GUIDANCE NOTE

on preventing and combatting trafficking in human beings for the purpose of labour exploitation

GRETA

GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

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Introduction

1. Trafficking in human beings for the purpose of labour exploitation has been identified as one of the major challenges facing Europe in the report by the former Secretary General of the Council of Europe, "Ready for Future Challenges - Reinforcing the Council of Europe",[1] based on the findings of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). At the 129th Ministerial Session on 17 May 2019 in Helsinki, the Committee of Ministers agreed to continue analysing the protection provided by existing European standards with a view to identifying gaps and developing sector-specific recommendations, guidelines and codes of conduct, as well as, if required, other instruments, and instructed its Deputies to examine ways of strengthening action against trafficking in human beings.[2]

2. In the course of the second round of evaluation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), GRETA paid particular attention to measures taken by State Parties to prevent and combat trafficking for the purpose of labour exploitation. GRETA dedicated a thematic chapter to this issue in its 7th General Report.[3] Available data shows that trafficking for the purpose of labour exploitation has been on the rise, and has emerged as the predominant form of exploitation in some State Parties to the Convention. This form of trafficking occurs both in the formal and informal economy, and concerns women, men and children. It generates significant profits and can be linked to other illegal activities, such as tax evasion, social benefit fraud, corruption or money laundering. GRETA noted that combating trafficking in human beings for the purpose of labour exploitation is challenging on many accounts. The fact that awareness among institutions of the specificities of trafficking for the purpose of labour exploitation has for a long time been limited compared to the level of awareness about trafficking for the purpose of sexual exploitation clearly has implications with respect to the lack of proactive identification of situations of labour exploitation. Further challenges arise because of differences in practice with respect to the interpretation and application of labour standards and in defining labour exploitation, because trafficked persons prefer not to lodge complaints or act as witnesses, as they are often dependent on their traffickers for work and housing, and not least because combating trafficking for the purpose of labour exploitation requires co-ordinated action between the State, civil society, trade unions and the private sector.

3. At its 35th meeting in July 2019, GRETA decided to set up an ad hoc working group on strengthening action to combat trafficking for the purpose of labour exploitation, which drafted a compendium of good practices in the area of combating trafficking in human beings for the purpose of labour exploitation.[4] On the basis of the compendium, GRETA has adopted this Guidance Note to further strengthen the implementation of the obligation to take measures to prevent and combat trafficking for the purpose of labour exploitation.

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[1] Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093af03

[2] See Committee of Ministers, Decision CM/Del/Dec(2019)129/2 (17 May 2019). Available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809477f1

[3] 7th General Report on GRETA's activities, covering the period from 1 January to 31 December 2017, GRETA(2018)1.

[4] https://rm.coe.int/mpendium-of-good-practices-in-addressing-trafficking-in-human-beings-f/16809f9bef

Key concepts and definitions

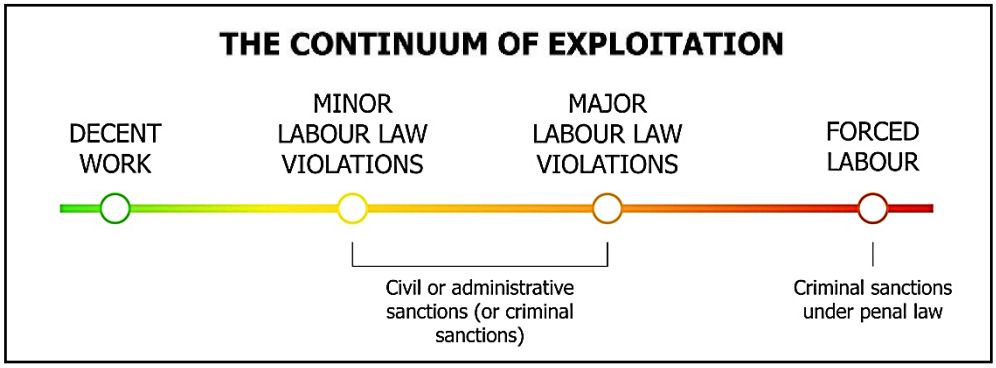
4. The internationally agreed definition of **trafficking in persons**,[5] replicated in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings, as well as in other instruments,[6] is a combination of three components: an "action" (recruitment, transportation, transfer, harbouring or receipt of persons), which is committed through the use of "means" (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person), for the "purpose" of exploitation. The definition provides an open-ended list of "exploitation" practices, which include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a person to the intended exploitation is irrelevant where any of the previously mentioned "means" have been used, or where the trafficked person is a child.

5. **Trafficking for the purpose of labour exploitation** as a term is used to differentiate between trafficking for the purpose of sexual exploitation, and trafficking for exploitative purposes in different economic sectors, both in the formal and informal economy. The concept of "labour exploitation" in the context of human trafficking is taken to cover, at a minimum, forced labour or services, slavery or practices similar to slavery, and servitude, notions that are well acknowledged in international law, including in the case law of the European Court of Human Rights regarding Article 4 of the European Convention on Human Rights (ECHR). Notably, forced or compulsory labour is defined in Article 2(1) of the International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour (No. 29 of 1930) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

6. **Exploitation** is a fundamental element of the criminalisation of human trafficking. However, the concept of exploitation is not defined in international law. While a range of disciplines (economics, politics, philosophy, law) have sought to establish what "exploitation" is, the concept remains ambiguous and has both temporal and cultural dimensions. Within the context of human trafficking, there is general support for understanding "exploitation" - in the sense of taking unfair advantage of another person's vulnerability or state of need - as a continuum, albeit one that is poorly defined and is not static. At one end lie situations which amount to labour law violations, such as failure to pay a mandated minimum wage, and at the other extreme are situations where the unfair advantage is acute and the resulting harm very severe.[7] Currently, it is not clear where on this continuum labour exploitation changes from being considered a problem of labour law to becoming an issue under criminal law. The absence of a clear definition of "exploitation" makes it difficult to draw the line

[5] Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime ("the Palermo Protocol").
[6] E.g. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
[7] See UNODC, The concept of 'exploitation' in the Trafficking in Persons Protocol, Vienna, 2015.

between exploitation in terms of violation of labour rights and extreme exploitation amounting to forced labour.[8]



7. **Vulnerability** and its abuse are central to any understanding of human trafficking. While vulnerability is used in the international human rights discourse to emphasise particular disadvantages of specific groups, generally regarded as needing particular or special support, there is no single definition of the concept nor of the criteria to be used to identify a group or person as vulnerable.[9] The ILO observed that vulnerability can result from some innate characteristic of the trafficked person (physical or mental deficiency, ill health, or youth) or may develop due to the situation the person finds him/herself in within a destination country (poverty, precarious administrative status).[10] Yet, the necessary condition for the notion of exploitation is the abuse of vulnerability, and not vulnerability per se. The Explanatory Report to the Convention defines abuse of a position of vulnerability as the abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic, and it might involve insecurity or irregularity of the trafficked person's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited.[11]

8. **Severe labour exploitation** is a concept used by the European Union Agency for Fundamental Rights (FRA) to refer to all forms of labour exploitation that are criminal under the legislation of the Member State in which the exploitation occurs.[12]

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[8] Klara Skrivankova, Between decent work and forced labour: examining the continuum of exploitation, Joseph Rowntree Foundation, November 2010. See also Marija Jovanovic, The Essence of Slavery: Exploitation in Human Rights Law, 20 Human Rights Law Review 3 (2020).

[9] Elif Celik, The role of CRPD in rethinking the subject of human rights, 21 The International Journal of Human Rights 7 (2017) pp. 933-955.

[10] Rohit Malpani, Legal Aspects of Trafficking for Forced Labour Purposes in Europe, ILO Working Paper, January 2006, p. 4.

[11] Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (2005) paragraph 83. See also Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 2(2) and UNODC, Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2006).

[12] European Union Agency for Fundamental Rights, Severe labour exploitation: workers moving within or into the European Union States' obligations and victims' rights (2015). Available at https://fra.europa.eu/en/news/2015/zero-tolerance-severe-forms-labour-exploitation-needed-fra-study-says

Criminalisation of human trafficking for the purpose of labour exploitation

9. Article 18 of the Convention seeks to have human trafficking treated as a criminal offence. The existence of laws criminalising trafficking plays an important preventive role, which is reinforced, *inter alia*, when the law provides for appropriate sanctions and when it can be readily operationalised by practitioners, prosecutors, and judges. In this respect, and in particular in the context of labour exploitation, comprehensive, detailed and clear definitions of the criminal offences become crucial.

10. In addition to criminalising human trafficking, some State Parties prohibit forced labour in their criminal code and also include it in their labour code. States should ensure that the interpretation of what constitutes labour exploitation for the purpose of establishing the criminal offence of human trafficking is consistent with the standards contained in labour law. States should regularly review legislation, in light of new evidence on trafficking for labour exploitation within their territories, to fill potential legal gaps.

11. Only a few parties to the Convention have defined "exploitation" in their national law, while others have defined "labour exploitation" in the context of trafficking in human beings.[13] States should define the parameters of the concept of **exploitation** through either law or guidance, in order to avoid inconsistency of interpretation and legal uncertainty. Such definition should include all forms of trafficking for the purpose of labour exploitation, including domestic work and servitude.

