

For participants only  
20 May 1999

Original: English

**Ad Hoc Committee on the Elaboration of a  
Convention against Transnational Organized Crime**

Fourth session  
Vienna, 28 June-9 July 1999

**Position paper on the draft Protocol to Prevent, Suppress and  
Punish Trafficking in Women and Children, submitted by the  
Special Rapporteur on Violence against Women\***

**EXECUTIVE SUMMARY:**

**THE PROTECTION OF THE HUMAN RIGHTS OF TRAFFICKED PERSONS,  
WITH PARTICULAR REFERENCE TO TRAFFICKED WOMEN**

The Special Rapporteur on violence against women, including its causes and consequences, welcomes the efforts of the Member States to develop a Protocol to the Convention against Transnational Organized Crime to address the problem of trafficking in persons. The Special Rapporteur, however, is concerned with certain aspects of the draft Protocol to Prevent, Suppress and Punish Trafficking in Women (Trafficking Protocol) and, through this position paper, wishes to convey to Member States her concerns and recommendations.

The Special Rapporteur has confined her analysis to the protection of the human rights of trafficked adult persons, with particular reference to trafficked women. The Special Rapporteur does not seek to minimize the importance of children's rights. Specific standards relating to trafficking in children are necessary. However, the Special Rapporteur feels she lacks the necessary expertise to provide a similarly detailed analysis in respect of children's rights. In elaborating the Trafficking Protocol, the Special Rapporteur urges States to ensure that children's rights are protected and to guarantee the development of child-specific policies that are also gender-sensitive.

While this executive summary seeks to highlight the Special Rapporteur's principle concerns, the Special Rapporteur encourages Member States to review the more detailed analyses and recommendations presented in the position paper that follows.

---

\* The present document is reproduced in the form in which it was received. It is available in English only.

## ***The Need to Protect and Promote Human Rights***

While the Special Rapporteur recognizes that the draft Trafficking Protocol is being developed in the context of a crime prevention instrument, the Special Rapporteur wishes to highlight existing obligations under international human rights law and the need to ensure that the Trafficking Protocol is consistent with such obligations. The Special Rapporteur would like to draw the attention of Member States to existing standards as set forth in, *inter alia*, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Forced Labour Convention, the Abolition of Forced Labour Convention, and the Convention on the Rights of the Child. Further, the Special Rapporteur wishes to draw attention to the duty under international law that States act with due diligence to prevent, investigate, and punish human rights violations, whether such violations are perpetrated by the State or by private actors.

The Special Rapporteur wishes to emphasize that the effective prevention and eradication of trafficking in persons is dependent on ensuring that the human rights of trafficked persons are protected and promoted. The failure of States to protect and promote women's human rights generally and, in particular, their economic and social rights, has created a situation in which trafficking in women has flourished. Further, violations of the human rights of trafficked persons generally, and trafficked women specifically, have been well documented throughout the trafficking process. Prevention and eradication are inextricably linked to the protection of the human rights of trafficked persons. The Special Rapporteur encourages Member States to ensure that the Trafficking Protocol reflects this reality.

### ***Need to Incorporate the Principle of Non-discrimination***

The principle of non-discrimination is a fundamental principle of international human rights law and, as such, should be enshrined in the Trafficking Protocol in order to ensure that the Protocol's protections are applied to trafficked persons without discrimination. The provision should make specific reference to non-discrimination as to sex, immigration status, and the fact of a trafficked person's having been trafficked formerly or having participated in the sex industry.

In an atmosphere of discrimination and marginalization, it would be unrealistic to expect trafficked women to come forward to assist in prevention or prosecution efforts. We know from experiences at the national level that without the voluntary participation of trafficked persons, such efforts will fail. Thus, the Special Rapporteur calls for the inclusion of language that will effectively protect and promote the human rights of trafficked persons within the context of combatting transnational crime.

### ***Definition of Trafficking in Persons***

The Special Rapporteur calls for a strong definition of trafficking in persons that reflects all elements of the trafficking process, as well as the many ways and means by which persons are trafficked. In so doing, she recommends the use of the term "trafficking in persons" rather than "trafficking in women" or "trafficking in women and children" and "trafficked persons" rather than "trafficking victims."

Although it is essential for States to recognize that there are gendered elements, causes and consequences of trafficking, and to develop policies accordingly, the Special Rapporteur is of the belief that trafficking in persons is not confined to women and/or children. The use of "persons" also seeks to emphasize that trafficking is undertaken for numerous reasons, rather than solely for the purpose of sexual labour. Further, consistent reference to the trafficked persons' victimhood fails to acknowledge the temporary and/or changing nature of their victimization. Further, in

defining trafficking, the Special Rapporteur urges States to avoid collapsing women and children and treating them as one category.

The Special Rapporteur proposes the following definition of trafficking:

#### Article 2

2. *Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons*
  - (a) *by the threat or use of abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, and*
  - (b) *for the purpose of placing or holding such person, whether for pay or not, in forced or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (a).*

The structure of the trafficking definition proposed in Article 2, Option 1 must be modified to target the critical elements of trafficking and distinguish trafficking as a separate crime from its component parts. By singling out trafficking for sexual exploitation — a term subject to divergent interpretations — the trafficking definition would divert attention from the common elements of all forms of trafficking. The common elements are the brokering, accompanied by the exploitative or servile conditions of the work or relationship in which the trafficked persons ends up, coupled with the lack of consent in arriving at that position. In this regard, the Special Rapporteur recommends that the focus of the definition be shifted to trafficking for forced or slavery-like practices, generally.

The Special Rapporteur is of the view that the definition of trafficking should require that the movement or transport involved must be such as to place the victim in an unfamiliar milieu, where she is culturally, linguistically, or physically isolated, denied legal identity or access to justice, and, thus, finds herself at greater risk of abuse, violence, exploitation, domination, and discrimination. The crossing of geographic or political borders is not a necessary prerequisite for these elements to be present.

The Special Rapporteur further recommends that the structure of the trafficking definition require both transport or recruitment *and* the end purpose of the transport or recruitment, in order to reflect the necessary linkage between the two practices. Although numerous separate human rights violations are perpetrated in the course of trafficking, it is the combination of the coerced transport and the coerced end practice that distinguishes trafficking as a separate crime from its component parts.

The Special Rapporteur is of the view that the trafficking definition must be expanded if it is to adequately address the full range of modern manifestations of trafficking in women. More specifically, the trafficking definition should be expanded to include the purchase and sale of persons in order to encompass all persons involved in the trafficking chain, including the person at the beginning of the chain, who provides or sells the trafficked person, and the person at the end of the chain, who receives or purchases the trafficked person, holds the trafficked person in forced labour, and profits from that labour. Moreover, the means by which the trafficker perpetrates his crime should be expanded to include abduction, abuse of authority, and debt bondage, while the end purposes of the trafficking should be modified to include trafficking of persons into slavery-like practices.

### *Assistance For and Protection of Trafficked Persons*

The Special Rapporteur considers that, in keeping with States' international obligation to act with due diligence to prevent, investigate and punish human rights violations, the Trafficking Protocol should grant trafficked persons the right to initiate relevant administrative and legal proceedings against traffickers and to obtain redress for the harms they have suffered. In order to facilitate the exercise of this right, the Trafficking Protocol should require States to keep trafficked persons informed of their legal rights, and should emphasise the duty of States to prosecute the crime of trafficking, as well as all crimes committed against trafficked persons in the course of the trafficking, including rape, sexual and other forms of assault, abduction, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labour, servitude, debt bondage, and forced marriage.

The Special Rapporteur is of the view that the Trafficking Protocol should also ensure that certain procedural protections are guaranteed during and after the course of any legal proceedings involving the trafficked person. These protections include, for example, maintaining the confidentiality of legal proceedings, encouraging prosecutors to consult with experts on trafficking, informing trafficked persons of the progress and disposition of any proceedings against the alleged traffickers, and allowing trafficked persons the opportunity to testify by special means in order to protect their safety and emotional health. These protections are essential if States are to fulfill their obligation to act with due diligence to provide effective redress and to protect against human rights violations. In the absence of such protections, trafficked persons risk being subjected to additional human rights violations resulting from the ordeal of a trial and the threat of reprisals by the traffickers.

The Special Rapporteur further recommends that the Trafficking Protocol require States Parties to provide protection to trafficked persons and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interests of the prosecution. Specifically, States Parties must refrain from detaining, arresting, or prosecuting trafficked persons for offenses arising from their victimization. Such offences might include failing to have necessary immigration documents, the possession of illegal immigration documents or involvement in the sex industry. States Parties must also implement measures before, during and after any legal proceedings, to protect trafficked persons from intimidation and reprisals by traffickers; this would include the possibility of enabling trafficked persons to participate in witness protection programs.

