



**Convention on the  
Rights of the Child**

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**Committee on the Rights of the Child**

**Consideration of reports submitted by States  
parties under article 12, paragraph 1, of the  
Optional Protocol to the Convention on the Rights  
of the Child on the sale of children, child  
prostitution and child pornography**

**Initial reports of States parties due in 2004**

**Belarus**

[4 December 2009]

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## **I. Introduction**

### **A. Process of preparation of the report**

1. In accordance with article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Belarus hereby submits its initial report on implementation of the Optional Protocol.
2. The report has been prepared in accordance with the revised guidelines regarding initial reports to be submitted by States parties.
3. The information used in preparing the report was supplied by ministries and other government departments responsible for issues related to protecting children's rights and legal interests, as well as Belarusian voluntary organizations.
4. The report contains information on the legislative, administrative and other measures taken in the country to implement the provisions of the Optional Protocol.

### **B. General principles of the Convention on the Rights of the Child in implementing the Optional Protocol on the sale of children, child prostitution and child pornography**

5. A series of measures have been taken in Belarus for the practical implementation of the principles of the Convention on the Rights of the Child; they are aimed at improving and reviewing existing legislation defending children's rights and improving their status in the country, including by guaranteeing their right to life, survival and development, and respect for their views.
6. Belarusian legislation defines a child as a natural person under the age of 18 years (the age of majority) unless, under the law, he or she has attained full civil-law dispositive capacity before that time (Rights of the Child Act No. 2570-XII of 19 November 1993, with amendments and supplements).
7. Under article 3 of the Rights of the Child Act, children's rights and legal interests are upheld by commissions for juvenile affairs, tutorship or guardianship agencies, public prosecutor's offices and courts, and by other organizations thus mandated by national law to give priority in their activities to protecting such rights and legal interests.
8. Under article 191 of the Marriage and Family Code, children have the right to material support. All children, whether living with their parents or not, have the right to such support from their family and the State as is needed for their full physical and mental development, to develop their natural interests and talents, and to receive an education corresponding to their abilities, so that they can develop in a balanced manner and become valued members of society.
9. The Marriage and Family Code confers on parents the responsibility, in the upbringing of children, to care for their health, their physical, mental and spiritual development, to help them find suitable employment, and to prepare them for independent living.
10. The legislation confers on parents not only responsibility for their children's upbringing, but also liability for neglect of that responsibility. By law, parents or other persons or establishments involved in the upbringing of a child are held accountable for any

inappropriate upbringing. Upbringing is considered inappropriate if it does not uphold the legal rights and interests of the child, and does not ensure that he or she will steadfastly abstain from antisocial behaviour and from violating the law and the rights and legal interests of others (Marriage and Family Code, art. 67).

11. An important guarantee that these parental responsibilities will be carried out is the rule that states that, where parental duties are performed inappropriately or parental rights are abused, children may turn to the tutorship and guardianship agencies, the procurator's office or, on reaching the age of 14, to the courts, to protect their rights and legal interests.

12. The Marriage and Family Code governs cases where children are left without parental care: death of the parents, removal or restriction of their parental rights, declaration that they have no legal capacity, illness, prolonged absence, refusal to attend to the child's upbringing or to protect his or her rights and interests, including a refusal to remove the child from an education or medical facility, social protection institution, or other similar establishment; or other cases where there is a lack of parental care. In such cases, the child's rights and interests are protected by tutorship and guardianship agencies (Marriage and Family Code, art. 116).

13. The tutorship and guardianship agencies identify and register children without parental care and, depending on the specific circumstances of the loss of parental protection, decide on the best placement arrangements for them and monitor the conditions of their maintenance, upbringing and education.

14. Children without parental care may be placed with a family (for adoption or under a tutorship, guardianship or fostering arrangement) or, when this is not possible, in a State or non-State children's home for fostering. The tutorship and guardianship agencies and administration of the children's home must take all the necessary measures to place the child in a family, including for fostering.

15. In arranging a placement for a child without parental care, consideration must be given to his or her ethnic origin, religious and cultural affiliation and mother tongue, as well as to ensuring continuity, where possible, in upbringing, education and family ties.

### **C. Convention on the Rights of the Child: Implementation of measures related to the Optional Protocol on the sale of children, child prostitution and child pornography**

16. The following measures have been taken in Belarus to implement the Convention on the Rights of the Child, and specifically articles 1, 11, 21, 32, 34, 35 and 36.

17. Article 9 of the Belarusian Rights of the Child Act guarantees the right to inviolability of the person and protection from exploitation and violence. Every child has the right to protection of his or her person from any type of exploitation and violence. The State guarantees the personal inviolability of the child, and protects him or her from any type of exploitation, including sexual exploitation, from physical and psychological violence, from cruel, rough or degrading treatment, from sexual abuse, including by the child's parents (or persons performing parental duties) or relatives, from involvement in criminal activity, exposure to alcohol or narcotic, toxic, psychotropic and other potent intoxicating substances for non-medical use, and from forced prostitution, begging, gambling or acts involving the production of pornographic materials or items.

18. Persons who are aware of cruel treatment or physical and/or psychological violence that is a threat to a child's life, health and development are obliged to immediately report it to the competent State body.

19. Under article 4 of the Rights of the Child Act, the State protects the lives of children against any illegal attack. Individuals who have committed crimes when under the age of 18 may not be sentenced to the death penalty or life imprisonment. This provision is also contained in other legislation. Hence, under article 59 of the Criminal Code, individuals who have committed crimes when under the age of 18 may not be sentenced to the death penalty, and under article 58, they may not be sentenced to life imprisonment.

20. The legislative provisions are supported by the implementation of national programmes to defend children's rights and guarantee the best protection of their interests.

21. Between 2001 and 2005, a presidential programme entitled "Children of Belarus" (approved by Presidential Decree No. 281 of 24 May 2001) was implemented to strengthen the effectiveness of the State system supporting children, primarily those in particularly difficult circumstances, and to achieve the common priorities and guidelines of State social policy for children that are applied in government activities at all levels. This resulted in better medical care for children and women and measures to reduce the harmful effects of the Chernobyl disaster on the health of children and pregnant women. It helped resolve issues related to the rights and interests of children with special mental and physical needs, increased possibilities for handicapped children to receive basic education and vocational training, improved the system of social service institutions available to families and children, and led to the establishment and use of a system for placing orphans in foster families.

22. The President's 2006–2010 "Children of Belarus" programme, approved by Presidential Decree No. 318 of 15 May 2006, is now being implemented; it has subprogrammes devoted to the following: the children of Chernobyl; handicapped children; orphans, children and the law: bringing up individuals; children's nutrition; and social protection for families and children. The programme measures are intended to improve the quality of life for families with children; to improve children's health and encourage healthy lifestyles; to prevent childhood disability and ensure an optimum level of functioning for disabled children; to prevent child abandonment, and to protect the rights and ensure the integration into society of orphans and children without parental care.

23. The national action plan 2004–2010 to improve the status of children and protect their rights (approved by Council of Ministers Decision No. 1661 of 18 December 2003) is also currently being implemented; it includes work to protect children from violence, trafficking and all forms of exploitation.

#### **D. Legal status of the Optional Protocol on the sale of children, child prostitution and child pornography in Belarus**

24. Belarus acceded to the Optional Protocol on 23 January 2002; it came into force on 23 February 2002.

25. The Protocol has the status of a law. The act on accession to the Protocol was adopted on 3 December 2001.

26. Belarus recognizes the supremacy of universally acknowledged principles of international law and ensures that its laws comply with them (Constitution, art. 8).

27. Under article 33 of the International Agreements Act, the rules of law contained in the international agreements that Belarus has acceded to form part of national legislation and are directly enforceable, except where such enforcement requires the adoption (publication) of a domestic legal act.

## **E. Progress achieved in eradicating the sale of children, child prostitution and child pornography**

28. In Belarus, the sale of children is seen as an integral part of human trafficking. Because of its small scale, it is not considered as a separate problem.

29. Minors make up approximately 10 per cent of the total number of victims. Data from the Ministry of Internal Affairs show that the largest number of minors drawn into human trafficking was recorded in 2006, at 222 individuals (of whom 156 were identified in investigations related to a high-profile case concerning the modelling business). Thanks to measures taken by the law enforcement agencies, the number of minors who were victims of human trafficking had fallen to 26 in the first half of 2009. An absolute majority of cases concerned girls aged between 17 and 18. Cases involving children aged between 14 and 16 were very rare.

30. The recent worldwide increase in the problem of child pornography has not left Belarus unaffected, but such pornography has not become a large-scale phenomenon in the country.

31. In March 2008, the Ministry of Internal Affairs stopped the activities of an organized criminal group that had produced and disseminated child pornography and maintained pornographic websites between 2005 and 2008. In 2008, the law enforcement agencies closed down a total of three pornographic studios (an additional two were closed down in the first half of 2009).

32. In July 2007, INTERPOL and the law enforcement agencies of Belarus, Italy, the Russian Federation, the United States and Ukraine, with the help of 30 companies from the United States involved in the Financial Coalition against Child Pornography, collaborated in a police operation code-named "Tornado" to combat child pornography on the Internet. During the operation, Belarusian law enforcement agencies arrested 11 members of a criminal organization that posted child pornography on commercial websites. This resulted in the closing down of 270 websites offering child pornography that had been visited by persons from more than 140 countries. The criminals were sentenced to deprivation of liberty for periods of between 4 and 12 years.

