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**Ad Hoc Committee on the Elaboration of a
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**Note by the International Labour Organization on the
additional legal instrument against trafficking in women and
children***

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on the additional legal instrument against
trafficking in women and children**

I. ILO standards and their supervision

1. Relevant ILO Instruments:

Within the ILO's mandate, trafficking in men, women and children for purposes of labour exploitation, in particular forced and compulsory labour, and other slavery-like practices - both at national and transnational levels - is covered by a number of ILO Conventions, of which the most important are¹: the *Forced Labour Convention, 1930 (No. 29)* and to a lesser extent the *Abolition of Forced Labour Convention, 1957 (No. 105)*, the *Migration for Employment Convention (Revised), 1949 (No. 97)* and the *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*, the *Private Employment Agencies Convention, 1997 (No. 181)*, the *Indigenous and Tribal Populations Convention, 1957 (No. 107)* and the *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, the *Minimum Age Convention, 1973 (No. 138)* and the proposed new *ILO Convention concerning the prohibition and immediate elimination of the worst forms of child labour*, due to be adopted in June 1999. Forced labour, discrimination in employment and occupation, and child labour are also covered by the ILO Declaration on Fundamental Rights and Principles at Work, and its Follow-up, adopted by the International Labour Conference in 1998.

a. ILO Conventions and Recommendations

The *Forced Labour Convention, 1930 (No. 29)*, prohibits forced and compulsory labour in all its forms - by which is meant all work or service which is exacted from any person under the menace of a penalty and for which the said person has not offered himself or herself voluntarily (Article 2.1). According to Article 4.1. of the Convention, ratifying states cannot impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations. Under the Convention, the illegal exaction of forced or compulsory labour must be subject to really adequate and strictly enforceable penal sanctions (Article 25).

¹ Relevant Recommendations include the *Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35)*, *Migration for Employment (Revised) Recommendation, 1949 (No. 86)*, *Migrant Workers Recommendation, 1975 (No. 151)*, *Minimum Age Recommendation, 1973 (No. 146)*, *Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)*, and the *Indigenous and Tribal Populations Recommendation, 1957 (No. 104)*. Other Conventions, such as those dealing with wages, conditions of work, labour inspection and private employment agencies, also cover the issue to some extent.

The issue of trafficking is often closely related to illegal entry or stay in foreign countries. The *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)* provides that “each Member State, for which the Convention is in force, undertakes to respect the basic human rights of all migrant workers”² (Article 1). Under Convention No. 143, States for which the Convention is in force shall take measures to detect, eliminate and apply sanctions for clandestine movements of migrants in abusive conditions and illegal employment of migrant workers, on the one hand, and on the other, provide a minimum level of protection to workers in an irregular situation. While Convention No.143 is primarily aimed against the organized movement of migrant workers by labour traffickers, it also applies to illegal and clandestine migration by individuals acting on their own or in small groups. It aims to prevent all forms of illegal or clandestine migration for employment in so far as they take place in abusive conditions. Abusive practices as identified by the Meeting of Experts on Future ILO activities in the Field of Migration (April 1997) include, among others, situations in which 1) candidates for migration are enticed into employment under false pretences; 2) migrants are specifically subjected to unacceptable harsh working and living conditions and are faced with dangers to their personal security or life; 3) workers suffer from degrading treatment or women are abused or forced into prostitution; and 4) migrants have their passports or their other identity documents confiscated.

Measures to suppress clandestine movements of migrants include: establishing systematic contact and exchange of information with other states (Articles 3 and 4); consulting representative organisations of employers and workers (Articles 2, 4 and 7); prosecuting the authors of labour trafficking whatever the country from which they exercise their activities (Article 5); and defining and applying administrative, civil and penal sanctions (which include imprisonment) in respect of organisation of movements of migrants for employment in abusive conditions and in respect of knowing assistance to such movements, whether for profit or otherwise (Article 6). Finally, it should be noted that under Article 9.1 of the Convention, workers whose employment situation is irregular are nevertheless entitled to the same remuneration, social security and other benefits as lawfully employed migrants.