In order to ensure that gender and age appropriate assistance and support is made available for all categories of trafficked persons, the Special Rapporteur recommends that the Trafficking Protocol include a provision directing States Parties to provide trafficked persons with access to embassies and non-governmental organizations working to provide support services for trafficked persons.

### *Status of the Trafficked Person in the Receiving State*

The Special Rapporteur considers that the Trafficking Protocol should require States Parties to provide temporary residency status to trafficked persons in order to facilitate the successful prosecution and punishment of traffickers, and the prevention of trafficking. Trafficking fact patterns indicate that the threat of deportation deters many trafficked persons from reporting to the authorities, as trafficked persons could, upon their return, face social ostracism by their families and communities, possible arrest or detention by authorities in their home countries, and reprisals by traffickers who are often waiting at the border to re-traffic returning persons. Providing temporary residency status and work authorization, as well as the possibility of permanent residency status, would help allay trafficked persons' fears of immediate deportation, and, thus, remove the deterrent against reporting and facilitate the bringing of legal proceedings against the traffickers.

### *Voluntary Return and Reintegration of Trafficked Persons*

The Special Rapporteur is of the view that the serious threat of reprisals by traffickers necessitates that any return of trafficked persons to their home communities must be safe and voluntary. With respect to situations in which the trafficked persons wish to return to their home communities, the Special Rapporteur recommends that the Trafficking Protocol encourage States Parties to coordinate with, and provide financial and other support to non-governmental organizations that have developed programs to assist in the safe repatriation and reintegration of trafficked persons. Coordination with such organizations would facilitate efforts to combat trafficking by preventing the reprisals against trafficked persons by traffickers.

The Special Rapporteur would like to highlight the need to use the term “reintegration” in place of “rehabilitation.” The process of reintegration is a multi-faceted one that encompasses many mechanisms of support and empowerment for the trafficked person. Rehabilitation implies a level of debilitation, sickness and/or fault on the part of the trafficked person and thus its use should be avoided. The term “rehabilitation” may serve to exacerbate or sanction marginalization of and discrimination against trafficked persons.

Recognizing that trafficked persons are vulnerable to re-trafficking due to the lack of employment opportunities resulting from their having been trafficked, the Special Rapporteur further recommends that the Trafficking Protocol requires States Parties to ensure that the economic and social rights of trafficked persons are guaranteed and, in so doing, to provide education, skills training, and employment assistance to trafficked persons in order to prevent re-trafficking.

The Special Rapporteur is concerned that some Governments have used health regulations to target women trafficked into the sex industry for mandatory, non-consensual and sometimes coerced testing for HIV/AIDS, thereby violating the principle of non-discrimination, as well as a woman’s right to privacy. In many cases, women are neither informed of the nature of the test being administered nor granted access to their test results. Further, the Special Rapporteur is concerned that the results of such testing, or the public disclosure of the results, may fuel additional discrimination against trafficked women or women who have worked in the sex industry. The Special Rapporteur therefore recommends that, in keeping with the state obligation to protect and promote women’s reproductive rights, as enunciated in the both the Cairo and Beijing Platforms of Action, the Trafficking Protocol requires States to grant trafficked persons the right of access to voluntary and confidential health testing services.

**POSITION PAPER ON THE DRAFT PROTOCOL  
TO PREVENT, SUPPRESS, AND PUNISH TRAFFICKING IN WOMEN  
SUBMITTED BY MS. RADHIKA COOMARASWAMY,  
SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN**

**THE PROTECTION OF THE HUMAN RIGHTS OF TRAFFICKED PERSONS,  
WITH PARTICULAR REFERENCE TO TRAFFICKED WOMEN**

**General Comments on language**

1. **Preference for the phrase “trafficked persons” rather than “victims.”** Use of the term “trafficked person” would be preferable to “victim,” as the protocol should focus on measures to empower trafficked persons. To consistently refer to trafficked persons as victims fails to acknowledge the temporary or changing nature of their “victimization,” and could inadvertently risk encouraging the development of policies and laws aimed more at “protecting” than at “empowering” trafficked persons.
2. **Preference for the phrase “trafficking in persons” rather than “trafficking in women and children.”** From a broader human rights perspective, the term “trafficking in persons” is preferable, as it recognizes the reality that trafficking is not limited to women and children, and ensures protection to all trafficked persons. Use of gender-neutral language would respond to the current shift in perceptions of trafficking as no longer being limited to trafficking for sexual purposes, but rather inclusive of trafficking for non-sexual purposes as well. Notwithstanding the need to address trafficking in a non-discriminatory manner, however, there are gendered aspects to trafficking that require a gender-specific focus on women in any policy or legislative response to trafficking. The burgeoning trade in women is fundamentally linked to their unequal status in society and the gender discrimination that females suffer throughout their life cycle (infancy, childhood, adolescence, adulthood, and old age). Adverse socioeconomic conditions in their home communities, fewer educational and employment opportunities relative to men, along with the traditional responsibility of women to care for their families, all increase the likelihood that women and girl-children will be coerced or deceived by the lure of better job or marriage offers in other regions. Even where a girl-child or a woman is not tempted by the prospect of better paying jobs, son preference in many communities could lead families to coerce their female relatives to accept the offers, if not to sell their female relatives outrightly. The provisions in this protocol, while maintaining gender-neutrality in its language, should be developed bearing in mind the causes and consequences of trafficking in women, in particular.

**Title of the Protocol**

**Draft title:**

***Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime***

**Proposed title:**

***Protocol to Prevent and Eradicate Trafficking, Punish Traffickers and Protect the Rights of Trafficked Persons, Supplementing the Convention Against Transnational Organized Crime***

2. **Requires a human rights element.** In its current form, the title of the Protocol does not adequately reflect the inextricable links between the protection of trafficked persons’ human rights and the effective prevention

of trafficking and the prosecution and punishment of traffickers. A crucial element of trafficking is the marginalisation of trafficked women through their removal from the protections of the state, their communities, and their families. Failure to protect trafficked women's human rights would lead to such marginalisation, which, in turn, would undermine efforts to investigate, prosecute, punish, and, ultimately, prevent trafficking. Protection of the human rights of trafficked women would contribute to the eradication of trafficking by fostering trafficked women's willingness to report the abuses to the authorities and to assist in the prosecution of their traffickers. Given that trafficked women are often in a position to serve as primary witnesses in the prosecution of traffickers, their willing participation in prosecutions would increase the likelihood of success. The deterrent created by the threat of successful prosecution of trafficking, coupled with the effective protection of trafficked women's human rights, would significantly advance efforts to eradicate trafficking.

### Preamble

**Proposed additional paragraph (to be inserted between “Taking into account the fact that...” and “Concerned that...”):**

*Bearing in mind the human rights protections set forth in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Convention on the Rights of the Child.*

1. **Include reference to international human rights instruments.** In order to maintain consistency with international law and to draw attention to existing frameworks relevant to the protection of the rights set forth in this Protocol, the Preamble should explicitly refer to existing international human rights instruments, including, but not limited to, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Declaration on the Elimination of Violence against Women, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Forced Labour Convention, the Abolition of Forced Labour Convention, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of the Child.

### Article 1 Purpose

1. **Article 1(1)**

**Draft language:**

*1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish international trafficking in [women and children][persons] for the purpose of forced labour or sexual exploitation [, giving particular attention to the protection of women and children, who are so often the victims of such trafficking].*

**Proposed language:**

*1. The purposes of this Protocol are to promote and facilitate cooperation among States Parties to prevent, investigate and punish international trafficking in persons for the purpose of forced labour or slavery-like practices, and to protect the human rights of trafficked persons.*