33. A system has been established to protect the rights of child victims of violence and provide them with timely and skilled assistance; it includes the child protection agencies, social and educational centres, children's shelters and social, educational and psychological services in educational establishments.

34. Belarus has a National Plan of Action to Improve the Situation of Children and Protect their Rights for 2004–2010; it was approved by Council of Ministers Decree No. 1661 of 18 December 2003.

35. The plan, aimed at protecting children from violence, trafficking and all forms of exploitation and armed conflict, includes measures to inform children and specialists working with children about the Optional Protocol and the recommendations of the Committee on the Rights of the Child adopted as part of the general discussion on violence against children within the family and in school. It also provides for the development and introduction of a system for recording cases of physical, mental and other forms of violence against children, and measures to: raise public awareness about offences and crimes against minors and the penalties imposed for them; detect dangerous and harmful acts committed against children and prosecute the perpetrators; analyse and ensure the general implementation of legislation to protect the lives and health of minors at extreme risk who become victims of crime, cruelty and violence; and restrict the showing in television or video films or the publishing in the press of material that advocates violence and cruelty.

36. Work is also conducted to prevent violence against children through the “Children of Belarus” presidential programme for 2006–2010 (approved by Presidential Decree No. 318 of 15 May 2006). The programme advocates non-violence in child-rearing and provides for expert assessments of cinema, video, audio and advertising products; it calls for the registration of children and families at risk, and for the training of specialists to work with them.

37. School psychologists and educational experts work with teaching staff, parents and students to prevent children from getting into risk situations involving the sale of children, child prostitution and pornography and to raise awareness and understanding of the problem.

38. It has become standard practice in educational establishments to conduct activities to inform children, young people and teachers about dangerous situations in which children may become victims of crime or sexual exploitation and about the methods used by human traffickers, as well as the measures taken by the State to protect its citizens.

39. Work has also been done with parents towards the suppression and early detection of risk factors that could lead to sexual violence or sexual exploitation of children or to situations in which they are lured into child prostitution and pornography. It has been a topic of parents’ meetings, with the participation of psychologists and officials from minors’ commissions and inspectorates.

40. The efforts made to improve legislation, eradicate networks of international organized criminal groups and improve public awareness are expected to bring about a further reduction in illegal acts related to the sale of children and their involvement in sexual exploitation.

## **F. Laws and regulations to protect children**

41. The laws and regulations on upholding and defending the rights of the child in Belarus can be found on the website of the National Centre of Legislation and Legal Research of Belarus<sup>1</sup> and are available to all interested parties. Legal information adapted to the needs of children and adolescents can be found at <http://mir.pravo.by>.

## **II. Data**

### **A. Data on the age of victims of the sale of children**

42. As already noted, the sale of children in Belarus is considered an integral part of human trafficking.

43. Almost all minors who are the victims of human trafficking are between 17 and 18 years old and can already make an adequate assessment of the situation (in accordance with the Criminal Code, the age of criminal responsibility begins at age 16).

44. Women and girls are the main victims of sexual exploitation. The Ministry of Internal Affairs has been responsible for monitoring and reporting on the incidence of trafficking in minors in Belarus since 2005.

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<sup>1</sup> [www.pravo.by](http://www.pravo.by).



## B. Data on the incidence of the sale of children

45. Human trafficking, including the sale of children, generally takes two forms in Belarus, one involving sexual exploitation and the other labour exploitation.

46. Between 2005 and mid-2009, Belarus established 435 cases of trafficking in minors, 428 of which involved sexual exploitation and 7 labour exploitation.

Table 1

**Information on the number of underage victims of sexual and labour exploitation**

<i>Year</i>	<i>Total number of underage victims</i>	<i>Number of victims of sexual exploitation</i>	<i>Number of victims of labour exploitation</i>
2005	61	59	2
2006	222	218 (156 and 62*)	4
2007	23	22	1
2008	103	103	0
2009 (first six months)	26	26	0

\* In 2006, 218 cases of trafficking in minors involving sexual exploitation were established, including:

- 156 minors identified in the course of a high-profile criminal investigation into a modelling agency (just two of whom were age 13, with the rest age 17)
- 62 underage victims identified during investigations into other offences exposed in 2006

47. The work of minors sentenced to deprivation of liberty in correctional institutions is not considered labour exploitation under the Penal Enforcement Code (arts. 98–103).

48. No instances of the transfer of children's organs for profit have been found in Belarus.

49. Likewise, no instances have been found of human trafficking for the sexual or labour exploitation of minors adopted in other countries or during children's visits abroad for treatment under humanitarian projects.

## C. Data on child prostitution

50. According to the Ministry of Internal Affairs, 26 minors were involved in prostitution in the country in 2005, 35 in 2006, 9 in 2007, 96 in 2008 and 18 in 2009 (first six months).

51. There is no legalized sex tourism industry in Belarus. The procurement of women or men for tourists for paid sexual services is prosecuted under the Criminal Code (usually under article 171, Exploitation of prostitution).

52. Nor is sex tourism promoted in Belarus. Such acts are regarded as an element of recruitment for subsequent exploitation, which, as human trafficking, incurs criminal liability.

## D. Information on the incidence of child pornography

53. Three minors were involved in pornography (solely photographs of naked children, not depicting sexual acts) in 2005, 2 in 2006 and 11 in 2007.

54. In 2008, evidence was found of the production of child pornography with minors engaged in sexual acts. It was ascertained that 71 children were involved in pornography (61 of whom were forced into prostitution, which has been included in the statistical information for 2008). During the first half of 2009, 10 children (8 children aged under 14 years and 2 under 18) were involved in pornography.

55. Four cases involving the production and distribution of pornographic material depicting minors were uncovered in 2005, 13 in 2006 and 6 in 2007. The material was distributed in the form of photos and videos on compact discs and video cassettes. Six cases involving the production and distribution of child pornography were uncovered in 2008 and nine in the first half of 2009. Almost all the material containing child pornography was distributed through the Internet.

56. The pornography industry on the Internet is clearly specialized. For example, Belarusian nationals have been mainly involved in setting up websites and billing (or payment) systems. Citizens of the Russian Federation, Ukraine and Moldova have been involved in the procurement of children for pornography, of Latvia, in money-laundering, and those of the United States, in web hosting.

57. As the sale of children is a form of human trafficking, a general record is kept of the number of charges brought and sentences imposed for such offences. Action taken against human trafficking and related offences brought 4,139 offences to light between 2000 and mid-2009.

58. Overall, 1,326 offences were related to the removal of people abroad for exploitation (including 591 cases of direct human trafficking). Furthermore, 19 criminal organizations and 70 organized criminal groups were dismantled; and 1,342 persons were convicted for human trafficking and related offences, 481 of whom were sentenced to deprivation of liberty.

### **III. General measures of implementation**

#### **A. National strategy for the elimination of the sale of children, child prostitution and child pornography**

59. The State guarantees the personal inviolability of the child and protects him or her from any type of exploitation, including sexual exploitation, from physical and psychological violence, from cruel, rough or degrading treatment, from sexual abuse, including by the child's parents (or persons performing parental duties) or their relatives, from involvement in criminal activity and exposure to alcohol or narcotic, toxic, psychotropic and other potent intoxicating substances for non-medical use, and from forced prostitution, begging, gambling or acts involving the production of pornographic materials or items.

60. Belarus has established a regulatory framework for the suppression of human trafficking, including the prevention and prosecution of the sale of children, child prostitution and child pornography.

61. Presidential Decree No. 3 on certain measures to combat human trafficking was adopted on 9 March 2005. It regulated key areas such as employment and study abroad, intercountry adoption and the activities of marriage and modelling agencies, and also introduced the internationally accepted concept of human trafficking.

62. Amendments and additions were introduced into the Criminal Code in 2005 and 2008. Belarus currently defines six elements of human trafficking and related acts as

criminal offences (this category of offences is covered by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol)). The maximum penalty for such offences is deprivation of liberty for 15 years, with confiscation of property. The production and distribution of pornographic material and items of a pornographic nature and the implication of minors in antisocial behaviour are singled out as a separate group of offences related to human trafficking.

63. Presidential Decree No. 352 of 8 August 2005 on the prevention of the consequences of trafficking in human beings was adopted in order to establish a legal and institutional framework ensuring adequate protection of victims of human trafficking.

64. The Decree defines the concept of “victim of human trafficking” and specifies the measures to be taken to ensure the safety of victims, their social protection and rehabilitation, and to allow them to stay temporarily in Belarus (for foreign nationals and stateless persons) and to be released from liability (for administrative offences only, with the criminal provisions relating to extreme necessity applying in the event that the victim has committed a criminal offence).

65. Presidential Decree No. 18 was adopted on 24 November 2006 and provides additional measures for the protection by the State of children in problem families, including measures to protect children at risk, such as those subjected to domestic violence or mistreatment.

66. The Advertising Act of 10 May 2007 prohibits the advertisement of pornographic materials, printed products, images or other items of a pornographic nature and advertisements designed to lure potential victims into human trafficking or the provision of sexual services in the guise of legitimate activity or antisocial behaviour (art. 10).

67. The Regulations on computer clubs and Internet cafés (approved by Decision No. 175 of the Council of Ministers of 10 February 2007) restrict the online dissemination of pornographic materials. Under the Regulations, the use of computer programs that have been deemed to promote violence, cruelty and pornography is prohibited in such establishments.

