,000,000, be prohibited from holding certain positions or doing certain works for 01 - 05 years, be put under mandatory supervision for 01 - 05 years, or have all or part of his/her property confiscated.</p> | <p>Imprisonment: Minimum of 12 years and a maximum of 20 years imprisonment</p> <p>Optional:</p> <p>Fine: VND 50,000,000 – 200,000,000</p> <p>Liable to mandatory supervision: 1-5 years</p> <p>Liable to prohibition from holding certain positions or doing certain works: 1 – 5 years</p> <p>Liable to confiscation of property (all or part)</p> | |
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| Criminal Code, Article 151(3) and (4) | <p>This offence committed in any of the following cases shall carry a penalty of 18 - 20 years' imprisonment or life imprisonment:</p> <p>a) The offence is committed by an organized group;</p> <p>b) The offence is committed in a professional manner;</p> <p>c) The victim suffers from 46% mental and behavioural disability or above because of the offence;</p> <p>d) The victim's body part has been taken;</p> <p>dd) The offence results in the death or suicide of the victim;</p> <p>e) The offence is committed against 06 or more people;</p> <p>g) Dangerous recidivism.</p> <p>The offender may also be liable to a fine of from VND 50,000,000 to VND 200,000,000, be prohibited from holding certain positions or doing certain works for 01 - 05 years, be put under mandatory supervision for 01 - 05 years, or have all or part of his/her property confiscated.</p> | <p>Imprisonment: Minimum of 18 years and a maximum of 20 years imprisonment</p> <p>Optional:</p> <p>Fine: VND 50,000,000 – 200,000,000</p> <p>Liable to mandatory supervision: 1-5 years</p> <p>Liable to prohibition from holding certain positions or doing certain works: 1 – 5 years</p> <p>Liable to confiscation of property (all or part)</p> | |
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Chinese

China

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| Criminal Law of the People's Republic of China | <p>第二百四十条 【拐卖妇女、儿童罪】拐卖妇女、儿童的，处五年以上十年以下有期徒刑，并处罚金；有下列情形之一的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产；情节特别严重的，处死刑，并处没收财产：</p> <p>(一)拐卖妇女、儿童集团的首要分子；</p> <p>(二)拐卖妇女、儿童三人以上的；</p> <p>(三)奸淫被拐卖的妇女的；</p> <p>(四)诱骗、强迫被拐卖的妇女卖淫或者将被拐卖的妇女卖给他人迫使其卖淫的；</p> <p>(五)以出卖为目的，使用暴力、胁迫或者麻醉方法绑架妇女、儿童的；</p> <p>(六)以出卖为目的，偷盗婴幼儿的；</p> <p>(七)造成被拐卖的妇女、儿童或者其亲属重伤、死亡或者其他严重后果的；</p> <p>(八)将妇女、儿童卖往境外的。</p> <p>拐卖妇女、儿童是指以出卖为目的，有拐骗、绑架、收买、贩卖、接送、中转妇女、儿童的行为之一的。</p> | <p>Imprisonment: 5 – 10 years</p> <p>Fines and confiscation of property available</p> <p>Death penalty available where circumstances are serious</p> | |
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LATIN AMERICA AND THE CARIBBEAN – TRAFFICKING OFFENCES AND PENALTIES

| Legislation | Offence | Penalty | Notes |
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| English | | | |
| Barbados | | | |
| Trafficking in Persons Prevention Act 2016, Section 3(1) | A person who, for the purpose of exploitation by any of the means specified in subsection (2): (a) recruits, transports, transfers, harbours or receives persons into or within Barbados; (b) recruits, transports or transfers persons from Barbados to another jurisdiction; or (c) receives or harbours persons from Barbados in another jurisdiction, is guilty of the offence of trafficking in persons and is liable on conviction on indictment, to a fine of \$1 000 000 or to imprisonment for 25 years or to both. | Imprisonment: 25 years (maximum) and/or Fine: BBD 1,000,000 | |
| Trafficking in Persons Prevention Act 2016, Section 4(1) | A person who for the purpose of exploitation recruits, transports, transfers, harbours or receives a child into or within Barbados; receives or harbours a child from Barbados in another jurisdiction; or recruits, transports or transfers a child from Barbados to another jurisdiction, is guilty of the offence of trafficking in children and is liable on conviction on indictment to a fine of \$2 000 000 or to imprisonment for life or to both. | Imprisonment: life (maximum) and/or Fine: BBD 2,000,000 | |
| Dominica | | | |

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| Transnational Organized Crime Act 13 (Prevention and Control), Section 13(1)(a) | Where a person is convicted of the offence of trafficking in persons under section 8 and the victim of the offence – (a) is a child, that person is liable on conviction on indictment to imprisonment for life; | Imprisonment: life (maximum) | <p>The definition of ‘trafficking in persons’ is set out in Section 8 of the Transnational Organized Crime Act 13 (Prevention and Control):</p> <p>(1) A person who, for the purpose of exploitation of another person organizes or facilitates –</p> <p>(a) the entry or proposed entry of the other person into Dominica;</p> <p>(b) the exit or proposed exit of the other person from Dominica; or</p> <p>(c) the receipt of the other person into Dominica, by any of the means specified in subsection (6) and thereby obtains the compliance of the other person in respect of the entry or proposed entry or the exit or proposed exit or in respect of that receipt, commits the offence of trafficking in persons.</p> <p>[Subsections (2)-(6) specify further parts of the definition].</p> |
| Transnational Organized Crime Act 13 (Prevention and Control), Section 13(1)(b) | Where a person is convicted of the offence of trafficking in persons under section 8 and the victim of the offence – (b) is not a child, that person is liable on conviction on indictment to a fine of \$2,000,000 or to imprisonment for 15 years or to both. | Imprisonment: 15 years (maximum) and/or Fine: XCD 2,000,000 (maximum) | |
| Guyana | | | |

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| <p>Combating of Trafficking in Persons Act 2005, Section 3</p> | <p>Whoever engages in or conspires to engage in, or attempts to engage in, or assist another person to engage in or organises or direct other persons to engage in 'trafficking in persons' shall</p> <p>(i) on summary conviction –</p> <p>(a) be sentenced to not less than three years nor more than five years imprisonment;</p> <p>(b) be subject to forfeiture of property under section 7; and</p> <p>(c) be ordered to pay full restitution to the trafficked person or persons under section 6.</p> <p>(ii) on conviction on indictment –</p> <p>(a) be sentenced to not less than five years or to life imprisonment;</p> <p>(b) be subject to forfeiture of property under section 7; and</p> <p>(c) be ordered to pay full restitution to the trafficked person or persons under section 6.</p> | <p>Imprisonment: Minimum of 3 years and a maximum of 5 years imprisonment (summary);</p> <p>Imprisonment: Minimum of 5 years and a maximum of life imprisonment (indictment)</p> <p>Forfeiture of property</p> <p>Restitution</p> | <p>The definition of 'trafficking in persons' is set out in Section 2 of the Combating of Trafficking in Persons Act 2005:</p> <p>"trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.</p> |
| <p>Combating of Trafficking in Persons Act 2005, Section 8(1) (a)</p> | <p>As factually appropriate, the following adjustments to the sentence of a person convicted on indictment of the crime of trafficking in persons may apply –</p> <p>(a) if the convicted person used, threatened use, or caused another to use of threaten use of a dangerous weapon, two years may be added to the sentence</p> | <p>Additional imprisonment of 2 years (on indictment) for aggravated factors</p> | |
| <p>Combating of Trafficking in Persons Act 2005, Section 8(1) (b)</p> | <p>(b) if a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against a trafficked person, five years may be added to the sentence.</p> | <p>Additional imprisonment of 5 years (on indictment) for aggravated factors</p> | |
| <p>Combating of Trafficking in Persons Act 2005, Section 8(1) (c)</p> | <p>(c) if the trafficked person has not attained the age of eighteen years, five years may be added to the sentence.</p> | <p>Additional imprisonment of 5 years (on indictment) for aggravated factors</p> | |
| <p>Combating of Trafficking in Persons Act 2005, Section 8(1) (e)</p> | <p>(e) if the trafficked person suffers a permanent or life-threatening injury, ten years may be added to the sentence.</p> | <p>Additional imprisonment of 10 years (on indictment) for aggravated factors</p> | |

Haiti

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| <p>The Antitrafficking law, Article 11</p> | <p>Any person found guilty of trafficking in persons as defined in article 1.1 commits a crime and shall be liable to imprisonment for a term of 7 to 15 years and a fine of between 200,000 and 1,500,000 gourdes.</p> | <p>Imprisonment: Minimum of 7 years and a maximum of 15 years imprisonment</p> <p>and</p> <p>Fine: 200,000 – 1,500,000</p> | <p>The definition of ‘trafficking in persons’ is set out in Article 1.1 of the Antitrafficking Law:</p> <p>“ Trafficking in persons” (or “human trafficking”) means the recruitment, transport, harboring, or receipt of persons by means of a threat or use of force or other forms of coercion, by kidnapping, by fraud, by deception, by abuse of power or of a position of vulnerability or by giving and receiving payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation.</p> |
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| <p>The Antitrafficking law, Article 21</p> | <p>The offenses set forth in articles 11, 13, 14, 15, 16, 17, 18, 19, and 20 are punishable by a sentence of life imprisonment where they are committed in any of the following circumstances:</p> <ul style="list-style-type: none"> a. Against a child. b. Against more than one person. c. When the victim has been raped or has suffered a similar violation during the period in which he or she has been trafficked, whether by one or more persons. d. Against a person who was outside the territory of the Republic and who has been brought there for that purpose or upon his or her arrival on the territory of the Republic. e. Against a person particularly vulnerable because of age, illness, physical or mental disability, pregnancy, or any other similar case that is apparent or known to its author. f. When the person has been put in contact with the perpetrator through a network for the dissemination of public messages. g. By kidnapping, using threats, coercion, violence, or fraud against the person concerned or against the person's family or any person having a habitual relationship with him or her. h. In circumstances that directly place the victim against whom the offense is committed in immediate or nonimmediate danger of death or of serious personal injury that can lead to mutilation or permanent disability, or of long-term illness. i. By a legitimate, natural, or foster ascendant of the trafficked person or by any other person with authority over him or her, or by a person having abused his or her authority or the facilities conferred on this person by his or her office. j. By a public official or civil servant, a custodian or agent of a governmental authority or law enforcement officer, or any person using the prerogatives associated with his or her office. k. By a person who has forged false identification papers, false travel documents, or false passports for the transit of trafficked persons through a foreign territory or their entry into Haitian territory. | <p>Imprisonment: life</p> | |
| <p>St. Vincent and the Grenadines</p> | | | |

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| Prevention of Trafficking in Persons Act 2011, Section 5(1) | A person who engages in, conspires to engage in, attempts to engage in, assists another person to engage in, or organises or directs another person to engage in trafficking in persons commits an offence and is liable on conviction on indictment to a fine of two hundred and fifty thousand dollars or to imprisonment for fifteen years or both | Imprisonment: 15 years and/or Fine: EXC 250,000 | The definition of 'trafficking in persons' is set out in Section 2 of the Prevention of Trafficking in Persons Act 2011: "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. |
| Prevention of Trafficking in Persons Act 2011, Section 8 | Notwithstanding the penalty imposed under section 5, where a person is convicted under that section and there is the presence of any of the following aggravating circumstances resulting from acts of the convicted person – [...] (b) the victim suffers a serious bodily injury, or if the convicted person commits a sexual assault against the victim; (c) the trafficking involved a victim who is particularly vulnerable, including a pregnant woman; (d) the victim had not attained the age of eighteen years of age; [...] (f) the victim suffers a permanent or life-threatening bodily injury; [...] The court may impose an additional term of imprisonment of up to twenty years. | Additional term of imprisonment not exceeding twenty years | |
| Trinidad and Tobago | | | |