- a. **Overview.** In its current form, by narrowly limiting the purpose of the Protocol to trafficking for forced labour or sexual exploitation, Article 1 fails to respond to the exigencies of modern manifestations of trafficking, including trafficking for slavery-like practices such forced marriages and forced adoptions. Moreover, the explicit reference to “sexual exploitation” diverts attention from the essence of the abuses targeted by this Protocol -- namely, the forced and exploitative conditions under which a woman works -- and risks subjecting the Protocol to divergent interpretations due to the highly contested definition of “sexual exploitation.”
- b. **Include “slavery-like practices.”** As the Preamble refers to the need for a universal instrument that addresses all aspects of trafficking, the purpose of this Protocol should include trafficking of persons into slavery-like practices, in order to encompass trafficking for domestic work, forced marriages, and forced motherhood, which are not traditionally encompassed under the term “forced labour.” Article 1 of the Supplementary Slavery Convention condemns forced marriage as a slavery-like practice, prohibiting “any institution or practice whereby...a woman, without 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.” This provision reinforces the ICCPR guarantee, in Article 23(3), of marriage only with “the free and full consent of the intending spouses.” The uniformity of condemnation of slavery and slavery-like practices in international and national laws has elevated prohibition of such practices to the level of customary international law. As such, all States are required to punish and prosecute individuals who engage in such practices, regardless of whether these States have ratified the relevant conventions. The Protocol should uphold this standard by extending its protections to persons trafficked into slavery-like practices.
- c. **Include “protect of the human rights of trafficked person.”** Language in Article 1(1) should explicitly include protection of the human rights of trafficked persons as a primary purpose of the Protocol. A narrow focus on punishment of the traffickers could divert attention from the crucial link between protection of the human rights of trafficked persons and the prevention and eradication of trafficking.
- d. **Delete phrase “sexual exploitation.”** The term “sexual exploitation” is subject to a wide range of divergent interpretations, according to whether all activities in the sex industry constitute “sexual exploitation” per se, or whether only sex work under exploitative or slavery-like conditions could qualify as “sexual exploitation.” In order to highlight the commonality between the different purposes for which people are trafficked (i.e. including both sexual and non-sexual purposes), the focus of the Protocol should be on the forced, exploitative, or slavery-like conditions of the work or relationship and whether those conditions were freely and knowingly consented to by the person.



## 2. Article 1(2), 1(2)(a)

### Draft language:

2. *[To that end, [the purpose is, in particular, to encourage States Parties to undertake;]][States Parties shall undertake:]*

*(a) To adopt effective measures [, in accordance with their domestic law,] to prevent trafficking in [women and children][persons], as defined in this Protocol, and punish severely those who engage in that activity.*

### Proposed language:

2. *To that end, States Parties shall undertake:*

*(a) To adopt effective measures to prevent trafficking in persons, as defined in this Protocol, and punish severely those who engage in that activity.*

- a. **Overview – Language must strengthen state obligation to protect the rights set forth in the Protocol.** The draft language of Article 2 and 2(a) contains too many qualifications to achieve effectively the goals of this Protocol. States Parties must affirmatively commit to the obligations set forth in the Protocol, and modify their domestic laws accordingly.
- b. **Article 1(2) — Use language “States Parties shall undertake.”** This language is preferable to “the purpose is, in particular, to encourage States Parties to undertake” language, as the latter phrasing is redundant with Article 1(1), which sets out the purpose of the Protocol. The provisions of the Protocol articulate existing international human rights norms, for which States Parties are under a duty to act with due diligence to protect and promote. It is a recognized principle of international human rights law -- reflected, for example, in ICCPR Article 2 and CEDAW Articles 2 and 3 -- that States must (1) protect the rights of individuals to exercise their human rights, (2) investigate alleged violations of human rights, (3) punish violators of human rights, and (4) provide effective remedies for victims of human rights violations. The language of the Protocol must reflect and reinforce these international obligations.
- c. **Article 1(2)(a) — Delete “in accordance with domestic law.”** Where domestic law comes into conflict with the provisions of the Protocol, States Parties should modify their domestic laws to bring them into accordance with Protocol provisions and international human rights standards, particularly those designed to protect victims of trafficking. Existing international human rights norms require States Parties to take all necessary measures to act with due diligence to prevent, investigate, remedy, and protect against human rights violations. Documentation of trafficking fact patterns indicates that, notwithstanding these international obligations, domestic immigration and criminal laws are often used to compromise protection of trafficked women’s human rights. Law enforcement officials often deport trafficking victims and/or arrest them for engaging in criminal activity (e.g. prostitution, undocumented immigration), rather than acknowledge that their involvement in these activities was forced or coerced. Deleting the phrase “in accordance with domestic law” would reinforce States Parties’ duty to act with due diligence in the protection of human rights.

## 3. Article 1(2)(d)

**Draft language:**

*(d) To provide in appropriate cases for the safe and voluntary return of victims to their countries of origin or of habitual residence, or to a third country;*

**Proposed language:**

*(d) To provide for the safe and voluntary return of trafficked persons to their countries of origin or of habitual residence, or to a third country, and to provide the reintegration assistance necessary to protect the human rights of the trafficked person.*

- a. **Overview.** The Protocol must ensure the safe and voluntary return of trafficked persons, and provide reintegration assistance in order to protect trafficked persons from re-victimization.
- b. **Delete phrase “in appropriate cases.”** It is imperative that the Protocol retain the requirement of voluntariness in the return of trafficked persons to their countries of origin or habitual residence or third country. A trafficked woman should be given a choice as to whether to return or to stay in the country of destination, as trafficked women may be socially ostracized by their home communities — particularly if they have been trafficked into the sex industry -- if not exposed to an extremely high risk of physical danger through reprisals by the traffickers. Return of trafficked women under these circumstances would only result in marginalisation by the home communities and re-victimization by the traffickers.
- c. **Include provision to ensure safety/costs of return.** In order to facilitate the voluntary return of trafficked persons, countries of destination should coordinate with countries of origin for the safe return of trafficked persons and should share the costs of repatriation. Countries of destination must ensure that the trafficked person is not simply deposited at the border and forced to find her own means of returning home, for documentation of trafficking fact patterns reveals that these women are particularly vulnerable to reprisals by traffickers and attempts by traffickers to re-traffic them. Countries of destination must, therefore, coordinate with countries of origin to arrange the return of trafficked women directly to their home communities, where trafficked women could then participate in programs to facilitate their reintegration into these communities.
- d. **Include provision of reintegration assistance and support programmes for trafficked persons returning to their home countries.** Trafficked persons returning to their home countries should be provided with reintegration assistance in order to ensure that their human rights, including economic and social rights, are protected. Reintegration assistance should provide trafficked women with any psychological and medical assistance necessary to address the physical and emotional trauma resulting from the experience of having been trafficked. Reintegration assistance should also include programs to address problems with social ostracization by families and communities, difficulties in finding viable employment, and harassment and reprisals from traffickers and authorities.

## 4. Article 1(2)(f)

**Draft language:**

*(f) To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.”*

**Proposed language:**

*(f) To provide victims with both legal, medical, psychological and financial assistance, and with education, skills training and assistance in finding employment.”*

- a. **Article 1(2)(f) – Include provision of education, skills training, and assistance in finding employment opportunities.** Trafficked women — particularly those who have been trafficked into the sex industry — often find that viable employment opportunities are lacking or compromised as a result of their having been trafficked. States have an obligation under Article 6 of the International Covenant on Economic, Social, and Cultural Rights, “to provide technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.” Unless States Parties provide education and skills training to assist women to reintegrate into their communities and to improve their employment prospects, trafficked women could become vulnerable to re-trafficking.
- b. **Article 1(2)(f) — Delete “appropriate” and “whenever States Parties deem it necessary.”** Article 1(2)(f) should be modified to remove State Party discretion. The Protocol fails to provide guidelines by which States Parties can gauge whether legal, medical, psychological and financial assistance is necessary. States Parties must provide such assistance if they are to fulfill their obligation under international human rights law to prevent, investigate, remedy, and protect against human rights violations with due diligence, as this assistance is critical to efforts to provide effective remedy for human rights violations. In the absence of guidelines responsive to trafficked women’s needs and rights, this language should be deleted in order to ensure that trafficked women receive the fullest measure of human rights protection.

## **Article 2 (Option 1) – Scope of application**

### **1. Article 2(1)**

#### **Proposed additional language:**

*The States Parties shall undertake to ensure that the rights enunciated in the present Protocol will be exercised without discrimination of any kind, in law or in practice, as to race, colour, sex, sexual orientation, age, language, religion, political or other opinion, cultural beliefs or practices, national ethnic or social origin, property, birth, residency or other status, including, without limitation, the status of having been a trafficked person or having worked in the sex industry.*

- a. **Include a non-discrimination provision.** The principle of non-discrimination is a fundamental principle of international human rights law. Article 2 of the UDHR, the ICCPR, and the ICESCR requires that States fulfill their obligations to protect and ensure the rights contained within these respective instruments without discrimination as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” while Article 7 of the UDHR and Article 26 of the ICCPR emphasize that all human beings are “equal before the law and are entitled without any discrimination to equal protection of the law.” Documentation of trafficking fact patterns indicates that trafficked women are often deprived of protections to which they are entitled under international human rights law as a result of discrimination against them on the basis, in particular, of their gender, immigration status, or the fact of their having been trafficked in the past or having participated in the sex industry. The inclusion of a non-discrimination provision would help prevent the many injustices trafficked women suffer due to discriminatory treatment by government officials.