12. Delineating the aspects of "**coercion**", which is one of the elements of the legal definition of trafficking in human beings, is crucial for understanding the factors underpinning trafficking in human beings for labour exploitation. Rather than using direct threats or force, traffickers often compel workers to comply with abusive working conditions through subtle means of coercion, such as threat of or actual withholding of wages, and taking advantage of vulnerabilities such as irregular immigration status and lack of means of subsistence. In the case of *Chowdury and Others v. Greece*, in which the European Court of Human Rights found for the first time a violation of Article 4 of the European Convention on Human Rights in respect of trafficking for the purpose of labour exploitation, the Court considered that where an employer abuses its power or takes advantage of the vulnerability of its workers in order to exploit them, they do not offer themselves for work voluntarily.[14] The Court further considered that a restriction on freedom of movement was not a condition *sine qua non* for establishing a situation as forced labour or human trafficking, because a trafficking situation could exist in spite of the victim's freedom of movement.[15] States should align the notion of **abuse of vulnerability**, which is one of the elements of the legal definition of trafficking in human beings, to that of the Convention. Abuse of vulnerability as defined by the Convention encompasses any abuse of vulnerability, whether physical, psychological, emotional, family-related, social or economic.

13. The irrelevance of the trafficked persons' **consent to the intended exploitation**, when any abusive means have been used in the case of adults (the use of means is immaterial in the case of children), should be explicitly stated in national measures criminalising trafficking, as persons subjected to labour exploitation in particular may willingly accept the exploitation because they have no

[13] GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, GRETA(2020)08, pp. 5-7.
[14] *Chowdury and Others v. Greece* (application No. 21884/15), judgement of 30 March 2017, paragraph 96.
[15] Ibid., paragraph 123.

alternative in order to make a living, or because they do not perceive it as exploitation. Indeed, consent is an important factor at different stages of human trafficking cases, for instance: if trafficked persons refrain from self-identifying as victims as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as human trafficking where the person apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions that the victim has given his/her consent.[16] Stating explicitly in law the irrelevance of the consent to the intended exploitation could improve the implementation of the anti-trafficking provisions and provide trafficked persons with greater confidence in self-reporting to NGOs and public authorities.

14. Practitioners in many States experience great difficulty in separating bad working conditions from situations that could or should be investigated and prosecuted as trafficking offences. Certain interpretations by courts of what constitutes human trafficking for the purpose of labour exploitation may result in acquittals or the cases being considered as labour law violations, or exploitation which does not involve human trafficking. Similarly, certain interpretations of what constitutes "exploitation" by authorities responsible for the identification of trafficked persons may result in victims being denied recognition and access to assistance, remedies and protection. Therefore, the provision of country-specific **guidance** to clarify the scope and meaning of "labour exploitation", and its application in the trafficking context, can assist law enforcement officials, labour inspectors, prosecutors, judges and other actors who may be involved in the prevention, identification and countering of trafficking for the purpose of labour exploitation.[17]

Criminalising human trafficking for the purpose of labour exploitation

- Define the parameters of the concept of exploitation through either law or guidance, in order to avoid inconsistency of interpretation and legal uncertainty;
- Align the notion of abuse of vulnerability used in the national legislation to that of the Convention, which encompasses any abuse of vulnerability, whether physical, psychological, emotional, family-related, social or economic;
- State explicitly in law the irrelevance of the consent to the intended exploitation;
- Regularly review legislation, in light of new evidence on trafficking for labour exploitation, to fill potential legal gaps.

Policy and institutional framework

15. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and action against trafficking, including through the setting up of specific co-ordinating bodies. Indeed, without a co-ordinated and comprehensive institutional framework of support, efforts to tackle trafficking for the purpose of labour exploitation remain fragmented and ineffective. As forced labour and human trafficking are issues that may fall under the competences of

[16] See UNODC Issue Paper, The Role of Consent in the Trafficking in Persons Protocol, United Nations, Vienna, 2014. Available at: www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

[17] For examples of country-specific guidance see GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 6-7.

different ministries, policy co-ordination is essential. States should establish **multi-disciplinary task forces or working groups** responsible for co-ordinating and steering national action on combating trafficking for the purpose of labour exploitation, as well as dealing with specific problems and cases. A multi-disciplinary, integrated approach involving all relevant organisations enables the sharing of information and intelligence, as well as making it possible for them to complement each other and combine their different roles and mandates (see also paragraph 22).[18] Multi-disciplinary co-operation should include, at a minimum, representatives of relevant ministries and regional authorities, law enforcement agencies, labour inspectorates, employers' organisations, trade unions and civil society organisations. Other relevant actors include municipal authorities, migrant organisations and businesses. When possible and appropriate, trafficked persons should be encouraged to play a role in the design and monitoring of measures.

Multi-disciplinary co-operation in combating labour trafficking

- Set up multi-disciplinary task forces or working groups to deal with policy and operational issues;
- Take advantage of the different roles, responsibilities and approaches of different organisations;
- Share information and intelligence;
- Organise multi-disciplinary training and exchange expertise;
- Carry out joint inspections and visits.

16. **National strategies or action plans** for combating human trafficking should be comprehensive and include specific measures to address trafficking for labour exploitation. Governments should assume full participation, responsibility and accountability in defining the objectives, implementing the activities and meeting the outcomes of the action plans.[19] A participatory approach should be implemented, starting from the preparatory stages, involving relevant stakeholders, including labour inspectorates, trade unions and civil society organisations. The strategies and action plans should envisage research and data collection to map the scale of the phenomenon and identify at-risk sectors and target groups; analysis of the legislative framework and case-law; preventive measures, including those addressing demand; specific assistance and protection measures for victims; a monitoring and evaluation framework; and a specific budgetary allocation for their implementation.[20]

17. States should also put in place a **National Referral Mechanism** (NRM) for the detection, identification and assistance of persons trafficked for different forms of exploitation, including labour

[18] See Government of the Netherlands, Manual for experts on multidisciplinary cooperation against trafficking in human beings for labour exploitation (2016) Chapter I. Available at: https://www.government.nl/documents/publications/2016/01/18/manual-for-experts-on-multidisciplinary-cooperation-against-trafficking-in-human-beings-for-labour-exploitation

[19] ICMPD, Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response (2008).

[20] ILO, Strengthening action to end forced labour (International Labour Conference, 103rd session 2014) ILC.103/IV/1, paras 59-64.

exploitation, in which the roles and responsibilities of all relevant actors, including labour inspectorates and trade unions, are clearly defined (see paragraph 51 and following). Co-ordination and co-operation structures should be laid out in, and implemented on the basis of, such a mechanism.

Mandate of labour inspectorates to address human trafficking

18. For the purpose of this Guidance Note, the terms labour inspectorates and labour inspectors are used to designate all those authorities and institutions, both generalist and specialist, that are responsible for ensuring the application of labour legislation in the workplace.[21] While the most important function of labour inspectors is to ensure compliance with national labour law,[22] labour inspectors can play a crucial preventative, advisory and enforcement role in the fight against human trafficking. In carrying out their functions, labour inspectors are likely to come across situations of trafficking/forced labour at workplaces or situations that indicate a risk of exploitation. Given their responsibilities, labour inspectors are well placed to engage in anti-trafficking action, including prevention, identification of trafficked persons, as well as investigation of suspected cases of trafficking.

19. Labour inspectors usually have the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice. They can carry out inquiries freely and in particular speak to workers alone, examine documents and take samples. Labour inspectors have the power to issue orders with a view to remedying gaps, and to decide whether it is appropriate to give warning and advice, or to institute or recommend proceedings.[23] They should further be allowed to bring to the notice of the competent authority violations or abuses not specifically covered by existing legal provisions and should be involved in the process of discussing flawed norms.[24] Besides, labour inspectors are required to investigate any complaint concerning labour law violations without revealing the source of the complaint, thus encouraging trafficked persons to come forward. Collaboration with, and early involvement of, social partners, including civil society and specialised victim protection services (see also paragraph 53), as well as union and staff representatives, is a major tool in identifying violation and ensuring compliance.

20. With regard to human trafficking, labour inspectors often lack a clear mandate. First, because in many countries trafficking is a criminal offence primarily investigated by the police. Second, the scope of labour inspection systems may not cover sectors in which trafficking occurs, such as domestic work and the sex industry. There may also be a gap between the legal provisions and their application in practice. Providing labour inspectors with a mandate to combat human trafficking requires political

[21] For examples of organisational structures and responsibilities of different national labour inspectorates, see GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 11-15.

[22] See ILO Labour Inspection Convention No. 81 of 1947 and ILO Labour Inspection (Agriculture) Convention No. 129 of 1969.

[23] ILO Labour Inspection Convention No. 81 of 1947, Article 3. See also ILO, Strengthening action to end forced labour (International Labour Conference, 103rd session 2014) ILC.103/IV/1.