68. Measures taken pursuant to the Act of 10 November 2008 amending certain laws on combating illegal migration and slave labour, child pornography and prostitution are aimed directly at combating child pornography on the Internet.

69. Furthermore, a provision has been introduced into the Rights of the Child Act stipulating that employment posts involving the upbringing and education of children or regular work with children may not be taken up by persons who have previously committed offences against the sexual inviolability or sexual freedom of the individual or offences covered by the following articles of the Criminal Code: 172 (Involvement of a minor in a criminal offence); 173 (Involvement of a minor in antisocial behaviour); 181 (Human trafficking); 181<sup>1</sup> (Use of slave labour); 343 (Production and distribution of pornographic materials and items); and 343<sup>1</sup> (Production and distribution of pornographic materials and items of a pornographic nature depicting minors).

70. Council of Ministers Decision No. 76 of 23 January 2009 approved a list of posts involving the upbringing and education of children and other posts involving regular work with children that may not be taken up by persons who have previously committed offences against the sexual inviolability or the sexual freedom of the individual or the offences covered by articles 172, 173, 181, 181<sup>1</sup>, 343 and 343<sup>1</sup> of the Criminal Code.

71. An analysis of the existing law on the protection of the rights of children shows that Belarus has established an effective system for defending the rights and legitimate interests of children, including children at risk.

72. Combating the sale of children, child prostitution and child pornography is considered an integral part of the State policy to combat human trafficking in Belarus. Measures to remedy this evil are included in a number of State programmes.

73. The State programme to fight crime for 2006–2010 (approved by Presidential Decree No. 103 of 21 February 2006) provides for the relevant government bodies to carry out specifically agreed interdepartmental prevention and response plans and special operations to prevent, detect and suppress crimes related to human trafficking, including for sexual exploitation, and related to the production and distribution of pornography.

74. The State programme to combat human trafficking, illegal migration and related unlawful activities for 2008–2010 (approved by Presidential Decree No. 624 of 6 December 2007) is intended to address the priorities in the fight against human trafficking, prostitution and pornography, which include raising public awareness about efforts to combat human trafficking, illegal migration, prostitution and child pornography.

75. Belarus has a National Action Plan to Improve the Situation of Children and Protect their Rights for 2004–2010; it was approved by Council of Ministers Decree No. 1661 of 18 December 2003. This plan, aimed at protecting children from violence, trafficking and all forms of exploitation and armed conflict, includes measures to inform children and specialists working with children about the Optional Protocol and the recommendations of the Committee on the Rights of the Child adopted as part of the general discussion on violence against children within the family and in school. It also provides for the analysis and general implementation of legislation to protect the lives and health of minors at extreme risk who have become victims of crime, cruelty and violence and to restrict the showing in television or video films or the publishing in the press of material that advocates violence, cruelty and immorality.

76. Work is also conducted to prevent violence against children through the “Children of Belarus” presidential programme for 2006–2010 (approved by Presidential Decree No. 318 of 15 May 2006). The programme advocates non-violence in child-rearing and provides for expert assessments of cinema, video, audio and advertising products; it stipulates the registration of children and families at risk, and calls for the training of specialists to work with them.

77. The measures implemented under the above-mentioned State programmes are financed from State budget allocations for the relevant public bodies and other public organizations and from other sources, as allowed by law.

78. More than 15 ministries, the media and international and non-governmental organizations (NGOs) are engaged in efforts to prevent human trafficking, including the sale of children, child prostitution and child pornography.

79. The Ministry of Internal Affairs coordinates the efforts of the State bodies of Belarus to combat human trafficking and has primary responsibility for detecting, suppressing and investigating offences and detaining the people who have committed them.

80. A special service, the drug control and human trafficking division, has been in place within the Ministry since 1996. The service is made up of operational units whose most important area of activity is combating contemporary slavery in all its forms and manifestations.

81. The Ministry reports to the Head of State every year on the measures taken in Belarus to combat human trafficking.

82. The Ministry of Labour and Social Protection handles the rehabilitation and social reintegration of children over 15 years of age who are victims of human trafficking.

83. The rehabilitation and social reintegration of children aged 3 to 15 who are victims of human trafficking have been assigned to the Ministry of Education. The Ministry is also responsible for raising public awareness to prevent the “modern slave trade”. The Ministry also monitors student exchanges abroad, child adoption and the activities of modelling agencies to prevent any possible sexual exploitation of minors.

84. The Ministry of Health has responsibility for rehabilitating victims of human trafficking under 3 years of age. It should be noted that no cases of the sale of children of that age have been detected in Belarus.

85. The Ministry of Foreign Affairs and diplomatic and consular authorities abroad defend the rights and legitimate interests of the citizens of Belarus, including victims of human trafficking.

86. Particular attention has been paid to public awareness and prevention campaigns aimed at preventing the sexual exploitation of children, child prostitution and child pornography. The Ministry of Information and the media play an active role in this area.

87. Thematic materials with headlines such as “The Law”, “Society”, “Illusion”, “Beware, slavery!”, “No to human trafficking”, “Combating human trafficking”, “Decree No. 3 line by line” and others have appeared in national and regional periodicals. Specialists dealing with this problem have appeared in the press and on the airwaves.

88. All public authorities involved in combating human trafficking are guided by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

89. The Academy of the Ministry of Internal Affairs trains internal affairs specialists in this field in order to improve the work done to combat human trafficking.

90. Specialists are also trained in this line of work at the International Training Centre on Migration and Combating Human Trafficking, which was established within the Academy of the Ministry of Internal Affairs in 2007. Courses have been developed at the Centre for various categories of trainees, including law enforcement and other public officials and representatives of international organizations and NGOs.

91. Issues relating to the prevention of human trafficking, especially women and children, child pornography and child prostitution, are included in the system of further training and retraining for administrative staff and specialists in the education system.

92. The National Institute of Vocational Education has held further training courses for administrators and teachers in the following areas:

- Monitoring activities as a basis for raising the quality of education in schools
- Maintenance and organization of social work and psychological services at vocational and technical schools and at specialized secondary schools
- Work of school psychologists and social workers to prevent deviant behaviour among students to reintegrate schoolchildren who have experienced violence
- Legal and organizational/methodological work to prevent the sale and sexual exploitation of children

93. Training specialists at the Academy of Postgraduate Education have developed special courses for social workers and boarding school instructors entitled “Victimology” (36 hours) and “Preventing violence and child abuse”. Thematic group consultations have also been developed and conducted, entitled “Prevention of victimhood in educational establishments”, “Shaping responsible sexual behaviour among adolescents” and “Protection and prevention of the exploitation and sale of children”.

94. The training of teachers working at boarding schools, orphanages, health centres and hospitals and of deputy directors of elementary schools, form masters, school administrators and social workers includes special courses entitled “Children at risk and extreme risk” (four class hours) and “Psychological aspects of sexual behaviour” (four class hours), which deal with efforts to prevent the sale of children and the spread of child pornography and child prostitution. The prevention of human trafficking and child prostitution is also studied at the further training faculty for applied psychology.

95. In October 2007 special advanced training courses were held by the Department of Psychology and Social Educational Work of the Academy of Postgraduate Education for the leaders of form master methodology associations on psychological and educational approaches to violence within the family and in schools; they included training in the prevention of the sale of children for sexual abuse.

96. Special advanced training courses were also organized on the following themes:

- “Instilling in schoolchildren a culture of healthy living” (80 hours) for deputy directors for education
- “Theory and technique of addiction prevention among children and adolescents” for leaders of teaching methodology associations, social workers and psychologists
- “Social, psychological and educational support for children and problem families: modern concepts and techniques” for directors and deputy directors of social and educational centres, orphanages and children’s homes

97. The Gomel Provincial State Institute for Advanced Training and Retraining of School Administrators and Education Specialists offered a training course for principals and teachers throughout 2007 on the theme of “International law on the protection and implementation of the rights of the child in Belarus” (a total of 133 classes were conducted for 3,804 participants). A special course entitled “Child abuse: causes, consequences and relief. Prevention of deviant behaviour” was given to form masters, social workers and school psychologists (a total of 63 classes for 1,819 participants).

98. The Vitebsk Provincial State Institute for Advanced Training and Retraining of School Administrators and Education Specialists held courses for 3,672 participants.

99. Procuratorial officials and judges receive advanced training at the Institute for the Retraining and Further Training of Judges and Officials of the Procurator’s Office, the Courts and Other Institutions in the System of Justice, at Belarusian State University. Those attending the Institute are taught about the latest developments in the field of law, inter alia, on issues concerning the investigation and consideration of cases involving adolescents who are the victims of abuse, including sexual and labour exploitation. The lectures and workshops are led by highly experienced court and procuratorial officials and leading legal scholars from the University’s law faculty, the Academy of Public Administration attached to the Office of the President and the Academy of the Ministry of Internal Affairs.

100. Bearing in mind the recommendations of the Committee on the Rights of the Child from 1996, the National Commission on the Rights of the Child is making every effort to ensure the practical implementation of the Convention on the Rights of the Child. Pursuant to Presidential Decree No. 675 of 16 November 2006 on the National Commission on the Rights of the Child, the Commission’s composition, powers and functions have been considerably enlarged.

101. The National Commission on the Rights of the Child is composed of delegates of the National Council of the Republic of Belarus, representatives of national and local government bodies, the judicial authorities, educational institutions and NGOs.