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| <p>Trafficking in Persons Act 2011, Section 16</p> | <p>A person who, for the purpose of exploitation— (a) recruits, transports, transfers, harbours or receives persons into or within Trinidad and Tobago; (b) recruits, transports or transfers persons from Trinidad and Tobago to another jurisdiction; (c) receives persons from Trinidad and Tobago into another jurisdiction; or (d) harbours persons from Trinidad and Tobago in another jurisdiction, by means of— (i) threats or the use of force or other forms of coercion; (ii) abduction; (iii) fraud or deception; (iv) the abuse of power or the abuse of a position of vulnerability; or (v) the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, commits the offence of trafficking in persons and is liable on conviction on indictment, to a fine of not less than five hundred thousand dollars and imprisonment of not less than fifteen years.</p> | <p>Imprisonment: 15 years (minimum) and Fine: TTD 500,000 (minimum)</p> | <p>The definition of 'trafficking in persons' is set out in Section 3 of the Trafficking in Persons Act 2011</p> |
| <p>Trafficking in Persons Act 2011, Section 18</p> | <p>A person who— (a) recruits, transports, transfers or receives a child into or within Trinidad and Tobago; (b) harbours a child in Trinidad and Tobago; or (c) recruits, transports or transfers a child from Trinidad and Tobago to another jurisdiction, for the purpose of exploitation, commits the offence of trafficking in children and is liable on conviction on indictment to a fine of not less than one million dollars and imprisonment for not less than twenty years. (2) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is sufficient to establish the offence of trafficking in children.</p> | <p>Imprisonment: 20 years (minimum) and Fine: TTD 1,000,000 (minimum)</p> | <p>The definition of 'trafficking in persons' is set out in Section 3 of the Trafficking in Persons Act 2011</p> |

Spanish

Chile

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| Código Penal, Article 411-quater | El que mediante violencia, intimidación, coacción, engaño, abuso de poder, aprovechamiento de una situación de vulnerabilidad o de dependencia de la víctima, o la concesión o recepción de pagos u otros beneficios para obtener el consentimiento de una persona que tenga autoridad sobre otra capte, traslade, acoja o reciba personas para que sean objeto de alguna forma de explotación sexual, incluyendo la pornografía, trabajos o servicios forzados, servidumbre o esclavitud o prácticas análogas a ésta, o extracción de órganos, será castigado con la pena de reclusión mayor en sus grados mínimo a medio y multa de cincuenta a cien unidades tributarias mensuales. | Imprisonment: 'reclusión mayor en sus grados mínimo a medio' Fine: 50 to 100 monthly tax units. | |
| Código Penal, Article 411-quater | Si la víctima fuere menor de edad, aun cuando no concurriere violencia, intimidación, coacción, engaño, abuso de poder, aprovechamiento de una situación de vulnerabilidad o de dependencia de la víctima, o la concesión o recepción de pagos u otros beneficios para obtener el consentimiento de una persona que tenga autoridad sobre otra, se impondrán las penas de reclusión mayor en su grado medio y multa de cincuenta a cien unidades tributarias mensuales. | Imprisonment: 'impondrán las penas de reclusión mayor en su grado medio' Fine: 50 to 100 monthly tax units. | |
| El Salvador | | | |
| Decreto N° 824, Ley Especial Contra la Trata De Personas, Article 54 | El que entregue, capte, transporte, traslade, reciba o acoja personas, dentro o fuera del territorio nacional o facilite, promueva o favorezca, para ejecutar o permitir que otros realicen cualquier actividad de explotación humana, definidas en el artículo 3 de la presente Ley, será sancionado con penade diez a catorce años de prisión. | Imprisonment: Minimum of 10 years and a maximum of 14 years imprisonment. | |

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| Decreto N° 824, Ley Especial Contra la Trata De Personas, Article 55 | <p>El Delito de Trata de Personas será sancionado con la pena de dieciséis a veinte años de prisión e inhabilitación especial en el ejercicio de la profesión, cargo o empleo público o privado, durante el tiempo que dure la condena, en los siguientes casos:</p> <p>a) Cuando la víctima sea niña, niño, adolescente, persona adulta mayor o persona con discapacidad;</p> <p>b) Cuando el autor fuere funcionario o empleado público, autoridad pública o agentes de autoridad; sin perjuicio de concurso de delito aplicable, cuando se prevalezca del cargo;</p> <p>c) Cuando exista una relación de ascendiente, descendiente, adoptante, adoptado, hermano, cónyuge o persona con quien se conviviere maritalmente o se tenga semejante relación de afectividad; o cuando se trate de tutor, curador, guardador de hecho o encargado de la educación o cuidado de la víctima y cuando exista relación de autoridad o confianza con la víctima, sus dependientes o personas responsables, medie o no una relación de parentesco;</p> <p>d) Cuando el delito sea cometido por persona directa o indirectamente responsable del cuidado de la niña, niño o adolescente que se encuentre bajo una medida de acogimiento en entidades de atención a la niñez y adolescencia, sean estas públicas o privadas;</p> <p>e) Cuando se ocasionaren daños o lesiones corporales y enfermedades graves e irreversibles;</p> <p>f) Cuando el hecho sea precedido de amenaza, uso de la fuerza u otras formas de coacción o engaño;</p> <p>g) Cuando se utilicen para la planificación o la ejecución del delito, servicios o instalaciones con fines turísticos, comerciales, deportivos o de esparcimiento, o de naturaleza semejante; y,</p> <p>h) Cuando el delito se realice utilizando como soporte las tecnologías de información y comunicación, incluyendo internet.</p> | Imprisonment: Minimum of 16 years and a maximum of 20 years imprisonment. | |
| Decreto N° 824, Ley Especial Contra la Trata De Personas, Article 55 | Cuando los autores del Delito de Trata de Personas sean los organizadores, jefes, dirigentes o financistas de las agrupaciones ilícitas o estructuras de crimen organizado, nacional o transnacional, será sancionado con pena de veinte a veinticinco años de prisión. | Imprisonment: Minimum of 20 years and a maximum of 25 years imprisonment. | |

Mexico

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| <p>Ley General Para Prevenir, Sancionar Y Erradicar Los Delitos En Materia De Trata De Personas Y Para La Protección Y Asistencia A Las Víctimas De Estos Delitos, Article 10</p> | <p>Toda acción u omisión dolosa de una o varias personas para captar, enganchar, transportar, transferir, retener, entregar, recibir o alojar a una o varias personas con fines de explotación se le impondrá de 5 a 15 años de prisión y de un mil a veinte mil días multa, sin perjuicio de las sanciones que correspondan para cada uno de los delitos cometidos, previstos y sancionados en esta Ley y en los códigos penales correspondientes.</p> | <p>Imprisonment: Minimum of 5 years and a maximum of 15 years imprisonment.</p> <p>and</p> <p>Fine: 1,000 – 20,000 days</p> | |
| Nicaragua | | | |
| <p>Ley Contra La Trata de Personas, Article 182</p> | <p>Comete el delito de trata de personas, quien organice, financie, dirija, promueva, publicite, gestione, induzca, facilite o quien ejecute la captación directa o indirecta, invite, reclute, contrate, transporte, traslade, vigile, entregue, reciba, retenga, oculte, acoja o aloje a alguna persona con cualquiera de los fines de prostitución, explotación sexual, proxenetismo, pornografía infantil, matrimonio servil, forzado o matrimonio simulado, embarazo forzado, explotación laboral, trabajos o servicios forzados, trabajo infantil, esclavitud o prácticas análogas a la esclavitud, servidumbre, tráfico o extracción ilícita de órganos, tejidos, células o fluidos humanos o cualquiera de sus componentes, experimentación biomédicas clínica o farmacológica ilícitas, participación en actividades de criminalidad organizada, utilización de menores en actividades delictivas, mendicidad o adopción irregular, para que dichos fines sean ejercidos dentro o fuera del territorio nacional.</p> <p>Se aplicará la pena de diez a quince años de prisión y mil días multa, la cancelación de licencia comercial, clausura definitiva del local y el decomiso de los bienes muebles e inmuebles utilizados y los recursos económicos y financieros obtenidos.</p> <p>En ningún caso el consentimiento de la víctima eximirá ni atenuará la responsabilidad penal de las personas que incurran en la comisión del delito de trata de personas.</p> | <p>Imprisonment: Minimum of 10 years and a maximum of 15 years imprisonment.</p> <p>and</p> <p>Fine: 1000 days</p> <p>Cancellation of licenses, confiscation of property</p> | |

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| <p>Ley Contra La Trata de Personas, Article 182 <i>bis</i> (I)</p> | <p>I. Se impondrá la pena de dieciséis a dieciocho años y multa de mil días en los casos siguientes: 1) Cuando el delito de trata de personas se cometa por medio de amenazas, intimidación, secuestro, chantaje, uso de fuerza u otras formas de coacción; y 2) Cuando la persona autora o partícipe, cometa el delito en ejercicio de poder o valiéndose de una situación de vulnerabilidad de la víctima, cuando recurra al fraude, al engaño, a ofrecimiento de trabajo o cualquier beneficio, o a la concesión o recepción de pagos o beneficios para obtener el consentimiento de una persona, que tenga autoridad sobre otra.</p> | <p>Imprisonment: Minimum of 16 years and a maximum of 18 years imprisonment. and Fine: 1000 days</p> | |
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| <p>Ley Contra La Trata de Personas, Article 182 bis (II)</p> | <p>II. Se impondrá la pena de diecinueve a veinte años y multa de mil días en los casos en que:</p> <ol style="list-style-type: none"> 1) La víctima sea una persona niña, niño, adolescente o mayor de sesenta años de edad; o se trate de persona proveniente de los pueblos originarios o afrodescendientes, persona con discapacidad, o el hecho fuere cometido por familiar, tutor o tutora, encargado o encargada de la educación, guarda o custodia, guía espiritual, lideresa o líder religioso o que comparta permanentemente el hogar de la víctima, o medie una relación de confianza; 2) Quien sustraiga, ofrezca, entregue, transfiera, venda, acepte, adquiera o posea, a un niño, niña o adolescente, alterando o no la filiación, medie o no pago, recompensa o beneficio, con cualquiera de los fines de explotación dispuestos en el delito de trata de personas; 3) Cuando las víctimas en un mismo hecho sean dos o más personas; 4) Cuando los fines de explotación sean dos o más de los previstos en este delito; 5) Cuando a consecuencia del delito de trata de personas, se ponga en peligro la vida de la víctima o ésta resulte con daño grave, en la salud física o psicológica, o haya adquirido una enfermedad grave o incurable, o cuando resulte embarazada o sea obligada a practicarse aborto; 6) Cuando la víctima sea obligada o inducida a consumir drogas o resulte en una condición de adicción; 7) Cuando la persona autora o participe del delito de trata de personas haya sido condenado por la comisión del mismo delito en el extranjero; y 8) Cuando la persona autora o participe del delito sea servidor o servidora pública o trabaje para organismos internacionales u organismos no gubernamentales cuyo fin esté relacionado con el tema atención o protección a la niñez, adolescencia y mujer. <p>Si concurren dos o más de las circunstancias previstas en este artículo se aplicará la pena máxima.</p> | <p>Imprisonment: Minimum of 19 years and a maximum of 20 years imprisonment.</p> <p>Fine: 1000 days</p> | |
| Paraguay | | | |

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| <p>Ley N° 4788 – Integral Contra La Trata de Personas, Article 5°</p> | <p>1° El que, con el propósito de someter a otro a un régimen de explotación sexual; captare, transportare, trasladare, acogiere o recibiere a la víctima directa, será sancionado con pena privativa de libertad de hasta ocho años.</p> <p>2° El que, con el propósito de someter a otro a un régimen de servidumbre, matrimonio servil, trabajo o servicio forzado, esclavitud o cualquier práctica análoga a la esclavitud; captare, transportare, trasladare, acogiere o recibiere a la víctima directa, será sancionado con pena privativa de libertad de hasta ocho años.</p> <p>3° El que, con el propósito de someter a otro a la extracción ilícita de sus órganos o tejidos; captare, transportare, trasladare, acogiere o recibiere a la víctima directa, será sancionado con pena privativa de libertad de hasta ocho años.</p> | <p>Imprisonment: 8 years (maximum)</p> | |
| <p>Ley N° 4788 – Integral Contra La Trata de Personas, Article 6°</p> | <p>En los casos del artículo anterior, se aplicará la pena privativa de libertad de dos a quince años cuando:</p> <ol style="list-style-type: none"> 1. la víctima directa tuviere entre catorce y diecisiete años de edad inclusive; 2. el autor hubiere recurrido a la amenaza o al uso de la fuerza, coacción, rapto, fraude, engaño, abuso de poder o a la concesión de pagos o beneficios a una persona que tenga autoridad sobre la víctima directa; 3. el autor fuere funcionario público o cometiere el hecho en abuso de una función pública; o, 4. a efecto de la trata de personas, se trasladare a la víctima directa del territorio del Paraguay a un territorio extranjero, o de este al territorio nacional. | <p>Imprisonment: Minimum of 2 years and a maximum of 15 years imprisonment.</p> | |

