



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Working Group on Trafficking in Persons

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**Analysis of key concepts: focus on the concept of “abuse of power or of a position of vulnerability” in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

## **Analysis of key concepts: focus on the concept of “abuse of power or of a position of vulnerability” in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

**Background paper prepared by the Secretariat**

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\* CTOC/COP/WG.4/2011/1.



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## I. Introduction

1. In decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Organized Crime Convention, was the principal legally binding global instrument to combat trafficking in persons. The Conference further decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.
2. In resolution 5/2, the Conference decided that the working group should hold at least one intersessional meeting prior to the sixth session of the Conference and present its recommendations to the Conference on whether the working group should be extended and, if so, proposed areas for future work.
3. The first, second and third meetings of this working group were held in Vienna, Austria from 14 to 15 April 2009, from 27 to 29 January 2010 and on 19 October 2010 respectively.
4. The present background paper was prepared by the Secretariat to aid in the discussion of the fourth session of the working group.

## II. Development of appropriate measures

5. Member States might consider the following points, among others, in implementing the key concept of “abuse of power or of a position of vulnerability” in Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:
  - What is the meaning given to the term “abuse of power” by domestic legislation?
  - What is the meaning given to the term “abuse of a position of vulnerability” by domestic legislation?
  - How is it possible to certify the existence or absence of “no real and acceptable alternative”?
  - How to prove that the abuse was such that the person believed that he or she had no reasonable alternative?
  - Is extreme poverty a sufficient position of vulnerability to render consent irrelevant?
  - States Parties may consider adopting a definition focusing on the offender and his intention to take advantage of the situation of the victim.

### III. Overview of issues

6. Article 3 (a) of the Trafficking in Persons Protocol defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, *of the abuse of power or of a position of vulnerability* or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (emphasis added).

7. The term “abuse of power or a position of vulnerability” is one of the key concepts of the definition, however is not defined further in the Trafficking in Persons Protocol. The interpretative notes state that the reference to abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.<sup>1</sup>

8. States have interpreted the concept of “abuse of power or of a position of vulnerability” in varying ways within their respective national legislation. These differences in the legislative approach to the concept are mirrored in the differing interpretations of the concept in national case law. In many jurisdictions, the concept of abuse of power or of a position of vulnerability also functions as aggravating circumstances used to enhance penalties in cases of trafficking.

9. Comparatively little attention has been given to the interpretation of the concept of abuse of power as opposed to the concept of abuse of a position of vulnerability. The concept of abuse of power has appeared in international conventions before,<sup>2</sup> there is, however, not much interpretative guidance available resulting in the majority of the material included in this background paper being on the key concept of abuse of a position of vulnerability.

10. Criminal justice practitioners often do not take a person’s vulnerability in the various trafficking stages into account. As a consequence, persons who have been trafficked may not be identified as victims of trafficking, but as offenders and/or irregular migrants, leading to their expulsion or criminalization. An examination and clarification of the key concept of “abuse of power or of a position of vulnerability” could serve to better advise and guide criminal justice practitioners towards a more effective criminal justice response that protects victims and prosecutes offenders.

11. In some of the literature on trafficking in persons, the terms “vulnerable” and “poor” have been used synonymously, and poverty is often cited as a leading cause of trafficking. Vulnerability, however, is not the same as poverty. Vulnerability refers to the condition of a person in a specific context. One possible definition given in the literature refers to vulnerability as “a condition resulting from how individuals negatively experience the complex interaction of social, cultural,

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<sup>1</sup> Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols, UN Doc. A/55/383/Add.1 (3 November 2000), paragraph 63.

<sup>2</sup> For example, in Article 2 of the International Convention for the Suppression of the White Slave Traffic, 30 UNTS 23.

economic, political and environmental factors that create the context for their communities.”<sup>3</sup>

12. As such, vulnerability is not a static, absolute state, but one that changes according to context as well as to the capacity for individual response. A response to vulnerability needs therefore to take into account the external conditions of an individual as well as the coping mechanisms that enable the individual to protect him- or herself against a negative impact from those external conditions.<sup>4</sup>