- i. **Gender.** The protections contained in this Protocol must be exercised in a manner that does not discriminate against women. Articles 2(f) and 15 of CEDAW, respectively, require States Parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and to “accord to women equality with men before the law.” Article 3 of the ICCPR requires States Parties to “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights” set forth in the ICCPR. Overwhelmingly, national laws against trafficking are applied to the detriment of trafficked women. In particular, those laws which target trafficking for prostitution have been used to criminalize women working in prostitution. Case studies indicate that governments rarely arrest or prosecute men responsible for the trafficking -- for example, the brothel owners, clients, and recruiters, particularly state agents involved in the trafficking schemes. Police raids on brothels in which women are forced into prostitution more often result in the arrest and prosecution of the forced prostitutes than of the clients or brothel owners. Inclusion of a non-discrimination provision would help prevent such discriminatory treatment of trafficked women.
- ii. **Residency status.** The Protocol should include a provision that ensures non-discrimination against trafficked persons who are undocumented immigrants in the country of destination. Trafficked women are often undocumented immigrants forced to work in a foreign country, and suffer discrimination at the hands of law enforcement officials because of their illegal immigration status. Research by non-governmental organizations working on the trafficking issue reveals a disturbing tendency on the part of government officials to resort to summary deportation of trafficked women rather than accord them the protections they are entitled to under international law. Inclusion of a non-discrimination provision to ensure against discrimination based on a trafficked person’s immigration status would help prevent such practices and facilitate protection of trafficked women’s rights.
- iii. **Formerly trafficked person/sex worker.** Effective implementation of the goals of this Protocol require that the protections guaranteed by the Protocol be applied in a manner that does not discriminate against formerly trafficked women, and sex workers. Documentary evidence indicates that women trafficked into the sex industry suffer a high level of social ostracization, which often results in a denial of their human rights. Marginalisation within the community or the family is often reinforced by state policies and practices that discriminate against trafficked women, particularly those trafficked into the sex industry. Moreover, the social ostracization can cause these women to become particularly vulnerable to traffickers’ efforts to coerce them into re-entering the sex industry, thus resulting in a vicious cycle of re-trafficking.

## 2. Article 2(2)

### **Draft language:**

*For purposes of this Protocol, “trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons.*

### **Proposed language:**

*For the purpose of this Protocol, “trafficking in persons” means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons.*

- a. **Include “purchase, sale.”** The inclusion of the buying and selling of persons would allow the trafficking definition to cover all persons involved in the trafficking chain. This would include the person at the beginning of the chain, who provides or sells the trafficked person, and the person at the end of the chain, who receives or purchases the trafficked person, holds the trafficked person in forced labour, and profits from that labour. Criminalizing the activities of all parties involved in the crime of trafficking would facilitate efforts to prevent trafficking.

### 3. Article 2(2)(a)

#### **Draft language:**

*(a) By the threat or use of kidnapping, force, fraud, deception or coercion, or*

#### **Proposed language:**

*(a) By the threat or use of abduction, force, fraud, deception, coercion (including the abuse of authority), or debt bondage, and*

- a. **Replace “kidnapping” with the term “abduction.”** Abduction is the more appropriate term to use, for unlike “kidnapping,” abduction does not involve extortion. Documentation of trafficking patterns indicates that trafficking often does not entail extortion. The language of the Protocol should be modified accordingly.
- b. **Include “abuse of authority.”** Documentation of trafficking fact patterns reveals that there are many instances in which women are trafficked into forced labour or slavery-like practices by those who abuse their positions of authority. State police, border guards, and other state officials are often involved in the trafficking of women, either passively condoning the abuse, or actively collaborating with the traffickers in the systematic abuse of these women. The trafficking definition should therefore encompass recruitment and/or transfer of women by use of coercion via abuse of authority.
- c. **Include debt bondage.** In its current form, Article 2(2)(b) of the Protocol is a variant of the definition of debt bondage, defined under international law in Article 1(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (“the Supplementary Slavery Convention”), as “[T]he status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.” The Supplementary Slavery Convention bans all slavery-like practices, including debt bondage. Documentation of trafficking fact patterns indicates that many trafficked women are held in debt bondage, under which these women are forced to work for indefinite periods of time in order to pay off their “debt.” In order to ensure protection of these women, and to ensure consistency with international law, the language in Article 2(2)(b) should be deleted, and the term “debt bondage” included in Article 2(2)(a).
- d. **Include necessary linkage between the transport or trade and the end purpose of the transport or trade — replace “or” (between Article 2(2)(a) and 2(2)(b)) with “and.”** The trafficking definition should include a linkage between the transport or trade process and the ultimate purpose of the movement or recruitment.

- i. **Trafficking as a crime separate from its component parts.** Although numerous separate abuses are perpetrated in the course of trafficking, which themselves violate international law, it is the combination of the coerced transport and the coerced end practice that makes trafficking a separate crime from its component parts. Without this linkage, trafficking would be substantively indistinguishable from the individual activities of smuggling and forced labour or slavery-like practices. However, trafficking ought to be distinguishable because the nature of the violation cannot be reduced to its component parts. For instance, the transport of the trafficked person is inextricably linked to the end purpose of the trafficking, and because of this linkage, has a character distinct from coerced transport as an isolated practice. Transport in the trafficking context is undertaken with the further intent to subject the victim of the coerced transport to additional violence -- in the form of forced labour or slavery-like practices -- after completion of the coerced transport. Conversely, the end purpose of the transport assumes a different character from forced labour or slavery-like practices absent the transport/movement element. Movement compounds the abuse by subjecting the trafficked person to an unfamiliar milieu, disconnected from her family, isolated by language or other cultural barriers, and removed from the protections of her country of origin.

#### 4. Article 2(2)(b)

##### Draft language:

*(b) By the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation or forced labour.*

##### Proposed language:

*(b) For the purpose of placing or holding such person, whether for pay or not, in forced or bonded labour, or in slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (a).*

- a. **Overview.** In its current form, Article 2(2)(b) narrowly limits trafficking to sexual exploitation and forced labour, whereas the reality is that modern manifestations of trafficking include persons trafficked into forced labour, bonded labour, and servitude.
- b. **Delete “sexual exploitation.”** The term “sexual exploitation” is problematic because it is subject to widely divergent interpretations. Fact patterns reveal that people can be and are trafficked for a wide variety of purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships. The common element of these different fact patterns -- and therefore, the most appropriate target of the Protocol -- is the brokering accompanied by the exploitative or servile conditions of the work or relationship and whether or not those conditions were consented to through the exercise of free will, as well as a link between the ultimate purpose and the trade/transport process.
- c. **Include “slavery-like practices.”** The definition of trafficking should be expanded to include slavery-like practices in order to address the exigencies of modern manifestations of trafficking in women. Article 8(2) of the International Covenant on Civil and Political Rights states that “[n]o one shall be held in servitude,” while Article 1 of the Supplementary Slavery Convention requires States Parties to abolish the slavery-like practice of debt bondage. Article 1 of the Supplementary Slavery Convention condemns forced marriage as a slavery-like practice, prohibiting “any institution or

practice whereby...a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or kind.” Reinforcing these standards, Article 23(3) guarantees that “No marriage shall be entered into without the free and full consent of the intending spouses.” Moreover, Article 16 of CEDAW requires states to ensure that women have the same right as men “to freely choose a spouse and to enter into marriage only with their free and full consent,” and “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” In spite of these protections, thousands of women are trafficked into slavery-like practices of debt-bondage and forced marriages. Inclusion of slavery-like practices in the Protocol would more effectively combat such situations, as well as reinforce the protections afforded by existing human rights instruments..

- e. **Include “in a community other than the one in which such person lived at the time of the original act described in (a).”** The trafficking definition should require the movement or transport of a person to a community other than the one in which she originally lived to ensure that the movement is sufficiently significant to render the person particularly vulnerable to exploitation. Trafficking patterns reveal common elements which render the movement significant: for example, victims are moved to an unfamiliar milieu; are disconnected from family, community and friends; are given only limited access to the usual support systems and services; are isolated either emotionally, physically, or by language or other cultural barriers; are denied legal identity or access to justice, and are, therefore, at greater risk of abuse, violence, exploitation, domination and discrimination. The crossing of geographic or political borders is not a necessary prerequisite for these elements to be present.

