Every country in the world is affected by human trafficking, whether as a country of origin, transit, or destination for victims. In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol). Its definition of human trafficking contains three elements:

1. **The Act**: the recruitment, transportation, transfer, harbouring or receipt of persons;
2. **The Means**: by threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or by giving payment or benefits to a person in control of the victim;
3. **The Purpose**: to exploit the prostitution of others or other forms of sexual exploitation, forced labour, slavery or similar practices, servitude or the removal of organs.

Over 110 States have signed and ratified the Palermo Protocol, however, the United Nations Office on Drugs and Crime recently reported that “[v]ery few criminals are convicted and most victims are probably never identified or assisted”.

In 2002, the U.N. based Office of the High Commissioner for Human Rights noted the need to harmonize legal definitions, procedures and cooperation at the national and regional levels consistent with international instruments like the Palermo Protocol. The purpose of this questionnaire is to explore the extent to which member countries have implemented domestic anti-trafficking legislation and whether that legislation is effective in addressing these concerns.

Question 1: Has your country signed and ratified the Palermo Protocol? If yes, on what date? Yes, on July 3, 2008.

Question 2: Does your country have special legislation for the criminal prosecution of human trafficking? If yes, please answer Questions 3 to 10. If no, is there any such legislation presently under consideration?

Question 3: How is human trafficking defined in your country’s legislation?

The law establishes a gradation of criminal offences tailored to meet gradations in exploitative behavior. This reflects the view that all exploitation must be combated, even when it does not amount to trafficking or slavery, in order to create a climate unfriendly to the development of
such severe forms of criminal behavior.

As regards trafficking for the purpose of slavery or forced labor, the following series of crimes has been established: **trafficking in human beings for the purpose of slavery or forced labor** (section 377A(a) of the Penal Law), **holding a person under conditions of slavery** (section 375A of the Penal Law), **forced labor** (section 376 of the Penal Law), and **exploitation of vulnerable populations** (section 431 of the Penal Law). This last crime was in force before the law, but its punishment was heightened from one year's imprisonment to 3 years of imprisonment. In addition, the abduction offence has been broadened to include two new offences: **abduction for the purpose of slavery or forced labor** and **conveying a person beyond the boundaries of a state** (sections 374A and 370 of the Penal Law) and a new offence created of **causing a person to leave a state for the purposes of prostitution or slavery** (section 376A of the Penal Law).

The following is a concise analysis of the main crimes included in the new law and pertinent to trafficking for the purpose of slavery and forced labor:

1. **Trafficking in Persons** (Section 377A(a) Penal Law)

Before the new law came into force, the only trafficking offence was for the purpose of prostitution. The new law includes trafficking for a wide array of unworthy purposes, including slavery and forced labor. The crime is attended with a maximal punishment of 16 years imprisonment and 20 years imprisonment if it is committed against a minor.

The crime is composed of two main elements: a **transaction** in a person, for one of several **exploitative purposes**, including subjecting a person to slavery or forced labor. The definition of transaction in a person is instructive:

"transaction in a person" means selling or buying a person or carrying out another transaction in a person, whether or not for consideration."

It is immediately apparent that the elements of the crime differ from those espoused in the main
trafficking Protocol. The Protocol defines trafficking by means of three elements: certain actions involved in moving a human being from one place to another (and for example, recruitment, transportation, transfer, harbouring or receipt), by nefarious means (such as threats or use of force, coercion, or fraud) for the purpose of exploitation (which includes at a minimum forced labour or services, slavery or practices similar to slavery or servitude). Only in the case of trafficking of children is there no requirement of nefarious means.

In contrast, the Israeli law chooses to define the hard core of trafficking, as a transaction in a person, as distinguished from a transaction with a person. This emphasizes the objectification of the person, which is the essence of trafficking, as does the placement of the section in the chapter of the Penal Law which deals with violations of human freedom. The Israeli law, like the Protocol, also requires that there be an exploitative purpose and for example, slavery or forced labor, but it does not require that foul means be used. Trafficking may transpire even if no threat, violence or abuse of power occurs. This definition facilitates the proving of the offence, as does the statement that no consideration is required, nor a transaction of a particular kind. The law explicitly states that a middleman in a trafficking transaction is to be considered an accomplice.

The law also facilitates convictions by stating two possible connections between the transaction and the exploitative conditions: either the trafficker must perform the acts for the exploitative purpose or in so acting he must place the person in danger of one of the exploitative conditions.