13. Many studies have been conducted on the contributing factors that make persons vulnerable to trafficking in persons. Some of the factors suggested are poverty, unemployment, lack of socio-economic opportunities, gender-based violence, discrimination and marginalization.<sup>5</sup> Indicators of recruitment by abuse of vulnerability could be: abuse of difficult family situation; abuse of illegal status; abuse of lack of education (language); abuse of lack of information; control of exploiters; difficulties in the past; difficulty to organize the travel; economic reasons; false information about law, attitude of authorities; false information about successful migration; family situation; general context; personal situation; psychological and emotional dependency; relationship with authorities/legal status and abuse of cultural/religious beliefs.<sup>6</sup>

## IV. Guidance for response

### A. Organized Crime Convention and the Trafficking in Persons Protocol

14. The term “abuse of power” is used in the definition of trafficking in persons in Article 3 (a) without a precise definition being provided. Its exact meaning was disputed during the drafting of the Trafficking in Persons Protocol. During discussions on the earlier formulation “abuse of authority”, negotiators noted that “the word ‘authority’ should be understood to include the power that male family members might have over female family members in some legal systems and the power that parents might have over their children”.<sup>7</sup>

15. The term “vulnerability” is referred to three times in the Trafficking in Persons Protocol. The first one is in the preamble: “Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently

<sup>3</sup> UNODC & UN.GIFT, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background paper, 2008, p. 8. Available from [www.unodc.org/documents/human-trafficking/2008/AnIntroductiontoHumanTrafficking-VulnerabilityImpactandAction.pdf](http://www.unodc.org/documents/human-trafficking/2008/AnIntroductiontoHumanTrafficking-VulnerabilityImpactandAction.pdf).

<sup>4</sup> *Ibid.*, p. 68.

<sup>5</sup> United Nations Global Plan of Action to Combat Trafficking in Persons. UN Doc. A/RES/64/293 (12 August 2010), preambular paragraph 3.

<sup>6</sup> International Labour Office & European Commission, *Operational indicators of trafficking in human beings: Results from a Delphi survey implemented by the ILO and the European Commission*, 2009.

<sup>7</sup> *Travaux préparatoires* of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations publication, Sales No. E.06.V.5), p. 343, fn 20. Available from [www.unodc.org/pdf/ctoccop\\_2006/0460074\\_ebook-e.pdf](http://www.unodc.org/pdf/ctoccop_2006/0460074_ebook-e.pdf).

protected”. The second time is in the definition in Article 3 (a), reading ““Trafficking in persons’ shall mean the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control for another person, for the purpose of exploitation.” The last reference concerns prevention of trafficking in persons in article 9, paragraph 4, reading “States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking.”

16. The interpretative notes on article 3 of the Trafficking in Persons Protocol provide supplementary means of interpretation according to Article 32 of the Vienna Convention on the Law of Treaties. The Ad Hoc Committee noted that “[t]he reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>8</sup>

17. The UNODC Model Law against Trafficking in Persons proposes two alternative definitions of the term “abuse of a position of vulnerability” in its article 5 (Definitions):

(a) “Abuse of a position of vulnerability” shall refer to any situation in which the person involved believes he or she has no real and acceptable alternative but to submit;

or

“Abuse of a position of vulnerability” shall mean taking advantage of the vulnerable position a person is placed in as a result of [provide a relevant list]:

[(i) Having entered the country illegally or without proper documentation;] or

[(ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;] or

[(iii) Reduced capacity to form judgements by virtue of being a child, illness, infirmity or a physical or mental disability;] or

[(iv) Promises or giving sums of money or other advantages to those having authority over a person;] or

[(v) Being in a precarious situation from the standpoint of social survival;] or

[(vi) Other relevant factors.]<sup>9</sup>

18. The Model Law contains a commentary to this definition underlining that many other definitions of abuse of a position of vulnerability are possible, including

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<sup>8</sup> Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols, UN Doc. A/55/383/Add.1 (3 November 2000), paragraph 63.