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| <p>Ley Nº 4788 – Integral Contra La Trata de Personas, Article 7º</p> | <p>En los casos del Artículo 5º de la presente Ley, la sanción del artículo anterior podrá ser aumentada hasta veinte años de pena privativa de libertad, si:</p> <ol style="list-style-type: none"> 1. concurrieren más de un agravante del Artículo 8º de la presente Ley; 2. el autor fuere pariente dentro del cuarto grado de consanguinidad o por adopción, o segundo de afinidad, cónyuge, excónyuge, concubino o exconcubino, persona conviviente, tutor, curador, encargado de la educación o guarda de la víctima directa, ministro de un culto reconocido o no; 3. la víctima directa fuere una persona de hasta trece años de edad inclusive; 4. como consecuencia de la trata de personas se ocasionare a la víctima algún resultado descrito en el Artículo 112 del Código Penal; 5. el autor y/o partícipe actuare como miembro, empleado o responsable de una empresa de transporte comercial; de bolsas de trabajo, agencias de publicidad o modelaje, institutos de investigación científica o centros de asistencia médica; 6. el autor y/o partícipe efectuare promociones, ofertas o subastas por publicaciones en medios masivos, medios restringidos o redes informáticas; 7. el autor actuare comercialmente, de conformidad al Artículo 14, inciso 1º, numeral 15 del Código Penal; u, 8. el autor actuare como miembro de una banda organizada para la realización continuada de la trata de personas. | <p>Imprisonment: 20 years (maximum)</p> | |
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Portuguese

| Brazil | | | |
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| Código Penal, Article 149-A | <p>Agenciar, aliciar, recrutar, transportar, transferir, comprar, alojar ou acolher pessoa, mediante grave ameaça, violência, coação, fraude ou abuso, com a finalidade de:</p> <p>I – remover-lhe órgãos, tecidos ou partes do corpo;</p> <p>II – submetê-la a trabalho em condições análogas à de escravo;</p> <p>III – submetê-la a qualquer tipo de servidão;</p> <p>IV – adoção ilegal; ou</p> <p>V – exploração sexual.</p> <p>Pena – reclusão, de 4 (quatro) a 8 (oito) anos, e multa.</p> | <p>Imprisonment: Minimum of 4 years and a maximum of 8 years imprisonment.</p> <p>Fine: unspecified</p> | |
| Código Penal, Article 149-A | <p>§ 1º A pena é aumentada de um terço até a metade se:</p> <p>I – o crime for cometido por funcionário público no exercício de suas funções ou a pretexto de exercê-las;</p> <p>II – o crime for cometido contra criança, adolescente ou pessoa idosa ou com deficiência;</p> <p>III – o agente se prevalecer de relações de parentesco, domésticas, de coabitação, de hospitalidade, de dependência econômica, de autoridade ou de superioridade hierárquica inerente ao exercício de emprego, cargo ou função; ou</p> <p>IV – a vítima do tráfico de pessoas for retirada do território nacional.</p> | <p>Penalty is increased by one third to half</p> | |
| Código Penal, Article 149-A | <p>§ 2º A pena é reduzida de um a dois terços se o agente for primário e não integrar organização criminosa.</p> | <p>Penalty is reduced by one to two thirds</p> | |

THE PACIFIC – TRAFFICKING OFFENCES AND PENALTIES

| Legislation | Offence | Penalty | Notes |
|------------------------------------|--|------------------------|--|
| Fiji | | | |
| Crimes Decree 2009, Article 115(1) | A person (the first person) commits an indictable offence of domestic trafficking in persons if: (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Fiji to another place in Fiji; and (b) the first persons uses force or threats; and (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation. Penalty – Imprisonment for 12 years | Imprisonment: 12 years | Non-domestic offences of trafficking in persons, under Article 112, have the same penalty |
| Crimes Decree 2009, Article 116(1) | A person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim) and any of the following applies (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported; (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment; (c) the first person, in committing the offence – (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and (ii) is reckless as to that danger. Penalty – Imprisonment for 20 years | Imprisonment: 20 years | Non-domestic offences of aggravated trafficking in persons, under Article 113, have the same penalty |

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| Crimes Decree 2009, Article 117(1) | A person commits an indictable offence of domestic trafficking in children if – (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and (b) the other person is under the age of 18; and (c) in organising or facilitating that transportation, the first-mentioned person: (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place. Penalty – Imprisonment for 25 years | Imprisonment: 25 years | Non-domestic offences of trafficking in children, under Article 114, have the same penalty |
| Marshall Islands | | | |
| Prohibition of Trafficking in Persons Act 2017, Section 105 | Any person who: (a) recruits, transports, transfers, harbors or receives another person; (b) 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 of of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; (c) for the purpose of exploitation; Shall be guilty of the offence of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding fifteen (15) years, and a fine not exceeding ten thousand dollars (\$10,000) or both. | Imprisonment: 15 years (maximum) and/or Fine: USD 10,000 (maximum) | |
| Prohibition of Trafficking in Persons Act 2017, Section 107 | Any person who: (a) recruits, transports, transfers, harbors, arranges, or receives a child; (b) for the purpose of exploitation of that child; Shall be guilty of the offence of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding twenty (20) years, and a fine not exceeding fifteen thousand dollars (\$15,000) or both. | Imprisonment: 20 years (maximum) and/or Fine: USD 15,000 (maximum) | |

| Micronesia (Federated States of) | | | |
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| Trafficking in Persons Act of 2012, Section 615 | A person who knowingly recruits, transports, transfers, harbors or receives another person for the purpose of exploitation, by threat, use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability, or 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, shall be guilty of human trafficking. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 15 years, or fined not less than \$5,000 but not more than \$25,000, or both. | Imprisonment: 15 years (maximum) and/or Fine: USD 5,000 – 25,000 | |
| Trafficking in Persons Act of 2012, Section 616 | A person who knowingly recruits, transports, transfers, harbors, or receives a child by any means for the purpose of exploitation shall be guilty of child trafficking. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than \$5,000 but not more than \$50,000, or both. | Imprisonment: 30 years (maximum) and/or Fine: USD 5,000 – 50,000 | |

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| <p>Trafficking in Persons Act of 2012, Section 617</p> | <p>A person who engages in human trafficking as defined under section 615 of this title or trafficking in children as defined under section 616 of this title shall be guilty of aggravated human trafficking if any of the following circumstances are present:</p> <ul style="list-style-type: none"> (a) the offense involves serious injury or death of the victim or another person; (b) the offense involves a victim who is particularly vulnerable, including a pregnant woman; (c) the offense exposed the victim to a life⁴ threatening illness, including HIV/AIDS; (d) the victim is physically or mentally handicapped; (e) the offense involves more than one victim; (f) the crime was committed as part of the activity of an organized criminal group; (g) drugs, medications or weapons were used in the commission of the crime; (h) a child was adopted for the purpose of trafficking; (i) the offender has been previously convicted for the same or similar offenses; (j) the offender is a public official; (k) the offender is a spouse or the conjugal partner of the victim; (l) the offender is in a position of responsibility or trust in relation to the victim; (m) the offender is in a position of authority concerning a child victim. <p>Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than \$5,000 but not more than \$50,000, or both.</p> | <p>Imprisonment: 30 years (maximum)</p> <p>and/or</p> <p>Fine: USD 5,000 – 50,000</p> | |
| Palau | | | |
| <p>Anti-People Smuggling and Trafficking Act, Section 6</p> | <p>Every person who knowingly or recklessly recruits, transports, transfers, harbors or receives any person or persons for the purpose of exploitation by threat, use of force, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, shall be guilty of people trafficking, and upon conviction thereof shall be fined not more than \$250,000, or imprisoned not more than 25 years, or both.</p> | <p>Imprisonment: 25 years (maximum)</p> <p>and/or</p> <p>Fine: USD 250,000 (maximum)</p> | |

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| Anti-People Smuggling and Trafficking Act, Section 7 | Every person who knowingly or recklessly recruits, transports, transfers, harbors or receives a child by any means for the purposes of exploitation shall be guilty of trafficking in children and, upon conviction thereof, shall be fined not more than \$500,000, or imprisoned for not more than 50 years, or both. | Imprisonment: 50 years (maximum) and/or Fine: USD 500,000 (maximum) | |
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EUROPE AND OTHERS – TRAFFICKING OFFENCES AND PENALTIES

| Legislation | Offence | Penalty | Notes |
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| English | | | |
| Australia | | | |
| Criminal Code (Cth), section 271.5 | <p>(1) A person (the first person) commits an offence of domestic trafficking in persons if:</p> <p>(a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and</p> <p>(b) the first person uses coercion, threat or deception; and</p> <p>(c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.</p> <p>Penalty: Imprisonment for 12 years.</p> | Imprisonment: 12 years | |
| Criminal Code (Cth), section 271.6 | <p>(1) A person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim) and any of the following applies:</p> <p>(a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;</p> <p>(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;</p> <p>(c) the first person, in committing the offence:</p> <p style="padding-left: 20px;">(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and</p> <p style="padding-left: 20px;">(ii) is reckless as to that danger.</p> <p>Penalty: Imprisonment for 20 years.</p> | Imprisonment: 20 years | |

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| Criminal Code (Cth), section 271.7 | <p>A person commits an offence of domestic trafficking in children if:</p> <p>(a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and</p> <p>(b) the other person is under the age of 18; and</p> <p>(c) in organising or facilitating that transportation, the first-mentioned person:</p> <p>(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or</p> <p>(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.</p> <p>Penalty: Imprisonment for 25 years.</p> | Imprisonment: 25 years | |
| Canada | | | |
| Criminal Code (R.S.C., 1985, c. C-46), section 279.01 | <p>(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable</p> <p>(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or</p> <p>(b) to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.</p> | <p>Imprisonment: Minimum of 4 years and a maximum of 14 years imprisonment.</p> <p><u>Aggravated</u></p> <p>Imprisonment: Minimum of 5 years and a maximum of life imprisonment.</p> | |

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| Criminal Code (R.S.C., 1985, c. C-46), section 279.011 | (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or (b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case. | Imprisonment: Minimum of 5 years and a maximum of 14 years imprisonment. <u>Aggravated</u> Imprisonment: Minimum of 6 years and a maximum of life imprisonment. | |
| New Zealand | | | |
| Crimes Act 1961, section 98D | Every person is liable to the penalty stated in subsection (2) who arranges, organises, or procures— (a) the entry of a person into, or the exit of a person out of, New Zealand or any other State— (i) for the purpose of exploiting or facilitating the exploitation of the person; or (ii) knowing that the entry or exit of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or (b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State— (i) for the purpose of exploiting or facilitating the exploitation of the person; or (ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both. (2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both. | Imprisonment: 20 years (maximum) and/or Fine: NZD 500,000 (maximum) | Section 98E of the Crimes Act also sets out aggravating factors to be taken into account during sentencing. |
| United Kingdom | | | |

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| <p>Modern Slavery Act 2015, Sections 2 and 5</p> | <p>S 2 (1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited. (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child). (3) A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V. (4) A person arranges or facilitates V’s travel with a view to V being exploited only if— (a) the person intends to exploit V (in any part of the world) during or after the travel, or (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.</p> <p>S 5(1) A person guilty of an offence under section 1 or 2 is liable— (a) on conviction on indictment, to imprisonment for life; (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.</p> | <p>Imprisonment: Life (on indictment) or to a maximum of 12 months imprisonment (summary conviction) and Fine: unlimited – on summary conviction</p> | |
| United States of America | | | |
| <p>18 U.S.C. § 1590</p> | <p>(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both. (b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).</p> | <p>Imprisonment: 20 years (maximum) and/or Fine: USD 250,000 <u>Aggravated</u> Imprisonment: life (maximum) and/or Fine: USD 250,000</p> | |

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| <p>18 U.S.C. § 1591</p> | <p>(a)Whoever knowingly— (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b). (b) The punishment for an offense under subsection (a) is— (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e) (2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.</p> | <p><u>Under the age of 14</u> Imprisonment: Minimum of 15 years and a maximum of life imprisonment and/or Fine: USD 250,000 <u>Between the ages of 14-18</u> Imprisonment: Minimum of 10 years and a maximum of life imprisonment and/or Fine: USD 250,000</p> | |
| French | | | |
| France | | | |