In addition, it should be noted, that the Supreme Court Interpretation of "buying and selling", as these terms appeared in the former offence of "trafficking for the purpose of prostitution, was broad and included any transfer of rights in a human being. This mode of interpretation should facilitate convictions, even if it is difficult to prove the nature of the transaction.

1 PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.
The legislative technique adopted by the Law is to define the offence in broad terms, rather than specify a series of concrete actions which constitute it. This technique was consciously chosen, under the assumption that too many words often creates classifications which allow evasion and miss the essence of the offence. On the other hand, when the hard core of the offence is defined, a wide array of circumstances which merit inclusion, are more likely to fit.

The Israeli law and the Protocol have a common ground in that the consent of the victim is irrelevant to the crime. Unlike the Protocol, which deals only in transnational trafficking, the Israeli law also covers internal trafficking.

2. Holding a Person under Conditions of Slavery (section 375A of the Penal Law)

Before the new law, Israel did not have a slavery offence. Now, it is a crime with a maximal punishment of 16 years of imprisonment and 20 years if committed against a minor.

The elements of the offence require that a person be held under conditions of slavery for the purposes of work or services, including sex services. Slavery is defined as follows:

"""slavery" means a situation under which powers generally exercised towards property are exercised over a person; in this matter, substantive control over the life of a person or denial of his liberty shall be deemed use of powers as stated."

This definition attempts to focus upon the hard kernel of slavery, which is acting towards a person as if towards property, thus destroying his separate legal personality and his basic autonomy. 2 The first part of the definition is taken from the Slavery Convention of 1926, whereas the second part was added in order to clarify that slavery may take place, even if there

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is no passing of property rights in the person. This was necessary in view of the fact that modern slavery focuses on control as distinguished from ownership.

As in the trafficking offence, it is not necessary to prove that foul means were used to enslave the person. Nor is his consent relevant.

The legislative technique is similar to that of the trafficking offence in that a broad definition is used in order to catch the full range of circumstances which may amount to slavery. It was felt that this was a case wherein it was doubtful if detail would clarify, as much as it would tend to exclude circumstances which should be included.

Clearly, slavery and trafficking for the purpose of slavery are similar, in that both crimes strike at a person's most basic freedoms and objectify him. Still, in trafficking, this is done by means of a transaction in a person, whereas under slavery, the conditions under which the person is held constitute the crime.

In some sense the two crimes can be seen as a continuum, with slavery acting as the realization of trafficking, if the transaction is undertaken in order to enslave the person. This allows a whole range of behavior to be dealt with by the criminal law, without leaving gaps which are not covered. Thus, in cases where the evidence does not prove a transaction, but the living and working conditions are inhuman, a charge of slavery may be entered, whereas in cases where the evidence is limited to a transaction, the trafficking crime may be used.

3. New Abduction Offences Allied to Trafficking (sections 374A and 370 of the Penal Law)

The new law creates two new abduction offences which serve to cover behavior which is close to trafficking and slavery, but may not fall squarely into the elements of those crimes:

1. Aggravated abduction offence - (section 374A) which requires that the abduction be perpetrated in order to achieve the aims enumerated in the trafficking crime (including slavery and forced labor). The maximal sentence is 20 years imprisonment. This section was added in
order to tailor abduction to a world rife with trafficking.

It should be noted that abduction does not require the use of force, but may occur if the perpetrator threatens or entices the victim to leave the place in which he is by means of fraud (section 369 of the Penal Law). Thus this crime fills in gaps left by the trafficking offence. Even if a transaction cannot be proven, as is required by the trafficking crime, a perpetrator who causes a person to move from one place to another by fraudulent means, may still be convicted of abduction.

Interestingly, this crime more resembles the definition of trafficking in the Trafficking Protocol than the trafficking crime itself, as defined in Israeli law. Like the definition in the Protocol, it requires the moving of a person from one place to another by nefarious means for one of the purposes enumerated in the trafficking offence.

2. In addition, the law creates a new offence of "Conveying a Person Beyond the Boundaries of a State" (section 370) - which prohibits conveying a person beyond the boundaries of the state in which he resides. This provision reflects a reality by which people are abducted beyond national boundaries in order to "feed" the international "trafficking industry". The maximal sentence is 10 years imprisonment.

As in the abduction offence previously described, this offence may be used even when there is no evidence of a transaction, as required by the trafficking in persons offence.

4. Causing a Person to Leave a State for Purposes of Prostitution or Slavery (section 376B of the Penal Law)

Like the new abduction offence, this new offence fills in the gaps left by the trafficking offence. It penalizes "Anyone who causes another person to leave the State in which he lives for purposes of engaging the person in prostitution or holding that person under conditions of slavery." The maximal sentence is ten years imprisonment.
Thus, even if a transaction in a person cannot be proven, as required by the trafficking offence, a perpetrator who entices another person to move across borders in order to hold him under conditions of slavery is still liable to criminal sanctions.