<sup>9</sup> UNODC, Model Law against Trafficking in Persons (United Nations publication, Sales No. E.09.V.11), pp. 10-11. Available from [www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf).

elements such as abuse of the economic situation of the victim or of dependency on any substance, as well as definitions focusing on the objective situation or on the situation as perceived by the victim.<sup>10</sup>

19. The Model Law recommends that Governments may consider adopting a definition focusing on the offender and his intention to take advantage of the situation of the victim. These may also be easier to prove, as it will not require an inquiry into the state of mind of the victim but only that the offender was aware of the vulnerability of the victim and had the intention to take advantage of it.<sup>11</sup>

20. In addition, the UNODC Model Law against Trafficking in Persons reproduces the relevant paragraph of the United States State Department Model Law to Combat Trafficking in persons, which reads

Abuse of a position of vulnerability means such abuse that the person believes he or she has no reasonable alternative but to submit to the labour or services demanded of the person, and includes but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgements by virtue of being a child.<sup>12</sup>

## **B. Conference of the Parties and the Working Group on Trafficking in Persons**

21. The Conference of the Parties to the Organized Crime Convention at its fifth session requested the Secretariat to continue its work on the analysis of key concepts of the Trafficking in Persons Protocol.<sup>13</sup> Furthermore, the Conference of the Parties welcomed the work of the Working Group on Trafficking in Persons, including its recommendations.<sup>14</sup>

22. The Open-ended Interim Working Group on Trafficking in Persons recommended at its second session, held from 27-29 January 2010 in Vienna, that

the Secretariat should prepare, in consultation with States parties, issue papers to assist criminal justice officers in penal proceedings, on subjects such as consent; harbouring, receipt and transport; abuse of a position of vulnerability; exploitation; and transnationality. In addition, the Secretariat should ensure that any new concepts were integrated into existing tools and materials.<sup>15</sup>

<sup>10</sup> Ibid., p. 10.

<sup>11</sup> Ibid.

<sup>12</sup> United States State Department Model Law to Combat Trafficking in Persons, 2003, article 1.

<sup>13</sup> Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, CTOC/COP/2010/17 (2 December 2010), p. 10, paragraph 10.

<sup>14</sup> Ibid., paragraph 5.

<sup>15</sup> Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, CTOC/COP/WG.4/2010/6 (17 February 2010), paragraph 31(b).

23. The Open-ended Interim Working Group on Trafficking in Persons recommended at its first session, held from 14-15 April 2009 in Vienna, that

[w]ith regard to the definition of concepts that might require further clarity, the Secretariat should prepare, in consultation with States parties, issue papers to assist States parties in better understanding and interpreting key concepts of the Trafficking in Persons Protocol, especially legally relevant definitions in order to assist criminal justice officers in penal proceedings.<sup>16</sup>

### **C. Additional international guidance**

24. In the United Nations Global Plan of Action to Combat Trafficking in Persons, the General Assembly recognized the need to develop a global plan of action that would “promote a human rights-based, gender- and age-sensitive approach in addressing all factors that make people vulnerable to trafficking in persons and strengthening the criminal justice response, which are necessary to prevent trafficking in persons, protect its victims and prosecute its perpetrators.”<sup>17</sup>

25. The General Assembly resolved in the Global Plan of Action to “address the social, economic, cultural, political and other factors that make people vulnerable to trafficking in persons, such as poverty, unemployment, inequality, humanitarian emergencies, including armed conflicts and natural disasters, sexual violence, gender discrimination, social exclusion and marginalization, as well as a culture of tolerance towards violence against women, youth and children.”<sup>18</sup>

26. The General Assembly further decided in the Global Plan of Action to “develop or strengthen processes for the identification of victims, such as those developed, inter alia, by the United Nations Office on Drugs and Crime and other organizations, including appropriate and non-discriminatory measures that help to identify victims of trafficking in persons among vulnerable populations.”<sup>19</sup>

27. The United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, address the issue of vulnerability, and provide an analysis of various factors that increase vulnerability of victims to human trafficking. Principle 5 includes the obligation to address vulnerability to trafficking (principle 5.2), addressing increases in vulnerability related to inequality and poverty (principle 5.3), related to discrimination and violence against women (principle 5.4), addressing the special vulnerabilities of children, including unaccompanied and separated children (principle 5.5), addressing increases in vulnerability in conflict and post-conflict situations (principle 5.6), and ensuring that measures taken to address vulnerability do not violate established rights (principle 5.7).

28. The General Assembly, in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) provided a

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<sup>16</sup> Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, CTOC/COP/WG.4/2009/2 (21 April 2009), paragraph 7.

<sup>17</sup> United Nations Global Plan of Action to Combat Trafficking in Persons, A/RES/64/293 (12 August 2010), preambular paragraph 16 (d).