With regard to measures to prevent misleading information on overseas employment, the *Migration for Employment Convention (Revised), 1949 (No. 97)*, states that ratifying States undertake to maintain, or satisfy themselves that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information (Article 2). Ratifying States will also, insofar as national laws and regulations permit, take all the appropriate steps against misleading propaganda relating to emigration and immigration (Article 3.1). Considering the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, the ILO adopted in 1997 the *Private Employment Agencies Convention (No. 181)*. The Convention provides that a Member shall [...] adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent

² This article refers to the human rights contained in the international instruments adopted by the UN in this domain, which include some of the fundamental rights of workers. The exercise of these basic human rights is not linked to any requirement as to citizenship or legal residency in the country of employment. A distinction can however be made between these rights thus protected generally, and those which are laid down in greater detail for regularly admitted workers in Part II of the Convention.

practices and abuses (Article 8.1). Article 8.2) provides that where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

The *Indigenous and Tribal Populations Convention, 1957 (No. 107)* provides that each Member shall adopt special measures to ensure effective protection with regard to recruitment and conditions of employment of workers belonging to these populations and to prevent discrimination between them and other workers. The more recent *Indigenous and Tribal Peoples Convention, 1989 (No. 169)* specifies that special measures shall be taken to ensure effective protection with regard to recruitment and conditions of employment of indigenous and tribal peoples. Such measures should ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, nor to bonded labour and other forms of debt servitude (Article 20). Particular attention must be paid to adequate labour inspection services in areas where these workers are employed.

The *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* states that discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity in employment or occupation. The 1996 Special Survey on Equality in Employment and Occupation refers to the particular vulnerability of indigenous and tribal peoples to discrimination, including coercion and improper practices in recruitment and employment, and states that "in some countries serfdom, debt bondage and other types of compulsory service, although formally abolished by law, are still practised in respect of indigenous and tribal peoples, and sometimes affect other disadvantaged groups as well". ILO programmes and publications addressing the issue³ also indicate that deep-rooted gender-based discrimination in society and the labour market has contributed to the phenomenon of cross-border and national trafficking in women and girls.

More generally in relation to child labour, the *Minimum Age Convention, 1973 (No. 138)* contains the obligation for ratifying Member States to pursue a national policy designed to ensure the effective abolition of child labour (Article 1). Cases of forced child labour, child prostitution and trafficking are generally dealt with at present under the Forced Labour Convention. However, trafficking of children is most likely to be covered under the proposed *ILO Convention (and its accompanying Recommendation) concerning the prohibition and immediate elimination of the worst forms of child labour* which is being discussed for the second time in June 1999 with a view to adoption. The draft provides that the Convention would apply to all persons under the age of 18. The worst forms of child labour are stated to include all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced and compulsory labour, debt bondage and serfdom as well as work which is likely to jeopardize the health, safety and morals of children. Domestic service often falls under one or more of these categories. In addition, the proposed Convention calls for measures to take account of the special situation of girls. Its accompanying Recommendation, which would supplement the Convention and provide further guidance for its effective implementation, also addresses the situation of child domestic workers. For example, the design and implementation of programmes of action should aim at giving special attention to the problem of hidden work situations, in which girls are at special risk. Furthermore, in determining

³ See attached information on IPEC's activities in the field of trafficking in children; See also Lin Lean Lim, *The Sex Sector*, International Labour Office, Geneva, 1998.

the types of work which are likely to jeopardize the health, safety and morals of children, countries are asked to consider, as a minimum, work which exposes children to physical, emotional or sexual abuse and work under particularly difficult conditions, such as work for long hours or during the night or work which does not allow the child the possibility of returning home each day.

As mentioned above, the proposed Convention also covers trafficking in children as well as the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, as "worst" forms of child labour. The proposed Convention calls for international cooperation and assistance among the ratifying States in eliminating such forms of child labour, which is particularly relevant to the international dimensions of the problem. It also provides that States would have the obligation to establish or designate appropriate monitoring mechanisms and to design and implement programmes of action to eliminate as a priority the worst forms of child labour. Each State would have to take measures to ensure the effective implementation and enforcement of the provisions of the Convention, including the provision and application of penal sanctions or, as appropriate, other sanctions. The provisions of the draft Recommendation reinforce the need for countries to cooperate with international efforts to end trafficking in children and other worst forms of child labour by gathering and exchanging information on criminal offences, including those involving international networkers, and detecting and prosecuting those involved in the sale and trafficking of children and the use of children for illicit activities, prostitution and pornography.

a. ILO Declaration on Fundamental Rights and Principles at Work, and its Follow-up

This Declaration was adopted at the June 1998 Session of the International Labour Conference. It provides that "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation"⁴.

