

THE MIAMI DECLARATION OF PRINCIPLES ON HUMAN TRAFFICKING

FEBRUARY 10, 2005

Preamble

Today, slavery is illegal in nearly every country on the face of this planet. Yet, 600,000 to 2,000,000 people are trafficked across international borders annually, and millions more are trafficked within borders. An estimated 27 million people toil under conditions of personal servitude around the world. Human trafficking has become the third-largest source of profits for organized crime, generating billions of dollars each year.

In order to combat this egregious and growing threat to human dignity, the government leaders, scholars, expert practitioners and students present at the symposium on human trafficking held on the campus of St. Thomas University Law School on February 10, 2005, hosted by the Law School's Graduate Program in Intercultural Human Rights and its INTERCULTURAL HUMAN RIGHTS LAW REVIEW, shared their expertise, engaged in thorough, problem- and policy-oriented discussion and formulated the following set of *consensus principles* to recommend to decision-makers and practitioners around the world.

I. International Legal Policies

1. Trafficking in persons is a human rights violation that constitutes a contemporary form of slavery. It is defined as:

the action of recruitment, transportation, transfer, harboring or receipt of persons

by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or re-

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ceiving of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.¹

2. Trafficking in persons also typically violates other basic human rights, especially the right of the victim to be free from slavery or servitude, the right of the victim to life, liberty and security of person, the right of the victim to be free from torture or cruel, inhuman or degrading treatment or punishment, the right of the victim to health, the right of the victim to freedom of movement and residence, and the right of the victim to free choice of employment. It also includes the commission of serious crimes against persons, in many cases rape, assault, and torture, as well as crimes against states, often including money laundering, tax evasion, and violations of immigration rules.

3. Trafficking in persons is to be considered a crime against humanity, just as genocide, enslavement and torture are. As such, its commission triggers universal jurisdiction. It should also be recognized as a violation of *jus cogens*, a breach of the peremptory norms of international law.

4. Victims of trafficking in persons are to be treated with dignity, fairness and respect for their human rights. Among these rights are: the right to safety; the right to privacy; the right to information; the right to legal representation; the right to be heard in court; the right to compensation for damages; the right to medical assistance; the

¹ This definition largely draws on 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, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Sept. 9, 2003. It is to be noted that consent of the victim is irrelevant where the illicit means mentioned above are established. Criminal law defenses, however, are preserved.

right to social assistance; the right to seek residence; and the right to return to their country of origin.

5. States² should recognize that the roots of human trafficking include vulnerabilities based upon age, poverty, lack of education, unemployment or underemployment, gender discrimination, as well as the non-enforcement of laws on the registration of births, the age of marriage and the age of majority.

6. States should ratify and implement relevant and appropriate international legal instruments on human rights and trafficking in persons.³

7. States should adopt and implement the laws and administrative structures needed to support international co-operation and assistance in preventing, investigating and prosecuting cases of human trafficking.

8. States should establish direct channels of communication between their border control agencies and law enforcement agencies. They should initiate or expand efforts to gather and analyze data on trafficking in persons, including on the means and methods used, on the

² The term “State” describes the recognized principal actors of international law which unite a people in a defined territory under its own sovereign government. It includes States organized in a federal system. Governments are the agents of States. International legal obligations are binding upon all levels of government. In a federal State, these entities include federal, state, and local authorities.

³ Pertinent instruments to be considered include, but are not limited to, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *supra* note 1; the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* Jan. 18, 2002; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317 (IV) of 2 December 1949, *entered into force* July 25, 1951; and the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

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situation, magnitude, nature, and economics of trafficking in persons, particularly of women and children. States should share such information, as appropriate, with law enforcement agencies and other agencies of countries of origin, transit and destination, as well as with international law enforcement agencies such as INTERPOL.

9. States should provide, strengthen, and cooperate internationally in, training for law enforcement personnel, customs and immigration officials, prosecutors and judges, and other relevant officials, on the issue of trafficking in persons. The training should focus on the methods used in preventing such trafficking, prosecuting the traffickers, and protecting the rights of victims of trafficking, including protecting the victims from the traffickers. This training should also take into account the need to consider human rights, be sensitive to child and gender issues as well as linguistic, cultural, ethnic, and religious aspects of the problem, and it should encourage co-operation with non-governmental organizations and other elements of civil society.