### Article 3 *Obligation to criminalize*

#### 1. Article 3(1), 3(2)

##### **Draft language:**

*1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [article 2, paragraph 2,] [article 2, paragraph 2 and 3,] and shall impose penalties that take into account the grave nature of those offences.*

*2. Each State Party shall also adopt such measures as may be necessary to....*

##### **Proposed language:**

*1. Each State Party shall adopt and enforce such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in Article 2, paragraph 2 and shall impose penalties that take into account the grave nature of those offences. States Parties must ensure that the obligation to criminalize shall not be used to encourage or justify the de facto or de jure criminalization of trafficked persons for crimes they have been forced to commit in the course of the trafficking.*

*2. Each State Party shall adopt [and implement] such measures as may be necessary to...*

*4. In addition to charging the accused with the crime of trafficking, States Parties should also bring charges for crimes committed in the course of trafficking, including, for example: rape,*

*sexual and other forms of assault (including, without limitation, forced pregnancy and forced abortion), abduction, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labour, involuntary servitude, debt bondage, and forced marriage.*

*5. Each State Party shall adopt and implement such measures as may be necessary to establish as criminal offences active participation or passive acquiescence to the crime of trafficking by state agents and officials, including, in particular, border agents and police authorities.*

*6. Each State Party shall periodically review and revise its legislation and practices to ensure its value and effectiveness in eradicating the offences described in Articles 2(2), 3(1), 3(2), 3(4), and 3(5).*

- a. **Article 3(1) and 3(2) – Include the term “enforce.”** Documentation of trafficking fact patterns indicates that even in countries which have domestic anti-trafficking legislation, discriminatory or lax enforcement by government authorities and law enforcement officials render these laws ineffective. Inclusion of the term “enforce” would provide a safeguard against lax or non-enforcement of domestic anti-trafficking legislation.
- b. **Article 3(1) – Include a provision to ensure against criminalization of trafficked persons.** Documentation of trafficking fact patterns reveals that, in the course of efforts to combat trafficking, some states treat trafficked women as criminals on the basis of their undocumented immigration status or their involvement in the sex industry, notwithstanding the coerced nature of their participation. States Parties must ensure that any efforts to criminalize trafficking do not inadvertently harm and further marginalise the victims of trafficking.
- c. **[new] Proposed Article 3(4) – inclusion of a provision charging traffickers with the crimes they commit in the course of trafficking.** Trafficking is only one of many crimes that may be committed by a trafficker against a trafficked person in the course of the trafficking. Article 2(2) of the ICCPR requires States Parties to undertake “to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized” therein. Coupled with the Article 2(1) obligation “to respect and to ensure” in a non-discriminatory manner the rights therein, and the Article 2(3) requirement that states provide effective and enforceable remedy to victims of human rights violations, Article 2 creates a positive duty on the part of States Parties to take the necessary measures, both legislative and otherwise, to protect against interference with, or violation of, human rights by private parties. More specifically, States Parties have a duty to act with due diligence to prevent, investigate, prosecute, and protect against violations of trafficked women’s human rights. These international legal standards obligate States Parties to give horizontal effect to these rights and to require States Parties to prosecute individuals for all crimes committed in the course of trafficking. Documentation of trafficking fact patterns indicates that traffickers often rape or sexually assault trafficked women, confine them, and extract labour from them under extremely abusive and exploitative situations -- acts which individually constitute separate human rights violations. Fulfilment of their duty under ICCPR Article 1 to take all measures necessary to protect and preserve the human rights of trafficked women requires that States Parties penalize all human rights violations committed by traffickers.
- d. **[new] Proposed Article 3(5) – Include provision assessing additional penalties for state agents involved in the crime of trafficking.** The Protocol should explicitly penalize state agents who actively or passively participate in the crime of trafficking. Trafficking fact patterns reveal the



involvement of police and other government officials at various points in the trafficking scenario, and little effort on the part of government authorities to investigate charges of official complicity or to punish those responsible. Ensuring that state agents are penalized for involvement in the crime of trafficking would foster greater confidence in government authorities, and thereby promote greater cooperation between trafficked women and government authorities in their efforts to prosecute and penalize traffickers, and, ultimately, to eradicate trafficking.

- e. **[new] Proposed Article 3(6) – Include provision establishing periodic review of legislation.** States Parties should be obligated to ensure that their domestic legislation meets the objectives of the Protocol. The complexity of the crime of trafficking and its potential to develop new manifestations over time necessitates that states periodically review existing legislation and practices in order to ensure that these laws fulfill the objectives of the Protocol.

#### Article 4 Assistance for and protection of trafficked persons

##### 1. Article 4(1)

###### **Draft language:**

*[In appropriate cases and to the extent possible under domestic law,] States Parties shall protect the privacy of victims by maintaining the confidentiality of legal proceedings related to trafficking in [persons]/[women and children].*

###### **Proposed language:**

*While ensuring the protection of the rights of defendants under international law, States Parties shall ensure the confidentiality of legal proceedings related to trafficking in persons, unless the trafficked person opts for such proceedings to be public.*

- a. **Strengthen language.** In its current form, the language of Article 4(1) fails to ensure the recognition and protection of trafficked persons' human rights, as respect for a trafficked person's right to privacy is essential to maintaining her continued safety. Evolving principles of international law recognize that the right to privacy, as articulated in Article 17 of the ICCPR, extends to victims and witnesses before, during, and after the investigation and prosecution of human rights violations, particularly those involving sexual violence. Accordingly, Article 68(1) of the Rome Statute of the International Criminal Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses," particularly during the investigation and prosecution of crimes involving sexual or gender violence. Under the limiting language of Article 4(1) of the Protocol, States Parties have discretion over whether or not to ensure the privacy and confidentiality of legal proceedings relevant to the trafficking. The phrase "in appropriate cases" is too vague a standard by which States Parties ought to gauge their compliance. Prosecutors would have the discretion to withhold protection from trafficked women who, for instance, refuse to testify in the prosecution of their traffickers out of fear of reprisals, or even to withdraw protections after the testimony has been obtained. Instead, whether or not legal proceedings shall be public should be left to the discretion of the trafficked person involved. Due to the threat of reprisals by traffickers against their accusers, it is imperative that States ensure that the privacy of the trafficked person is respected and that legal proceedings against their traffickers be kept confidential.

##### 2. Article 4(2)

**Draft language:**

*In addition to measures provided pursuant to Article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing, in appropriate cases:*

**Proposed language:**

*In addition to measures provided pursuant to Article 7 of the Protocol, each State Party shall:*

- a. **Delete “in appropriate cases” and “ensure that its legislative framework contains measures that permit providing.”** Article 4(2) should be strengthened so as to require States Parties to provide directly the measures mentioned in 4(2)(a),(b), and (c). Merely ensuring “that its legislative framework contains measures that permit providing” does not adequately address the potential for lax or arbitrary enforcement of such legislation. In the absence of clear guidelines responsive to trafficked persons’ needs and rights, the phrase “in appropriate cases” should be deleted in order to remove discretion by state officials.

### 3. Article 4(2)(a), (b)

**Draft language:**

*(a) Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;*

*(b) Assistance to victims covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence.*

**Proposed language:**

*(a) Grant trafficked persons the right to bring criminal charges or to pursue civil or other action against traffickers and others, including public officials, who may have exploited or abused them in the course of trafficking.”*

*(b) Inform trafficked persons about relevant court and administrative proceedings, their legal rights and the procedures available for obtaining social assistance, compensation, and restitution for the trafficking. States Parties shall provide trafficked persons with a qualified translator and access to legal representation of their choice before and during all criminal, civil, administrative or other proceedings in which the trafficked person is a witness, complainant, defendant or other party, and provide free transcripts of all documents related to the proceedings in the trafficked person’s language. States Parties shall provide translation and legal representation to indigent trafficked persons without cost.*

- b. **Include provision ensuring the right to pursue legal action against trafficking.** Trafficked persons should be accorded the right to bring relevant administrative and legal proceedings in order to bring their traffickers to justice and to obtain redress for the harms they have suffered. Under ICCPR Art 2(3), State undertake “to ensure that any person whose rights or freedoms...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” States Parties also must undertake “to ensure that any person claiming such remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.” Paragraph 10 of the Model Strategies and

Practical Measures on the Elimination of Violence against Women in the Field of Criminal Prevention and Criminal Justice reinforces this obligation, urging Member States to “ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State.” It is imperative that States Parties provide such redress, as successful actions brought by trafficked women against their traffickers would not only serve as a deterrent against future trafficking, but would also empower trafficked women to regain a sense of control over their own lives.