It also recognizes the obligation on the ILO itself to assist its Members and to support their efforts by all the means at its disposal. The Follow-up adopted for the Declaration consists of two parts: Annual reports will have to be supplied by States that have not ratified all the relevant ILO Conventions, and will be examined by the ILO Governing Body at its annual session in March. Global reports prepared by the Director-General will examine each of these issues in turn (with forced labour to be examined in 2001 and child labour in 2002) and will be submitted to the Conference for discussion. These discussions will form the basis for plans of action for technical cooperation or each of these issues, to be adopted for a four-year period.

⁴ Paragraph 2 of the ILO Declaration on Fundamental Rights and Principles at Work.

2. Comments by the ILO Supervisory bodies

For almost ten years⁵, the Committee of Experts on the Application of Conventions and Recommendations (cited as "the Committee" hereafter) has commented on several occasions on situations related to trafficking of men, women and children for purposes of labour exploitation, including forced labour in sweatshops, factories, plantations, brothels and as domestic servants in private houses. The Committee has found that victims of trafficking are often submitted to conditions of forced labour, and information on national and cross-border trafficking has generally been examined under Convention No. 29. Increasingly, trafficking, especially child trafficking for prostitution, is also being discussed at the International Labour Conference Committee on the Application of Conventions and Recommendations (ILCCR)⁶. Although men are also being trafficked, it is apparent from the Committee of Experts's comments that women and children are the key target group for traffickers⁷.

The Committee of Experts has commented most extensively on cases of trafficking in women and children for prostitution (with most often a subsequent debate in the Conference Committee), and requested detailed information on the action taken against traffickers. The Committee has pointed to the importance of raising awareness about trafficking in all sectors of society⁸ and has found that "in the case where child bondage and forced labour is related to trafficking and related forms of abuse, specific measures were needed for their identification, release and rehabilitation, given the particular vulnerability of children and their specific needs"⁹. However, in a number of instances the Committee's comments have gone beyond this particular situation. It has expressed its concern about the situation of indigenous peoples, including children, being trafficked at national and cross-border level involving recruitment through deception, violence or coercion non-payment of wages and compulsory and forced labour¹⁰. It has also commented on the conditions of recruitment and working conditions of foreign female domestic workers¹¹ and on

⁵ CEACR observation on Convention No. 29, India, 1990 and discussion at the ILO Conference Committee on the Application of Conventions and Recommendations in 1991.

⁶ In the past, the ILCCR has taken up the issue in the case of India (ILCCR, 1991 and 1998), Bangladesh (ILCCR, 1998), Sudan (ILCCR 1997 and 1998) and Thailand (ILCCR, 1995). In 1999, it is examining Myanmar, Pakistan and Peru.

⁷ Under Convention No. 29, comments by the Committee of Experts on cases on trafficking of women and children include, for example, Bahrain (direct request 1994), Bangladesh (observation 1997), Brazil (observations 1996 and 1998), Côte d'Ivoire (observation 1998), India (observation 1997), Libya Arab Jamahiriya (observation 1998), Pakistan (observation 1994), Peru (observation 1998), Sri Lanka (observation 1998, direct request 1996), Sudan (observation 1998) and Thailand (observation 1998).

⁸ Bangladesh (observation 1998)

⁹ India (observation 1995).

¹⁰ Dominican Republic (observation 1998) and Haiti (observation 1998) under Convention No. 105, Brazil (observation 1998) under Convention No. 29, Mexico (observation 1998) and Peru (observation 1998) under Convention No. 169.

¹¹ For example, Bahrain (direct request, 1994), Libyan Arab Jamahiriya (direct request, 1998)

practices of migrant labourers, including children being trafficking and forced to work on plantations¹², fishing platforms or as camel riders.