II. Legal Sanctions and Enforcement Strategies

10. Trafficking in persons is an egregious criminal activity, often perpetrated by individuals or by organized transnational criminal groups. Trafficking in persons is often linked with the laundering of illicit proceeds, thus making prosecution and confiscation particularly difficult. A comprehensive approach to trafficking should include *prosecution* of the traffickers, *prevention* of the act of trafficking, and *protection* of the victims of trafficking. In addition, trafficking is often a transnational crime that warrants the development and implementation of transnational policies, in particular, the imposition of extraterritorial sanctions, extradition, and exchange of information.

11. States should recognize trafficking in persons as a specific and serious crime in their domestic laws. In particular, States have the responsibility to enact domestic anti-trafficking laws that can be applied extraterritorially. Penalties for trafficking must reflect the severity of the offense.

12. States should enact legislation to recognize as crimes all forms of sexual exploitation, including trafficking for the purpose of prostitution, trafficking for the purpose of pornography, trafficking for the purpose of providing mail-order brides and household help, as well as sex tourism.

13. States are urged to curtail demand for commercial sexual services, and punish all actors involved in the trafficking scheme, including the principals of the scheme, other members of the criminal association, as well as facilitators.

14. Corporations should be held criminally liable for the commission of the crime of trafficking in persons. Also, corporate officials in a position of relevant authority who know or should have known that their corporation derives a financial benefit from the labor of a trafficked person should be held criminally liable for their complicity in the crime of trafficking in persons.

15. States should fight corruption and punish public officials who facilitate or participate in the trafficking enterprise.

16. States are urged to fully prosecute cases of trafficking and to commit adequate funding to this task.

17. As a part of their responsibility to prosecute cases of trafficking, States should provide special training to law enforcement officials, border officials and judges on methods of detecting, investigating and prosecuting cases of trafficking in persons and related crimes. Adequate training and funding for state and local law enforcement is imperative.

18. States should recognize and implement in their domestic laws trafficking in persons as an extraditable offense, and they should include this offense in their extradition treaties and practices.

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19. States should recognize that trafficking is a crime that is not dependent on the person's immigration status, and benefits should be granted to victims of trafficking irrespective of their immigration status.

20. States should have immigration policies reasonably calculated to meet domestic labor needs. Immigrants are often vulnerable to trafficking because they do not have legal immigration status but have migrated in response to the destination country's unmet demand for labor. Moreover, such migration creates instability for the migrant's remaining family in the country of origin; thereby creating a secondary vulnerable population.

21. States should allow victims of trafficking to apply for a protective status allowing them to remain in the State's territory, and if found to be valid, States should grant the relief. Victims should have recourse to all other opportunities to apply for immigration status. States should recognize the relation between underlying crimes and the larger definition of trafficking. Victims of trafficking should not be deported without having the opportunity to apply for such protective status.

22. Immigration-related benefits should not be made unreasonably contingent upon the victim's cooperation with the prosecution of their traffickers.

23. No State (including countries of destination, transit, or origin of human trafficking) should impose immigration penalties on victims of trafficking who repatriate. The victim's repatriation should thus not adversely affect his or her chances of future immigration to the transit or destination State.

24. It is the responsibility of the government of the victim's citizenship to issue or provide valid identity documents promptly to trafficking victims.

IV. Protection and Reintegration of Victims of Trafficking

25. States should sponsor training and support efforts to train NGOs and legal counsel in all the dimensions of human trafficking. This includes training in the identification of victims of trafficking and their social, health, and legal needs.

26. States should sponsor training and support efforts to train law enforcement officers, judicial and other administrative officials as well as members of governmental agencies who may have contact with trafficked persons in all the dimensions of human trafficking. This includes training in the identification of victims of trafficking and their social, health, and legal needs.