102. The Commission actually performs the function of ombudsman for children's rights and has representatives in every administrative centre and in Minsk. It is authorized to take decisions to protect children's rights and legal interests and to intervene in the activities of national and regional government bodies, executive and administrative agencies and other organizations for the implementation of legislation and government programmes to assist children and protect their rights and legal interests.

103. The Commission is preparing proposals to improve social policy and mechanisms for assisting children and is monitoring the implementation of government programmes to support children and families. Children can turn to the Commission to resolve a wide range of issues.

104. The Commission monitors the implementation of the Convention on the Rights of the Child and its Optional Protocols, deals with children's complaints in a child-friendly manner and, where necessary, takes measures to restore the rights of children where they have been violated. A system has been developed in Belarus to carry out programmes to support and protect victims and witnesses of human trafficking.

105. The rehabilitation and social reintegration of victims of human trafficking, including children who are the victims of sexual exploitation, is provided free of charge and includes the following types of assistance:

- The provision of temporary residences, including room and board
- Legal assistance, including legal advice
- Medical care provided by State health-care agencies, including at in-patient facilities
- Psychological assistance in the form of preventive, diagnostic and other corrective treatment and counselling and socio-educational assistance
- Assistance in finding permanent employment
- Tracing services to find the families of underage victims or their placement in foster care or, when that is not possible, a children's home

106. In order to minimize negative social consequences and to facilitate the rehabilitation of victims of human trafficking, 156 regional social services centres have been set up as part of the labour, employment and social protection system in the country. Minors can also receive rehabilitation services at the 146 socio-educational establishments of the Ministry of Education (of which 10 are social and educational centres, 37 are children's social shelters and 99 are centres set up in shelters).

107. Confidential hotlines are widely in use at social and educational centres to provide counselling to children experiencing difficulties.

108. Belarusian NGOs are actively involved in addressing the prevention and rehabilitation of victims of human trafficking, including children.

109. Since 2001, the Young Women's Christian Association (YWCA) of Belarus has been implementing a programme called "La Strada" for the prevention of human trafficking in Central and Eastern Europe. It includes a telephone hotline and awareness activities for the prevention of human trafficking.

110. Since 2002, a municipal voluntary organization for the prevention of child abuse, Children Are Not for Violence, has been carrying out a programme entitled "Stop the cycle of evil", which is aimed at combating child prostitution, child pornography and trafficking in children for sexual exploitation.

111. A service for victims of violence was set up in 2007 in the local social services centre in Pervomaisky district in Minsk with the assistance of the Radislava voluntary association.

## **IV. Prevention**

### **A. Prevention of the sale of children, child prostitution and child pornography**

112. Belarus is currently implementing the “Children of Belarus” presidential programme for 2006–2010 (approved by Presidential Decree No. 318 of 15 May 2006), the “Youth of Belarus” national programme for 2006–2010 (approved by Presidential Decree No. 200 of 4 April 2006) and a national plan of action to improve the status of children and the protection of their rights for 2004–2010 (approved by Council of Ministers Decision No. 1661 of 18 December 2003). These programmes and the plan are aimed at improving the quality of life of children, keeping them healthy and instilling in them good habits for a healthy life, protecting them from violence and cruelty and raising legal awareness among the coming generation. They include measures to combat the sale of children, child prostitution and child pornography.

113. In addition, Ministry of Education Decision No. 47 of 24 July 2004, which approved the instructions for procedures to detect adolescents in need of public protection, defines such procedures and the role to be played by public bodies performing this function.

114. Presidential Decree No. 18 of 24 November 2006 on additional measures for State protection of children in disadvantaged families is aimed at protecting especially vulnerable children who are in families in socially difficult situations and who are at risk.

115. Under the Decree, when a woman registers her pregnancy, medical personnel determine family and living conditions in order to identify potential complications during the pregnancy and for the newborn child.

116. Children at risk are identified by district doctors and nurses during home-nursing visits paid to children under 1 year of age, during house calls, during visits to outpatient clinics and on admission to hospitals for treatment. During scheduled home visits to newborns and infants, attention is paid to living conditions, nutrition and nurturing practices. An assessment is made of the level of care that can be afforded, and diet and rest patterns that are observed.

117. The administration of the health establishment is informed of any indication that the child’s life is in danger, and a report is immediately sent to the education authorities (or department) and to the commission for juvenile affairs.

118. Children aged 3 years or under who are at risk and without parental care are hospitalized in a paediatric ward, where they receive the necessary examination, treatment and care, while the tutorship and guardianship agencies determine their status.

119. The competent authorities register acts of civil status, including births, in the relevant records and issue documents to citizens on the basis of such registration (article 43 of the Civil Code). The registration of births and the issuance of birth certificates are also regulated by the Marriage and Family Code (chap. 19).

120. Birth registration requires the submission to the civil registry office of the medical certificate of the birth of the child issued by a health-care institution, the parents’ (or one parent’s) identity documents and a document serving as a basis for information about the father, to be recorded in the child’s birth certificate.



121. If there is no medical certificate of the child's birth issued by a health-care institution, the birth is registered on the basis of a court decision establishing the fact of the child's birth.

122. On the initiative of Ministry of Internal Affairs, every district of Belarus has run "Families without violence" campaigns since 2006. Groups consisting of police officers and officials working for health care, education, labour and social protection and cultural institutions and members of the media work regularly in the evening and at night at the duty stations of internal affairs agencies and check up on every report of a family incident, so as to carry out a thorough analysis of it, take the necessary measures to address the reasons for and conditions giving rise to such problems, develop effective methods for combating this negative phenomenon and encourage the weekly publication of material on this issue in the media.

123. Officials of the juvenile affairs inspectorate under the Ministry of Internal Affairs take steps to identify families whose living conditions are a cause of misgiving and alarm.

124. One of the methods used by the internal affairs agencies together with the education authorities is the exchange of information about adolescents prone to vagrancy and breaking the law, which helps to identify them in a timely manner and allows the authorities to take the necessary range of preventive steps. A system of cooperation has been worked out in the districts of Belarus, whereby schools report students who are absent for more than three days without a valid reason to the operational service of the internal affairs agency, after which the juvenile affairs inspectorate checks up on them.

125. The internal affairs agencies, together with interested parties, regularly hold legal information days, legal education hours, press conferences and competitions to test knowledge of the law in order to prevent juvenile crime and to promote a healthy way of life.

126. Tours, rallies and excursions are held for adolescents, including those who have been registered with the juvenile affairs inspectorate, during which they visit the historical and cultural monuments of Belarus and take part in various sports competitions. In cooperation with the commissions for juvenile affairs of the district administrations, education, sports and tourism bodies and institutions and employment centres carry out events to identify unemployed and out-of-school adolescents and take steps to find employment for them.

127. All secondary schools have legal awareness study corners that provide information on legal issues. Each local internal affairs authority has established a club for adolescents in which courses on legal, educational and cultural themes and physical education are offered. Apart from police officers, officials from other interested departments, including educators, lawyers and psychologists, are also involved in working with difficult adolescents.

## **B. Measures to promote public awareness of the harmful consequences of the sale of children, child prostitution and child pornography**

128. As part of efforts to combat human trafficking, including the sale of children, special attention is given to raising public awareness. A large-scale publicity campaign undertaken by all the State authorities, mass media and international and community organizations involved in addressing the issue has raised public awareness, made enslavement in any form socially unacceptable, dispelled the myth of "quick and easy earnings" and, most importantly, strengthened people's faith in the State's ability to protect them from being trafficked as "human commodities".

129. Confidential telephone helplines and “hotlines” have been set up throughout the country to give advice on travelling abroad safely. A special section has been created on the Ministry of the Interior’s website providing a live electronic link for citizens at risk of or victims of human trafficking.
130. Every quarter, updated lists of commercial agencies licensed to recruit Belarusian citizens for employment abroad and to act as marriage brokers are published in the country’s newspapers and posted on the Ministry of the Interior’s website.
131. The Ministry of Education raises awareness of the issue of human trafficking from school age upwards. All schools now have legal awareness study corners with up-to-date information on human trafficking. All secondary and vocational schools have been supplied with a practical teaching aid entitled “Mechanisms in place to prevent human trafficking”, recommended by the National Institute for Education.
132. Issues related to preventing of human trafficking, child prostitution and child pornography feature regularly on education authority work plans at every level, and are reviewed at staff meetings, round tables and teacher council sessions.
133. General education establishments offer special courses on law, the rights of the child and humanitarian law studies. All vocational education establishments offer a Law Basics course. One of the modules in these courses looks at issues related to the (modern) slave trade and employment abroad.
134. The Belarusian mass media help to keep the public informed about the prevention of human trafficking, with articles on the efforts of the law enforcement agencies to apprehend offenders, the work of international organizations and NGOs, and situations in which young persons are at risk of falling prey to this criminal activity; as well as the ways and means used by traffickers, and how rehabilitation facilities assist exploited persons.
135. The following newspapers and magazines for children and young people devote special coverage to the topic: *Znamyta Yunosti*, *Perekhodnyi Vozrast*, *Chyrvonaya Zmena*, (a supplement to the *Zvyazda* newspaper), *Zor’ka*, *Ranitsa*, *Kacheli* and *Byarozka*. These publications receive State subsidies. Readers can find articles on the prevention of human trafficking, and safe travel abroad for work or study, as well as information on legal entities and private individuals specially licensed to arrange such trips.
136. Round tables and press conferences organized by the “Dom Pressy” press centre, a national joint enterprise, ensure up-to-date coverage of the issue. Preventive messages are also broadcast on television.
137. Belarusian community organizations are actively involved in helping to prevent human trafficking, including the sale of children.
138. Since 2002, a municipal voluntary organization for the prevention of child abuse, Children Are Not for Violence, has been running a programme called “Stop the cycle of evil”, which is aimed at combating child prostitution, child pornography and trafficking in children for sexual exploitation.
139. The Young Women’s Christian Association of Belarus has been running a programme called “La Strada” for the prevention of human trafficking in Central and Eastern Europe since 2001. It includes a telephone hotline and awareness activities for the prevention of human trafficking.