[24] See Beate Andrees, Forced labour and human trafficking: a handbook for labour inspectors, ILO (2008), p. 3; GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 11-15.

will to strengthen the labour inspection systems as a whole, by increasing the number of inspectors and providing them with adequate resources.[25]

21. The **mandate of labour inspectorates** should be expanded to explicitly cover human trafficking for the purpose of labour exploitation. It should include the detection and reporting of such cases in any place where work is performed, including domestic households and the informal sector, regardless of the administrative status of workers or the type of contract which exists between the worker and the employer. Labour inspectors' mandates should further cover the identification of wrongful recruitment processes, including in associated businesses. Such mandate should be anchored firmly in national law and administrative regulations. Detailed guidance on how to proceed when labour inspectors detect a possible case of human trafficking could be established, for example, in a Memorandum of Understanding, in an Action Plan or in an internal decree.[26]

Main functions of labour inspectors relevant to combating trafficking for labour exploitation

- **Ensuring compliance with labour law**: prevention of violations, enforcement of labour law, data collection on compliance levels in different sectors;
- **Advice and information**: promoting labour standards, providing training, participating in information campaigns, proposing legal and policy developments;
- **Protection**: through direct contacts with workers, providing information on rights and avenues for assistance, detecting possible victims of trafficking and referring them to assistance.

22. States should take measures to ensure effective **co-operation and co-ordination** between actors engaged in anti-trafficking action,[27] including through the implementation of operational co-operation and the creation of **joint inspection teams** by labour inspectorates and other agencies (e.g. police, tax authorities, social security, trade unions). Carrying out joint inspections enables a multi-disciplinary approach and the pooling of information, which can improve the effectiveness of the operations.

23. At the same time, it is crucial to ensure that undocumented foreign workers can report their conditions without running the risk, even hypothetically, of being reported to the immigration authorities. By creating '**firewalls**', public authorities and private-sector actors should not share personal data of undocumented migrants with immigration authorities for purposes of immigration control and enforcement.[28] Indeed, when the roles and responsibilities of labour, criminal law enforcement and immigration authorities are not clear, undocumented migrant workers might be reluctant to provide information for fear of expulsion. It is therefore important to delineate the roles of different agencies. If labour inspectors also fulfil the function of checking undocumented migrants, this undermines the

[25] Beate Andrees, Forced labour and human trafficking: a handbook for labour inspectors, ILO (2008), p. 13.
[26] For examples, see GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 11-15.
[27] See ILO, Strengthening action to end forced labour (International Labour Conference, 103rd session 2014) ILC.103/IV/1; ILO, 2014 Protocol to the Forced Labour Convention No. 29 of 1930.
[28] See ECRI, General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (CRI(2016)16), p. 13.

trust of workers, especially those with an irregular status, who are at risk of deportation or sanctions. When the legislation fails to clarify roles and responsibilities, the National Action Plan, the National Referral Mechanism, or specific Memoranda of Understanding should fill this gap. The main objective of the inspection system shall remain to protect the rights and interests of all workers and to improve their working conditions.[29] In this respect, the Platform for International Co-operation on Undocumented Migrants (PICUM) provides "Guidelines for developing effective complaints mechanisms for undocumented migrant workers".[30]

The 'firewall' principle

- The firewall is a clear separation in law and practice between putting forward a complaint to the relevant national body and any proceedings related to immigration. Coming forward with a complaint should not lead to any reprisals for the undocumented worker in relation to their immigration status. This includes protection from fines and other administrative sanctions, prosecution for immigration-related criminal offences, arrest, detention and deportation;
- The firewall principle should also apply in routine labour inspections that are not initiated by the worker themselves but through inspections of relevant bodies.

From PICUM Guidelines for developing effective complaints mechanisms for undocumented migrant workers

24. **Inspection methods and techniques** that are relevant to labour exploitation and should be used by labour inspectors, both independently and in collaboration with other actors, include interviews and direct observation, the verification of documents, the enforcing of posting of notices, and the inspection of materials and substances used in the workplace.[31] All inspections and actions taken by labour inspectors, the police, or any other entity or organisation, should consider and be balanced against the possible risk of reprisals that workers could face from their employers once the inspection is completed. This risk may be mitigated through the discreet dissemination of information regarding hotlines or other confidential ways of informing the authorities about an exploitative situation or practice.

25. Labour inspectorates should be allocated the necessary **human, financial and material resources** to ensure the effectiveness of their actions.[32] While specialised labour inspectorates can be established in sectors characterised by a high risk of undeclared work and labour exploitation, all labour inspectors should receive training on how to detect indicators of human trafficking/forced labour. Labour inspectorates should be equipped to identify features and trends of human trafficking

[29] See, *inter alia*, ILO, Labour administration and labour inspectors (International Labour Conference, 100th session 2011) ILC.100/V, para 304; ILO, Labour inspection in Europe: Undeclared work, migration, trafficking (2010) LAB/ADMIN Working Document No. 7, pp. 6 and 30.

[30] Available at: https://picum.org/press-release-european-labour-authority-new-agency-should-address-labour-rights-of-undocumented-workers/

[31] Beate Andrees, Forced labour and human trafficking: a handbook for labour inspectors, ILO (2008), p. 21.

[32] The ILO has taken as reasonable benchmarks that the number of labour inspectors in relation to workers should approach 1/10,000 in industrial market economies; 1/15,000 in industrialising economies; 1/20,000 in transition economies; and 1/40,000 in less developed countries. See e.g. ILO, Committee on Employment and Social Policy, Strategies and practice for labour inspection (2006) GB.297/ESP/3, para 13. The formula to calculate the number of inspectors per 10,000 persons employed in a given country is as follows: number of labour inspectors / number of employed persons liable to labour inspection x 10,000.

for the purpose of labour exploitation along the supply chains, and should put in place risk-management systems to monitor and detect the phenomenon.

Protecting the rights of trafficked persons during inspections

- Provide systematic, multi-disciplinary and practical-based training to labour inspectors on trafficking for the purpose of labour exploitation and on how to engage with trafficked persons through a victim-centred and human-rights based approach;
- Carry out confidential interviews with workers, involving interpreters and cultural mediators;
- Ensure that all inspections and actions taken by labour inspectors, as well as by all other actors involved in joint inspections, are balanced against the possible risk of reprisals that workers could face from their employers once the inspection is completed;
- Ensure that firewalls between labour and immigration authorities are in place at any time during and after the joint inspection, so that all workers, including undocumented workers, can feel safe to come forward and to continue with their pledge.

Training and awareness-raising on trafficking for labour exploitation

26. Training is essential in order to raise awareness about the specificities of trafficking for labour exploitation and its modalities, and to equip relevant practitioners with the right tools to prevent, identify and combat the phenomenon.

27. Training should be systematically integrated in the **regular training curricula** of different professional groups, and an impact assessment should be carried out at regular intervals. In addition to labour inspectors, the professionals targeted for such training should include tax and customs authorities, police officers, prosecutors, judges, border guards, migration officials, consular staff, social workers, local/municipal government officials, NGOs, trade unions, private employment agencies and companies.

28. **Multi-institutional and multi-disciplinary training** provides additional benefits. When training includes professionals from different agencies, the conditions are optimal to exchange experiences, create trust and build networks for addressing trafficking for labour exploitation in a coordinated manner. Training can also include **simulation-based** training exercises to enhance countries' capacities to identify and assist trafficked persons through a new, multi-national and cross-sectoral approach.[33]

29. **Raising awareness** of trafficking for labour exploitation and the rights of trafficked persons is important, as many people still lack knowledge of this phenomenon. Awareness campaigns and events can target the general public, businesses, stakeholders in specific sectors considered to be at risk, as well relevant professionals, including the police, labour inspectors, tax officials, prosecutors and judges. Online and offline campaigns can be general in nature or focus on specific issues, e.g. labour exploitation in supply chains, the role of private recruitment agencies and licensing companies

[33] See e.g. OSCE's simulation-based training. Information is available at: https://www.osce.org/cthb/simulation-based-training

in trafficking for labour exploitation, the rights of trafficked persons and their reintegration into the labour market.

30. Awareness raising remains a crucial prevention tool, in particular when it is targeted and directly engages groups at risk, e.g. in schools, communities, employment agencies, drop-in centres and work premises. Mobile units, labour inspectors, cultural mediators and civil society organisations can play a key role in reaching vulnerable populations, and should be appropriately resourced to do so. In addition, positive results can be achieved through mass campaigns aimed at displaying information in a range of languages through different communication channels, including at airports and on transport networks.

31. Awareness raising should be based on research and mainstreamed into education and training curricula, including those targeting vulnerable groups. It should highlight the risks and effects of trafficking for labour exploitation, as well as trafficked persons' rights. The dissemination of information, e.g. through leaflets, videos, commercials, public conferences and information workshops, should be encouraged, and should avoid reinforcing gendered stereotypes and assumptions around the vulnerability and agency of trafficked persons.

32. States should carry out **impact assessments** following awareness campaigns to evaluate whether knowledge has increased, and whether the target group's behaviour changed, in order to plan future campaigns and other activities based on concrete evidence and data. These can take the form of, *inter alia*, interviews or web-based surveys.

Targeted prevention for groups at risk

33. The Convention requires Parties to establish and/or strengthen effective policies and programmes to prevent human trafficking, in particular for persons at risk of being trafficked. Specific population groups tend to be more at risk, as vulnerability to exploitation and trafficking is determined by a combination of factors, many of which are structural and are linked to social, economic, labour and immigration policies.

34. Personal vulnerability is exacerbated where people are isolated – either physically or socially – and are not organised or represented collectively.[34] Migrant workers, domestic workers (including in diplomatic households), asylum seekers, beneficiaries of international or other types of protection, as well as members of disadvantaged ethnic minorities, are particularly vulnerable to trafficking for labour exploitation.