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| Code Pénal, Article 225-4-1 | <p>I. - La traite des êtres humains est le fait de recruter une personne, de la transporter, de la transférer, de l'héberger ou de l'accueillir à des fins d'exploitation dans l'une des circonstances suivantes :</p> <p>1° Soit avec l'emploi de menace, de contrainte, de violence ou de manœuvre dolosive visant la victime, sa famille ou une personne en relation habituelle avec la victime ;</p> <p>2° Soit par un ascendant légitime, naturel ou adoptif de cette personne ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions ;</p> <p>3° Soit par abus d'une situation de vulnérabilité due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, apparente ou connue de son auteur ;</p> <p>4° Soit en échange ou par l'octroi d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage.</p> <p>L'exploitation mentionnée au premier alinéa du présent I est le fait de mettre la victime à sa disposition ou à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre la victime des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, de réduction en esclavage, de soumission à du travail ou à des services forcés, de réduction en servitude, de prélèvement de l'un de ses organes, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre la victime à commettre tout crime ou délit.</p> <p>La traite des êtres humains est punie de sept ans d'emprisonnement et de 150 000 € d'amende.</p> <p>II. - La traite des êtres humains à l'égard d'un mineur est constituée même si elle n'est commise dans aucune des circonstances prévues aux 1° à 4° du I.</p> <p>Elle est punie de dix ans d'emprisonnement et de 1 500 000 € d'amende.</p> | <p><u>Adult</u></p> <p>Imprisonment: 7 years</p> <p>and</p> <p>Fine: EUR 150,000</p> <p><u>Child</u></p> <p>Imprisonment: 10 years</p> <p>and</p> <p>Fine: EUR 1,500,000</p> | |
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| Code Pénal, Article 225-4-2(I) | <p>I.-L'infraction prévue au I de l'article 225-4-1 est punie de dix ans d'emprisonnement et de 1 500 000 € d'amende lorsqu'elle est commise dans deux des circonstances mentionnées aux 1° à 4° du même I ou avec l'une des circonstances supplémentaires suivantes :</p> <p>1° A l'égard de plusieurs personnes ;</p> <p>2° A l'égard d'une personne qui se trouvait hors du territoire de la République ou lors de son arrivée sur le territoire de la République ;</p> <p>3° Lorsque la personne a été mise en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de communication électronique ;</p> <p>4° Dans des circonstances qui exposent directement la personne à l'égard de laquelle l'infraction est commise à un risque immédiat de mort ou de blessures de nature à entraîner une mutilation ou une infirmité permanente ;</p> <p>5° Avec l'emploi de violences qui ont causé à la victime une incapacité totale de travail de plus de huit jours ;</p> <p>6° Par une personne appelée à participer, par ses fonctions, à la lutte contre la traite ou au maintien de l'ordre public ;</p> <p>7° Lorsque l'infraction a placé la victime dans une situation matérielle ou psychologique grave.</p> | <p>Imprisonment: 10 years</p> <p>and</p> <p>Fine: EUR 1,500,000</p> | |
| Code Pénal, Article 225-4-2(II) | <p>II.-L'infraction prévue au II de l'article 225-4-1 est punie de quinze ans de réclusion criminelle et de 1 500 000 € d'amende lorsqu'elle a été commise dans l'une des circonstances mentionnées aux 1° à 4° du I du même article 225-4-1 ou dans l'une des circonstances mentionnées aux 1° à 7° du I du présent article.</p> | <p>Imprisonment: 15 years</p> <p>and</p> <p>Fine: EUR 1,500,000</p> | |
| Code Pénal, Article 225-4-3 | <p>L'infraction prévue à l'article 225-4-1 est punie de vingt ans de réclusion criminelle et de 3 000 000 euros d'amende lorsqu'elle est commise en bande organisée.</p> | <p>Imprisonment: 20 years</p> <p>and</p> <p>Fine: EUR 3,000,000</p> | |

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| Code Pénal, Article 225-4-4 | L'infraction prévue à l'article 225-4-1 commise en recourant à des tortures ou à des actes de barbarie est punie de la réclusion criminelle à perpétuité et de 4 500 000 euros d'amende. | Imprisonment: life and Fine: EUR 4,500,000 | |
| Italian | | | |
| Italy | | | |
| Codice Penale, Article 601(1) | È punito con la reclusione da otto a venti anni chiunque recluta, introduce nel territorio dello Stato, trasferisce anche al di fuori di esso, trasporta, cede l'autorità sulla persona, ospita una o più persone che si trovano nelle condizioni di cui all'articolo 600, ovvero, realizza le stesse condotte su una o più persone, mediante inganno, violenza, minaccia, abuso di autorità o approfittamento di una situazione di vulnerabilità, di inferiorità fisica, psichica o di necessità, o mediante promessa o dazione di denaro o di altri vantaggi alla persona che su di essa ha autorità, al fine di indurle o costringerle a prestazioni lavorative, sessuali ovvero all'accattonaggio o comunque al compimento di attività illecite che ne comportano lo sfruttamento o a sottoporsi al prelievo di organi. | Imprisonment: 8 – 20 years | |
| Albanian | | | |
| Albania | | | |
| Kodi Penal, Section 110(a) – para 1 | Rekrutimi, transportimi, transferimi, fshehja ose pritja e personave nëpërmjet kërcënimit ose përdorimit të forcës apo formave të tjera të shtrëngimit, rrëmbimit, mashtrimit, shpërdorimit të detyrës ose përfitimit nga gjendja shoqërore, fizike apo psikike ose dhënies apo marrjes së pagesave ose përfitimeve për të marrë pëlqimin e personit që kontrollon një person tjetër, me qëllim shfrytëzimin e prostitucionit të të tjerëve ose formave të tjera të shfrytëzimit seksual, të punës ose shërbimeve të detyruara, të skllavërimit ose formave të ngjashme me skllavërimin, të vënies në përdorim ose transplantimit të organeve, si dhe formave të tjera të shfrytëzimit, si brenda dhe jashtë territorit të Republikës së Shqipërisë, dënohen me burgim nga tetë deri në pesëmbëdhjetë vjet. | Imprisonment: 8 – 15 years | |

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| Kodi Penal, Section 110(a) – para 2 | Kur kjo vepër kryhet ndaj një personi të rritur të gjinisë femërore dënohet me burgim nga dhjetë deri në pesëmbëdhjetë vjet. | Imprisonment: 10 – 15 years | |
| Kodi Penal, Section 110(a) – para 3 | Organizimi, drejtimi dhe financimi i trafikimit të personave dënohen me burgim nga shtatë deri në pesëmbëdhjetë vjet | Imprisonment: 7 – 15 years | |
| Kodi Penal, Section 110(a) – para 4 | Kur kjo vepër kryhet në bashkëpunim, më shumë se një herë, shoqërohet me keqtrajtimin dhe detyrimin me dhunë fizike a psikike ndaj të dëmtuarit, për të kryer veprime të ndryshme, sjell pasoja të rënda për shëndetin, ose rrezikon jetën e tij, dënohet me burgim jo më pak se pesëmbëdhjetë vjet. | Imprisonment: 15 years (minimum) | |
| Kodi Penal, Section 110(a) – para 5 | Kur vepra ka sjellë si pasojë vdekjen e të dëmtuarit, dënohet me burgim jo më pak se njëzet vjet ose me burgim të përjetshëm. | Imprisonment: 20 years - life | |
| Kodi Penal, Section 128(b) – para 1 | Rekrutimi, shitja, transportimi, transferimi, fshehja ose pritja e të miturve me qëllim shfrytëzimin e prostitucionit ose formave të tjera të shfrytëzimit seksual, të punës ose shërbimeve të detyruara, skllavërimit ose formave të ngjashme me skllavërimin, vënies në përdorim ose transplantimit të organeve, si dhe formave të tjera të shfrytëzimit, dënohen me burgim nga dhjetë deri në njëzet vjet. | Imprisonment: 10 - 20 years | |
| Kodi Penal, Section 128(b) – para 2 | Organizimi, drejtimi dhe financimi i trafikimit të të miturve dënohen me burgim nga dhjetë deri në njëzet vjet. | Imprisonment: 10 - 20 years | |
| Kodi Penal, Section 128(b) – para 3 | Kur kjo vepër kryhet në bashkëpunim ose më shumë se një herë, apo shoqërohet me keqtrajtimin dhe detyrimin me dhunë fizike a psikike të të dëmtuarit, për të kryer veprime të ndryshme, ose sjell pasoja të rënda për shëndetin, dënohet me burgim jo më pak se pesëmbëdhjetë vjet. | Imprisonment: 15 years (minimum) | |
| Kodi Penal, Section 128(b) – para 4 | Kur vepra ka sjellë si pasojë vdekjen e të dëmtuarit, dënohet me burgim jo më pak se njëzet vjet ose me burgim të përjetshëm. | Imprisonment: 20 years - life | |

Dutch

Netherlands

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| <p>Strafrecht, Article 273f(1)</p> | <p>Als schuldig aan mensenhandel wordt met gevangenisstraf van ten hoogste twaalf jaren of geldboete van de vijfde categorie gestraft:</p> <p>1° degene die een ander door dwang, geweld of een andere feitelijkheid of door dreiging met geweld of een andere feitelijkheid, door afpersing, fraude, misleiding dan wel door misbruik van uit feitelijke omstandigheden voortvloeiend overwicht, door misbruik van een kwetsbare positie of door het geven of ontvangen van betalingen of voordelen om de instemming van een persoon te verkrijgen die zeggenschap over die ander heeft, werft, vervoert, overbrengt, huisvest of opneemt, met inbegrip van de wisseling of overdracht van de controle over die ander, met het oogmerk van uitbuiting van die ander of de verwijdering van diens organen;</p> | <p>Imprisonment: 12 years (maximum)</p> <p>Fine: (5th category)</p> | |
| <p>Strafrecht, Article 273f(3)</p> | <p>De schuldige wordt gestraft met gevangenisstraf van ten hoogste vijftien jaren of geldboete van de vijfde categorie, indien:</p> <p>de feiten, omschreven in het eerste lid, worden gepleegd door twee of meer verenigde personen;</p> <p>degene ten aanzien van wie de in het eerste lid omschreven feiten worden gepleegd een persoon is die de leeftijd van achttien jaren nog niet heeft bereikt dan wel een ander persoon is bij wie misbruik van een kwetsbare positie wordt gemaakt;</p> <p>de feiten, omschreven in het eerste lid, zijn voorafgegaan, vergezeld of gevolgd van geweld.</p> | <p>Imprisonment: 15 years (maximum)</p> <p>Fine: (5th category)</p> | |
| <p>Strafrecht, Article 273f(4)</p> | <p>Indien een van de in het eerste lid omschreven feiten zwaar lichamelijk letsel ten gevolge heeft of daarvan levensgevaar voor een ander te duchten is, wordt gevangenisstraf van ten hoogste achttien jaren of geldboete van de vijfde categorie opgelegd.</p> | <p>Imprisonment: 18 years (maximum)</p> <p>Fine: (5th category)</p> | |
| <p>Strafrecht, Article 273f(5)</p> | <p>Indien een van de in het eerste lid omschreven feiten de dood ten gevolge heeft, wordt levenslange gevangenisstraf of tijdelijke van ten hoogste dertig jaren of geldboete van de vijfde categorie opgelegd.</p> | <p>Imprisonment: life or imprisonment for 30 years (maximum)</p> <p>Fine: (5th category)</p> | |

ANNEX B – NON-PUNISHMENT PROVISIONS

AFRICA – NON-PUNISHMENT PROVISIONS

| Legislation | Non-Punishment Provisions | Notes |
|---|---|-------|
| English | | |
| Botswana | | |
| Anti-Human Trafficking Act 2014, Section 23 | Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Botswana illegally or for any criminal act that was a direct result of being trafficked. | |
| Egypt | | |
| Law No. (64) of 2010 regarding Combating Human Trafficking, Article 21 | The victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim. | |
| Ethiopia | | |
| Proclamation No 909/2015: Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, Article 30 | Any person victim of trafficking in persons or smuggling of migrants shall not be legally prosecuted on the facts of being a victim of the crime. | |
| The Gambia | | |
| Trafficking in Persons Act 2007, Article 49 | Where the circumstances so justify, a victim of trafficking shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including non-possession of valid travel documents or use of a false travel or other documents. | |
| Malawi | | |
| Trafficking in Persons Act 2015, Section 42 | A person who has been certified as a trafficked person by an enforcement officer or a protection officer, in accordance with this Act, shall not be subjected to any criminal proceedings directly relating to, or as a direct consequence of, the person's situation as a trafficked person. | |
| Mozambique | | |
| Law No 6/2008, Article 20(3) | Victims of trafficking are not criminally liable for the commission of trafficking-related acts included in this law or any others they are coerced into, their consent being irrelevant. | |

| Kenya | | |
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| Counter-Trafficking in Persons Act, Section 14 | Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked. | |
| Senegal | | |
| ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims, Article 12 | Notwithstanding anything to the contrary, victims of crimes under this Act may not be subject to prosecution and conviction. The provisions of the preceding paragraph are not applicable to the adult who knowingly contributes to the achievement of the offense. | Any alien who, outside the territory of the Republic, was guilty either as author or as an accomplice of crimes covered by this Act may be prosecuted under the provisions of the laws of Senegal, where the victim of these offenses is a Senegalese national (Article 11) |
| Sierra Leone | | |
| Anti-Human Trafficking Act 2005, Section 16 | A victim of trafficking is not liable for any criminal offence that was a direct result from being trafficked. | |
| French | | |
| Djibouti | | |
| Loi N°133/AN/16/7ème L portant sur la lutte contre la traite des personnes et le trafic illicite des migrants, Article 31 | Une personne étrangère victime de la traite n'est pas criminellement responsable de l'entrée, du séjour ou du travail accompli de façon illégale sur le territoire national s'il y a des raisons suffisantes de croire que cette personne est une victime de la traite de personnes. | |
| Niger | | |
| Ordonnance N° 2010-86 du 16 décembre 2010 relative à la lutte contre la traite des personnes, Article 32 | Immunité pénale des victimes Les victimes des infractions visées au présent chapitre ne peuvent faire l'objet de poursuites ni de condamnation au titre desdites infractions, notamment, au titre : 1- de l'entrée illégale au Niger ; 2- de la résidence en situation illégale au Niger ; 3- de la possession de documents illégaux de voyage ou d'identité obtenus ou reçus en vue de l'entrée illégale au Niger. | |
| Tunisia | | |