## V. Prohibition and related matters

### A. Application of the Criminal Code to acts involving the sale of children, child prostitution and child pornography

140. Liability for acts related to the sale of children, child prostitution and child pornography, as enumerated in article 3, paragraph 1, of the Optional Protocol, is adequately regulated by the Belarusian Criminal Code.

141. Where reference is made in that connection to offences committed against a minor, it should be noted that, under article 4, paragraph 8, of the Criminal Code, a minor is defined as a person who has not yet reached 18 years of age on the date of commission of the offence.

142. The Criminal Code envisages prosecution for the following acts connected with human trafficking (under articles 171, 171<sup>1</sup>, 181, 181<sup>1</sup>, 182 and 187, the category of offences reflected in the relevant Palermo Protocol).

143. Article 171, "Exploitation or facilitation of prostitution" (introduced in the Criminal Code in 1999), concerns the exploitation of the prostitution of another person, or the provision of premises (a location) for financial gain in the clear knowledge that the premises (location) will be used for the purposes of prostitution, or the establishment and/or upkeep of a brothel for the purposes of prostitution, where there is no evidence of a more serious offence. This offence is punishable by deprivation of liberty for a period of:

- (a) 3 to 5 years (under paragraph 1 of the article);
- (b) 7 to 10 years (under paragraph 2) with confiscation of property.

The following are considered aggravating circumstances (paragraph 2 of the article):

- Acts involving transportation of a person outside the country for the purposes of prostitution
- Acts committed by an official in abuse of his/her official powers
- Acts committed by a person who has previously committed offences under this article, or under articles 171<sup>1</sup>, 181 or 181<sup>1</sup> of the Criminal Code
- Acts involving the exploitation for the purposes of prostitution of a person known to be a minor
- The same acts committed by an organized group

Statute of limitations: (a) under paragraph 1 of the article, 5 years; (b) under paragraph 2 of the article, 10 years. This offence solely concerns the sexual exploitation of persons.

144. Article 171<sup>1</sup>, "Enticement to engage in prostitution or compulsion to continue to engage therein" (introduced into the Criminal Code in 2005). Commission of this offence carries a penalty of deprivation of liberty for a period of:

- 1 to 3 years (under paragraph 1 of the article)
- 3 to 5 years (under paragraph 2)
- 7 to 10 years (under paragraph 3)

Aggravating circumstances (paragraph 2 of the article): the same acts, committed:

- Repeatedly
- With the use or threat of force

- By a person who has previously committed offences under articles 171, 181 or 181<sup>1</sup> of the Criminal Code
- By a person who has reached the age of 18, against a person known to be a minor

Special aggravating circumstances:

(a) Acts referred to in paragraphs 1 or 2 of the article committed by a parent, teacher or other person responsible for the upbringing of a minor against a person known to be a minor;

(b) Acts referred to in paragraphs 1 or 2 of the article committed by an organized group.

Statute of limitations: (a) under paragraphs 1 and 2 of the article, 5 years; (b) under paragraph 3 of the article, 10 years. This offence solely concerns the sexual exploitation of persons.

145. Article 181, “Human trafficking” (introduced into the Criminal Code in 1999), concerns the purchase or sale of a person or other transactions involving a person, as well as the recruitment, transportation, transfer, harbouring or receipt of a person for purposes of exploitation. In this article, and in articles 181<sup>1</sup>, 182 and 187 of the Criminal Code, “exploitation” means the unlawful coercion of a person to perform labour or services, if, for reasons beyond his or her control, he or she is unable to refuse to perform this labour (services), and includes slavery or slavery-like practices. In this article, and in articles 182 and 187 of the Code, “Sexual exploitation” means the obtaining of profit from the performance by another person of acts of a sexual nature, including through prostitution. This offence carries a penalty of deprivation of liberty for a period of:

- 5 to 7 years (under paragraph 1 of the article) with confiscation of property
- 10 to 12 years (under paragraph 2) with confiscation of property
- 12 to 15 years (under paragraph 3) with confiscation of property

Aggravating circumstances (paragraph 2 of the article): the same acts, committed:

- Against a person known to be a minor
- Against two or more persons
- For the purposes of sexual exploitation
- For the purposes of removing from the victim organs or tissue for transplantation
- By a group of persons by prior conspiracy
- By an official in abuse of his/her official powers
- By a person who has previously committed offences under this article, or under articles 171, 171<sup>1</sup>, 181<sup>1</sup> or 187 of the Criminal Code
- For the purposes of transporting the victim outside the country
- By exploiting personal, family or other difficulties of the victim
- By deception, abuse of trust or with the use or threat of force or other forms of coercion

Special aggravating circumstances:

(a) Acts referred to in paragraphs 1 or 2 of this article, that have resulted in the death through criminal negligence of the victim, or grievous bodily injury or other serious consequences for the victim;

- (b) The same acts committed by an organized group.

Statute of limitations: (a) under paragraphs 1 and 2 of the article, 10 years; (b) under paragraph 3 of the article, 15 years. This offence concerns exploitation for either sex or labour.

146. Article 181<sup>1</sup>, “Use of slave labour” (introduced into the Criminal Code in 2008): “Use of slave labour or other form of exploitation of a person in the absence of an offence under article 181 of this Code”. This offence carries a penalty of deprivation of liberty for a period of:

- 2 to 5 years (under paragraph 1 of the article)
- 3 to 10 years (under paragraph 2) with or without confiscation of property
- 8 to 12 years (under paragraph 3) with confiscation of property

Aggravating circumstances (paragraph 2 of the article, elements of the aggravating circumstances): the same acts committed:

- Against a person known to be a minor
- Against two or more persons
- By a group of persons by prior conspiracy
- By an official in abuse of his/her official powers
- Against a woman known by the perpetrator to be pregnant
- By a person who has previously committed offences under this article, or under articles 171, 171<sup>1</sup>, 181 or 187 of the Code

Special aggravating circumstances:

(a) Acts referred to in paragraphs 1 or 2 of this article that have resulted in the death by criminal negligence of the victim, or grievous bodily injury or other serious consequences for the victim;

- (b) The same acts committed by an organized group.

Statute of limitations: (a) under paragraph 1 of the article, 5 years; (b) under paragraphs 2 and 3 of the article, 10 years. This offence solely concerns exploitation of human labour.

147. Article 182 “Abduction” (introduced into the Criminal Code in 1999): “The unlawful capture of a person in secret, in the open, by deception or abuse of trust, or with the use or threat of force or other forms of coercion, in the absence of an offence under article 291 of this Code”. Article 291 of the Criminal Code covers “hostage-taking”. This offence carries a penalty of deprivation of liberty for a period of:

- 5 to 7 years (under paragraph 1 of the article) with or without confiscation of property
- 5 to 15 years (under paragraph 2) with confiscation of property
- 10 to 15 years (under paragraph 3) with confiscation of property

Aggravating circumstances (paragraph 2 of the article): the same acts committed:

- Against a person known to be a minor
- Against two or more persons
- For financial gain
- For the purposes of sexual or other exploitation

- For the purposes of removing from the victim organs or tissue for transplantation
- By a group of persons by prior conspiracy
- With the use of force such as to endanger life or health, or of torture or cruel treatment

Special aggravating circumstances:

(a) Acts referred to in paragraphs 1 or 2 of this article that have resulted in the death by criminal negligence of the victim, or grievous bodily injury or other serious consequences for the victim;

(b) The same acts committed by an organized group.

Statute of limitations: (a) under paragraph 1 of the article, 10 years; (b) under paragraphs 2 and 3 of the article, 15 years. This offence covers the exploitation of persons for sex or labour.

148. Article 187, “Unlawful acts related to the employment of Belarusian citizens abroad” (introduced into the Criminal Code in 2005), provides that “if, as a result of unlawful acts related to the employment of Belarusian citizens abroad, persons for whom employment abroad has been secured are subjected to sexual or other exploitation against their will, in the absence of an offence under article 181 of this Code”, such acts constitute an offence punishable by deprivation of liberty for a period of:

- 3 to 5 years (under paragraph 1 of the article) with forfeiture of the right to exercise certain official duties or to engage in a particular activity
- 4 to 6 years (under paragraph 2) with forfeiture of the right to exercise certain official duties or to engage in a particular activity
- 6 to 8 years (under paragraph 3) with confiscation of property and forfeiture of the right to exercise certain official duties or to engage in a particular activity

Aggravating circumstances (paragraph 2 of the article): unlawful acts related to the employment of Belarusian citizens abroad, committed:

(a) Repeatedly;

(b) By a person who has previously committed offences under articles 171, 171<sup>1</sup>, 181 or 181<sup>1</sup> of the Criminal Code.