35. The extension of the scope of **labour protection over all sectors of the economy**, including domestic work, unregulated sectors, the informal economy and undocumented workers, is essential for protecting vulnerable workers from exploitation, as well as for discouraging demand (see paragraph 40 and following). Labour legislation and workplace inspections, including on health and safety, compliance with labour standards and revenue laws, play an important role in deterring instances of human trafficking for forced labour and identifying possible trafficked persons.

[34] ILO, Strengthening action to end forced labour (International Labour Conference, 103rd session 2014) ILC.103/IV/1, para 91.

36. Effective **regulation of labour supply and workers' rights**,[35] including the protection of the **right of workers to unionise**, are also important for preventing human trafficking. Freedom of association and the effective recognition of the right to collective bargaining are among the principles and rights that States committed to respect and promote in the 1998 ILO Declaration of Fundamental Principles and Rights as Work.[36]

37. **Social and economic empowerment initiatives** can increase individual and community resilience to trafficking for the purpose of labour exploitation. These initiatives include employment opportunities and schemes, access to birth registration and identity documents, access to development programmes and mother tongue education, and the provision of health care, legal advice and psychological as well as material support. In addition, they should include campaigns that strengthen the ability of workers to access their rights, in particular through protection of their right to organise.

38. Prevention practices include access to decent work in home countries and the provision of **information to labour migrants**, both pre-and post-departure, so that they can make informed decisions about migrating, as well as the establishment of **drop-in centres** for undocumented migrant workers in destination countries which provide counselling free-of-charge and anonymously.

39. A lack of **regular migration channels** can put displaced persons or migrants in situations of vulnerability, and make them prey to exploitative practices, regardless of whether their recruitment is organised by a broker or agency in the country of origin.[37] Prevention can therefore be reinforced through the adoption of legislation, or the simplification of existing legislation, in a range of immigration and labour-related areas, including regulations on the employment of domestic workers, measures to prevent abuse of domestic workers in diplomatic households, regulations on the freedom of migrant workers to access the labour market without being tied to a particular employer and on the right to change employer without the consent of the original employer, and regulating the functioning of the private recruitment agencies.

Prevention: addressing vulnerabilities

- Extending the scope of labour protection over all sectors of the economy, including domestic work, unregulated sectors and undocumented workers;
- Effective regulation of labour supply and workers' rights, including the protection of the right of workers to unionise;
- Access to decent work and social protection;
- Provision of information to labour migrants;
- Setting up drop-in centres for undocumented migrants;
- Introducing regular migration channels;
- Access to redress for infringement of rights.

[35] See, *inter alia,* the European Social Charter and ILO Convention Nos. 29, 87, and 98.
[36] The ILO Declaration on Fundamental Principles and Rights at Work (1998) makes it clear that the rights enshrined in eight fundamental ILO Conventions referring to freedom of association and collective bargaining, rights pertaining to the elimination of child and forced labour, and discrimination at work are universal rights.
[37] See the ILO Multilateral Framework on Labour Migration (2006), that sets out non-binding principles and guidelines for a rights-based approach to labour migration.

Measures to discourage demand, including through public-private partnerships, public procurement and supply chain reporting requirements

40. The Convention places an obligation on State Parties to adopt legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of victims of trafficking, especially women and children. Article 6 of the Convention provides a list of minimum measures, including research on best practices, methods and strategies, use of the media to raise awareness, targeted information campaigns, and educational programmes for children which promote gender equality and human dignity. The Convention also contains a provision encouraging Parties to make it a criminal offence to knowingly use services of a victim of trafficking, as a way of suppressing demand that drives trafficking in human beings (Article 19).

41. Measures to discourage demand should target **employers** (including State institutions), **consumers** as well as **third parties** (e.g. recruitment agencies, transporters) and can be implemented by States, businesses and civil society organisations.[38] As part of their demand-reduction efforts, States should criminalise the use of services of victims of trafficking with the knowledge that the person is a victim. States should further adopt measures to improve labour conditions in sectors prone to the use of trafficked labour, through strengthening and enforcing labour standards and regulations. Actions can also be taken against exploitation associated with the migration process, including through stricter regulation of private employment and recruitment agencies and better protection of migrant workers. Further measures include private-sector initiatives to address labour exploitation in supply chains, as well as consumer-based action against products made from exploitative labour.[39]

42. **Strengthening labour standards** is an essential element in discouraging demand for the labour or services of trafficked persons. Where labour standards are consistently monitored and enforced, the cost of non-compliance can outweigh any potential benefits derived from the exploitation of persons. At the same time, severe forms of exploitation would amount to criminal conduct, meaning that effectively enforced labour standards have both a preventative and a punitive effect.[40] States should ensure that the fundamental principles and rights at work are reflected and applied in national laws and extend to all workers, including domestic workers, regardless of their migration status or any other factors, and that mechanisms exist to enforce them.[41] States should regulate, at a minimum, basic working conditions including hours, safety conditions and leave entitlements.

43. The **licensing of employment and recruitment agencies** and the monitoring of their activities, with a view to avoiding fraudulent practices, is a further tool for preventing trafficking for the purpose of labour exploitation. Indeed, fraudulent practices of employment and recruitment agencies, including the payment of recruitment fees which puts the workers in debt, or non-payment of minimum wage and social insurance contributions, are conducive to human trafficking. States should

[38] Mike Dottridge, Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation (2016). Available at: https://rm.coe.int/16806846be

[39] ICAT, Preventing Trafficking in Persons by Addressing Demand (2014) p. 9.

[40] See Shahrzad Fouladvand, "Decentering the prosecution-oriented approach: Tackling both supply and demand in the struggle against human trafficking" (2018) International Journal of Law, Crime and Justice 52: pp. 129-143.

[41] ILO Declaration on Fundamental Principles and Rights at Work (1998).

regulate and monitor the activities of private placement and recruitment agencies,[42] operating in both the formal and informal sectors of the economy, and those responsible for facilitating the placement of domestic workers, rather than relying on voluntary self-regulation by the recruitment industry. When States themselves engage with recruitment agencies, they should not use recruiters that do not comply with local labour laws of the country in which the recruiting is taking place. Such prohibition should also be extended to private companies and businesses.

44. Similarly, States should monitor employers based in EU countries, who recruit **workers to be posted** to other EU countries, paying particular attention to sectors at risk, with a view to preventing the economic exploitation of these workers.

45. According to the 2011 UN Guiding Principles on Business and Human Rights, States should consider a **smart mix of measures** – national and international, mandatory and voluntary – to foster business respect for human rights. Building on the UN Guiding Principles, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2016)3 on human rights and business. The recommendation provides guidance to assist member States in preventing and remedying business-related human rights abuses, including with regard to the rights of workers, and also includes measures to induce businesses to respect human rights and apply human rights due diligence throughout their operations.[43] States should adopt National Action Plans for implementing the UN Guiding Principles on Business and Human Rights, including measures which are relevant to addressing human trafficking, such as legislation integrating the prevention of human trafficking in public procurement policies and promoting transparency in supply chains to enable scrutiny of companies' performance to prevent human trafficking and labour exploitation.

46. Governments have an obligation to ensure that all government-owned organisations avoid encouraging demand related to human trafficking in the context of their purchase of services and goods.[44] States should, at the planning stage of **public procurement**, identify product or service categories that are most likely to be prone to human rights abuses, including trafficking for labour exploitation. Risk assessments are instrumental in the evaluation of the extent to which the supply chains of goods or products are known to public authorities as vulnerable, and thus require greater scrutiny through deeper diligence.[45] States could create publicly available lists of high-risk products for procurement professionals to consider, as well as an easily accessible information database for all levels of government to consult.

47. Inter-ministerial and Corporate Social Responsibility (CSR) working groups involving all actors concerned, e.g. the State, companies, trade unions and NGOs, could be established to create greater awareness amongst companies of the corporate responsibility to respect human rights throughout their operations abroad and in their supply chains, as well as to co-ordinate and harmonise such efforts. Businesses can be required to disclose information about their production processes, as well

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[42] See e.g. ILO, Private Employment Agencies: Regulation, Monitoring and Enforcement (2007); ILO, Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers (2006).

[43] Available at: https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html

[44] Mike Dottridge, Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation (2016) p. 12.

[45] OSCE Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains (2018) p. 25.

as to report publicly about measures taken to **reduce the risks of human trafficking in their supply chains**.[46] At a minimum, a company should map its supply chain and provide information on locations of production facilities, suppliers used and whether any of its facilities employs migrant workers, who are known to be especially vulnerable to trafficking for labour exploitation. States could further conduct or require independent supply chain audits and workplace monitoring, and should ensure that companies are held accountable in case of human rights abuses, both through prosecutions and through sanctions.[47] States could conversely put in place a mechanism to reward good practices when companies disclose information related to trafficking and put safeguards in place, such as awarding contracts and export credits, leveraging their purchasing power with their suppliers.