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| Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 6 | N'est pas punissable toute personne qui a commis une infraction liée d'une manière directe à l'une des infractions de traite des personnes dont elle était victime. | |
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ASIA – NON-PUNISHMENT PROVISIONS

| Legislation | Non-Punishment Provisions | Notes |
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| Bangladesh | | |
| The Prevention and Suppression of Human Trafficking Act 2012, Section 37(1) | Any person or agency dealing with the subject-matter of this Act shall endeavour to ensure that any victim of the offence of human trafficking is not subjected to conviction or punishment under this Act or any other existing law | |
| Indonesia | | |
| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 2(1) | A victim who commits a crime under coercion by an offender of the criminal act of trafficking in persons shall not be liable to criminal charges. | |
| Laos | | |
| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 39 | Victims of the trafficking have the following rights: [...] 7. To be exempted from the criminal liability and shall not be detained for prostitution offence and illegal immigration; | |
| Lebanon | | |
| Penal Code, Article 586.8 | A victim who proves that he was compelled to commit acts that are punishable by law or that he was compelled to violate the terms of [his] residency or work [permit] shall be given amnesty from punishment. | |
| Malaysia | | |

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| Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 25 | <p>A trafficked person shall not be liable to criminal prosecution in respect of—</p> <p>(a) his illegal entry into the receiving country or transit country;</p> <p>(b) his period of unlawful residence in the receiving country or transit country; or</p> <p>(c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country or transit country,</p> <p>where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed or was committed.</p> | |
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Pakistan

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| Prevention of Trafficking in Persons Act 2018, Section 6 | A victim shall not be criminally liable for an offence under this Act but may become [a] witness in the case. | |
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Qatar

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| Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 4 | The victim shall not be subject to criminal or civil liability of any of trafficking in human beings crimes when such a crime is initiated or directly associated with such person as being a victim. | |
| Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 25 | The victim shall be exempted from penalties prescribed for violating Law No. (4) of year 2009 related to the entry and departure of expatriates, their residence and sponsorship. | <p>The law referred to here is Law no. 4 of 2009 Regarding Regulation of the Expatriates Entry, Departure, Residence and Sponsorship</p> <p>Penalties in that Law are set out in Articles 51-53.</p> |

United Arab Emirates

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| <p>Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015, Article 11 bis (1)</p> | <p>1. It shall be impermissible to interrogate the victim, civilly or criminally for any crime of the crimes stipulated in this Law, whenever the same is established or directly connected to being a victim.</p> <p>2. In exception of the provision of Clause (1) of this Article, it shall be permissible to interrogate the victim civilly and criminally on the human trafficking crime in the following cases:</p> <p>A. If he/she contributed in person, without being subject to any coercion whether moral or material, to the perpetration of one of the human trafficking crimes.</p> <p>B. If the person is a foreigner incoming to the country for work, and violated the work contract and the residence regulation.</p> <p>C. If the person failed to report the crime or the collusion thereof to the competent authorities while being able to.</p> | |
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LATIN AMERICA AND THE CARIBBEAN – NON-PUNISHMENT PROVISIONS

| Legislation | Non-Punishment Provisions | Notes |
|--|--|-------|
| English | | |
| Barbados | | |
| Trafficking in Persons Prevention Act 2016, Section 14 | Where a victim has been compelled to engage in unlawful activities as a direct result of being trafficked, and the victim has committed any immigration-related offence or any other criminal offence for which he is being prosecuted, the victim may offer as a defence, evidence of having been compelled as a victim of trafficking to engage in such unlawful activities. | |
| Belize | | |
| Trafficking in Persons Prohibition Act 2011, Section 10 | A victim of trafficking in persons is not criminally liable for any immigration-related offence, or any other criminal offence that is a direct result of being trafficked. | |
| Guyana | | |
| Combating of Trafficking in Persons Act 2005, Section 3 | A victim of trafficking is not criminally liable for any migration-related offence, prostitution, or any other criminal offence that was a direct result from being trafficking. | |
| Haiti | | |
| The Antitrafficking law, Article 22.2 | Victims of trafficking shall be exempted from all prosecution for illicit acts related to trafficking, committed while they were under the duress of the actual perpetrators of the offenses referred to in the present law. | |
| The Antitrafficking law, Article 22.3 | Victims of trafficking in persons who allegedly committed a homicide under the same conditions as stipulated in the previous paragraph may be eligible for extenuating circumstances. | |
| Jamaica | | |
| Trafficking in Persons (Prevention, Suppression and Punishment) Act, Section 8 | Where a person provides evidence that he is a victim he shall not be liable to prosecution for any offence against the laws relating to immigration or prostitution, that is a direct result of the offence of trafficking in persons committed against him. | |
| Trinidad and Tobago | | |

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| Trafficking in Persons Act 2011, Section 31 | Where a victim has been compelled to engage in unlawful activities as a direct result of being trafficked and he has committed any immigration-related offence, or any other criminal offence for which he is being prosecuted, he may offer as a defence, evidence of having been compelled as a victim of trafficking to engage in such unlawful activities. | |
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Spanish

| Costa Rica | | |
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| Ley 9095 Contra La Trata de Personas, Article 70 | Las víctimas del delito de trata de personas no son punibles penal o administrativamente por la comisión de faltas o delitos, cuando estos se hayan cometido durante la ejecución del delito de trata de personas y a consecuencia de esta, sin perjuicio de las acciones legales que el agraviado pueda ejercer contra el autor o los autores de los hechos. | |
| El Salvador | | |
| Decreto N° 824, Ley Especial Contra la Trata De Personas, Article 58 | No son responsables penal o administrativamente las víctimas directas del Delito de Tratade Personas, cuando estas hayan cometido hechos punibles como consecuencia o resultado directo desu condición de víctima del mismo delito. | |
| Mexico | | |
| Ley General Para Prevenir, Sancionar Y Erradicar Los Delitos En Materia De Trata De Personas Y Para La Protección Y Asistencia A Las Víctimas De Estos Delitos, Article 37 | No se procederá en contra de la víctima de los delitos previstos en esta Ley por delitos que hubiesen cometido mientras estuvieran sujetas al control o amenaza de sus victimarios, cuando no les sea exigible otra conducta. | |

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| Ley General Para Prevenir, Sancionar Y Erradicar Los Delitos En Materia De Trata De Personas Y Para La Protección Y Asistencia A Las Víctimas De Estos Delitos, Article 38 | Las víctimas extranjeras de delitos en materia de trata de personas, no serán sujetas a las sanciones previstas en la Ley de Migración u otros ordenamientos legales, por su situación migratoria irregular o por la adquisición o posesión de documentos de identificación apócrifos. Tampoco serán mantenidas en centros de detención o prisión en ningún momento antes, durante o después de todos los procedimientos administrativos o judiciales que correspondan. | |
| Paraguay | | |
| Ley N° 4788 – Integral Contra La Trata de Personas, Article 14 | <p>Las víctimas de la trata de personas no son punibles por la comisión de cualquier delito que sea el resultado directo de haber sido objeto de trata.</p> <p>Tampoco les serán aplicables las sanciones o impedimentos establecidos en la legislación migratoria cuando las infracciones sean consecuencia de la actividad desplegada durante la comisión del ilícito que las damnificare.</p> | |

THE PACIFIC – NON-PUNISHMENT PROVISIONS

| Legislation | Non-Punishment Provisions | Notes |
|---|---|-------|
| Marshall Islands | | |
| Prohibition of Trafficking in Persons Act 2017, Section 109 | <p>(1) A victim of trafficking in persons shall not be held criminally punishable for offenses committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.</p> <p>(2) Notwithstanding the provisions of the Immigration Act 2006, a victim of trafficking in persons who is a foreign citizenship shall not be held criminally liable for immigration offences established under the Immigration Act, if entry into the Republic without lawful approval was occasioned by the fact the such person was a victim of an offense under this Act, and to the satisfaction of the Director of Immigration.</p> | |
| Micronesia (Federated States of) | | |
| Trafficking in Persons Act of 2012, Section 620 | <p>(1) A trafficked person shall not be subject to criminal prosecution with respect to:</p> <p>(a) the act of human trafficking;</p> <p>(b) that person's entry into the receiving country;</p> <p>(c) that person's unlawful residence in the receiving country; and</p> <p>(d) that person's procurement or possession of any fraudulent travel or identity document.</p> | |
| Palau | | |
| Anti-People Smuggling and Trafficking Act, Section 10 | <p>A trafficked person shall not be subject to criminal prosecution with respect to:</p> <p>(a) The act of people trafficking;</p> <p>(b) That person's illegal entry into the receiving country;</p> <p>(c) That person's period of unlawful residence in the receiving country; and</p> <p>(d) That person's procurement or possession of any fraudulent travel or identity documents which he or she obtained, or with which he or she was supplied, for the purpose of entering the receiving country.</p> | |

EUROPE AND OTHERS – NON-PUNISHMENT PROVISIONS

| Legislation | Non-Punishment Provisions | Notes |
|--------------------------------------|--|-------|
| English | | |
| United Kingdom | | |
| <p>Modern Slavery Act 2015, s 45</p> | <p>(1) A person is not guilty of an offence if—</p> <p>(a) the person is aged 18 or over when the person does the act which constitutes the offence,</p> <p>(b) the person does that act because the person is compelled to do it,</p> <p>(c) the compulsion is attributable to slavery or to relevant exploitation, and</p> <p>(d) a reasonable person in the same situation as the person and having the person’s relevant characteristics would have no realistic alternative to doing that act.</p> <p>(2) A person may be compelled to do something by another person or by the person’s circumstances.</p> <p>(3) Compulsion is attributable to slavery or to relevant exploitation only if—</p> <p>(a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or</p> <p>(b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.</p> <p>(4) A person is not guilty of an offence if—</p> <p>(a) the person is under the age of 18 when the person does the act which constitutes the offence,</p> <p>(b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and</p> <p>(c) a reasonable person in the same situation as the person and having the person’s relevant characteristics would do that act.</p> <p>(5) For the purposes of this section—</p> <p>“relevant characteristics” means age, sex and any physical or mental illness or disability;</p> <p>“relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking.</p> <p>(6) In this section references to an act include an omission.</p> | |

ANNEX C – PROVISIONS CONCERNING THE COMPENSATION OF VICTIMS

AFRICA – PROVISIONS CONCERNING THE COMPENSATION OF VICTIMS

| Legislation | Compensation Provision | Notes |
|---|--|---|
| English | | |
| Botswana | | |
| Anti-Human Trafficking Act 2014, Section 22 | Where a person is convicted of an offence under this Act, the court may, in addition to any other punishment prescribed under this Act, order the person to make restitution or compensate the victim for – (a) the costs of any medical or psychological treatment; (b) the costs of necessary transportation, accommodation and other living expenses; or (c) any other relief that the court may consider just. | |
| Ethiopia | | |
| Proclamation No 909/2015: Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, Article 31 | 1/ The court may decide against the convicted person, in addition to imprisonment and fine, to pay compensation for the victim or to persons or organization who incurred cost in the name of the victim. 2/ The amount of compensation to be paid under sub-article (1) of this Article shall, enable to set off medical, transport, moral damage, any other costs or losses incurred as a direct result of the crime and other appropriate expenses; provided, however, in any case, the compensation shall not be less than the amount paid, or to be paid to the human trafficker or migrant smuggler, loss incurred by the victim because of the crime or the benefit obtained by the human trafficker or migrant smuggler. 3/ When the victim cannot get compensation under sub-articles (1) and (2) of this Article, an Ethiopian national can claim a reimbursement payment and shall be paid from the Fund. | The fund referred to in subsection 3 is set up by Article 32 of the Proclamation. |
| The Gambia | | |
| Trafficking in Persons Act 2007, Article 50 | A victim of trafficking, irrespective of his or her immigration status- (a) has the right to bring civil action against a trafficker and any other person, including a public officer, who have exploited or abused him or her; and (b) is entitled to compensation, restitution and recovery for economic, physical and psychological damages to be met from the assets of the convicted trafficker, | |