<sup>18</sup> Ibid., paragraph 12.

<sup>19</sup> Ibid., paragraph 17.



definition of victims of abuse of power (paragraph 18) and recommended that States should promote policies and mechanisms for the prevention of acts of abuse of power, and should develop and make readily available appropriate rights and remedies for victims (paragraph 21). In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support (paragraph 19).

#### D. Regional guidance

29. European Union Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims includes a definition of “position of vulnerability” “a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”.<sup>20</sup> The wording is similar, if not identical, to the one in the interpretative notes to the Organized Crime Convention and its Protocols, which refers to the abuse of a position of vulnerability as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>21</sup>

30. European Union Directive 2011/36 also emphasises the need to reduce vulnerability<sup>22</sup> and provides for more severe penalties when the offence is committed against a particularly vulnerable victim, including at least all children.<sup>23</sup> The Directive suggests that other factors that could be taken into when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability.<sup>24</sup> It is further suggested that particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability.<sup>25</sup>

31. The Council of Europe Convention on Action against Trafficking in Human Beings reproduces in its article 4 the definition of trafficking in human beings in article 3, Trafficking in Persons Protocol.<sup>26</sup> The Explanatory Report provides guidance on the term “abuse of a position of vulnerability”, stating that

[b]y abuse of a position of vulnerability is meant 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. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the

<sup>20</sup> 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, Official Journal of the European Union, 15.04.2011, article 2 (2).

<sup>21</sup> Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols, UN Doc. A/55/383/Add.1 (3 November 2000), paragraph 63. Emphasis added.

<sup>22</sup> Directive 2011/36/EU, preambular paragraph 2.

<sup>23</sup> *Ibid.*, preambular paragraph 12.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, preambular paragraph 23.

<sup>26</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series — No. 197, article 4.

situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.<sup>27</sup>

32. The Council of Europe Convention obliges parties to take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them<sup>28</sup> and to establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by means such as research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking.<sup>29</sup>

33. The 100 Brasilia Regulations Regarding Access to Justice for Vulnerable People, approved by the Plenary Assembly of the Ibero-American Judicial Summit held in Brasilia in March 2008, aims to ensure effective access to justice without discrimination to people in a vulnerable position. This document provides a detailed definition of the concept of vulnerability and some examples in Section 2 point 1:

Vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law. The following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty. The specific definition of vulnerable people in each country will depend on their specific characteristics, and even on their level of social or economic development.<sup>30</sup>

## **E. Domestic response**

34. Some examples of domestic legislation contained in the UNODC Model Law against Trafficking in Persons (pp. 10-11) are reproduced below:

Taking advantage of the particularly vulnerable position in which the alien is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or a physical or mental disability.

(Source: Belgium, Law containing Provisions to Combat Trafficking in Human Beings and Child Pornography, 13 April 1995, article 77 bis (1) 2)

Profiting from a situation of physical or psychological inferiority or from a situation of necessity, or through promises or giving sums of money or other advantages to those having authority over a person.

(Source: Italy, Criminal Code, article 601)

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<sup>27</sup> Council of Europe Explanatory Report on the Convention on Action against Trafficking in Human Beings, ETS 197, 16.V.2005, paragraph 83.

<sup>28</sup> Ibid., article 5 (5).

<sup>29</sup> Ibid., article 5 (2).

<sup>30</sup> 100 Brasilia Regulations Regarding Access to Justice for Vulnerable People, available from <http://justicia.programaeurosocial.eu/datos/documentos/noticias/1217852883.pdf>.

State of vulnerability — special state in which a person is found such that he/she is inclined to be abused or exploited, especially due to:

- (a) his/her precarious situation from the standpoint of social survival;
- (b) situation conditioned upon age, pregnancy, illness, infirmity, physical or mental deficiency;
- (c) his/her precarious situation due to illegal entry or stay in a country of transit or destination.

(Source: Republic of Moldova, Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI, 20 October 2005, article 2, paragraph 10)

## Annex

### **Key tools and recommended resources**

#### **UNODC Model Law against Trafficking in Persons**

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different state authorities and NGOs. Each provision provided in the Model Law is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. Of special relevance is Art. 5, which provides with a first approach to the definition of the term “abuse of a position of vulnerability”.