48. States should ensure that any preferential customs tariffs concerning imported goods, including privileged reductions in regular tariffs, are not made available and are not applicable to goods which were produced through labour exploitation.[48]

49. States should work closely with trade unions, civil society and the private sector to address the root causes and contributing factors, including social norms, that enable exploitative practices to flourish. **Consumer-based approaches** involve ethical labelling amongst other measures such as advertising and awareness campaigns designed to encourage the purchase of products that are "free from exploitation". In this respect, mass media have an important role to play in educating the public and in increasing awareness of good practices.[49]

Examples of demand reduction measures

- Criminalise the use of services of victims of trafficking with the knowledge that the person is a victim;
- Adopt measures to improve labour conditions in sectors prone to the use of trafficked labour, through strengthening and enforcing labour standards and regulations;
- Regulate/license employment and recruitment agencies;
- Adopt legislation integrating the prevention of human trafficking in public procurement policies and promoting transparency in supply chains;
- Promote public-private partnerships;
- Engage NGOs and trade unions through strategic partnerships;
- Support consumer-based action against products made from exploitative labour.

[46] For examples, see GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 28-32.
[47] See e.g. Olga Martin-Ortega, Opi Outhwaite and William Rook, "Buying Power and Human Rights in the Supply Chain: Legal Options for Socially Responsible Public Procurement of Electronic Goods" (2015) 19 The International Journal of Human Rights 3, pp. 357-358.
[48] See e.g. ILO, Labour Provisions in G7 trade agreements: A comparative perspective (2019), available at: https://www.ilo.org/global/publications/books/WCMS_719226/lang--en/index.htm. See also Mike Dottridge, Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation (2016) p. 14.
[49] ILO, Strengthening action to end forced labour (International Labour Conference, 103rd session 2014) ILC.103/IV/1.

Identification of victims and provision of a recovery and reflection period

50. Article 10 of the Convention requires parties to adopt measures to identify victims.[50] Identification is of fundamental importance. Many trafficked people do not identify themselves as "victims" and are not aware of the legal significance of the term. Therefore, the onus of identification lies with the authorities. In order to perform identification, parties to the Convention must provide their competent authorities with persons who are trained and qualified in preventing and combating human trafficking, and in identifying and helping trafficked persons, including children, irrespective of their nationality and immigration status. At the same time, specialised NGOs, labour inspectorates and other labour authorities, trade unions, as well as cultural and health mediators can substantially contribute to the identification process, and should be involved in a multi-agency effort to ensure that no trafficked person remains unidentified. This is envisaged by Article 10, according to which identification is a collaborative process between the authorities and relevant support organisations. Unreasonable delays in identification and referral to assistance may lead to violations of a trafficked person's right to assistance and protection, as well as increase the risk of re-trafficking and further exploitation.

51. In order to identify trafficked persons, including for the purpose of labour exploitation, in a timely, pro-active and consistent manner, States should establish a **National Referral Mechanism** (NRM) which provides for a formalised identification procedure - which could take the form of Standard Operating Procedures - and defines the roles and responsibilities of all actors involved. The NRM should include, *inter alia,* labour inspectors and trade unions, which can play a crucial role in assisting with the identification and support of persons trafficked for labour exploitation.

52. A key element of the NRM should be the development and periodic updating of **indicators** that help labour inspectors assess whether a situation could fall under trafficking for labour exploitation. Uniform indicators across the territory, as well as across employment sectors, would further contribute to a more consistent detection of exploitative situations and identification of trafficked persons. Although such indicators can be developed in each country and tailored to the context in which the labour inspector is operating, the ILO has provided general guidance and proposed eleven indicators of forced labour.[51]

53. The identification process' **multi-disciplinary nature** should be strengthened, including by encouraging regular multi-agency inspections in the sectors most at risk, and co-ordinated action upon emergence of presumed victims. The roles of different actors involved in such multi-agency inspections should be clearly defined through a Memorandum of Understanding or Standard Operating Procedures. As mentioned earlier in this Guidance Note, it is of paramount importance to ensure that undocumented migrant workers can report their condition and/or be identified without running the risk, even hypothetically, of being reported to the immigration authorities. The early involvement

[50] Further, in the case *Chowdury and Others v Greece* (application No. 21884/15), the European Court of Human Rights established that under Article 4 of the European Convention on Human Rights, States have a positive obligation to identify potential victims of trafficking.

[51] The ILO has developed a list of indicators of forced labour, which include elements present in the trafficking definition as well as other indicators such as restriction of movement, isolation, physical and sexual violence, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. See https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

of NGOs and civil society organisations in the identification process can play a crucial role in ensuring that migrant workers understand their rights.

54. When inspections are being conducted in locations where there is a high presence of workers of a specific nationality, the inspection team should include cultural or health mediators, or seconded officers from the country of origin of the potentially trafficked persons, to assist in the inspection and to add to its effectiveness.

55. A person's identification as a victim of human trafficking should not depend on the presence of elements necessary to initiate a criminal case or the person's co-operation with the law enforcement authorities. Further, the legal situation of a worker or the nature of the employment relationship should not influence negatively the victim identification process. Any person showing signs that he/she has been subjected to elements of the definition of trafficking in human beings (action, means and purpose) should be considered as a victim of trafficking.[52] The bodies performing victim identification should apply operational indicators of trafficking in human beings, **independently of the criminal investigation**. As soon as there are reasonable grounds to believe that a person has been trafficked, he/she should be informed of the options available and referred to organisations providing assistance.

56. Identifying a trafficked person is a process which takes time. Many trafficked persons, however, might be at risk of being removed from the territory before their identification is completed because they are undocumented or otherwise irregularly present in the country where they are being exploited. Article 13 of the Convention provides that when there are reasonable grounds to believe that a person has been trafficked, States shall grant a **reflection and recovery period** of at least 30 days and shall guarantee that, during that time, the person will not be removed from the territory. Potentially trafficked persons should be informed in a timely manner, and in a language that they understand, about their rights and about the identification process, including about safeguards against expulsion. The reflection and recovery period shall further be granted regardless of whether the person collaborates with the authorities.

57. Without prejudice to the need for States to proactively engage in the identification of persons trafficked for labour exploitation, States should take measures aimed at increasing the propensity amongst trafficked persons to **self-identify** as such. According to the Fundamental Rights Agency, these measures include: a real possibility of regularisation of the trafficked person's residence status and access to the labour market; the provision of targeted and tailored support services, including information about their rights; a realistic chance of receiving compensation and back pay; and the facilitation of access to, and safe and meaningful participation in, criminal proceedings.[53]

58. In addition to the NRM, States should establish **Transnational Referral Mechanisms** (TRMs) to ensure thorough assistance to trafficked persons in cross-border cases during the phases of identification, first assistance and protection, long-term assistance and social inclusion, return and social inclusion, as well as criminal and civil proceedings. Paragraph 1 of Article 16 of the Convention places

[52] A child is to be regarded as a victim even if none of the means specified in Article 4(a) of the Convention have been used.

[53] FRA, Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights (2015) p. 74.

an obligation on the Party of which a victim is a national or in which the person had the right of permanent residence to facilitate and accept the return, preferably voluntary, of the victim without undue or unreasonable delay. Such return, as it is not always without risk, shall be with due regard for the rights, safety and dignity of that person. Established between countries of origin and countries of destination, TRMs are instruments that complement, and do not substitute, NRMs.[54]

Steps for an effective identification

- Establish a National Referral Mechanism bringing together all relevant actors;
- Ensure that the identification process is multi-disciplinary and involves civil society organisations at an early stage;
- Adopt specific indicators on trafficking for labour exploitation to assist all actors that might come in contact with trafficked persons (labour inspectors, police, prosecutors, immigration and border control authorities, asylum authorities, tax authorities, healthcare professionals, civil society organisations, trade unions, recruitment agencies…);
- Provide presumed victims with information on their rights and options, as well as the non-punishment provision, so that they can make a safe and informed choice on whether to co-operate with the authorities;
- Ensure that the identification of trafficked persons for the purpose of accessing assistance and protection is independent from their participation in criminal proceedings;
- Ensure that, when there are reasonable grounds to believe that a person has been trafficked, he/she is granted a reflection and recovery period of at least 30 days, during which it is not possible to enforce any expulsion order against him/her;
- Establish Transnational Referral Mechanisms (TRMs) to ensure thorough assistance to trafficked persons in cross-border cases.

Victim assistance measures

59. The obligation to provide assistance to trafficked persons for whom there are "reasonable grounds to believe" that they have been trafficked stems from Article 12, paragraphs 1 and 2, of the Convention. These measures apply to all trafficked persons, regardless of their immigration status, during the recovery and reflection period of at least 30 days provided for in Article 13 of the Convention, prior to the granting of any residence permit. Article 12 provides a list of measures that must be guaranteed by law and include, at a minimum, standards of living capable of ensuring the victims' subsistence (including appropriate and secure accommodation, psychological and material assistance), access to emergency medical treatment, translation and interpretation services, counselling and information, assistance to represent the victims' rights during criminal proceedings against offenders, and access to education for children. Parties are free to grant additional assistance measures.

[54] See e.g. Department for Equal Opportunities – Presidency of the Council of Ministers Italy and International Centre for Migration Policy Development (ICMPD), Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU (2010), available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_for_the_development_of_a_trm_1.pdf and IOM France, Transnational Referral Mechanism Model – TRM (2017), available at http://www.iomfrance.org/tact/

60. States should ensure long-term, consistent and appropriate **funding** for the assistance of trafficked persons, regardless of their immigration status. In light of recent trends showing an increase in the identification of cases of trafficking for labour exploitation, States should ensure that there are sufficient resources and **shelters** available to accommodate persons identified as victims of labour exploitation (the majority of whom are men), taking into account both the gendered dimension of trafficking for labour exploitation and the particular needs of individuals who have been trafficked for this purpose. States should ensure the availability of services co-ordinating the provision of assistance to trafficked persons at all times.