- c. **Include provision ensuring the right to be informed of their legal rights.** States Parties must ensure that trafficked persons are provided with the information and assistance necessary to exercise their right to seek redress for the human rights violations committed against them by the traffickers. In this vein, States Parties should abide by the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Criminal Prevention and Criminal Justice, in which the General Assembly called upon the Crime Commission to ensure that women subjected to violence be provided information on their rights and remedies and the procedures for how to obtain them. Informing trafficked women of their legal rights would not only ensure protection of trafficked women’s human rights, but would facilitate the prosecution of traffickers, and further efforts to eradicate trafficking.

4. [new] Article 4(2)(c)

**Proposed Article 4(2)(c):**

*(c) Ensure that any legal or administrative proceedings are not detrimental or prejudicial to the rights of the trafficked person and are consistent with the psychological and physical safety of trafficked persons and witnesses. States must ensure that:*

*(i) trafficked persons are kept informed of their role and the progress of any proceedings against alleged offenders and of the disposition of these proceedings;*

*(ii) the burden of proof prior to and during the prosecution of an alleged trafficker lies with the prosecution and not with the trafficked person;*

*(iii) in the preparation of the criminal proceedings, the prosecutor consults with an expert on the causes and consequences of trafficking and its effects on the victim;*

*(iv) the views and concerns of trafficked persons are allowed to be presented and considered at appropriate stages of any proceedings against the alleged offenders, in a manner not prejudicial to the rights of the defence;*

*(v) it be strictly prohibited to use the trafficked person’s personal history, alleged character, or current or previous occupation (eg. as a prostitute or domestic worker) by officials as a ground for disqualifying or dismissing the trafficked person’s case, or by the defendants as evidence in their defence;*

*(vi) trafficked persons subjected to sexual violence shall be permitted to present evidence in camera or by electronic or other special means, where necessary to prevent psychological harm to the trafficked person. Provision may also be made for witness incognito, so long as the rights of the defendant are protected;*

*(vii) where a trafficked person is a defendant in a criminal case, she has the opportunity to raise a defence of duress, coercion, or self-defence, and have the same evidence be considered mitigating evidence in sentencing, if convicted.*

- a. [new] Proposed Article 4(2)(c) – Include provision of procedural protections for trafficked persons. In order to facilitate successful prosecution of traffickers, States Parties must ensure protection of trafficked persons and witnesses throughout their participation in any relevant proceedings. The Rome Statute of the International Criminal Court (“Rome Statute”), the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“ICTR”), and the Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice (“Model Strategies”) set forth relevant standards for victim and witness protection. Regarding keeping victims informed of the progress of any proceedings against their alleged offenders, Paragraph 10(a) requires that Member States make available to women subjected to violence information regarding the scheduling, progress, and ultimate disposition of the proceedings. With respect to victim testimony, Article 68(3) of the Rome Statute allows for victims’ views and concerns “to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial” where the personal interests of the victims are affected. Along the same lines, Paragraph 7(c) of the Model Strategies requires States to ensure that women “subjected to violence have an opportunity to testify in court proceedings equal to that of other witnesses and that measures are available to facilitate such testimony and to protect their privacy.” Regarding use of victims’ personal history, the ICTR strictly prohibits admission into evidence the prior sexual conduct of the victim. With respect to the presentation of evidence, Article 68(2) of the Rome Statute allows the Court to “conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means” in order “to protect victims and witnesses or an accused,” particularly in the case of a victim of sexual violence.” Regarding the possibility of a self-defence claim, the ICTR prohibits an alleged offender from using the defence of consent if the victim “(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression or; (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear.” Documentation of trafficking fact patterns reveals that efforts to combat trafficking can, however inadvertently, have negative repercussions on the victims of trafficking, who may find themselves, rather than the offenders, under close scrutiny and forced to defend themselves. Not only does this further undermine trafficked women’s confidence in the legal system, marginalise trafficked women and deprive them of their basic human rights, but it can also thwart attempts to prosecute the traffickers. It is, therefore, imperative that these standards are upheld in proceedings brought against traffickers in order to ensure the fullest protection of trafficked women’s rights, and consequently, to promote successful prosecution of their traffickers.

## 5. Article 4(3)

### Draft language:

*Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.*

### Proposed language:

*Each State shall provide for the physical safety of trafficked persons covered by this Protocol while they are within its jurisdiction. States Parties shall provide protection to trafficked persons*

*and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interests of the prosecution, including:*

*(a) refraining from detaining, imprisoning, or prosecuting any trafficked person for offences related to being a victim of the trafficking, including for lack of a valid entry or work visa, solicitation, prostitution, undocumented immigration status, use of false travel or immigration documents;*

*(b) before, during and after all criminal, civil or other legal proceedings, implementing measures to protect trafficked persons from intimidation, threats of reprisals from traffickers and their associates, including reprisals from persons in positions of authority and, where necessary, to provide similar protection to family members and friends of the trafficked person;*

*(c) placing a trafficked person into a witness protection program or changing the trafficked person's identity, where necessary;*

*(d) considering the need for the safety of the trafficked person, family members and friends in decisions on the arrests, detention and terms of any form of release of the trafficker, and notifying the trafficked person prior to the release from custody or detention of persons arrested for, or convicted of trafficking, abusing or exploiting the trafficked person;*

*(e) prohibiting public disclosure of the identities of trafficked persons and the use of a trafficked person's history of being trafficked to discriminate or cause harm to any trafficked person or her family or friends, particularly with respect to their freedom of travel, search for employment, and marriage.*

- a. Delete "shall endeavour." The phrase "shall endeavour to" risks weakening the protections accorded to trafficked persons. Documentation of trafficking fact patterns reveals that cooperation with government authorities in the prosecution of traffickers can expose trafficked women to extreme physical harm, resulting from retaliatory measures taken by traffickers and their associates. Accordingly, the Protocol must require States, without qualification, to provide for the physical safety of trafficked women to ensure adequate respect and protection of their human rights and to encourage voluntary participation in prosecution.
- b. Replace "territory" with "jurisdiction." Use of the term "jurisdiction" would provide more comprehensive protection of trafficked women, including within its purview, women on the embassy grounds of a State Party located in the territory of a non-State Party.
- c. **[new] Proposed Article 4(3)(a) – Include provision for protection against detention, imprisonment, or prosecution of trafficked persons.** States Parties must ensure that trafficked persons are not treated as criminals but as victims of serious human rights abuses, and are therefore entitled to protection and the social services necessary for trafficked women to regain control over their own lives. Studies indicate that trafficked women are deterred from alerting the authorities to the crimes committed against them, as approaching the authorities may result in the arrest, detention, or deportation of the trafficked women because of their undocumented immigration status or their involvement in criminal activities (ex. prostitution). Only under the guarantee of human rights protection would trafficked women be willing to cooperate with the authorities and, thereby, provide the testimony and assistance crucial to the successful prosecution of traffickers. Without the

cooperation of trafficked women, successful prosecution would be difficult to achieve, and, consequently, would obstruct efforts to combat and eradicate trafficking.

- d. **[new] Proposed Article 4(3)(b) and 4(3)(c) – Include provision for protection against reprisals/witness protection program/change of identity.** The Protocol must be expanded to require States Parties to take affirmative measures to ensure protection of trafficked persons and witnesses against reprisals by their traffickers. The Rome Statute of the International Criminal Court recognizes the importance of such measures, establishing under Article 43(6) a “Victims and Witnesses Unit” to provide “protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.” The Rome Statute further provides that this Unit “include staff with expertise in trauma, including trauma related to crimes of sexual violence.” Such measures would be applicable to the situation of trafficked women confronted with the decision to cooperate in the prosecution of the traffickers. Studies demonstrate that current state policies have the effect of deterring trafficked women from reporting to the authorities and pressing charges, as these activities could subject trafficked women and their families to the risk of retaliation by traffickers and their associates. Going through a trial could expose trafficked women to stigmatising exposure, social exclusion and/or harassment by authorities. To obtain successful prosecution of traffickers, States Parties must, therefore, develop and implement laws and policies directed at dispelling the fears that many trafficked women have towards law and government authorities. For the protection of the safety of the trafficked person, a State Party must place the trafficked woman into a witness protection program and/or change her legal identity so as to shield her from discovery by the trafficker and/or his associates.
- e. **[new] Proposed Article 4(3)(d) – Include provision of information regarding the status of the proceedings against the trafficker.** States Parties must keep trafficked persons apprised of the status of any proceedings or measures being taken against the traffickers — particularly if the trafficker is soon to be released from custody — so that trafficked persons can safeguard themselves against potential reprisals by the traffickers. Paragraph 9(b) of the Model Strategies reaffirms this principle, requiring Member States to “ensure that a woman subjected to violence is notified of any release of the offender from detention or imprisonment where the safety of the victim in such disclosure outweighs invasion of the offender’s privacy.” Trafficked women would be more willing to pursue and cooperate with the prosecution of their traffickers if they were ensured the fullest measure of protection against reprisals. Informing trafficked women of the impending release of their traffickers from custody is a crucial element of such protective measures.
- f. **[new] Proposed Article 4(3)(e) – Include prohibition on public disclosure of trafficked persons’ identities.** The names of trafficked persons and/or their relatives should not be recorded in any documents or records that are accessible to the public, nor should they be released to the press or the public without the informed consent of the trafficked persons. Article 68(1) of the Rome Statute of the ICC sets forth a relevant standard, requiring the Court to take appropriate measures “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses,” particularly during the investigation and prosecution of crimes involving sexual violence. The prospect of having their identities revealed to the public would significantly deter trafficked women from pursuing and cooperating in the prosecution of their traffickers. Public disclosure of their identities could expose trafficked women to harassment and social stigmatisation, particularly in cases where the person was trafficked into the sex industry. Hence, to facilitate successful prosecution of traffickers, the Protocol should take every measure to ensure protection of the privacy of trafficked women and strictly prohibit public disclosure of their identities.