5. **Forced Labor** (section 376 of the Penal Law)

Before the law was enacted, the Penal Law included an offence of forced labor, but it was inadequate to deal with modern cases of severe exploitation, as can be seen by the maximal sentence, which was one year's imprisonment.

The new law redesigned this offence and strengthened it, as can be seen by the maximal sentence, which is 7 year's imprisonment. The section penalizes "**Anyone who unlawfully forces a person to work, by using force or other means of pressure or by threat of one of these, or by consent elicited by fraud, whether or not for consideration...**"

This crime is tailored to cover situations of lesser exploitation than slavery or trafficking, which have maximal sentences of 16 years imprisonment. In addition, while those crimes deal in denial of basic freedoms, so that they do not require an element of force, pressure, threats or fraud, "forced labor" does, because it deals with less severe situations which can still be considered as labor, rather than slavery.

Still, there is common ground between the three crimes in that here too, it is irrelevant if consideration has been paid. This reflects a recognition of the fact that payment of consideration alone cannot absolve from blame, as forced labor too, is a violation of the victim's freedom.

The crime does not require overt or threatened violence; "**other means of pressure**" opens the door to milder means. This term appears in other sections of the Penal Law and has been interpreted to include exploitation of severe economic hardship or an implicit threat to withhold a worker's permit.
6. **Exploitation of Vulnerable Populations** – (section 431 of the Penal Law): **Heightened Maximal Sentence**

Section 431 penalizes he who exploits the distress, the bodily or mental weakness, the lack of experience or recklessness of a person in order to demand or receive something which is not owing or to demand or receive something at a price which is unreasonably higher than the norm or to pay a price unreasonably lower than the norm for a product or service.

This section existed in the Penal Law before the enactment of the law, but its maximal sentence was one year's imprisonment. The new law enacted a more severe maximal sentence of 3 years in order to reflect the severity of exploitation encountered today, and in particular in the realm of foreign workers. It should be noted, that this section has been used in the past to indict persons who exploited foreign workers.

This is a crime of lesser severity than trafficking, slavery and forced labor. Here, the protected value is not a person's basic freedom, but rather his vulnerability to exploitation. As such, this crime is tailored to fit cases attended by less grievous harm.

**These six crimes are intended to cover the range of criminal behaviors related to exploitation of laborers, without leaving gaps.** The most severe behavior will be prosecuted under the trafficking, slavery or abduction crimes. The next gradation is causing a person to leave his state for purposes of slavery, followed by forced labor and finally exploitation of vulnerable populations.

Question 4: Does the legislation criminalize:
   a) Attempts to commit a trafficking offence? Yes.
   b) Participation as an accomplice or party in a trafficking offence? Yes.
   c) Organizing or directing others to commit a trafficking offence? Yes.

Question 5: Can corporations be charged with human trafficking along with natural persons (i.e. employment agencies, travel agencies, escort services)? Yes if the elements of the crime can be proven, including mens rea regarding the end purpose of the transaction.

Question 6: Does the legislation contain special provisions regarding the trafficking in children? If
yes, please describe. Yes. Trafficking of children or holding children under conditions of slavery carries with it more severe penalties – instead of a maximal sentence of 16 years imprisonment – such acts carry with them a maximal sentence of 20 years imprisonment.

Question 7: What are the penalties for human trafficking offences? Do they include deportation/extradition? Do they include confiscation of instruments of trafficking and proceeds of trafficking? The maximal sentence for trafficking or holding under conditions of slavery is 16 years of incarceration and in the case of a minor – 20 years. The maximal sentence for abduction for the purposes of trafficking is 20 years imprisonment. The trafficking and slavery offences carry minimal sentences of one fourth the maximal sentence as well.

Traffickers or those under suspicion of slavery, abduction for purposes of trafficking, and the other crimes detailed above, can be extradited.

As to confiscation or forfeiture -

The law enacts broad forfeiture provisions which allow courts to rule that property connected to trafficking and slavery offences should be forfeited. It includes the following provisions:

a. The property which can be forfeited is broad and includes property amassed from the profits accruing from movable and immovable property, money and rights which are connected to the crime.

b. The connection between the property and the trafficking and slavery offence is broadly set and may include: that the crime was committed with aid of the property, that the property served to allow the commission of the crime, that it was intended to be remuneration for the commission of the crime, that it was obtained directly or indirectly as remuneration for the commission of the crime, or was obtained as a result of the commission of the crime.

c. The law imposes an obligation upon courts who convict perpetrators of trafficking and slavery crimes to order forfeiture, as a rule, unless they reach the conclusion, for special reasons, that this should not be done.

d. The law allows courts to issue temporary orders and to order forfeiture in a civil proceeding, under special circumstances, even if no criminal proceeding was held.