61. As persons trafficked for the purpose of labour exploitation are often found in large groups, they may be difficult to accommodate in existing shelters. States should develop plans, engaging with civil society organisations, in this respect, with precise indications on the provision of housing, food, psychological and medical assistance, involvement of social services in case children are identified, interpretation and provision of information on trafficked persons' rights.[55]

62. Assistance for persons trafficked for labour exploitation **should not be made conditional on their co-operation** in the investigation and prosecution of criminal and other offences. Similarly, trafficked persons shall enter assistance mechanisms only after they have given informed consent to do so. To this end, trafficked persons should be provided with information on the services and assistance available to them and on how to access such services, in a comprehensible manner and in a language they can understand. Such services may include repatriation, in which the safety of trafficked persons and their family members shall be guaranteed, where the trafficked persons have genuinely consented to avail themselves of such services.

63. Early access to **legal assistance and free legal aid** is important, in particular for undocumented workers. As court and administrative procedures are often very complex, legal assistance is necessary for victims to be able to claim their rights, including unpaid wages and compensation (see paragraph 76 and following).

64. States should provide, in co-operation with other relevant actors, including NGOs and trade unions, assistance to trafficked persons with a view to their **social inclusion**. Vocational training, job counselling and job placement schemes, in particular when based on an assessment of the overall labour market that includes appropriate and safe work opportunities in a wide range of fields, are tools of economic empowerment that States should deploy to assist trafficked persons in their reintegration. An increased involvement of State employment agencies and the private sector, together with increased sensitisation of employers with respect to the phenomenon of trafficking, can increase the effectiveness of reintegration and economic empowerment processes.

Children trafficked for the purpose of labour exploitation

65. States have an obligation to promote, respect and realise the principle of the effective abolition of child labour,[56] in accordance with ILO's Minimum Age Convention (No. 138) and Worst Forms of Child Labour Convention (No. 182). **Children from vulnerable groups**, such as children in street

[55] GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 36-37.
[56] 1998 ILO Declaration on Fundamental Principles and Rights at Work.

situations, children from ethnic minorities, children placed in care institutions, and unaccompanied or separated children, are at heightened risk of being trafficked and subjected to child labour. States should raise public awareness of the risks and different manifestations of child trafficking (including for the purposes of forced labour, exploitation in begging or criminal activities), and should prioritise the sensitisation and training of relevant professionals (teachers, educational staff, child welfare professionals, social workers, guardians).[57]

66. Even though child trafficking usually occurs in the informal economy, international companies run the risk that child trafficking exists in increasingly complex sub-contracting arrangements in their supply chain.[58] To prevent child trafficking in supply chains, it is crucial to have transparency and stringent monitoring by independent and well-resourced agencies.[59]

67. The promotion of **education** is a further tool in preventing human trafficking. States have a responsibility to ensure that free basic education is accessible to all children, regardless of their immigration status, and that it includes activities of awareness-raising on trafficking in the curricula.

68. Article 10 of the Convention provides for special measures and procedures for children in the context of victim identification. States should take measures to improve the identification of child victims of trafficking, including by drawing up **indicators of child trafficking**[60] and setting up an identification and referral mechanism which takes into account the special circumstances and needs of child victims, involves child specialists, child protection services, and specialised police and prosecutors, and ensures that the best interests of the child are the primary consideration. States are required to presume that a trafficked person is a child if there are reasons for believing that to be the case, and if there is uncertainty about their age. Until their age is verified, they must be given special protection measures. Unaccompanied and separated children should have a **legal guardian** appointed. Children should be ensured timely access to information, presented in an easily understood manner, on their rights and options, in accordance with their age and maturity.

69. As soon as an unaccompanied child is identified as a victim, every effort should be made to **locate the child's family** when this is in the best interests of the child, given that sometimes it is the child's family who is involved in trafficking the child.

70. States should provide for **shelters specialised in assisting trafficked children**, to be set up with a view to addressing their needs and providing a protective environment. States should further ensure that unaccompanied and separated children benefit from effective care arrangements,

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[57] GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 16-17.

[58] ILO, Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners (2008), Book 4, p. 39. See also ILO, Combating child labour: A handbook for labour inspectors (2002).

[59] GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, p. 31. See in particular the initiative of the Dutch Social Economic Council, which in 2014 advised the Dutch Government to support the development of Responsible Business Conduct (RBC) sector agreements, allowing companies, government bodies, trade unions and representatives of civil society to work together to address the risks of child or forced labour in supply chains.

[60] GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, p. 17.

including safe and specialised accommodation, and that measures are taken to **prevent the disappearance of children placed in institutions**. Access to **psychological support**, as well as other assistance measures, such as legal assistance and interpretation, should be provided.

71. As children who have been trafficked may have missed out on schooling or may be at an age where they need to begin acquiring skills so that they can find decent work, States should assess the child's educational and training needs when preparing them to enter or re-enter education. This may include transitional classes to re-enter school, special arrangements in lieu of formal schooling and/or vocational training.

72. States should take measures to ensure that **trafficked children are never criminalised or detained**, including for reasons related to their immigration status. Child-friendly police desks with trained police officers are a further element of the response to exploitation and risk situations. The same is true of all those in the judicial system – lawyers, judges, court officials – who come into contact with children and will be instrumental not only in securing justice for them, but also in aiding their rehabilitation through fair treatment and respect for their rights.[61]

73. Trafficked children must not be returned to their country of origin if there is an indication, following a **risk and security assessment**, that such return would not be in the best interests of the child. Children who are returned without being identified as trafficked persons, or without having their best interests or the risk of return properly assessed, face a high risk of harm upon their return, including reprisals and the risk of being re-trafficked.

74. States should further ensure that trafficking of a child is regarded as an aggravating circumstance in the determination of the penalty for offences established in accordance with Article 18, pursuant to Article 24 of the Convention.

75. The Convention (Articles 28(3) and 32) requires Parties to afford **special protection measures** to child victims and witnesses, taking into account the best interests of the child. States should apply the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which recommend that all professionals working with children receive necessary interdisciplinary training on the rights and needs of children.[62] Children should be interviewed in a child-friendly environment. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child. The number of interviews should be as limited as possible, and their length should be adapted to the child's age and attention span. Direct contact, confrontation or interaction between a child victim/witness and an alleged perpetrator should, as far as possible, be avoided unless at the request of the child victim. States should provide for the possibility of audio-visual recording of hearings of children, at the same time safeguarding such hearings by such means as limiting the people allowed to attend the hearing and view the recording. States should likewise allow children to appear before the court

[61] ILO, Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners (2008), Book 4, p. 50.

[62] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3

by videoconference, where the child is heard in a separate room, possibly in the presence of an expert.

Respecting the best interests of the child in anti-trafficking actions

- Establish indicators of child trafficking and ensure that the NRM is child-sensitive and engages with child specialists;
- Ensure that all professionals involved in the identification, assistance and protection of child victims are trained on children's rights and needs;
- Provide safe and specialised accommodation and take measures to prevent the disappearance of children;
- Ensure that a trafficked person is presumed to be a child if there is uncertainty about the age and there are reasons to believe that the victim is a child. Age assessment procedures must be rights-based and child-sensitive;
- Ensure that trafficked children are never criminalised nor detained, including for reasons related to their immigration status;
- In case of unaccompanied and separated minors, ensure that a legal guardian is appointed and that legal assistance is provided as soon as possible;
- Guarantee that criminal proceedings are conducted in child-friendly environments and in a child-sensitive manner.

Access to compensation and other remedies

76. Article 15(3) of the Convention establishes a right of victims to compensation. Article 15(4) further requires Parties to take steps to guarantee compensation for trafficked persons, for example through setting up a compensation fund or introducing measures or programmes for social assistance and social integration of trafficked persons that could be funded by confiscated assets of criminal origin.

77. States should ensure that trafficked persons are **systematically informed**, in a language that they understand, of their right to seek compensation and the procedures to be followed. **Legal assistance** should be provided to all trafficked persons, irrespective of their nationality and immigration status. States should further ensure that trafficked persons are enabled to stay in their territory to be able to claim compensation, and are allowed to remain until the proceedings have terminated and the person has obtained compensation and/or back payments.[63] During this time, trafficked persons ought to be allowed to work, regardless of their immigration status at the time of their identification.

78. States should adopt measures to facilitate and ensure access to compensation for trafficked persons, including by **building the capacity of legal practitioners** to assist trafficked persons in claiming compensation, and by addressing the issue of compensation in training programmes for law enforcement officials and the judiciary. In the context of labour exploitation, compensation is important not only because it can allow for recovering potential loss of earnings – the threat of, or the

[63] For example, the NGO FairWork in Belgium represents undocumented workers claiming back wages. After lodging complaints, undocumented workers are not deported, and can remain in the country while the complaint is processed and recover money from the employer in back wages and social contributions). See also PICUM Guidelines on rights of the migrant workers.

actual withholding of, wages is in fact the most common means of coercion used to obtain work or services – but also because it provides critical support towards recovery.[64] States should make available to trafficked persons avenues, through labour courts or through civil proceedings, to recover unpaid wages.[65]

79. States should make full use of **property freezing and confiscation legislation**, including where companies are involved, to ensure compensation for trafficked persons. In order to safeguard the right to compensation when the perpetrator is unable to pay compensation to the trafficked person, and when no assets have been confiscated in the course of the investigation and proceedings, States should consider establishing a **State compensation fund**, appropriately and adequately resourced, to compensate trafficked persons. This is important in order to safeguard the right to compensation when the perpetrator is unable to pay compensation and when no assets have been confiscated.