## 6. [new] Article 4(4)

**Proposed Article 4(4):**

*States Parties shall ensure access to the embassy or consulate of the country of which the trafficked person is a citizen or, ensure access to a diplomatic representative of the State that takes charge of the country's interests or any national or international authority entrusted with the task of protecting such persons. States Parties shall also ensure access to non-governmental organizations that provide services to trafficked persons."*

- a. **Include provision granting access to embassies and non-governmental organizations.** States Parties should provide trafficked persons with access to embassies and non-governmental organizations in order to expand the resources available to them for obtaining the assistance they need for their recovery and empowerment. Numerous non-governmental organizations with practical knowledge of trafficking patterns and expertise in addressing the needs of trafficked women are well-positioned to provide valuable assistance in efforts to respond promptly and effectively, and on an individual basis.

**Article 5 Status of the trafficked person in the receiving State**

## 1. Article 5(1)

**Proposed additional language:**

*(a) States Parties must prevent immediate expulsion of a trafficked person by staying any deportation orders, and provide residency status and employment authorisation for a period of six months initially, during which time the trafficked person may decide whether or not to initiate or become a witness in any legal proceedings brought against the trafficker. If the trafficked person decides to pursue civil action or serve as a witness in criminal proceedings, the trafficked person shall be provided with residency status and employment authorization for the duration of the legal proceedings, including all appeals.*

*(b) Any deportation proceedings must be carried out in accordance with the law. However, States Parties must refrain from deporting a trafficked person if there are substantial grounds for believing that such person would be subjected to torture.*

*(c) Should the state of which a trafficked person claims to be a citizen refuse to recognize the trafficked person's citizenship claim, and if, on balance of the probabilities, the trafficked person was born in and/or has spent most of her life in the country, the country in which the trafficked person currently resides, legally or illegally, must provide the trafficked person with the rights and privileges accorded to other stateless persons under the UN Convention relating to the Status of Stateless Persons.*

- a. **[new] Proposed Article (5)(1)(a) – Include provision of temporary residency status.** Research indicates that the threat of deportation deters many trafficked persons from reporting to the authorities. Deportation poses a threat to many trafficked women, as many trafficked women are indebted to their families and recruiters in their countries of origin, whom they would be unable to reimburse. As a result, these trafficked women, upon their return, could face social ostracism by their families and communities, in addition to the extremely high risk of reprisals by the traffickers.

Trafficked women could also face harassment by the authorities in their home countries, and possible arrest or detention on grounds, for example, of undocumented immigration and participation in criminal activities (ex. prostitution). Requiring the provision of temporary residency status and work authorization, as well as the possibility of permanent residency status, would not only help allay their fears of immediate deportation, but would also facilitate the successful prosecution and punishment of traffickers, and, hence, the prevention of trafficking. Such a provision would enable more effective prosecution of the traffickers by encouraging trafficked women to report the abuses to the authorities and to pursue legal proceedings against their traffickers.

- b. **[new] Proposed Article (5)(1)(b) – Include protection during/from deportation proceedings.** The Protocol should be consistent with Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”), which prohibits States Parties from “[expelling, returning, or extraditing] a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 1 of the Torture Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity.” Documentation of trafficking fact patterns indicates that trafficked women are often repeatedly raped by their traffickers in order to “break them” and force them to submit to the forced labour, bonded labour, or servitude, with the involvement of state agents, including police, border officials, and prison guards, who participate, instigate, or acquiesce in the rape, beating or severe psychological abuse of these women. Deportation of trafficked women could subject them to an extremely high risk -- often with the cooperation or acquiescence of state agents -- of such treatment by traffickers, who often wait in border areas to re-traffic trafficked women who have been returned to their countries of origin. For the effective prevention of trafficking, the Protocol should protect against this eventuality by prohibiting deportation of trafficked persons in such circumstances.
- c. **[new] Proposed Article (5)(1)(c) – Include protection for stateless persons.** Trafficking patterns indicate the tendency of certain countries of origin to deprive trafficked women of their citizenship upon re-entry, thus rendering these trafficked women stateless. It is, therefore, imperative that the Protocol reaffirm and grant to trafficked women the rights and privileges to which stateless persons are entitled under international human rights law.

#### Article 6 *Return of trafficked persons*

##### 1. **[new] Article 6(3)**

**Proposed additional language:**

**3. *States Parties shall provide financial and other support to non-governmental organizations providing repatriation and reintegration services to trafficked persons.***

- a. **Include provision of support to non-governmental organizations.** Trafficking fact patterns demonstrate the difficulty of organizing the safe return of trafficked persons, as a number of countries lack repatriation procedures. Trafficked women are often dropped at the border with enough funds to return home, but without the means of ensuring a safe return. In these cases, trafficked women are



particularly vulnerable to traffickers who simply wait at the border to re-traffic them. A number of non-governmental organizations have developed programs to assist in the safe repatriation and reintegration of trafficked women. States Parties should coordinate with each other and with these non-governmental organizations, and provide financial and other support to these organizations.

## Article 7 Reintegration of trafficked persons

### 1. Title

#### **Draft title:**

*Article 7 Victim rehabilitation.*

#### **Proposed title:**

*Article 7 Reintegration of trafficked persons.*

- a. **Replace “rehabilitation” with term “reintegration.”** The term “rehabilitation” is problematic in that not only does it imply a measure of fault or complicity on the part of the trafficked person, necessitating participation in correctional programs, but it also suggests that the trafficked person is ill or debilitated. As a result, to have trafficked women participate “rehabilitation” programs risks psychologically, if not socially, marginalising these women even further. Trafficked women having already suffered marginalisation from mainstream society in the course of the experience of having been trafficked, it is imperative that States Parties take measures to foster a sense of empowerment in the trafficked women. The term “reintegration” acknowledges the fact of marginalisation, while avoiding the implication of any measure of fault on the part of the trafficked women.

## 2. Article 7(1)

**Draft language:**

*Each State Party shall ensure that its legislative framework contains measures that, in appropriate cases, provide victims of trafficking in [women and children] [persons] with adequate procedures for seeking:*

**Proposed language:**

*Each State Party shall ensure that its legislative framework contains measures that provide victims of trafficking in persons with adequate procedures for seeking:*

- a. Delete “in appropriate cases.” Access to the procedures set forth in Article 7 should be made available to all trafficked persons rather than left to the discretion of States Parties, particularly given the absence of clear guidelines developed to assess and respond to trafficked women’ reintegration needs.

## 3. Article 7(1)(a), 7(1)(b)

**Draft language:**

*(a) Compensation for damages, including compensation through fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in [women and children] [persons], and*

*(b) Restitution from the offenders.*

**Proposed language:**

*(a) Compensation for damages, including compensation through fines, penalties or, where possible, confiscated proceeds or instrumentalities of perpetrators of trafficking in persons and restitution from the offenders. Compensation and restitution shall be proportionate to the gravity of the abuse suffered by the trafficked person.*

- a. Combine 7(1)(a) and 7(1)(b); revise language to mention confiscation of traffickers’ assets; specify that amount of compensation is to be determined according to gravity of harm. The Protocol should provide compensation and restitution for economic, physical, and psychological damages. Paragraph 10(c) of the Model Strategies urges States Parties to “ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State.” Providing a useful model for the provision of compensation and restitution, Articles 77 and 79 of the Rome Statute of the International Criminal Court grant the Court discretion to levy fines and order the “forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties,” and to order money or other property collected through fines or forfeiture to be transferred to a Trust Fund, for the benefit of victims of the crimes under the jurisdiction of the Court. Applying the same principle, States Parties should create a system by which trafficked women receive compensation and restitution for the harm they suffered at the hands of their traffickers. Financial compensation to trafficked women would help redress the economic, physical, and psychological consequences of trafficking, and would serve as a deterrent to traffickers by strengthening the position of trafficked women.