[www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf)

#### **UNODC Anti-human Trafficking Manual for Criminal Justice Practitioners**

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is the result of a global cooperative process in which expert representatives from academia, NGOs, international organizations, law enforcement officers, prosecutors and judges from all over the world contributed their expertise and experiences. In line with the Trafficking in Persons Protocol, the purpose of the Anti-Human Trafficking Manual for Criminal Justice Practitioners is to support criminal justice practitioners in the prevention of human trafficking, the protection of its victims, the prosecution of its culprits and in the international cooperation needed to achieve these goals.

Module 14 of the Manual introduces the concept of vulnerability derived from drug use, this use being either voluntary or forced by the trafficker as a mean of control.

#### **UNODC & UN.GIFT, An Introduction to Human Trafficking: Vulnerability, Impact and Action**

The first paper, on vulnerability, challenges current working definitions of prevention and the practical emphasis on public awareness as the primary tool to prevent the occurrence of this crime. The author maintains that an expanded understanding of prevention to include the vulnerability of at-risk individuals and the fostering of an environment where crime cannot prosper will assist in the development of comprehensive prevention strategies.

The entire section 4 of the paper is devoted to the definition of “vulnerability”, and provides a good analysis on the concept as well as different viewpoints on the matter. (pp. 67-75)

[www.unodc.org/documents/human-trafficking/2008/AnIntroductiontoHumanTrafficking-VulnerabilityImpactandAction.pdf](http://www.unodc.org/documents/human-trafficking/2008/AnIntroductiontoHumanTrafficking-VulnerabilityImpactandAction.pdf)

### **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking — Commentary**

The Commentary<sup>31</sup> seeks to provide clear direction on the issue of legal status by identifying those aspects of the Trafficking Principles and Guidelines that can be tied to established international legal rights and obligations. It uses the *Principles and Guidelines* to structure a detailed overview of the legal aspects of trafficking, focusing particularly but not exclusively on international human rights law. It provides court and tribunal decisions to illustrate the translation into practice of the Principles and Guidelines.

Principle 5 and Related Guidelines: Intervention to Address Factors Increasing Vulnerability, is oriented towards prevention, but also deals with the issue of victim vulnerability and could serve as an example of positions of special vulnerability.

### **A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region**

This report by the OSCE's Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings is a background paper for the Alliance against Trafficking in Persons held in Vienna in 2006. This paper was written to provide a summary of national practices and challenges in legal responses to trafficking in human beings for labour exploitation, and is illustrated with cases reported in the OSCE Region. The aim is to assist participating States in the development and implementation of national anti-trafficking policy in compliance with OSCE commitments and other relevant international obligations, and to contribute to bridge the gap between international commitments, national anti-trafficking responses and the experiences of trafficked persons.

The concept of abuse of a position of vulnerability is detailed and explained in pages 8-11 of the document.

[www.osce.org/cthb/24342](http://www.osce.org/cthb/24342)

### **A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region**

This report by the OSCE's Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings presents an analysis of labour trafficking in one particular economic sector, agriculture. It addresses the current challenges within the agricultural sector, and aims to assist participating States, policymakers and non-governmental organizations (NGOs) to identify the structural issues and deficits of this sector that cause or exacerbate worker's vulnerability. The Report introduces the concept of "multiple dependency" and provides with some examples to better explain vulnerability of victims in human trafficking.

(Section 2.4.2, pages 38 and 39)

[www.osce.org/cthb/37937?download=true](http://www.osce.org/cthb/37937?download=true)

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<sup>31</sup> [www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf).

**Operational indicators of trafficking in human beings: Results from a Delphi survey implemented by the ILO and the European Commission (September 2009)**

The results of the survey provide several indicators of “abuse of a position of vulnerability”, either at recruitment (16 indicators) or at the destination point (7 indicators).

[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf)

**Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda**

It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and life within “the life” is rarely one marked by empowerment or adequate options. (paragraph 42)

In a world which continues to bear the hallmarks of white supremacy and male dominance, women and girls oppressed on the basis of race, nationality, caste and/or colour are especially vulnerable to sexual exploitation. Prostitute-users often abuse this vulnerability and, in so doing, abuse their own position of relative social power over trafficked persons. (paragraph 69)

Integration of the human rights of women and a gender perspective, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, E/CN.4/2006/62 (20 February 2006).