Special aggravating circumstances: unlawful acts committed by an organized group, related to the employment of Belarusian citizens abroad.

Statute of limitations: (a) under paragraphs 1 and 2 of the article, 5 years; (b) under paragraph 3 of the article, 10 years. This offence covers the exploitation of persons for sex or labour.

149. In addition, there is a separate category for the following offences related in some way to human trafficking (and provided for under articles 343, 343<sup>1</sup> and 173 of the Criminal Code).

150. Article 343, “Production and dissemination of pornographic materials or items of a pornographic nature” (introduced into the Criminal Code in 1999): “The production or storage for the purposes of dissemination or advertising, or the dissemination or advertising, of pornographic materials, publications, images or other items of a pornographic nature, or the public showing of cinematographic or video films with pornographic content”. This offence carries a penalty of:

(a) Community service, or a fine, or punitive work for up to 2 years, or detention for up to 6 months (under paragraph 1 of the article);

(b) Deprivation of liberty for a period of 2 to 4 years (under paragraph 2).

Aggravating circumstances (paragraph 2 of the article): the same acts committed:

- By a group of persons by prior conspiracy
- By an organized group
- Using the Internet, or another public or dedicated electronic communications network
- Involving the dissemination or promotion, by a person aged 18 years or over, to a person known to be a minor, of pornographic materials, publications, images or other items of a pornographic nature
- Involving the showing, by a person aged 18 years or over, to a person known to be a minor, of cinematographic or video films with pornographic content

Statute of limitations: (a) under paragraph 1 of the article, 2 years; (b) under paragraph 2 of the article, 5 years.

151. Article 343<sup>1</sup>, “Production and dissemination of pornographic materials or items of a pornographic nature depicting a minor” (introduced into the Criminal Code in 2008): “Production or storage for the purposes of dissemination or promotion, or the dissemination or promotion, of pornographic materials, publications or other items of a pornographic nature known to depict a minor, or the public showing of cinematographic or video films with pornographic content depicting a minor”. This offence carries a penalty of:

- Punitive work for up to 2 years, detention for up to 6 months, restriction of liberty for up to 4 years, or deprivation of liberty for up to 4 years (under paragraph 1 of the article)
- Deprivation of liberty for 3 to 8 years with or without confiscation of property (under paragraph 2)
- Deprivation of liberty for 5 to 13 years with or without confiscation of property (under paragraph 3)

Aggravating circumstances (paragraph 2 of the article): the same acts committed:

- By a person who has previously committed offences under this article or under article 343, paragraph 2, of the Code
- By a group of persons by prior conspiracy
- Using the Internet, or another public or dedicated electronic communications network
- Using a person known to be a minor for the production of pornographic materials, publications or other items of a pornographic nature depicting the minor

Special aggravating circumstances: acts provided for under paragraphs 1 or 2 of the article, committed:

(a) By an organized group;

(b) Using a person known to be a juvenile for the production of pornographic materials, publications or other items of a pornographic nature depicting the juvenile.

Statute of limitations: (a) under paragraph 1 of the article, 5 years; (b) under paragraph 2 of the article, 10 years; (c) under paragraph 3 of the article, 15 years.

152. It should be noted that, as of 2008, article 173 of the Criminal Code, “Enticement of a minor to engage in antisocial behaviour” no longer regulates offences related to human trafficking, except those committed prior to 5 December 2008. “Acts involving enticement of a minor to prostitution” has been removed from article 173 of the Criminal Code and placed in a separate category of offences under article 171<sup>1</sup>. Similarly, “Acts involving enticement of a minor to pornography” has been removed from article 173 and placed in a separate category of offences under article 343<sup>1</sup>.

153. In Belarus, socially dangerous acts that are crimes are regulated solely under the Criminal Code. There are no other legal instruments criminalizing specific acts.

154. Based on commitments undertaken by Belarus under international instruments, any acts recognized by the international community as offences will in future be criminalized by being introduced into the Criminal Code under the relevant categories of offences.

155. In Belarus, engagement in prostitution is considered an administrative offence (article 17.5 of the Code of Administrative Offences). The age at which persons become administratively liable is 16 years. Victims of human trafficking are not administratively liable in cases provided for under legislation (article 8.7 of the Code of Administrative Offences).

156. Under article 14 of the Criminal Code, the attempted commission of an offence is defined as a wilful act or omission by a person deliberately intending to commit an offence, if that offence is not consummated owing to circumstances beyond the individual’s control.

157. The attempted commission of an offence is punishable under the same article of the Special Section of the Criminal Code as the offence itself, read in conjunction with article 14 of the Code.

158. In Belarusian criminal law, the preparation or adaptation of tools or weapons or other deliberate efforts to make ready for the commission of an offence is considered as “planning an offence” (article 13 of the Criminal Code).

159. Planning an offence is punishable under the same article of the Special Section of the Code as the offence itself, read in conjunction with article 13.

160. The criminal penalty for planning or attempting the commission of an offence (i.e. an unconsummated offence) is determined by the court and is generally less severe than for the consummated offence.

161. In determining the penalty for an unconsummated offence, the nature of and threat to society posed by the acts perpetrated, the degree of criminal intent and the reasons why the offence was not consummated are all taken into account.

162. Under article 16 of the Criminal Code, the deliberate joint participation of two or more persons in the commission of a deliberate offence is recognized as complicity in the offence. Organizers, instigators and accessories are considered accomplices to the offence alongside the perpetrators.

163. The liability of organizers, instigators and accessories is laid out under the same article of the Special Section of the Criminal Code as that of the perpetrators, read in conjunction with article 16 of the Code. In the event that the acts carried out by organizers, instigators or accessories are not consummated for reasons beyond their control, these persons become liable for planning the corresponding offence.

164. Accomplices bear increased liability if the offence is committed by a group of persons directly involved in its commission (joint perpetration), whether as part of an organized group or a criminal organization. Members of such an organized group or



criminal organization are considered perpetrators, irrespective of their role in the offences committed.

165. In determining the penalty for a jointly committed offence, the nature and degree of the involvement of each joint perpetrator is taken into account. The length of the penalty for the organizer (leader) of an organized group may not be less than three-quarters of the length of the most severe penalty provided for in the relevant article of the Special Section of the Criminal Code.

166. These provisions apply to all offences listed in the official compendium of offences (articles 13, 14, 16, 66 and 61 of the Criminal Code).

## **B. Legislative obstacles to the realization of the Optional Protocol on the sale of children, child prostitution and child pornography**

167. In Belarus, there are no legislative provisions impeding realization of the Optional Protocol on the sale of children, child prostitution and child pornography.

## **C. Legislative acts regulating the criminal liability of legal entities**

168. Under article 44 of the Civil Code, a legal entity in Belarus is an organization that has ownership, economic management or day-to-day management of stand-alone assets, bears independent liability for its obligations, is capable on its own behalf of acquiring and exercising property or personal non-property rights, meeting obligations and acting as claimant or respondent in a court, and that has undergone State registration as a legal entity, in accordance with established practice, or has been declared such by a legislative act.

169. Under Belarusian criminal law, the perpetrator of an offence may only be a natural person, that is, a private individual. The perpetrator cannot be a legal entity. Liability for acts constituting an offence committed on behalf of a legal entity is borne by those of its officials who have perpetrated the offence.

170. Where it is established that an offence was committed by an official of a legal entity, the law enforcement agencies prosecute the person in question and issue a recommendation to the legal entity to eliminate the causes and circumstances that enabled the offence to be committed. Failure on the part of the legal entity to take effective measures to do so results in the revocation of its licence to carry out economic activity, and in the dissolution of the legal entity.

## **D. Measures to prevent illegal adoption in Belarus**

171. In Belarus, adoption is governed by the Marriage and Family Code.

172. Article 120, part 1, of the Code states that adoption is to be given priority when care is arranged for orphans and other children without parental care.

173. Adoption is authorized for all children regardless of the state of their health.

174. Children are eligible for adoption if their only (single) parent, or both parents, have died or have been deprived of their parental rights, or have consented to the child's adoption, or are unknown, or have been declared by a court as having no legal capacity or have been recognized by a court to be missing or presumed dead.

175. In Belarus, a series of conditions must be met for adoption: the children must be afforded the opportunity for full physical, psychological, spiritual and moral development;

adoption of siblings by different persons is generally not permitted unless it is in the interests of the children; the age difference between the adopting adult and the adopted child must be at least 16 years (adoption may be permitted with less of an age difference only if the adopting adult is the child's step-parent); and when orphans and other children without parental care are placed for adoption their ethnic background, religion and culture, mother tongue, the need for continuity in their upbringing and education and their family relations must be taken into account.

176. The consent of the child's parents is a mandatory condition for adoption. When the parents are minors who have not yet attained full legal capacity, the consent of their legal representatives and of the guardian of the adopted child is also required (article 127, part 1, of the Marriage and Family Code).

177. A child may be adopted without the consent of the parents in situations described in article 128 of the Marriage and Family Code.

178. For instance, adoption may take place without parental consent if the child's parents are unknown, or have been deprived of their parental rights, or have been declared by a court as having no legal capacity, or have been recognized by a court to be missing or presumed dead.

179. For the adoption of a child over 10 years of age, the child's consent is required; it must be determined by the tutorship and guardianship agency, a Belarusian consular office or a court by means of a court decision (article 130, parts 1 and 2, of the Marriage and Family Code).