3. The General Survey on Migrant workers, 1998

The Committee of Experts completed at its 1998 session its General Survey on Migrant Workers, in which it expressed its concern about the phenomenon of labour trafficking as an aspect of irregular migration (paras. 289-292). It found that illegal migration was becoming highly organized internationally and was linked to lucrative criminal activities, including human trafficking; labour trafficking could become one of the dominant forms of abusive migration. The Committee noted that irregular migrants “often find themselves in positions where they are vulnerable to abuse and exploitation. Substandard working and living conditions, slave-like working conditions, confiscation of travel documents, and non-payment of wages and other benefits at the hands of the employer, as well as potential humane treatment at the hands of the authorities if caught, all too commonly dominate the lives of irregular workers” (para.19). Strong emigration pressures combined with increasingly restrictive immigration laws and regulations contributed to the fact that potential immigrants were compelled to rely more on clandestine networks - who demand exorbitant fees for their services - to slip through the net. It noted that “the ensuing financial and moral debt (clandestine employment often being presented as a “service rendered”) thus [trapped] migrants in a position of dependence, exposing them to unbridled exploitation of their labour in conditions that are close to slavery”(para. 291).

The General Survey also highlighted the particular situation of women migrants when recruited as domestic workers or “sex workers”. It stated that “a vast majority are forced into prostitution upon their arrival in the host country. In many cases, women are recruited for jobs as receptionists, hostesses and barmaids, and are even issued permits to undertake such work, yet upon their arrival in the host country find themselves working in the sex industry” (para.23). According to the Committee, there was an increasing tendency to recruit women migrant workers for commercial (sexual) exploitation through arranged marriages with foreigners or by getting them to sign contracts of employment that look tempting but rarely reflect the real situation. The fact that they were employed abroad and often hold jobs for which there was little protection under social legislation such as domestic workers, manual workers in agriculture, factories or export processing zones, and as hostesses or entertainers in night clubs or cabarets, made them all the more vulnerable to exploitation and abuse. This position was reinforced by the confiscation of travel documents, large debts owed to the recruiter and the threat of being reported to the police (paras. 292).

The Committee further noted that an examination of national laws and regulations showed that sanctions against migrants in an irregular situation were very widespread, both in sending and receiving countries (para. 338). The Committee noted that, overall, States were very active in terms of attempting to combat clandestine and illegal migration, including labour trafficking. However, the Committee emphasized that “if the fight against clandestine migration and, a fortiori, the protection of nationals by both sending and receiving countries is justified, at the same time, it is important to ensure respect of the basic human rights of all migrant workers, in order to avoid

¹² Côte d'Ivoire (observation 1998) under Convention No. 29, Haiti and Dominican Republic (observation 1998) under Convention No. 105.

migrant workers (notably those in an irregular situation) finding themselves in a situation where their rights are not respected and where they are vulnerable to abuses of all kinds” (para. 361).

The Committee concluded that the two ILO Conventions (Nos. 97 and 143) were drafted with state-organized migration in mind, rather than the current situation where private recruitment and placement agencies increasingly play an essential role. In addition, the Conventions were drafted at a time when feminization of migration had not yet taken place. Now, it is estimated that female migrants make up almost half of migrant workers in the world today. Moreover, the Committee asked “whether new measures ought to be taken by the ILO to ensure protection for this category of workers and, equally, if any revision of the treatment of artists and members of the liberal professions in the ILO instruments were necessary, particularly in light of the extent of the phenomenon of women migrants workers being recruited for such employment only to find themselves working in the sex sector” (para. 658).

Despite lacunae in the existing instruments, the Committee was convinced that the principles embodied in Conventions Nos. 97 and 143 were still valid today. International migration would continue to increase and it would be unacceptable for millions of workers to remain excluded from international protection. The Committee examined two options: either to maintain the existing Conventions, with or without additional protocols to bridge the gaps, or to revise completely the current instruments in order to bring them up to date and to merge them into a single new Convention. The General Survey is to be discussed in the International Labour Conference in June 1999.

Finally, it is important to note that the new ILO Declaration on Fundamental Principles and Right at Work of 1998 refers in its Preamble to migrant workers as being especially in need for protection. The Declaration will be an important instrument and framework for the ILO in its efforts to combat trafficking of men, women and children for purposes of labour exploitation.