80. The United Nations Guiding Principles' definition of a **grievance mechanism** is that of a "routinized, State or non-State based, judicial or nonjudicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought." Such a mechanism should allow all workers, including undocumented workers, to report abuses without risking losing their job. Public authorities could further request suppliers and businesses to have a monitoring and evaluation process of their supply chains in place by for instance a company-based grievance mechanism that should engage NGOs and trade unions through strategic partnerships.[66]

81. When identified victims of trafficking are foreign nationals without a regularised immigration status, States should consider issuing a **residence permit** that is not conditional on their co-operation in criminal proceedings. The issuance of a residence permit not only eliminates some of the practical and legal barriers that trafficked persons face in accessing justice and effective remedies, including compensation, but it can also represent a remedy in and of itself.

Non-punishment provision

82. Persons who have been trafficked for the purpose of labour exploitation may on occasion be compelled to perform certain acts in relation to access and stay in a State's territory, as well as in relation to the work performed, that violate national law. In the labour exploitation context, these activities can include violations of administrative, labour and immigration laws, e.g. irregular entry, irregular stay and irregular work.

83. States should act in accordance with their obligation under Article 26 of the Convention and adopt a **specific legal provision and/or guidance** concerning the non-punishment of trafficked persons, providing for the possibility of not imposing penalties on victims for their involvement in

[64] The European Union's Fundamental Rights Agency's project on "Severe forms of labour exploitation" (SELEX) showed that receiving compensation and back pay from the employer was among the three most important issues for trafficked persons, according to 105 out of 251 respondents (victim support organisations, workers organisations and trade unions, and lawyers).

[65] For examples, see GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, pp. 39-41.

[66] See OSCE Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains (2018) p. 32.

unlawful activities, to the extent that they have been compelled to do so.[67] The scope of the non-punishment provision should be extended to all offences committed by trafficked persons, including administrative and immigration offences. Trafficked persons should be informed in a timely and appropriate manner on the non-punishment provision as soon as contact with the authorities or with other assistance services is established.

84. States should also provide training and guidance to police officers, labour inspectors, prosecutors, lawyers and other professionals concerned with the application of the non-punishment provision.[68] Furthermore, States should commit to systematic collection of data with respect to the application of the non-punishment provision, in order to monitor its implementation and guarantee its coherent and consistent use.

Criminal justice response

85. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are "effective, proportionate and dissuasive". Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders of the instrumentalities and proceeds of human trafficking offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to trafficked persons.

86. Investigating cases of labour exploitation is challenging on many accounts, and requires appropriate action on many levels. Many trafficked persons are migrants, often undocumented, who prefer not to lodge complaints or give evidence, as they are often dependent on their traffickers for work and housing, and expect to be paid back wages. In some cases, legitimate businesses employ trafficked and exploited workers in the supply chains, which can be complex and spread over several countries.

87. States should take legislative and other necessary measures to ensure that crimes related to trafficking in human beings are proactively investigated, prosecuted and judged swiftly, leading to effective, proportionate and dissuasive penalties. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation.

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[67] See also ILO, 2014 Protocol to the ILO Forced Labour Convention, Article 4.

[68] See e.g. OHCHR, The importance of implementing the non-punishment provision: the obligation to protect victims (2020), available at: https://www.ohchr.org/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf; UNODC, Guidance on the issue of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked, CTOC/COP/WG.4/2020/2 (2020), available at: https://undocs.org/CTOC/COP/WG.4/2020/2; OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, available at: https://www.osce.org/secretariat/101002?download=true

88. Further, States should take measures to ensure that authorities responsible for investigating trafficking cases are **adequately resourced**. Ongoing **training** for police, judges and prosecutors on the investigation and prosecution of cases of trafficking for labour exploitation should be provided. States should also train judicial and law enforcement authorities on the various forms of diplomatic and consular immunities and the restrictions to which they are subject.

89. The establishment of **specialised units** within the police and Prosecutor's Office, as well as specialisation amongst judges, enables the acquisition of experience and knowledge, and contributes to a higher prosecution and conviction rate.

90. States could adopt a **specific protocol** on the investigation of trafficking for the purpose of labour exploitation, to be deployed in order to gather all necessary evidence (including material objects, documentary, testimonial and digital evidence),[69] routinely using special investigative techniques, in order to assist prosecutors and judges in the criminal proceedings and avoid reliance on trafficked persons' evidence.[70] Evidence should focus on establishing the act, means and purpose of exploitation (in the case of children, the use of means is irrelevant). As evidence to prove the existence of abuse of a position of vulnerability is often less tangible than that proving other means, the investigation should seek to establish the possible vulnerabilities of the trafficked person, and that the trafficker was aware of them and used them to exploit the trafficked person.[71]

91. Investigations of human trafficking offences should be systematically accompanied by **financial investigations**, in particular where companies are involved, in order to substantiate the trafficking allegations with evidence, and to ensure the effective tracing, seizure and confiscation of criminal assets related to these offences. When there are elements to characterise an offence as trafficking in human beings, States should ensure that trafficking prosecutions are not re-characterised as other offences carrying lighter sentences and depriving trafficked persons of access to protection, assistance, and compensation.[72]

92. Most prosecutions in the context of trafficking for labour exploitation will still require evidence from trafficked persons to secure convictions, which highlights the need for adequate **protection measures**. When dealing with trafficked persons, the necessities of criminal law enforcement should always be carefully balanced against any existing human rights concern. Presumed trafficked persons should, as soon as possible, be referred to assistance programmes and offered protection and support. Memoranda of Understanding between law enforcement and civil society organisations supporting trafficked persons and migrant workers can be signed to facilitate co-operation, protecting at the same time the interests of trafficked persons throughout the criminal proceedings.

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[69] Evidence that can be gathered can be classified as, *inter alia*, testimonial evidence, documentary evidence, object evidence and digital evidence. See UNODC, Evidential Issues in Trafficking in Persons Cases (2017). Available at: https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf.

[70] See IOM, Investigating Human Trafficking Cases Using a Victim-centred Approach (2018), available at: https://publications.iom.int/system/files/pdf/investigating_human_trafficking.pdf

[71] See UNODC, Evidential Issues in Trafficking in Persons Cases (2017), pp. 53-112.

[72] See HEUNI, Uncovering labour trafficking: Investigation tool and checklist for labour inspectors (2020), available at: https://www.heuni.fi/en/index/tiedotteet/2020/06/howtobetteruncoverlabourtraffickingnewinvestigationtoolreleasedforlawenforcementandlabourinspectors.html

Building a criminal case of trafficking for labour exploitation

- Aim to build a case independent of the victim's testimony by gathering evidence (documentary, object, digital);
- Make maximum use of special investigative techniques (e.g. telecommunication interception and monitoring or wiretapping, extended and/or technical surveillance, covert collection of intelligence);
- Conduct financial investigations in a systematic manner;
- Pay attention to related crimes (benefit fraud, tax evasion, theft…);
- Keep in mind that victims do not always see themselves as victims or act as such;
- Offer presumed victims assistance and protection;
- Use interpreters and cultural mediators;
- Co-operate with civil society organisations and trade unions;
- Respect the non-punishment provision.

93. Anonymity or non-disclosure of the witness's identity to any party other than the prosecution should be standard practice during the investigation, and protective measures should be in place during criminal proceedings. The number of times victims/witnesses are heard in the course of the proceedings should be limited as much as possible, taking care to prevent direct contact between the victim and the defendant. States should further provide for measures to minimise additional trauma, such as preliminary depositions of evidence, preliminary hearings and testifying in the absence of the alleged trafficker. States should put in place appropriate guidelines or regulations to ensure that relevant agencies automatically provide information about witness protection to trafficked persons who decide to participate in criminal proceedings, and to people close to them. Witness protection schemes and measures should be appropriately funded by the State, and can include, *inter alia*, secure housing, confidentiality, change of identity, and, in exceptional cases, relocation of the trafficked person and their relatives.