27. Governments have a responsibility to find and identify victims of trafficking and assist them to come forward without fear of prosecution or retaliation. To this end, States should develop identification measures, which distinguish trafficking in human beings for various forms of exploitation from illegal migration and smuggling. Multiple means should be used to help victims of trafficking come forward, such as hotlines, drop-in centers and direct victim outreach.

28. The trafficked person must be recognized as the victim of the crime of trafficking. States must not criminalize the status of the trafficked person and should not penalize the victim for illegal acts, such as illegal immigration or prostitution, incident or related to the trafficking act.

29. States should provide victims of trafficking with all protective and re-integrative services, the minimum of which includes safety planning, health services, legal services, culturally appropriate mental health services, as well as safe and secure housing.

30. Victims should not be forced or coerced into cooperating with the prosecution of perpetrators, nor should they be penalized for failing to testify.

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31. Safety and privacy of the victims should be of the highest priority. Governments have the responsibility to ensure that witness protection programs are available to victims of trafficking and their family members before, during and after investigation and prosecution. Protection measures, especially police protection measures, should be available to all victims in need, not only to those acting as witnesses.

32. Benefits granted to a victim of trafficking should also be extended to members of the victim's family as needed.

33. Preventive measures should include, as a minimum: 1) programs promoting the empowerment of women and their full participation to the economic and social life of their countries of origin; 2) policies promoting education, social protection, and economic development; 3) measures to reduce the demand for prostitution, other commercial sexual services, cheap labor, and any other activity that could foster trafficking in persons; 4) measures to survey migration patterns and ensure legal and safe labor migration.

34. Governments have the responsibility to cooperate with non-governmental organizations (NGOs), including faith-based organizations, to allow them the freedom to work, and consult with them in taking the necessary measures to combat trafficking in persons and to assist the victims. Moreover, a system of identification, assistance, protection and social inclusion of trafficked persons should be based on regular cooperation between public institutions and social actors (especially law enforcement, prosecution, migration authorities, local authorities, NGOs and other relevant actors and service providers) at the national and local level.

35. Countries of origin and destination have the responsibility to cooperate, exchange information, and provide for mutual assistance in order to: 1) develop joint actions against trafficking and prevent overlaps; 2) promote law enforcement and judicial collaboration; and 3) facilitate contacts between embassies and consular authorities.

36. States should facilitate the repatriation of victims of trafficking, if they wish to return to their home country. Governments have also the responsibility to ensure the re-integration of victims of trafficking in their communities, by issuing identity documents and providing them with employment or education opportunities.

37. Research, information, networking, education, and mass media campaigns are crucial in the fight against trafficking in persons. Research is important to assess the scope of the problem, identify the victims, study methods to reduce the demand of all those activities fostering trafficking in persons, determine the special needs of child victims, suggest further tools to combat trafficking in persons, and highlight the link between trafficking and HIV/AIDS. Academic institutions should play a vital role in this field.

38. Awareness campaigns spreading information about trafficking issues should target the general public, the business community, and policy makers in order to create an environment that does not accept any form of trafficking. They should also address specific groups, such as potential victims, customers, business owners, border officials, law enforcement personnel, and diplomatic authorities. Such campaigns should warn about the risks of trafficking as well as the harm of prostitution, and inform about the benefits available to victims of trafficking. The media can play a crucial role by acting as a multiplier and ensure the outreach of the campaign by launching a systematic effort in several countries at the same time, thereby creating synergies and effective peer pressure.

39. States should consider the creation of an international list of missing persons, which would be particularly helpful in the identification of victims and potential victims, such as unaccompanied children.

40. States, in cooperation with IGOs and NGOs, should identify and review best practices in the field of trafficking in persons, including policies, programs, and existing laws, in order to study their impact in the reduction of trafficking.

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41. States should provide IGOs and NGOs that are involved in the fight against trafficking in persons with the appropriate funds and resources to effectively perform their mandate.

42. States should periodically self-assess their action against trafficking in persons, to evaluate the effectiveness of their laws and policies, and take measures to correct them, where appropriate.

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