## 4. Article 7(2)

**Draft language:**

*Each State Party shall consider implementing measures to provide for physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs.*

**Proposed language:**

*Each State Party shall enforce measures to guarantee the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to promote their health, self-respect and dignity, in ways commensurate to their age, gender and special needs.*

*Each State Party shall provide:*

*(a) Strictly voluntary and confidential testing service for HIV/AIDS and other sexually-transmitted diseases, accompanied by pre- and post-test counselling. States Parties must ensure that no punitive or restrictive measures are taken against any trafficked persons who test positive for HIV/AIDS and other sexually-transmitted diseases.*

- a. Replace “shall consider implementing measures” with “shall enforce measures.” In its current form, the language of Article 7(2) leaves the implementation of measures for the physical, psychological and social recovery of victims of and witnesses to trafficking to the discretion of each State Party. However, effective eradication of trafficking in women requires that States Parties commit themselves, without qualification, to the enforcement of such measures. The language of Article 7(2) must, therefore, be revised accordingly.
- b. **[new] Proposed Article 7(2)(a) – Include right of access to voluntary and confidential health testing services.** Trafficked persons must be granted the right of access to confidential and voluntary health testing services. According to guidelines established by the World Health Organisation (WHO), testing for HIV/AIDS and other sexually-transmitted diseases without consent is condemnable as an unjustifiable interference with the person’s basic right to privacy. Article 17 of the ICCPR underscores this principle in requiring that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation” and that “everyone has the right to protection of the law against such interference or attacks.” Recognizing that confidentiality and accessibility of information are critical to the realization of women’s reproductive rights, Paragraph 106(f) of the Platform of Action adopted at the 1995 Fourth World Conference on Women (“Beijing Platform of Action”) urges Governments to “redesign health information, services and training for health workers so that they are gender-sensitive and reflect the user’s ...right to privacy and confidentiality.” Paragraph 106(g) of the Beijing Platform of Action urges Governments to “ensure that all health services and workers conform to human rights, ethical, professional and gender-sensitive standards in the delivery of women’s health services aimed at ensuring responsible, voluntary and informed consent.” Under these guidelines, HIV/AIDS testing of trafficked women must not only be confidential, but strictly voluntary and administered with informed consent. However, documentation of trafficking fact patterns reveals a disturbing prevalence of non-consensual HIV/AIDS testing of women trafficked into the sex industry. Not only are women not informed of the nature of the test being administered to them, but they are often denied access to their test results. The Protocol must prevent such violations of their privacy and protect and preserve trafficked women’s right to reproductive health.

## **Article 8 Law enforcement measures**

## 1. Article 8(2)

**Draft language:**

*2. Each State Party shall provide or strengthen training to prevent trafficking in [women and children][persons] for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations.*

**Proposed language:**

*2. Each State Party shall provide or strengthen training for law enforcement, immigration and other relevant officials to prevent trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations. These programs should incorporate cross-cultural, gender and victim-sensitivity training.*

- a. **Include language providing for cross-cultural, gender and victim-sensitive training.** As set forth in Paragraph 12 of the Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, States should provide for mandatory cross-cultural, gender and victim-sensitivity training modules for police, criminal justice officials, and professionals involved in the criminal justice system. One of the most significant deterrents against reporting abuse can be found in trafficked women's fear and wariness of law enforcement officials. Specialized training directed at addressing these fears would improve the efficacy of law enforcement efforts to combat trafficking.

## 2. [new] Article 8(3)

**Proposed Article 8(3):**

*3. States Parties shall cease enforcing and shall repeal all measures targeted at preventing and obstructing the voluntary movement of its citizens or legal residents within, into or out of the country of residence, on the ground that the citizen or legal resident might become, might be, or has been a victim of trafficking.*

- a. **Proposed Article 8(3) – Include provision to protect against the obstruction of citizens/residents' right to voluntary movement.** In their efforts to eradicate trafficking, States Parties must respect the trafficked persons' right to voluntary movement. Article 12 of the ICCPR guarantees that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" and that "Everyone shall be free to leave any country, including his own." The principle of non-discrimination requires States Parties to ensure the exercise of these rights without discrimination as to gender. However, a survey of state responses to the problem of trafficking reveals a tendency to attempt to combat trafficking by restricting or prohibiting women's travel within and out of their country of residence. The Protocol should therefore include a measure that prohibits States Parties from promulgating and enforcing such measures.

**Article 11 Verification of documents**

**Draft language:**

*Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in [women and children][persons].*

**Proposed language:**

*Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in persons. The possession of invalid documents shall not be used as a ground to arrest, detain, or prosecute trafficked persons.*

1. **Include provision for protection of trafficked persons against arrest for illegal immigration.** The Protocol should include a provision which prohibits prosecution of trafficked persons for illegal immigration in order to focus attention on protecting the rights and needs of trafficked persons, and to prevent further harm to trafficked persons by treating them as criminals. States have a duty to act with due diligence to penalize and prosecute human rights violations committed by non-state actors. Article 2 of the ICCPR requires that “[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the the present Covenant.” Trafficking fact patterns reveal the tendency on the part of law enforcement officials to arrest or prosecute trafficked women for illegal immigration -- despite the fact that their entry into the destination country has been forced or coerced -- rather than address the abuse suffered by trafficked women and prosecute traffickers. By prohibiting government authorities from resorting to deportation and/or prosecution of trafficked women for illegal immigration, the proposed provision draws attention to states’ duty to act with due diligence to protect the human rights of trafficked women.
2. **Delete “undue or unreasonable.”** The phrase “undue or unreasonable” should be deleted in order to facilitate prompt and efficient verification of documents. Inclusion of the phrase would otherwise leave States officials with too large a margin of discretion with respect to the processing of travel and identity documents.

**Article 12 Prevention of trafficking**

1. **Article 12(2), 12(2)(a), 12(3)**

**Draft language:**

2. *States Parties [shall] [shall endeavour to]:*
  - (a) *[Endeavour to] Undertake...*
3. *States Parties [shall] [are encouraged to] provide...*

**Proposed language:**

2. *States Parties shall: ...*
  - (a) *Undertake...*
3. *States Parties shall provide...”*

- a. **Delete qualifying language.** States Parties have an existing duty under international law to act with due diligence to prevent human rights violations. Article 2 of the ICCPR and the ICESCR reinforce

this duty by obligating States Parties to promote and protect human rights, and to take such legislative and other measures as may be necessary to give effect to these rights. The Protocol should, therefore, use stronger language and require States Parties to undertake information campaigns and programmes to promote awareness and prevention of trafficking.

### Article 13 Cooperation with non-States Parties

#### **Draft language:**

*States Parties [shall] [are encouraged to] cooperate with non-States Parties to prevent and punish trafficking in [women and children] [persons] and to protect and care for victims of such trafficking. To that end, the appropriate authorities of each State Party [shall] [are encouraged to] notify the appropriate authorities of a non-State Party whenever a victim of trafficking who is a national of the non-State Party is in the territory of the State Party.*

#### **Proposed language:**

*States Parties shall cooperate with non-States Parties to prevent and punish trafficking in persons and to protect and provide care for victims of such trafficking. To that end, the competent authorities of each State Party shall notify the competent authorities of a non-State Party whenever a victim of trafficking who is a national of the non-State Party is in the jurisdiction of the State Party.*

1. Use “shall” rather than “are encouraged to.” The Protocol should use stronger language in order to ensure that States Parties undertake measures necessary to encourage cooperation with non-States Parties. In order to achieve effective realization of the protections contained within this Protocol, States Parties must cooperate with non-States Parties to prevent traffickers from undermining the goals of the Protocol by moving their activities to States not parties to the Protocol.
2. Use “competent” rather than “appropriate” authorities. Use of the term “competent” would better ensure fair and objective treatment of trafficked women, and leaves States Parties a narrower margin of discretion in designating such authorities.
3. Use “in the jurisdiction of” rather than “in the territory of.” Use of the phrase “in the jurisdiction of” would provide more comprehensive protection of trafficked women, including those on embassy grounds of States Parties that are located within the territory of non-States Parties.