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| Trafficking in Persons Act 2007, Article 54 | (1) A person convicted of the offence of trafficking may be ordered by the court to pay compensation to the victim of the trafficking. (2) A person who, in pursuit of trafficking, causes injury to another person may be ordered to pay compensation to the injured person. (3) The payment of compensation may be in addition to any other punishment. | |
| Ghana | | |
| Human Trafficking Act 2005, Section 19 | (1) A person convicted of the offence of trafficking shall be ordered by the court to pay compensation to the victim of the trafficking. (2) A person who causes injury to a person in pursuit of trafficking shall be ordered by the court to pay compensation to the injured person. (3) The payment of compensation shall be in addition to any other punishment. | |
| Human Trafficking Act 2005, Section 39 | The institution of a criminal charge arising from acts of trafficking is in addition to and does not affect the rights of a victim to pursue a civil claim for damages. | |
| Kenya | | |
| Counter-Trafficking in Persons Act, Section 13 | Where a person is convicted of an offence under this Act, the court may, in addition to any other punishment prescribed under this Act, order the person to make restitution or compensate the victim for— (a) the costs of any medical or psychological treatment; (b) the costs of necessary transportation, accommodation and other living expenses; or (c) any other relief that the court may consider just. | |
| Counter-Trafficking in Persons Act, Section 16 | Where a victim of a trafficking in persons offence institutes civil action for damages, the victim of trafficking in persons shall be exempt from the payment of court fees. | |
| Malawi | | |
| Trafficking in Persons Act 2015, Section 40 | A trafficked person, irrespective of his immigration status, has the right to- (a) institute civil proceedings against any person including a public officer in respect of an offence under this Act; or (c) seek compensation, restitution and recovery in damages from any person or from the proceeds of disposal of assets of any person connected with an offence under this Act. | There is no subsection (b) in this section. |
| Mozambique | | |

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| Law No 6/2008, Article 19(2) (f) | Conviction for these crimes, as envisioned by law, also entails: [...] (f) payment of damages to the victim and compensation for harm or damage caused. | |
| Sierra Leone | | |
| Anti-Human Trafficking Act 2005, Section 23 | (1) Where a defendant is convicted of trafficking in persons under section 2, the court shall order the defendant to pay restitution to the victim. (2) Restitution shall compensate the victim for- (a) costs of medical and psychological treatment; (b) costs of physical and occupational therapy and rehabilitation; (c) costs of necessary transportation, temporary housing and child-care; (d) lost income; (e) legal practitioner's fees and other legal costs; (f) the greater of the gross income or value to the defendant of the victim's services or labour; (g) compensation for emotional distress, pain, and suffering; and (h) any other losses suffered by the victim. (3) Restitution shall, upon the conviction of the defendant, be paid to the victim promptly with the proceeds from any property forfeited under section 24 applied first to the payment of restitution and the return of the victim to his home country or normal place of abode but the absence of the victim from the jurisdiction shall not prejudice the victim's right to receive restitution. | Subsection 23(3) refers to section 24 of the Act. Section 24 states: (1) All property, including but not limited to money, valuables, real property and vehicles, of any person convicted of the crime of trafficking in persons under section 2 that was used or intended to be used, or was obtained in the course of the offence, or benefits gained from the proceeds of the offence, shall be forfeited to the State. (2) Any overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by Government. |
| Tanzania | | |
| Section 15 | (1) A person convicted of the offence of trafficking in persons under this Act shall be ordered by the Court to pay compensation to the victim of the trafficking in persons. (2) A person who causes injury to any person in pursuant of trafficking in persons under this Act shall be ordered to pay compensation to the injured person. (3) The payment of compensation shall be in addition to any other punishment. | |
| French | | |
| Niger | | |

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| <p>Ordonnance N° 2010-86 du 16 décembre 2010 relative à la lutte contre la traite des personnes, Article 36</p> | <p>Conformément aux dispositions du Code de Procédure Pénale, les juridictions ordonnent au bénéfice des victimes d'infractions visées à la présente ordonnance, réparation de leur préjudice quel qu'il soit.</p> <p>Une fois ordonnée, la réparation doit être réalisée dans un délai raisonnable. Les autorités judiciaires peuvent ordonner en motivant leur décision que des biens confisqués ou leur valeur correspondante soient affectés à la réparation et la protection des victimes de la traite.</p> <p>Le retour de la victime dans son pays d'origine ne préjudicie pas à son droit à réparation.</p> <p>Une fois le droit à réparation des victimes de la traite assuré, une partie du montant des biens confisqués restant est affecté à travers les subventions de l'Etat mentionnées à l'article 10, aux frais de fonctionnement des institutions de lutte contre la traite, à savoir la Commission Nationale de Coordination de la lutte contre la Traite des Personnes (CNLDT) et l'Agence Nationale de Lutte contre la Traite des Personnes (ANLTP).</p> | |
| Tunisia | | |
| <p>Loi organique n° 2016-61 du 3 août 2016 relative à la prévention et à la lutte contre la traite des personnes, Article 63</p> | <p>Les victimes de la traite des personnes ayant des jugements définitifs d'indemnisation rendus en leur faveur, peuvent, en cas de non-exécution de ces derniers, réclamer le remboursement de ces frais auprès de la trésorerie de l'Etat. L'Etat prend en charge le remboursement de ces frais, en tant que dette publique.</p> | |

ASIA – PROVISIONS CONCERNING THE COMPENSATION OF VICTIMS

| Legislation | Compensation Provision | Notes |
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| Bangladesh | | |
| The Prevention and Suppression of Human Trafficking Act 2012, Section 28 | <p>(1) Where an accused person is convicted of an offence of [sic] committed under this Act, the Tribunal may pass an order to the accused to pay the victim of the offence of human trafficking a reasonable amount of compensation in addition to fine imposed by it, and, any such compensation shall be recovered by the tribunal directly or, if necessary, in accordance with the provisions of the Public Demands Recovery Act. 1913</p> <p>(2) If the Tribunal only passes an order of fine, without passing the order of compensation under sub-section (1) it may order that the whole or any part of the fine so imposed be provided to the victim of trafficking or to the victim.</p> <p>(3) The amount of compensation passed under sub-section (1) shall be determined at the discretion of the Tribunal, and, while awarding compensation, it shall take into consideration the matters regarding the costs of physical and mental treatment of the affected person, costs of necessary transportation or temporary housing, lost income, sufferance, the actual or emotional injury and the gravity of the distress.</p> | |
| The Prevention and Suppression of Human Trafficking Act 2012, Section 39 | Without prejudice to the right to institute criminal proceedings, and besides any criminal proceeding initiated, the victim or the victim of human trafficking may sue for compensation in any civil court for his actual sufferance or legal injury resulting from the offence committed under this Act or for the breach of any contract concerned to the offence. | |
| Indonesia | | |

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| <p>Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 48</p> | <p>(1) Every victim of a criminal act of trafficking in persons or his/her beneficiary is entitled to receive restitution.</p> <p>(2) Restitution as referred to in paragraph (1) constitutes compensation for:</p> <ol style="list-style-type: none"> a. loss of assets or income; b. suffering; c. cost of medical and/or psychological treatment; and /or d. other losses suffered by the victim arising from the criminal act of trafficking in persons. <p>(3) Restitution shall be awarded and specified in the same court ruling of the criminal act of trafficking in persons cases.</p> <p>(4) The provision of restitution as provided under paragraph (1) shall be effected upon the issuance of the first court ruling.</p> <p>(5) Restitution as provided under paragraph (4) may be temporarily deposited with the court in which the case is ruled upon.</p> <p>(6) Provision of restitution shall be effected within 14 (fourteen) days from the notification of court ruling having permanent legal force.</p> <p>(7) In the event the offender is ruled as not guilty by a court of appeals or cassation, the court will stipulate in its ruling that the deposited restitution money is to be returned to the said offender.</p> | <p>Elucidatory notes in the Act state, in relation to Article 48:</p> <p>Paragraph (1) In this Article, the procedure for the claim for restitution is commenced from the time the victim lodges a report of his/her case to the local Police and is carried out by investigators simultaneously with the investigations of the crime committed. The prosecutor is obligated to inform the witness of his/her rights to claim for restitution, and must state the amount of the loss suffered by the victim as a result of the criminal act of trafficking in persons in concurrence with the charges [for the offence]. This procedure does not eliminate the right of the victim to file his/her own claim for compensation of such loss.</p> <p>Paragraph (2) The term “other losses” in this clause may include:</p> <ol style="list-style-type: none"> a. loss of personal property; b. basic transport cost; c. legal fees or other costs relating to the legal proceedings; or d. loss of income promised by the offender. <p>Paragraph (3) Sufficiently clear.</p> <p>Paragraph (4) Sufficiently clear.</p> <p>Paragraph (5) In this clause, the temporary depositing of cash restitution with the court is done in accordance with the provisions of the law. This clause is made to mirror the process which applies in the handling of a civil case on the consignment.</p> <p>Paragraph (6) Restitution as provided under this clause constitutes factual payment of the restitution amount awarded which was previously deposited with the court of the first instance.</p> <p>Paragraph (7) Sufficiently clear.</p> |
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| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 49 | <p>(1) Payment of restitution shall be reported to the head of the court where the ruling was passed, accompanied by proof of such payment.</p> <p>(2) Upon receipt of the proof of payment as referred to in paragraph (1), the head of the court shall announce the payment of restitution in the court's bulletin board.</p> <p>(3) A copy of the proof of payment of restitution as referred to in paragraph (1) shall be given by the court to the victim or his/her beneficiary.</p> | |
| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 50 | <p>(1) In the event the order to pay restitution is not carried out within the period as prescribed under Article 48 paragraph (6), the victim or his/her beneficiary informs such failure to the court.</p> <p>(2) The court as referred to in paragraph (1) will issue a written notice to the restitution provider to immediately make such restitution payment to the victim or his/her beneficiary.</p> <p>(3) If the notice as referred to in paragraph (2) is not acted upon within 14 (fourteen) days, the court will instruct the prosecutor to seize the assets of the convicted offender and auction such assets in order to effect restitution payment.</p> <p>(4) If the offender is not able to pay restitution, he/she is subject to a prison sentence in lieu of restitution for a maximum period of 1 (one) year.</p> | |
| Laos | | |
| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 36 | <p>The victim or civil plaintiff have the right to claim for civil compensation during criminal proceedings.</p> <p>Apart from civil compensation, relevant organizations shall provide necessary protection and assistance to the victim as provided for in Art. 44 of this law and in accordance with the court decision.</p> | <p>Article 44 of the Law states:</p> <p>The victims of the trafficking in persons shall have rights to access to the following necessary assistances:</p> <ol style="list-style-type: none"> 1. Temporarily shelter; 2. Legal assistance; 3. Medical treatment; 4. Education and vocational training; 5. Economic support; 6. Reintegration. <p>Individuals, legal entities and relevant organizations providing assistances to the victims shall be protected in accordance with the laws.</p> |
| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 39 | <p>Victims of the trafficking have the following rights:</p> <p>[...]</p> <p>6. To be compensated</p> | |