II. Comments on the protocol

a. General comments:

In recent years, trafficking in persons, particularly in women and children, has considerably increased and has become a major part of transnational activities and organized crime. Coherent action at the international level is needed to respond to this development more effectively. The ILO, therefore, supports, in general, the elaboration of a Convention Against Transnational Organized Crime and a specific additional Instrument to Prevent, Suppress and Punish Trafficking in Women and Children, supplementing the draft Convention. In addition, we would like to stress the importance of close and effective collaboration between the ILO, the Centre for International Crime Prevention and the treaty-based and charter-based bodies of the United Nations.

It will be important to avoid duplication of additional instruments to the draft Convention: Two different additional legal instruments to the draft Convention are being considered - one to suppress, punish and prevent trafficking in women and children and one against the illegal trafficking in and transport of migrants (which deals specifically with the problem of trafficking and transport of migrants by sea). It ought to be determined how these two protocols will be linked to

each other. There seems to be overlapping between the two instruments, especially with regard to the preamble and Chapter I of the proposed protocol against illegal trafficking and transport of migrants which also includes a reference to trafficking for prostitution and sexual exploitation (which is covered by the other protocol). If the aim of the proposed protocol on illegal transport of migrants is to combat specifically the illegal traffic and transport of migrants by sea, and not the other aspects of trafficking in persons, we suggest in order to reflect the scope and purpose of the protocol, to 1) revise the title, preamble and chapter I of the protocol accordingly, and 2) delete paragraph 3 (on prostitution and sexual exploitation) of the preamble.

Given that the proposed Protocol to Suppress, Punish and Prevent Trafficking in Women and Children is a supplement to the draft Convention against Transnational Organized Crime, of which the aim is to promote *cooperation among the states parties* so that they may address more effectively the various aspects of organized crime having an *international dimension*, it should be limited to cross-border and transnational trafficking of persons and to situations in which cross-border trafficking is immediately related to or a consequence of trafficking in persons within borders¹³.

The proposed protocol should best be formulated in practical, concise and focussed terms, dealing with basic principles and capable of being ratified by and implemented in all member States. The ILO's long experience in standard-setting (through a tripartite process) reveals a tendency towards the adoption of principles which can be ratified and implemented by the widest possible number of States, rather than the adoption of a detailed set of provisions to which States may have numerous reservations.

b. Specific comments

I. The title and preamble:

The phenomenon of trafficking in persons is not necessarily limited to trafficking in women and children (although it should be recognized that women and children are disproportionately affected) nor to trafficking for purposes of forced labour and sexual exploitation. Men, women and children belonging to ethnic minorities, indigenous and tribal peoples, refugees and illegal migrants are considered to be particularly vulnerable to traffickers. In order to reflect reality, the scope of the proposed protocol should include all persons being trafficked and refer to *trafficking in persons*.

The proposed protocol should avoid disproportionately emphasizing the criminal response to everyone involved in trafficking, included the victims. In its 1999 General Survey on Migrant Workers, the Committee of Experts has found that sanctions against irregular migrants are very widespread and that even with the multiplication of repressive laws and regulations to control irregular migration, "abusive practices to which migrant workers can be victim often continue to occur on a similar scale"¹⁴. It has emphasized that it is important to ensure respect of the basic human rights of all migrant workers, in order to avoid migrant workers (notably those in an irregular

¹³ The draft Convention appears to leave some room (in its Article 2.5) for action to be taken against traffickers within the borders of one state, if at least two states are involved.

¹⁴ General Survey of 1999 on Migrant Workers, paragraph 360.

situation) finding themselves in a situation where their rights are not respected and where they are vulnerable to abuses of all kinds. We therefore recommend that the objective of the proposed protocol should be not only to prevent, suppress and punishing trafficking in persons but also to protect the basic human rights of the men, women and children being trafficked.

Further to the above, it may be worthwhile, in order to clarify the object and purpose of the proposed protocol, to recall in the preamble the relevance of other particularly relevant international human rights instruments, including ILO Conventions, that cover the same subject.