As a rule, in the Israeli legal system, proceeds of crime which are forfeited are transferred to the
State. Though there are exceptions to this rule, they are rare.

The new law diverges from this rule and establishes a special fund to which all forfeited property and fines imposed in connection to trafficking and slavery offences, should be transferred. The fund must allocate this property for the following purposes:

1. rehabilitation, treatment and protection of victims of these offences. **Each year, no less than one half of the Fund’s assets must be allocated to this end.**
2. prevention of the commission of such offences.
3. carrying out the functions of law enforcement authorities in enforcing the provisions of the law in regard to these offences.
4. payment of compensation (whole or partial) to individual victims who have been awarded such compensation by means of court judgments (whether in civil or criminal cases) and have established that they have no reasonable possibility of enforcing the judgment.

These purposes reflect the various aspects of the battle against trafficking, as established by international conventions: **protection, prosecution and prevention.** Thus, the Fund is intended to be a tool to encourage the waging of this battle on all fronts.

**This provision is an important precedent, in its emphasis upon the protection of victims, above and beyond the other purposes of the Fund.** This can be seen in the obligatory allocation of at least half of the yearly assets to the protection of victims and in the arrangement allowing for compensation of individual victims by the Fund, under certain circumstances.

Question 8: Are there statistics available on the number of prosecutions and rates of conviction in your country for human trafficking offences since its antitrafficking legislation was adopted? If yes, please provide.

**In 2005** – 31 convictions for trafficking and related offences, and 13 cases were pending before

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3 See for example, the citation in footnote 1.
the courts.

**In 2006** - 13 convictions for trafficking and related offences, and 31 cases were pending before the courts. Some of the most significant cases are:

1. **Cr.C. 1141/04 The State of Israel v. Offer** - The case involves five defendants who carried out brutal acts against the victims, who managed to escape and turn to the police. On October 3, 2006, defendants 1, 2, 3 and 5 were convicted as follows: Defendant 1 was convicted of TIP for the purpose of engaging in prostitution, inducement to engage in prostitution, inducement to engage in prostitution under aggravated circumstances, rape, forbidden intercourse by consent, false imprisonment and threats, and was sentenced to **13 years of imprisonment**, suspended imprisonment, **10,000 NIS compensation** (2,400 $) for one of the victims and 2,500 NIS (600 $) compensation for each of the other victims. Defendant 2 was convicted of blackmail by threats and Defendant 3 of inducement to engage in prostitution under aggravated circumstances and false imprisonment, and they were sentenced each to 6 months of imprisonment and suspended imprisonment. Following a plea bargain, defendant 4 was convicted of pandering and assisting in managing a property for the purpose of engaging in prostitution and was sentenced to 22 months of imprisonment, suspended imprisonment and 2,500 NIS (600 $) compensation. Defendant 5 was convicted of assisting to TIP and inducement to engage in prostitution under aggravated circumstances, and was sentenced to 22 months of imprisonment, suspended imprisonment and 2,500 NIS (600 $) compensation. The State is to appeal the relatively light sentence of defendant 3.

2. **Cr.A. 2529/05 Reuvenov V. The State of Israel** - The defendant was convicted of TIP, inducement to engage in prostitution under aggravated circumstances and pandering. On June, 19, 2006, the defendant was sentenced to **12 years of imprisonment** and 2 years of suspended imprisonment. The Supreme Court approved the District Court's verdict and rejected both the defendant's appeal against his conviction and his appeal for the mitigation of the punishment.
3. Cr.A. 3802/05, Tikva v. The State of Israel - The defendant was convicted of TIP and pandering, and sentenced to **10 years of imprisonment** and suspended imprisonment. On December 21, 2006, the Supreme Court rejected the defendant's appeal to mitigate the punishment.