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| Law Number 21 on The Eradication of the Criminal Act of Trafficking in Persons, 2007, Article 88 | Individuals, legal entities, organizations and families violating this law and causing damages to other persons shall be liable for such damages. | |
| Nepal | | |
| Human Trafficking and Transportation (Control) Act 2007, Section 16 | (1) A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender. (2) If the victim dies before receiving the compensation under SubSection (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation. (3) If there are no dependant parents and minor children to receive compensation under Sub-Section (2), the amount should be accrued in the Rehabilitation Fund. | |
| Oman | | |
| Royal Decree No 126/2008 – Anti-Trafficking Law, Article 17 | A victim of trafficking in persons' crime shall be exempted from the fees of the civil procedures they made to claim compensation for the damage caused by their exploitation in the crime of trafficking in persons. | |
| Qatar | | |
| Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 6 | The competent authorities shall ensure the provision of the following rights for the victims: [...] 6. Obtaining an appropriate compensation for damages suffered. | |
| Qatari Law No 15 of Year 2011 on Combating Trafficking in Human Beings, Article 10 | The competent court having jurisdiction to consider a criminal action arising from any of the offences provided in this Law, shall also decide on civil suit arising from such crimes. | |
| United Arab Emirates | | |

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| <p>Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015, Article 13 <i>bis</i></p> | <p>The victim of human-trafficking crimes shall be exempted from civil-case fees upon filing the same to claim compensation for the damage resulting from the exploitation thereof in a human trafficking crime.</p> | |
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**LATIN AMERICA AND THE CARIBBEAN –
PROVISIONS CONCERNING THE
COMPENSATION OF VICTIMS**

| Legislation | Compensation Provision | Notes |
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| English | | |
| Barbados | | |
| <p>Trafficking in Persons Prevention Act 2016, Section 11</p> | <p>(1) Where a person is convicted of an offence of trafficking, the court may, in addition to any penalty imposed pursuant to this section, order that person to pay restitution to the victim.</p> <p>(2) Restitution must compensate, where applicable, for any of the following:</p> <ul style="list-style-type: none"> (a) costs of medical and psychological treatment; (b) costs of physical and occupational therapy and rehabilitation; (c) costs of necessary transportation, temporary housing and child-care; (d) lost income; (e) attorney's fees and other legal costs; (f) compensation for emotional distress, pain and suffering; (g) any other losses suffered by the victim which the court considers applicable. <p>(3) Notwithstanding subsection (2), where the property of a person convicted under this Act is forfeited, restitution shall be paid to the victim as far as possible from that property or from the Criminal Assets Recovery Fund.</p> | <p>The explanatory memorandum, attached to the Act, states that</p> <p>This clause makes provision for restitution to be made to victims in appropriate circumstances and, in particular, it implements Article 14 (2) of the Convention.</p> |
| Belize | | |
| <p>Trafficking in Persons Prohibition Act 2011, Section 6</p> | <p>(1) The court may order a person convicted of the offence of trafficking in persons to pay restitution to the victims.</p> <p>(2) In determining the amount of restitution, the court shall take into account,</p> <ul style="list-style-type: none"> (a) the cost of medical and psychological treatment of the victim; (b) the costs of physical and occupational therapy and rehabilitation of the victim; (c) the costs of necessary transportation, temporary housing and childcare of the victim; (d) the victim's lost income; (e) the degree of emotional distress, pain and suffering experienced by the victim; and (f) any other loss suffered by the victim. <p>(3) Where the court orders the payments of restitution, that payment shall be made promptly after the conviction, and the return of the victim to his home country or any other absence of the victim from Belize shall not prejudice the victim's right to receive restitution.</p> | |

| Dominica | | |
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| Transnational Organized Crime Act 13 (Prevention and Control), Section 13(3)-(5) | <p>(3) Where a person is convicted of the offence of trafficking in persons, the court may, in addition to any penalty imposed under this section, order that person to pay restitution to the victim.</p> <p>(4) Restitution must compensate, where applicable, for any of the following –</p> <ul style="list-style-type: none"> (a) costs of medical and psychological treatment; (b) costs of physical and occupational therapy and rehabilitation; (c) costs of necessary transportation, temporary housing and child-care; (d) lost income; (e) attorney’s fees and other legal costs; (f) compensation for emotional distress, pain and suffering; (g) any other losses suffered by the victim which the court considers applicable. <p>(5) Notwithstanding subsection (3), where the property of a person convicted under this Act is forfeited, under the Proceeds of Crime Act or any other relevant Act, restitution shall be paid to the victim as far as possible, from that property or the proceeds thereof.</p> | |
| Guyana | | |
| Combating of Trafficking in Persons Act 2005, Section 6 | <p>(1) Where a defendant is convicted of trafficking in persons under this Act, the court shall order the defendant to pay restitution to the victim.</p> <p>(2) Restitution shall compensate the victim for -</p> <ul style="list-style-type: none"> (a) costs of medical and psychological treatment; (b) costs of physical and occupational therapy and rehabilitation; (c) costs of necessary transportation, temporary housing and child-care; (d) lost income; (e) attorney’s fees and other costs such as victim advocate fees; (f) compensation for emotional distress, pain and suffering; and (g) any other losses suffered by the victim. <p>(3) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from the property forfeiture under section 7 applied first to payment of restitution. The return of the victim to the victim’s home country, normal place of residence in Guyana, or other absence of victim from the jurisdiction shall not prejudice the victim’s right to receive restitution.</p> | Section 7, referred to in subsection (3), deals with forfeiture of property to the State. |
| Jamaica | | |

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| <p>Trafficking in Persons (Prevention, Suppression and Punishment) Act, Section 6</p> | <p>(1) Where a defendant is convicted of the offence of trafficking in persons, the court shall, in the same proceedings in which the person is convicted of the offence, order the person to pay restitution to the victim.</p> <p>(2) Restitution shall compensate, where applicable, for any of the following-</p> <ul style="list-style-type: none"> (a) costs of medical and psychological treatment; (b) costs of physical and occupational therapy and rehabilitation; (c) costs of necessary transportation, temporary housing and child-care; (d) lost income; (e) attorney's fees and other legal costs; (f) compensation for emotional distress, pain and suffering; and (g) any other losses suffered by the victim which the Court considers applicable. <p>(3) Restitution shall be paid to the victim from the property of the convicted person including as far as possible property forfeited under the provisions of the <i>Proceeds of Crime Act</i> for an offence of trafficking in persons or the proceeds thereof.</p> <p>(4) The absence of the victim from the proceedings shall not prejudice the victim's right to receive restitution.</p> | |
| Trinidad and Tobago | | |

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| <p>Trafficking in Persons Act 2011, Section 29</p> | <p>(1) Where a person is convicted of the offence of trafficking in persons or trafficking in children, the Court may, in accordance with Rules made under subsection (4), order that compensation be paid to the victim by the person convicted or out of the proceeds of any property forfeited under section 24.</p> <p>(2) Compensation shall be adequate and shall compensate, where applicable, for any of the following:</p> <p>(a) costs of medical and psychological treatment;</p> <p>(b) costs of physical and occupational therapy and rehabilitation;</p> <p>(c) costs of necessary transportation, temporary housing and child-care;</p> <p>(d) lost income;</p> <p>(e) attorney's fees and other legal costs;</p> <p>(f) compensation for emotional distress, pain and suffering;</p> <p>(g) any other losses suffered by the victim which the Court considers applicable; and</p> <p>(h) where the victim is not a national of or resident in Trinidad and Tobago, the cost of returning that person to the country of origin or residence or such third country which will accept his entry.</p> <p>(3) Compensation payable under this section shall be paid to the victim as soon as practicable after the making of an order under subsection (1) and in addition to any other remedy or penalty in relation to the offence.</p> <p>(4) The Rules Committee of the Supreme Court may, subject to negative resolution of Parliament, make rules with respect to the making of an order for restitution under subsection (1) and any other procedure for giving effect to the Order.</p> <p>(5) Where there are no rules made by the Rules Committee of the Supreme Court with respect to the making of an order for restitution under subsection (1) and any other procedure for giving effect to the Order, the Judge may give directions to effect the same.</p> | <p>Section 24, referred to in subsection (1), deals with forfeiture of property to the State.</p> |
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| <p>Trafficking in Persons Act 2011, Section 30</p> | <p>(1) Notwithstanding any other law to the contrary, where a person is convicted of an offence of trafficking, the victim may also apply to the Court for compensation, and the Court shall order that the convicted person pay compensation to the victim.</p> <p>(2) Victims of trafficking are also eligible to apply for relief under section 29 of the Criminal Injuries Compensation Act.</p> <p>(3) Where an order for compensation to the victim is made in a Court and the victim seeks further compensation in another Court, the Court that awards further compensation shall take into account the amount of compensation already ordered where the Court makes a further order.</p> <p>(4) The return of the victim to the victim's home country, normal place of residence in Trinidad and Tobago, or other absence of the victim from the jurisdiction, shall not prejudice the victim's right to receive compensation or restitution.</p> | |
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Spanish

Costa Rica

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| <p>Ley 9095 Contra La Trata de Personas, Article 73</p> | <p>Cuando el tribunal declare al imputado penalmente responsable del delito de trata de personas o sus actividades conexas, y se haya ejercido la acción civil resarcitoria por parte de la víctima y si así procediera, también lo condenará al pago de la reparación del daño provocado a la persona víctima. La condenatoria civil debe incluir:</p> <ul style="list-style-type: none"> a) Los costos del tratamiento médico. b) Los costos de la atención psicológica y la rehabilitación física y ocupacional. c) Los costos del transporte, incluido el de retorno voluntario a su lugar de origen o traslado a otro país cuando corresponda, los gastos de alimentación, de vivienda provisional y el cuidado de personas menores de edad o de personas con discapacidad, en que haya incurrido. d) El resarcimiento de los perjuicios ocasionados. e) La indemnización por daños psicológicos. <p>El estatus migratorio de la persona víctima o su ausencia por retorno a su país de origen, residencia o tercer país, no impedirá que el tribunal ordene el pago de una indemnización con arreglo al presente artículo.</p> <p>Las autoridades judiciales correspondientes, con el apoyo de las representaciones consulares y diplomáticas, realizarán todas las gestiones necesarias para localizar a la víctima y ponerla en conocimiento de la resolución judicial que le otorga el beneficio resarcitorio.</p> <p>El daño sufrido por la víctima será valorado por un perito nombrado por el tribunal y debidamente capacitado para ese efecto.</p> | |
| El Salvador | | |

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| <p>Decreto N° 824, Ley Especial Contra la Trata De Personas, Article 41</p> | <p>En todos los casos cuando el tribunal competente declare a la o el imputado penalmenteresponsable del Delito de Trata de Personas, deberá además contemplarse conforme al Código Penal en la sentencia condenatoria la cuantía de la responsabilidad civil por el daño causado a las víctimas, sus dependientes o personas responsables, monto que será fijado en la misma a partir de los elementos probatorios aportados por la Fiscalía General de la República.</p> <p>En cuanto a la precedencia del pago de obligaciones, la correspondiente a la responsabilidad civil por el Delito de Trata de Personas, salvo la obligación de dar alimentos, es preferente al pago de cualquier otra obligación o sanción pecuniaria. Se hará efectiva, una vez la sentencia sea declarada firme, en un plazo de noventa días, salvo que por circunstancias que vayan en beneficio de la víctima deba ampliarse el mismo.</p> <p>Para efectos de la presente Ley, la responsabilidad civil deberá comprender:</p> <ul style="list-style-type: none"> a) La indemnización a la víctima del Delito de Trata de Personas, sus dependientes o personas responsables, por los perjuicios causados por daños materiales o morales, incluidos los costos del transporte, el de retorno a su lugar de origen o traslado a otro país cuando corresponda; b) La restitución de cualquier otra pérdida material sufrida como consecuencia de la realización del hecho punible, o en su defecto, el pago del respectivo valor; y, c) El pago de las costas procesales. <p>Lo anterior es sin perjuicio que el Estado a través de sus instituciones, debe garantizar a la víctima, sus dependientes o personas responsables, todos los mecanismos pertinentes para hacer efectiva la reparación de los daños ocasionados por el delito.</p> | |
| Mexico | | |