180. Under article 131 of the Marriage and Family Code, the adoption of a child by one spouse requires the consent of the other if the child is not adopted by both spouses.

181. Persons wishing to adopt a child are subject to strict requirements. Persons of either sex may adopt children if they are of legal age, or if they are not of legal age but have attained full legal capacity under Belarusian law, with the exception of the following:

- Persons who have been declared by a court as having limited or no legal capacity
- Married couples, when one of the spouses has been declared by a court as having limited or no legal capacity
- Persons entirely or partially deprived by a court of their parental rights
- Persons discharged from obligations as tutors or guardians owing to improper fulfilment of their assigned duties
- Former adoptive parents if the previous adoption has been revoked by a court owing to a fault they have committed
- Persons who at the time of adoption do not have an income providing the legal minimum standard of living for an adopted child as established in Belarus
- Persons having no fixed place of residence or living in accommodation that does not comply with established health and technical requirements
- Persons who at the time of the adoption have pending or unserved sentences for premeditated crimes and persons convicted for premeditated serious and extremely serious crimes against the person
- Persons who owing to their health status are unable to exercise the rights and comply with the obligations of parents

- Persons whose children have been recognized as requiring State protection owing to their parents' failure or partial failure to perform their duties in raising and maintaining them (under article 85, part 1, of the Marriage and Family Act)

182. The list of disorders that disqualify a person from adopting a child is approved by the Ministry of Health.

183. Persons who are not married to one another may not jointly adopt the same child (article 125 of the Marriage and Family Code).

184. If several people want to adopt the same child, priority is given to the child's relatives.

185. Unauthorized persons may not select or transfer children for adoption for, or on behalf of, those wishing to adopt (i.e. engage in adoption intermediary activities).

186. Article 124, parts 1 and 2, of the Marriage and Family Code stipulates that the activities of the National Adoption Centre, tutorship and guardianship agencies and other bodies legally authorized to defend the rights and legal interests of children and to identify, register and place orphans and other children without parental care, as well as the activities in Belarus of adoption agencies specially authorized by foreign States, as agreed by the Belarusian Ministry of Education and the foreign State bodies responsible for adoption procedures, are not considered to be adoption intermediary activities.

187. Adoption is effected by the district or municipal courts responsible for the place of residence or location of the child or of the adoptive parents, acting on an application submitted by the person or persons wishing to adopt the child.

188. The abduction of a child of any age is a criminal act punishable under Belarusian law. Such crimes are covered by article 182, part 2, paragraph 1, of the Criminal Code and incur deprivation of liberty of between 5 and 15 years, with confiscation of property.

189. Deliberately counterfeiting birth registration records is a criminal act under article 380 of the Criminal Code. Such acts are punishable by community service, fines, work of a punitive nature for up to 2 years, deprivation of liberty for up to 6 months, restriction of liberty for up to 5 years, or deprivation of liberty for up to 3 years.

190. The procedure for the adoption by foreign citizens of Belarusian children is set out by the national law in force.

191. Belarus is a party to the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption of 29 May 1993.

192. The Convention was ratified by Presidential Decree No. 183 of 2 May 2003; it entered into force for Belarus on 1 November 2003.

193. Presidential Decree No. 3 of 9 March 2005 on certain measures to combat trafficking in human beings strengthened the laws aimed at preventing human trafficking, including in the context of adoption. In accordance with the Decree, foreign citizens may adopt Belarusian children only with the written authorization of the Belarusian Ministry of Education.

194. In Belarus, a system of agencies and institutions has been set up to supervise intercountry adoption.

195. Council of Ministers Decision No. 122 of 31 January 2007 approved a Regulation for intercountry adoption procedures and for the establishment of tutorship or guardianship of children for whom the required documentation has been obtained. It also established the time frames for the consideration of such documentation.

196. Questions relating to intercountry adoption are considered only for applicants living in countries whose competent State agencies have agreed to an intercountry adoption procedure in accordance with the Regulation for the harmonization of intercountry adoption and coordination with the competent bodies of other countries. The Regulation was adopted by Council of Ministers Decision No. 1173 of 21 September 2004.

197. Since 2005 a Council on Intercountry Adoption has been in operation in the Ministry of Education to strengthen supervision of the intercountry adoption procedure. As an interdepartmental public body, the Council includes representatives of the Ministries of Education, Health, Justice, Foreign Affairs and Labour and Social Protection and a member of the National Assembly's Council of the Republic. The Council on Intercountry Adoption studies information about each child proposed for intercountry adoption, assesses the effort made by tutorship and guardianship agencies to place the child in a Belarusian family, determines the best form of placement corresponding to the needs and interests of the child and decides whether the child should be transferred to a foreign family. It also studies the activities of the foreign organizations authorized to cooperate in intercountry adoption work.

198. Belarus has signed a bilateral intercountry adoption cooperation instrument only with Italy. A cooperation protocol on the adoption of Belarusian minors by Italian citizens was concluded on 12 December 2005 between the Belarusian Ministry of Education and the Commission for Intercountry Adoption of the Italian Council of Ministers, under the Prime Minister's office.

199. There is cooperation in intercountry adoption only with those States whose competent State agencies have duly agreed upon an intercountry adoption procedure with Belarus through authorized Belarusian agencies, and which guarantee mandatory supervision of living and education conditions of Belarusian children in the homes of the foreigners adopting them.

200. The determination of suitability for adoption and other questions related to the transfer of a child for adoption are assigned to the competent tutorship and guardianship agencies and the National Adoption Centre, under the Ministry of Education.

201. Adoption by foreign citizens takes place in Belarus upon application to the provincial courts responsible for the place of residence (or location) of the child to be adopted, and in Minsk, upon application to the Minsk municipal court.

202. The guaranteed supervision of intercountry adoption procedures by foreign State agencies (or their authorized bodies) is thus a prerequisite for cooperation in this field.

203. Activities by adoption intermediaries are not allowed. Article 177<sup>1</sup> of the Criminal Code establishes liability for illegal adoption activities. It states that actions related to the selection and transfer of children for adoption for, or on behalf of, persons wishing to adopt them, when carried out by persons not authorized to do so by law, and within a year of imposition of an administrative penalty for such a violation, and actions intended by such persons to secure adoption for material gain, are punishable by a fine or punitive deduction of earnings for up to 2 years or deprivation of liberty of the same duration.

204. It is worth mentioning that no cases of child trafficking or exploitation, including sexual exploitation, have come to light involving children given for adoption abroad or children temporarily travelling outside of Belarus for humanitarian reasons.

**E. Legislation prohibiting the production and dissemination of materials advertising the sale of children, child prostitution and child pornography**

205. A series of laws have been adopted in Belarus to prohibit the production and dissemination of materials advertising the acts described in the Optional Protocol relating to the sale of children, child prostitution and child pornography.

206. The main enactment regulating the production of and trade in erotic material is the Regulation on the production, replication, exhibition, rental, sale and advertising of erotic items, items having elements of eroticism, violence and brutality, items used for sex education and instruction, and items for sexual use (the Regulation was approved by Decision No. 18 of the Ministry of Culture of 8 May 2007).

207. The Regulation defines a number of terms related to the production of and trade in erotic material, including the term “pornography”.

208. To help settle disputes and also to ensure compliance with the legal requirements for the production, replication, exhibition, rental, sale and advertising of erotic items, items having elements of eroticism, violence and brutality, items used for sex education and instruction and items for sexual use, the Regulation stipulates that interested persons have the right to consult an expert commission on the prevention of pornography, violence and brutality. The commission issues expert conclusions as to whether a given item is of one type or another. It was established in the Ministry of Culture pursuant to Decision No. 1571 of the Council of Ministers on expert commissions for the prevention of the spread of pornography, violence and brutality, adopted on 22 October 2008. The commission’s mandate also includes studying and sharing domestic and foreign experience in preventing the spread of pornography, violence and brutality.

209. The Advertising Act of 10 May 2007 prohibits the advertisement of pornographic materials, printed products, images or other items of a pornographic nature and advertisements designed to lure potential victims into human trafficking or the provision of sexual services in the guise of legitimate activity or antisocial behaviour (art. 10).

210. The Regulations on computer clubs and Internet cafés (approved by Decision No. 175 of the Council of Ministers of 10 February 2007) restrict the online dissemination of pornographic materials. Under the Regulations, the use of computer programs that have been deemed to promote violence, cruelty and pornography is prohibited in such establishments.

211. Measures taken pursuant to the Act of 10 November 2008 amending certain laws on combating illegal migration and slave labour, child pornography and prostitution are aimed directly at suppressing the advertising of human trafficking, child prostitution and child pornography on the Internet.

212. The Act amended article 343 of the Criminal Code, which addresses the production and dissemination of pornographic materials or items of a pornographic nature. The elements of the offence now include the production or storage for dissemination or advertising purposes and the dissemination or advertising of pornographic materials, printed products, images or other items of a pornographic nature and the public showing of cinematographic or video films with pornographic content, using the Internet global computer network or another public or dedicated electronic communications network.

213. Also, article 343<sup>1</sup> was introduced into the Criminal Code. It establishes significantly more stringent penalties for the production and dissemination of pornographic materials or items of a pornographic nature containing images of minors. Such acts, when carried out using the Internet or another public or dedicated electronic communications network, are

punishable by imprisonment of 3 to 8 years, with or without confiscation of property. When such acts involve the use of a person known to be a juvenile in the production of pornographic materials, printed products or other items of a pornographic nature containing the juvenile's image, they are punishable by imprisonment of 5 to 13 years, with or without confiscation of property.