**In 2007** – 20 convictions for trafficking and related offences, and 15 cases were pending before the courts.

**In 2008** – 13 convictions for trafficking and related offences, and 12 cases were pending before the courts.

**In 2009** – 11 convictions for trafficking and related offences, and 11 cases were pending before the courts. Some of the most significant cases are:

- **S.Cr. C. 1056/08 The State of Israel v. Pavel Chavez et. al.** (June 22, 2009). In this case, three defendants were convicted and sentenced by the Tel-Aviv District Court on trafficking in persons for the purpose of prostitution and/or related offenses. In July 2005, two of the defendants assisted in the trafficking of the victim, a Russian citizen, into Israel through the Egyptian Border. The defendants forced her to engage in prostitution in a brothel, although she was told that she was coming to Israel to work as a dancer. The defendants used physical violence and threats, and locked the victim in the brothel, while guarding her constantly. She was forced to have sex with approximately 15 persons per day, seven days a week, even when she was sick or injured, and her pleas for medical assistance were denied. She received no vacations and her money was taken from her as payment of debts. In addition, two of the defendant raped the victim several times.

The defendants were convicted and sentenced according to a plea bargain which included a total compensation of **110,000 NIS** (U.S. $ 29,700) to the victim. The plea bargain was approved by the victim. It was decided to opt for a plea bargain in order to save the victim from having to re-experience the traumas and to assist her rehabilitation. The Court noted that the severity of the offenses and the need to uproot such vile acts requires the imposition of even more severe punishments, but accepted the plea bargain due to the abovementioned reasons.
Defendant 1 was convicted in inducement to engage in prostitution under aggravated circumstances and pandering for prostitution under aggravated circumstances, and was sentenced to 24 months imprisonment, 12 months suspended imprisonment, and 30,000 NIS (U.S. $ 8,100) as compensation to the victim. Defendant 2 was convicted of trafficking in persons for the purpose of prostitution, inducement to engage in prostitution under aggravated circumstances, pandering for prostitution under aggravated circumstances, and rape, and was sentenced to 8.5 years imprisonment, 24 months suspended imprisonment, and 40,000 NIS (U.S. $ 10,800$) as compensation to the victim. Defendant 3 was convicted of rape, and was sentenced to 5 years imprisonment, 18 months suspended imprisonment, and 40,000 NIS (U.S. $ 10,800) as compensation to the victim.

- **S.Cr.C 1016/09 The State of Israel v. Rami Saban et. al.** In 2009, the Police carried out an international investigation which involved four different countries, and resulted in the arrest of major offenders in Israel and abroad, and in the filing of an indictment against twelve offenders.

Question 9: To what extent does your country permit (through legislation or protocols) the pursuit of anti-trafficking investigations in cooperation with foreign intelligence or police services? The law allows such cooperation and it has been implemented widely.

The new law forges two tools to encourage the international battle against trafficking and slavery:

1. **Extraterritorial Jurisdiction** (amended section 15 of the Penal Law)

As a rule, Israeli courts have jurisdiction to try an Israeli citizen who has committed a crime abroad, on condition that the act is a crime, both in the state in which it was committed and in Israel (double criminality). Traditionally, there have been few exceptions to this rule (trafficking for the purpose of prostitution, prostitution offences involving minors and bigamy offences).

The new law broadens the class of cases in which an Israeli court has jurisdiction to try an
Israeli citizen for crimes committed abroad, even if the act was not a crime in the state in which it was committed. These now include three new crimes enacted by the law: trafficking in persons, conveying a person beyond the boundaries of a state and causing a person to leave a state for the purpose of prostitution or slavery.

This provision promotes the international battle against these crimes; Israeli citizens who commit them can be tried by an Israeli court, without regard to the legal status of their actions abroad. This prevents the Israeli citizen from sheltering under foreign legal systems which do not have adequate criminal provisions to cover these crimes.

2. Legal Assistance between States (amendment to Legal Assistance between States Law, 5758 - 1998)

The new law authorizes Israeli courts to enforce forfeiture orders of foreign courts or administrative bodies regarding property in Israel connected to the crimes of trafficking in persons and slavery. It also authorizes the Minister of Justice to request enforcement of a forfeiture order given by an Israeli court in regard to these crimes.

This amendment encourages cooperation between Israel and other nations in the economic battle against these offenses.

Question 10: Are there provisions protecting trafficked persons from being prosecuted or punished for their illegal entry or residence in your country as a result of having been the victims of human trafficking? Are there provisions preventing their deportation where there are grounds to believe that their return to their country of origin presents a significant security risk to them or their family members? It is the policy of the State Attorney’s Office that if a crime has been committed by a victim of trafficking for prostitution which is integral to the trafficking crime (such as illegal entry, forged documents and the like), he will not be prosecuted. Similar policy is under consideration regarding trafficking for slavery and forced labor.

Thank-you for responding. The responses will be tabulated and discussed at the next meeting of the Third Study Commission in Senegal.

submitted by:
Judge Galit Mor-Vigodzki

President of juvenile courts of Israel