Corporate liability

94. Article 22 of the Convention requires States to adopt legislative and other necessary measures to ensure that enterprises and/or representatives of enterprises can be held liable under their criminal law, or any other equivalent law, for the commission of trafficking offences for the purpose of labour exploitation. In practice, the application of this provision is challenging, and only a few countries have reported corporate liability proceedings related to human trafficking. States should ensure that corporate liability legislation is effectively applied in practice.[73]

95. Possible **administrative, civil and criminal sanctions** include injunctions to introduce changes, payment of fines, temporary or permanent closure of the company, temporary or permanent

[73] 9th General Report on GRETA's activities, covering the period from 1 January to 31 December 2019 (2020), paras. 175-177. See also Council of Europe Recommendation CM/Rec(2016)3 on human rights and business, paras 44-46.

withdrawal of licences to operate in a certain sector, placement of the company under judicial administration, confiscation of assets, deprivation of rights to sign contracts or to commit funds, reimbursement of financial losses suffered, repair of moral damage, and reinstatement of a worker.[74]

96. Besides implementing legislation that ensures that businesses can be held liable, States can apply different approaches to ensure that businesses act with human rights due diligence and thereby prevent trafficking in human beings. Further legislative measures can include, as mentioned above, the **promotion of transparency in supply chains**. The 2014 Protocol to the ILO Forced Labour Convention seeks to prevent trafficking for labour exploitation by supporting due diligence by both the public and private sectors. States should provide guidance to businesses on how to respect human rights in their operations, including with respect to risk management in supply and subcontracting chains.[75] Businesses should make Corporate Social Responsibility (CSR) a priority in order to prevent corporate liability, and should establish programmes or methods to give consideration to the impact of their operations on society in a transparent, committed, and informed manner. Companies, especially those working in high-risk sectors, should lower the risk of being involved, directly or indirectly, in trafficking for labour exploitation by doing responsible business, a paradigm that includes, at a minimum, a self-assessment of the risk factors to which the company is exposed (e.g. whether recruitment is done directly or through third parties, whether subcontractors are bound by a permanent clause stating that trafficking and labour exploitation will not be tolerated, failing which the contract will be void, or whether the company has in place a complaint mechanism that is available and accessible to all workers, including those of the subcontractors).[76]

Data collection and research

97. The availability of reliable, high-quality data related to the scale of trafficking in human beings and the profile of trafficked persons is crucial to the development of targeted counter-trafficking responses and to the measurement of their impact. While there is no provision in the Convention on data collection as such, collecting data on various aspects of human trafficking is important because it represents a tool to inform, adjust and assess anti-trafficking policies, as well as carry out risk assessment.

98. States should develop and maintain a **comprehensive statistical system** on trafficking in human beings for the purpose of labour exploitation by collecting reliable and harmonised data on measures to protect and promote the rights of trafficked persons, investigations, prosecutions and judicial decisions in cases of trafficking for the purpose of labour exploitation. Statistics should be collected from all key actors, insofar as the data relates to their sphere of responsibility so as to avoid

[74] Beate Andrees, Forced labour and human trafficking: a handbook for labour inspectors, ILO (2008), p. 24.
[75] See e.g. HEUNI, Guidelines for Businesses and Employers for Risk Management in Subcontracting Chains (2019), available at: https://www.heuni.fi/en/index/publications/heunireports/HEUNI_report_88c.html. See also ILO, Combating Forced Labour: A Handbook for Employers & Business (2015), available at: https://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm
[76] Other tools include the development, or the strengthening, of a company policy or code of conduct; the carrying out of enterprise-level assessments or social auditing; the promotion and provision of enterprise-level training; and the establishment of an internal Focal Point for trafficking and labour exploitation.

duplication, and it should be collected on the basis of harmonised definitions and indicators of trafficking and forms of labour exploitation. Data should be disaggregated by sex, age, type of exploitation and country (region within a country) of origin and/or destination.

99. Protocols (agreements) on data sharing should be established between relevant stakeholders within each country, as well as internationally. Data collection should be accompanied by all necessary measures to respect the right of the persons concerned to the **protection of their personal data**, including when NGOs working with trafficked persons are invited to provide information for the national database.

100. The Convention refers to **research** in the context of prevention of human trafficking, under Articles 5(2) and 6, but research is also relevant for other aspects of combating trafficking, and is important for the shaping of future policy measures. There is a growing body of research on human trafficking for the purpose of labour exploitation which should be used to inform development of legislation, policy and other initiatives. States should promote and fund research on different aspects of human trafficking, new trends and the impact of measures.

Synopsis of recommended actions

- Define the parameters of the concept of exploitation through either law or guidance, in order to avoid inconsistency of interpretation and legal uncertainty.
- Align the notion of abuse of vulnerability used in the national legislation to that of the Convention, which encompasses any abuse of vulnerability, whether physical, psychological, emotional, family-related, social or economic.
- State explicitly in law the irrelevance of consent to the intended exploitation, in order to provide trafficked persons with greater confidence in self-reporting to NGOs and public authorities.
- Establish multi-disciplinary task forces or working groups responsible for co-ordinating and steering national action on combating trafficking for the purpose of labour exploitation, as well as dealing with specific problems and cases.
- Adopt national strategies or action plans for combating human trafficking which are comprehensive and include specific measures to address trafficking for labour exploitation.
- Expand the mandate of labour inspectorates to explicitly cover human trafficking for the purpose of labour exploitation, including the detection and reporting of such cases in any place where work is performed, including domestic households and the informal sector, regardless of the administrative status of workers or the type of contract which exists between the worker and the employer.
- Establish a reporting and complaint mechanism that allows all workers, including undocumented workers, to report abuses without running a risk of losing their jobs or being reported to the immigration authorities.
- Allocate sufficient human, financial and material resources to ensure the effectiveness of labour inspections.
- Integrate training on human trafficking in the regular training curricula of different professional groups and organise multi-disciplinary training involving professionals from different agencies.
- Carry out impact assessments following awareness campaigns to evaluate whether knowledge has increased, and behaviour changed, in order to plan future campaigns and other activities based on concrete evidence and data.
- Extend the scope of labour protection over all sectors of the economy, including domestic work, unregulated sectors and undocumented workers, and ensure that mechanisms exist to enforce the fundamental principles and rights at work.
- Regulate and monitor the activities of private placement and recruitment agencies, operating in both the formal and informal sectors of the economy, and those responsible for facilitating the placement of domestic workers.

- Adopt National Action Plans for implementing the UN Guiding Principles on Business and Human Rights, including measures which are relevant to addressing human trafficking.
- Adopt legislation integrating the prevention of human trafficking in public procurement policies and promoting transparency in supply chains with a view to preventing human trafficking and labour exploitation.
- Provide companies with guidelines on trafficking for labour exploitation, including with respect to risk management in supply and subcontracting chains.
- Conduct or require independent supply chain audits and workplace monitoring, and ensure that companies are held accountable in case of human rights abuses.
- Establish a National Referral Mechanism (NRM) which provides for a formalised identification procedure and defines the roles and responsibilities of all actors involved. The NRM should include labour inspectors and trade unions, which can play a crucial role in the identification and support of persons trafficked for labour exploitation.
- Ensure long-term, regular, consistent and appropriate funding for the assistance of trafficked persons, regardless of their immigration status.
- Ensure that the best interests of the child are respected in all actions related to the identification and assistance of child victims of trafficking.
- Adopt measures to facilitate and ensure access to unpaid wages and compensation for trafficked persons, and in particular:
  - Ensure that trafficked persons are systematically informed, in a language that they understand, of their right to claim unpaid wages and to seek compensation and the procedures to be followed;
  - Provide legal assistance to all trafficked persons, irrespective of their immigration status;
  - Ensure that trafficked persons are enabled to stay in the territory to be able to claim unpaid wages and compensation, and are allowed to remain until the proceedings have terminated and they have obtained compensation and/or back payments;
  - Build the capacity of legal practitioners to assist trafficked persons in claiming unpaid wages and compensation, and address the issue of compensation in training programmes for law enforcement officials and the judiciary;
  - Make full use of property freezing and confiscation legislation, including where companies are involved, to ensure compensation for trafficked persons.
- When identified trafficked persons are foreign nationals without a regular immigration status, consider issuing a residence permit that is not conditional on co-operation in criminal proceedings.

- Adopt specific legal provisions and/or guidance concerning the non-punishment of trafficked persons, providing for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. The scope of the non-punishment provision should be extended to all offences committed by trafficked persons, including administrative and immigration offences. Trafficked persons should be promptly and appropriately informed about the non-punishment provision as soon as contact with the authorities or with other assistance services is established.
- Take legislative and other necessary measures in order to ensure that crimes related to trafficking in human beings are proactively investigated, prosecuted and judged swiftly, leading to effective, proportionate and dissuasive penalties. This includes measures to ensure that authorities responsible for investigating trafficking cases are adequately resourced and trained. The establishment of specialised units within the police and Prosecutor's Office, as well as specialisation among judges, enables the acquisition of experience and knowledge, and contributes to a higher prosecution and conviction rate.
- Adopt a specific protocol on the investigation of trafficking for the purpose of labour exploitation, to be deployed in order to gather all necessary evidence (including material objects, documentary, testimonial and digital evidence), routinely using special investigative techniques, in order to assist prosecutors and judges in the criminal proceedings and avoid over-reliance on trafficked persons' testimonies. Investigations into criminal offences should be systematically accompanied by financial investigations, in particular where companies are involved.
- Apply appropriate victim and witness protection measures before, during and after the proceedings, in order to prevent intimidation and retaliation by traffickers, and minimise additional trauma for the victims.
- Ensure that corporate liability legislation is effectively applied in practice in cases of human trafficking for the purpose of labour exploitation.
- Develop and maintain a comprehensive statistical system on trafficking in human beings for the purpose of labour exploitation by collecting reliable and harmonised data on measures to protect and promote the rights of trafficked persons, investigations, prosecutions and judicial decisions in cases of trafficking for the purpose of labour exploitation. Protocols (agreements) on data sharing should be established between relevant stakeholders within each country, as well as internationally.
- Promote and fund research on different aspects of human trafficking, new trends and the impact of measures.