Preferably, the title of the proposed protocol should read: *Protocol to Prevent and Suppress Trafficking, Punish Traffickers and Protect the Rights of Trafficked Persons, Supplementing the Convention Against Transnational organized Crime.*

II Operative part:

Article 1 (purpose)

Article 1 should address all aspects of trafficking and take into account all purposes for which human beings are trafficked. We suggest deleting the reference to sexual exploitation, which is a rather undefined term and subject to different interpretations. ILO experience (see above) indicates that while trafficking in persons is not always for the purpose of forced labour, it is generally related to abusive working conditions and exploitation of migrant workers. The General Survey on Migrant Workers found that labour trafficking could become one of the dominant forms of abusive migration. We would recommend amending Article 1 to cover, as a minimum, trafficking in persons for the purpose of labour exploitation, in particular forced labour and serfdom. The purpose of the proposed protocol, as laid down in Article 1, should also be to protect the rights of trafficked persons.

Article 1.1 could read: "The purpose of this Protocol is to promote and facilitate cooperation among States Parties in order to prevent, investigate and punish international trafficking in persons for the purpose of labour exploitation, in particular forced labour or serfdom, and to protect the rights of trafficked persons, with particular attention to the situation of women and children."

Section (2) of Article 2 can be deleted since its content is covered in the other provisions of the proposed protocol.

Article 2 (scope of application)

It is imperative that the definition of what constitutes "trafficking" should be absolutely clear and objective, corresponding to reality and the situations considered. As of today, there is no internationally accepted definition of "trafficking" and the Ad Hoc Committee should seize the opportunity to formulate a clear definition of trafficking taking into account other international legal instruments, including the above-mentioned ILO Conventions, as well as practices and lessons learnt from inter-governmental, governmental and non-governmental technical cooperation activities addressing the issue. It should be taken into account that trafficking is also a process in itself, independent of its consequences. The important aspect is the element of illegality, fraud,

deception or abuse surrounding the recruitment (including the working conditions) and transfer of the person concerned.

The ILO is in favour of the more concise and general scope of application (definition) included in option 1, rather than the detailed description of what constitutes trafficking, contained in option 2. However, option 1 should be expanded to include trafficking for labour exploitation, in particular forced labour and serfdom. The reference to sexual exploitation (as it is covered by the previous) should be deleted. The definition should cover all persons being trafficked and not only women and children. However, we agree that the legal status of children is often different than that of adult men and women. Moreover, as already mentioned above, the ILO Committee of Experts has recognized that “in the case where child bondage and forced labour is related to trafficking and related forms of abuse, specific measures were needed for their identification, release and rehabilitation, given the particular vulnerability of children and their specific needs”¹⁵. Article 2 of the draft ILO Convention on the worst forms of child labour, which covers trafficking, defines, in accordance with the Convention on the Rights of the Child, the term “child” as all persons under the age of 18. The proposed protocol (draft section 2.3 - option 1) should not adopt a standard which is lower than or contrary to internationally accepted standards and should prohibit trafficking of children below the age of 18.

Article 3 (obligation to criminalize)

It is important to bear in mind that the ILO Committee of Experts noted that, overall, States are very active in terms of attempting to combat clandestine migration - whether or not under abusive conditions - and illegal employment. However, unlike the sanctions against labour traffickers, sanctions against migrants in an irregular situation are very widespread, both in sending and receiving countries. The Committee also found that sanctions against labour traffickers generally do not distinguish between traffickers engaged in “exporting” labour and those involved in “importing” labour. Under ILO Convention No. 143 sanctions in respect of the organization of movements of migrants for employment in abusive conditions and in respect of knowing assistance to such movements, can be administrative, civil or penal, including imprisonment. If the person being trafficked finds herself or himself in a situation of forced labour, ILO Convention No. 29 stipulates that the illegal exaction of forced or compulsory labour must be subject to really adequate and strictly enforceable penal sanctions.

Article 3 of the proposed protocol should include a provision that the authors of trafficking can be prosecuted *whatever the country from which they exercise their activities* (see Article 5 of ILO Convention No. 143). Such a provision would prevent traffickers from slipping across borders in order to avoid detection and prosecution under a country’s administrative, civil and penal law. Traffickers would also not be immune from prosecution should they coordinate their activities from a country other than that of origin or destination, which may not have penal sanctions for trafficking in place.

¹⁵ India (observation 1995).