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| <p>Ley General Para Prevenir, Sancionar Y Erradicar Los Delitos En Materia De Trata De Personas Y Para La Protección Y Asistencia A Las Víctimas De Estos Delitos, Article 50</p> | <p>La reparación del daño se podrá reclamar en forma conexas a la responsabilidad penal, por la vía civil; y cuando sea exigible a terceros, tendrá el carácter de responsabilidad civil.</p> <p>Lo anterior de conformidad a lo establecido en los códigos Civil y de Procedimientos Civiles que corresponda.</p> | |
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| <p>Ley General Para Prevenir, Sancionar Y Erradicar Los Delitos En Materia De Trata De Personas Y Para La Protección Y Asistencia A Las Víctimas De Estos Delitos, Article 82</p> | <p>El monto que determine el juez para la reparación del daño deberá resarcir a las víctimas y ofendidos por los daños ocasionados por cualquiera de las conductas típicas incluidas en la presente Ley.</p> <p>Ese resarcimiento comprenderá la devolución de los bienes o el pago por los daños o pérdidas sufridos, el reembolso de los gastos realizados como consecuencia de la victimización, la prestación de servicios y la restitución de sus derechos, incluyendo:</p> <p>I. Costos de tratamientos médicos, medicinas, exámenes clínicos e intervenciones necesarias, prótesis o aparatos ortopédicos, de ser el caso, hasta la total recuperación de la víctima y su rehabilitación;</p> <p>II. Costos de terapias o tratamientos psiquiátrico, psicológico y rehabilitación física, social y ocupacional hasta la total recuperación de la víctima;</p> <p>III. Costos de transporte, incluido el de retorno a su lugar de origen, si así lo decide la víctima, gastos de alimentación, vivienda provisional, vestido y los que sean necesarios;</p> <p>IV. Pérdida de oportunidades, en particular las de empleo, educación y prestaciones sociales;</p> <p>V. Daños materiales y pérdida de ingresos, incluida la indemnización laboral por el tiempo que no pudo laborar en su trabajo perdido;</p> <p>VI. Los gastos de asistencia y representación jurídica o de peritos hasta la total conclusión de los procedimientos legales necesarios;</p> <p>VII. Si así lo solicita la víctima, una declaración oficial o decisión judicial que restablezca la dignidad, la reputación y los derechos de la víctima y de las personas estrechamente vinculadas a ella.</p> <p>En los casos en que el sujeto o sujetos activos del delito sean miembros de la delincuencia organizada nacional o transnacional, la víctima, ofendidos y testigos tendrán derecho a cambio de identidad y de residencia.</p> <p>Cuando funcionarios públicos u otros agentes que actúen a título oficial, cometan cualquiera de los delitos objeto de esta Ley, las víctimas serán resarcidas por el Estado, conforme a la legislación en materia de responsabilidad patrimonial, a través de las dependencias o instancias cuyos funcionarios o agentes hayan sido responsables de los delitos o los daños causados.</p> | |
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| Paraguay | |
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| Ley N° 4788 – Integral Contra La Trata de Personas, Article 17 | En caso de condena por un hecho punible previsto en la presente Ley, a pedido de parte el tribunal podrá fijar una indemnización a la víctima, a cargo del condenado. Se dará prioridad a la indemnización sobre cualquier otra sanción pecuniaria. |
| Ley N° 4788 – Integral Contra La Trata de Personas, Article 18 | El objetivo de la indemnización será ofrecer a la víctima compensación por lesiones, pérdidas o daños causados por el hecho punible. La indemnización debe incluir el pago total o en parte de: <ol style="list-style-type: none"> 1. el costo del tratamiento médico, físico, psicológico o psiquiátrico requerido por la víctima; 2. el costo de la terapia o rehabilitación física u ocupacional requerida por la víctima; 3. los gastos necesarios de transporte, cuidado temporal de niños, vivienda temporal o desplazamientos de la víctima a un lugar de residencia provisional segura; 4. el lucro cesante y el sueldo debido de conformidad con la Ley y los reglamentos nacionales relativos a los sueldos; 5. las costas judiciales y otros gastos o costos, incluidos los gastos incurridos en relación con la participación de la víctima en la investigación penal y el proceso judicial; 6. los pagos por daños no materiales, resultantes de lesiones morales, físicas o psicológicas, el estrés emocional, el dolor y el sufrimiento de la víctima como resultado del delito cometido contra ella; y, 7. cualquier otro gasto o pérdida incurrido por la víctima como resultado directo de haber sido objeto de trata y determinado debidamente por el tribunal. |
| Ley N° 4788 – Integral Contra La Trata de Personas, Article 19 | La situación de inmigración o el regreso de la víctima a su país de origen, u otra ausencia de la víctima de la jurisdicción, no impedirán al tribunal ordenar el pago de la indemnización. |
| Ley N° 4788 – Integral Contra La Trata de Personas, Article 20 | Cuando un funcionario público sea condenado por acciones que constituyen un delito en virtud de la presente Ley y las mismas hubieran sido realizadas en el cumplimiento real o aparente de sus funciones, el tribunal podrá ordenar el pago de una indemnización por parte del Estado, en los términos establecidos en el Artículo 106 de la Constitución Nacional. |

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| Ley Nº 4788 – Integral Contra La Trata de Personas, Article 21 | Para fijar la indemnización, el tribunal tendrá en cuenta la gravedad de los daños causados a la víctima y las secuelas que el delito haya dejado en ella. | |
| Ley Nº 4788 – Integral Contra La Trata de Personas, Article 22 | <p>Las víctimas de los hechos punibles descritos en la presente ley, en los casos que el tribunal no ordene el pago de indemnización, o tuvieren acción contra terceros no condenados, podrán entablar las demandas de indemnización correspondiente, bajo el amparo del beneficio de litigar sin gastos, sin necesidad de acreditar ningún otro requisito. Pudiendo renunciar en forma expresa a dicho beneficio. El Estado velará por el ejercicio de este derecho, a través de sus órganos.</p> <p>Este beneficio le ampara asimismo en los procedimientos de ejecución de la indemnización.</p> | |

**THE PACIFIC –
PROVISIONS CONCERNING THE
COMPENSATION OF VICTIMS**

| Legislation | Compensation Provision | Notes |
|---|--|-------|
| Marshall Islands | | |
| Prohibition of Trafficking in Persons Act 2017, Section 120 | <p>(1) Where an offender is convicted of an offence under the present Act, the Court may order the offender to pay compensation to the victim, in addition to, or in place of, any other punishment ordered by the Court</p> <p>(2) The aim of an order for compensation shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:</p> <p>(a) Cost of medical, physical, psychological or psychiatric treatment by the victim;</p> <p>(b) Cost of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;</p> <p>(c) Lost income and due wages according to national law and regulations regarding wages;</p> <p>(d) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;</p> <p>(e) Any other costs or losses incurred by the victim as a direct result of being trafficking and reasonably assessed by the Court.</p> | |

EUROPE AND OTHERS – PROVISIONS CONCERNING THE COMPENSATION OF VICTIMS

| Legislation | Compensation Provision | Notes |
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| English | | |
| United Kingdom | | |

Modern
Slavery Act
2015, s 8

(1) The court may make a slavery and trafficking reparation order against a person if— (a) the person has been convicted of an offence under section 1, 2 or 4, and (b) a confiscation order is made against the person in respect of the offence.

(2) The court may also make a slavery and trafficking reparation order against a person if— (a) by virtue of section 28 of the Proceeds of Crime Act 2002 (defendants who abscond during proceedings) a confiscation order has been made against a person in respect of an offence under section 1, 2 or 4, and (b) the person is later convicted of the offence.

(3) The court may make a slavery and trafficking reparation order against the person in addition to dealing with the person in any other way (subject to section 10(1)).

(4) In a case within subsection (1) the court may make a slavery and trafficking reparation order against the person even if the person has been sentenced for the offence before the confiscation order is made. (5) In determining whether to make a slavery and trafficking reparation order against the person the court must have regard to the person's means.

(6) If the court considers that— (a) it would be appropriate both to impose a fine and to make a slavery and trafficking reparation order, but (b) the person has insufficient means to pay both an appropriate fine and appropriate compensation under such an order, the court must give preference to compensation (although it may impose a fine as well).

(7) In any case in which the court has power to make a slavery and trafficking reparation order it must— (a) consider whether to make such an order (whether or not an application for such an order is made), and (b) if it does not make an order, give reasons.

(8) In this section— (a) “the court” means— (i) the Crown Court, or (ii) any magistrates' court that has power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates' courts); (b) “confiscation order” means a confiscation order under section 6 of the Proceeds of Crime Act 2002; (c) a confiscation order is made in respect of an offence if the offence is the offence (or one of the offences) concerned for the purposes of Part 2 of that Act.

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| <p>Modern Slavery Act 2015, s 9</p> | <p>(1) A slavery and trafficking reparation order is an order requiring the person against whom it is made to pay compensation to the victim of a relevant offence for any harm resulting from that offence.</p> <p>(2) “Relevant offence” means— (a) the offence under section 1, 2 or 4 of which the person is convicted; (b) any other offence under section 1, 2 or 4 which is taken into consideration in determining the person’s sentence.</p> <p>(3) The amount of the compensation is to be such amount as the court considers appropriate having regard to any evidence and to any representations made by or on behalf of the person or the prosecutor, but subject to subsection (4).</p> <p>(4) The amount of the compensation payable under the slavery and trafficking reparation order (or if more than one order is made in the same proceedings, the total amount of the compensation payable under those orders) must not exceed the amount the person is required to pay under the confiscation order.</p> <p>(5) In determining the amount to be paid by the person under a slavery and trafficking reparation order the court must have regard to the person’s means.</p> <p>(6) In subsection (4) “the confiscation order” means the confiscation order within section 8(1)(b) or (2)(a) (as the case may be).</p> | |
| United States of America | | |

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| 18 U.S. Code § 1593 | <p>a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.</p> <p>(b)</p> <p>(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.</p> <p>(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.</p> <p>(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(c)(2) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).</p> <p>(4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853).</p> <p>(c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.</p> | <p>18 U.S. Code § 2259(c)(2) states:</p> <p>Full amount of the victim's losses.— For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—</p> <p>(A) medical services relating to physical, psychiatric, or psychological care;</p> <p>(B) physical and occupational therapy or rehabilitation;</p> <p>(C) necessary transportation, temporary housing, and child care expenses;</p> <p>(D) lost income;</p> <p>(E) reasonable attorneys' fees, as well as other costs incurred; and</p> <p>(F) any other relevant losses incurred by the victim.</p> |
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French

France

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| <p>Code de procédure pénale, Article 706-3</p> | <p>Toute personne, y compris tout agent public ou tout militaire, ayant subi un préjudice résultant de faits volontaires ou non qui présentent le caractère matériel d'une infraction peut obtenir la réparation intégrale des dommages qui résultent des atteintes à la personne, lorsque sont réunies les conditions suivantes:</p> <p>1° Ces atteintes n'entrent pas dans le champ d'application de l'article 53 de la loi de financement de la sécurité sociale pour 2001 (n° 2000-1257 du 23 décembre 2000) ni de l'article L. 126-1 du code des assurances ni du chapitre Ier de la loi n° 85-677 du 5 juillet 1985 tendant à l'amélioration de la situation des victimes d'accidents de la circulation et à l'accélération des procédures d'indemnisation et n'ont pas pour origine un acte de chasse ou de destruction des animaux susceptibles d'occasionner des dégâts ;</p> <p>2° Ces faits:</p> <p>-soit ont entraîné la mort, une incapacité permanente ou une incapacité totale de travail personnel égale ou supérieure à un mois;</p> <p>-soit sont prévus et réprimés par les articles 222-22 à 222-30, 224-1 A à 224-1 C, 225-4-1 à 225-4-5, 225-5 à 225-10, 225-14-1 et 225-14-2 et 227-25 à 227-27 du code pénal ;</p> <p>3° La personne lésée est de nationalité française ou les faits ont été commis sur le territoire national.</p> <p>La réparation peut être refusée ou son montant réduit à raison de la faute de la victime.</p> | <p>The offence under 225-4-1 of the Code Pénal is France's trafficking in person's offence.</p> |
| Italian | | |
| Italy | | |

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| <p>Code de procédure pénale, Article 706-3</p> | <p>Art. 74. Legittimazione all'azione civile. 1. L'azione civile per le restituzioni e per il risarcimento del danno di cui all'articolo 185 del codice penale può essere esercitata nel processo penale dal soggetto al quale il reato ha recato danno ovvero dai suoi successori universali, nei confronti dell'imputato e del responsabile civile.</p> <p>Art. 75. Rapporti tra azione civile e azione penale. 1. L'azione civile proposta davanti al giudice civile può essere trasferita nel processo penale fino a quando in sede civile non sia stata pronunciata sentenza di merito anche non passata in giudicato. L'esercizio di tale facoltà comporta rinuncia agli atti del giudizio; il giudice penale provvede anche sulle spese del procedimento civile. 2. L'azione civile prosegue in sede civile se non è trasferita nel processo penale o è stata iniziata quando non è più ammessa la costituzione di parte civile. 3. Se l'azione è proposta in sede civile nei confronti dell'imputato dopo la costituzione di parte civile nel processo penale o dopo la sentenza penale di primo grado, il processo civile è sospeso fino alla pronuncia della sentenza penale non più soggetta a impugnazione, salve le eccezioni previste dalla legge.</p> | <p>These articles provide a pathway for civil claims for compensation.</p> |
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