Article 4 (assistance and protection)

Article 4 needs further elaboration to include the obligation for States Parties to provide information to those being trafficked on their specific rights, on the procedures available for claiming compensation and on the availability of special support services. It should also protect those who legitimately expose violations of the provisions of the protocol or national legislation from discrimination and reprisals. It may be necessary to provide for special complaints procedures for cases of trafficking and ensure that legal administrative procedures are simple and prompt. The protocol should take into account the special situation of children being trafficked and reflect their need for special assistance and protection.

Article 7 (victim rehabilitation)

According to the Committee of Experts, “once a migrant worker in an irregular situation has been seized by the law enforcement bodies, he or she is often immediately taken to the border without having had the possibility of recovering personal belongings, requesting payment of wages or lodging an appeal with the judiciary bodies in the country of employment”. According to Article 9.1 of Convention No. 143, however, irregular migrants are entitled to the same remuneration, social security and other benefits as lawfully employed migrants. Therefore, Article 7 should ensure that trafficked persons who have been irregularly employed are not deprived of their rights arising from the work actually performed. At the same time, it will be important that adequate measures are taken to ensure that the trafficked person’s irregular situation does not constitute an obstacle deterring him or her from having recourse to the judiciary, for fear of making his or her situation known to the authorities and incurring the risk of being expelled.

Article 8 (law enforcement), Article 12 (prevention)

Measures to ensure effective law enforcement should include training of labour inspectors and the judiciary as well as relevant actors in civil society such as legal aid and support organizations and workers’ and employers’ organizations. As far as possible, data gathered on the nature and extent of trafficking should be disaggregated by sex, age group, and origin. The proposed protocol should provide that national or regional programmes of action, including law enforcement measures, should be designed and implemented in consultation with all the relevant government institutions, NGOs and other stakeholders such as workers’ and employers’ organizations (such as private employment/recruitment agencies).

II. ILO action

Most of the ILO action to combat trafficking in persons has focussed on the most vulnerable group, children. Through its International Programme on the Elimination of Child Labour (IPEC), the ILO has been active in assisting countries in the design and implementation of programmes on trafficking in children, in particular through two subregional programmes in Asia. The sub-regional programmes in the Mekong region and South Asia included action oriented research in eight

countries¹⁶. The aim was to identify strategies to strengthen national action and to develop bilateral and sub-regional cooperation among countries affected by the trafficking situation. The results of the research were discussed during two sub-regional consultations and used as a basis for sub-regional activities and specific interventions to combat trafficking in children for labour exploitation, including prostitution, domestic work and other forms of labour exploitation. The follow-up implementation in all these countries will start later this year. Particular attention will be given to vulnerable groups such as children of migrants and ethnic minorities, tribal groups, the very young (under the 12 years of age) and girls. While ILO-IPEC will continue to strengthening its action in the Asian region, a similar programme to assess the problem and identify national and sub-regional responses will be launched in Western and Central Africa¹⁷. In addition, ongoing programmes are implemented at the country level and include direct action programmes targeting children and parents, advocacy and campaigns and capacity-building and strengthening (1) legislation and enforcement; (2) research and information dissemination; and (3) coordination and networking.

In addition, other units and departments within the Office, such as the Programme on More and Better Jobs for Women, the Migration unit and the Equality and Human Rights Coordination Branch, are strengthening their knowledge and expertise in order to broaden ILO's scope of attention and activities beyond trafficking in children. Coordination and cooperation with the UN system and other regional and international organisations in the field of human rights have also triggered a growing attention to trafficking-related issues in ILO written and oral activities reports submitted to the United Nations and its subsidiary bodies, in particular the Commission on Human Rights, as well as to the "treaty bodies" established to monitor the application of United Nations instruments. It maintains close relations with these bodies and takes part in discussions relating to a variety of human rights subjects, which increasingly include, the question of trafficking in persons.

In 1998, the ILO published *The Sex Sector* (edited by Lin L. Lim) which examines the social and economic forces driving the growth of the sex industry in four Southeast Asian countries. Although not the focus of the report, internal and international trafficking in women and children for prostitution are being referred to as important dimensions of the sex sector.

¹⁶ Bangladesh, Cambodia, China, Nepal, Pakistan, Sri Lanka, Thailand and Vietnam. The country study on Thailand also included information on the Lao People's Democratic Republic.

¹⁷ Benin, Burkina Faso, Cameroon, Gabon, Ghana, Côte D'Ivoire, Mala, Nigeria, Togo.