214. Furthermore, a provision has been introduced into the Rights of the Child Act stipulating that employment posts involving the upbringing and education of children or regular work with children may not be taken up by persons who have previously committed offences against the sexual inviolability or sexual freedom of the individual or offences covered by the following articles of the Criminal Code: 172 (Involvement of a minor in a criminal offence); 173 (Involvement of a minor in antisocial behaviour); 181 (Human trafficking); 181<sup>1</sup> (Use of slave labour); 343 (Production and distribution of pornographic materials and items); and 343<sup>1</sup> (Production and distribution of pornographic materials and items of a pornographic nature depicting minors).

215. Council of Ministers Decision No. 76 of 23 January 2009 approved a list of posts involving the upbringing and education of children and other posts involving regular work with children that may not be taken up by persons who have previously committed offences against the sexual inviolability or sexual freedom of the individual or the offences covered by articles 172, 173, 181, 181<sup>1</sup>, 343 and 343<sup>1</sup> of the Criminal Code.

216. Under article 12.15 of the Code of Administrative Offences, liability for violating the legislation on advertising involves a fine equivalent to an amount ranging from US\$ 325 to US\$ 815.

217. The measures taken pursuant to the Advertising Act provide an effective tool with which to prevent advertising of the sale of children, child pornography and child prostitution.

## **F. Legal provisions establishing jurisdiction over offences involving the sale of children, child prostitution and child pornography**

218. A person who commits a crime in Belarus is subject to liability as set out by the Criminal Code.

219. A crime is considered to be committed in Belarus if it is initiated, continued or concluded there, or if it is committed within Belarus in complicity with a person who has committed a crime in another country.

220. Article 5 of the Criminal Code stipulates that a person who commits an offence on-board a vessel or aircraft registered in Belarus and which is on the open seas or in the air outside the borders of Belarus is subject to criminal liability under the Belarusian Criminal Code, unless otherwise stipulated in an international treaty to which Belarus is a party. Criminal liability is also borne by a person who commits an offence on-board a Belarusian military vessel or aircraft, regardless of its location.

221. When crimes are committed in Belarus by diplomatic representatives of foreign States or other citizens who under the laws and international treaties of Belarus in force have immunity in Belarusian criminal courts, issues of their criminal liability are resolved by diplomatic means, on the basis of international treaties and international law.

222. Article 6 of the Criminal Code stipulates that citizens of Belarus and stateless persons permanently residing in the country who have committed crimes outside Belarus are liable under the Belarusian Criminal Code if the acts they commit are recognized as crimes in the State where the offence was committed and if they have not been brought to

justice there. When such persons are sentenced, the penalty is fixed within the limits of the sanction stipulated in the article of the Criminal Code, but it cannot exceed the most severe sanction provided by the law of the State where the offence was committed.

223. Under the Belarusian Criminal Code, foreign nationals or stateless persons not permanently residing in Belarus who have committed offences outside Belarus are liable to prosecution in cases involving the commission of particularly serious offences directed against the interests of Belarus.

224. The Belarusian Criminal Code is applied independently of the criminal law of the place in which the act is committed where the following offences are concerned:

- Genocide (art. 127)
- Crimes against the security of humankind (art. 128)
- Production, stockpiling or distribution of prohibited instruments of war (art. 129)
- Ecocide (art. 131)
- Use of a weapon of mass destruction (art. 134)
- Violation of the laws and customs of war (art. 135)
- Criminal violation of international humanitarian law during armed conflict (art. 136)
- Failure to act against, or issuance of, a criminal order during armed conflict (art. 137)
- Human trafficking (art. 181)
- Other offences committed outside Belarus which are prosecutable on the basis of a binding international treaty to which Belarus is a party

225. Under the articles listed above, persons who have not been convicted in a foreign State and who under the Criminal Code bear criminal liability in Belarus face criminal charges in Belarus.

226. Article 7 of the Criminal Code stipulates that citizens of Belarus may not be extradited to foreign States except as provided by international treaties to which Belarus is a party.

227. A foreign national or stateless person who has committed a crime outside Belarus and is located in the territory of Belarus may be extradited to a foreign State to face criminal charges or to serve a sentence in accordance with an international treaty to which Belarus is a party.

228. In the absence of such an international treaty, such persons may be extradited to a foreign State on the basis of the principle of reciprocity, on condition that the requirements of Belarusian legislation are met.

229. In accordance with the international treaties to which Belarus is a party, a person's prior convictions and other criminal records of acts committed in another State are taken into consideration when determining the person's criminal liability for offences committed in Belarus.

**G. Legal cooperation with other States parties to the Optional Protocol on the sale of children, child prostitution and child pornography with regard to investigations and criminal extradition proceedings**

230. Legal cooperation with foreign judicial bodies on mutual legal assistance in criminal affairs and extradition to bring criminal charges or give effect to court sentences that have entered into force, including for cases of sexual exploitation of children, is based on the international treaties and conventions to which Belarus is a party.

231. In the absence of a treaty, such matters are considered and resolved in accordance with section 15 of the Code of Criminal Procedure of Belarus (international legal assistance in criminal matters, on the basis of the principle of reciprocity).

**H. Seizure and confiscation of materials and proceeds from the sale of children, child prostitution and child pornography**

232. The Belarusian Criminal Code makes provision for the confiscation of property as an additional penalty for persons who commit crimes. This consists of the compulsory seizure and transfer to the State, without compensation, of all or part of the convicted person's property (articles 48 and 61 of the Criminal Code).

233. Confiscation of property is imposed for serious and very serious crimes committed for material gain, and may be imposed by a court as a sentence only in cases covered by the corresponding articles of the Criminal Code. General confiscation of property is one form of penalty.

234. Special confiscation is another form of penalty under Belarusian criminal law; this is a criminal procedural action aimed at seizing from convicted persons weapons, means of committing offences, money and valuables obtained by criminal means, and articles and items that have been seized.

235. For crimes covered by article 61, part 6, of the Criminal Code, regardless of the category of the crime and the type of penalty handed down, special confiscation is applied, consisting of the mandatory seizure without compensation and the transfer to the State of weapons and the means of commission of the crime belonging to the convicted person, and of articles seized and of property obtained by criminal means, as well as items directly related to the crime, unless they are to be returned to the victim or to another person.

**VI. Protection of the rights of victims**

**A. Ensuring the rights and best interests of child victims of practices prohibited by the Optional Protocol on the sale of children, child prostitution and child pornography**

236. Article 430 of the Code of Criminal Procedure of Belarus stipulates that "cases involving offences committed by minors shall be heard by special courts for minors or by specially trained judges".

237. The basic national child protection instruments, in particular the National Plan of Action to Improve the Situation of Children and Protect their Rights for 2004–2010 (approved by Decision No. 1661 of the Council of Ministers of 18 December 2003), set out provisions for the establishment of specialized courts for minors and call for the adoption of a law to set up such courts.



238. In the regular court system, criminal cases of minors are heard by the more experienced judges. The same principle also applies for adoption cases.

239. Article 221 of the Code of Criminal Procedure stipulates that when victims or witnesses who are minors under 14 years of age undergo questioning, a teacher or psychologist must take part. For minors between the ages of 14 and 16, their attendance is allowed at the discretion of the detective or investigator. When victims or witnesses who are minors are questioned, their parents or other legal representatives are permitted to attend.

240. When the suspect or accused person undergoing questioning is a minor, the participation of a teacher or psychologist is mandatory. The questioning may not continue uninterrupted for more than two hours and may not exceed four hours overall per day.

241. Under the law, criminal liability in Belarus begins at age 16 (or, by way of exception, at 14 for a small number of offences listed in article 27, part 2, of the Criminal Code, and which a child of that age can easily understand to be a threat to society). Minors who have reached the ages set out in parts 1 and 2 of the article do not bear criminal liability if it is established that at the time of commission of the socially dangerous act they were unable, owing to mental retardation unrelated to a psychological illness, to recognize the actual nature of their action or the danger it represents to society.

242. Victims and witnesses under the age of 16 are not warned about their liability for refusing to answer a question or give evidence or for knowingly giving false evidence; they are simply instructed to speak nothing but the truth. Victims and witnesses who are minors are informed of their right to refuse to give evidence that is self-incriminating or that incriminates members of their families or close relatives, and also other procedural rights and obligations covered by articles 50 and 60 of the Code of Criminal Procedure; this is noted in the record of the interrogation, which is certified as correct by their signature.

243. Those taking part in the questioning are advised of their right to make observations, which are noted in the record, concerning violations of the rights and legal interests of the minors being questioned, and with the permission of the investigator or detective, to ask questions of the minor who is being questioned. The investigator or detective has the right to exclude a question, but must indicate in the record the question concerned and the reason for its exclusion.

244. Under article 56 of the Code of Criminal Procedure, the legal representatives of victims or suspects (accused persons or those who have committed socially dangerous acts) who are minors are the person's parents, adoptive parents, tutors or guardians. They are responsible for informing the child at all stages of the proceedings. Persons who have been recognized as having no legal capacity may not be legal representatives.

245. When victims or suspects (accused persons or those who have committed socially dangerous acts) who are minors do not have legal representatives as described above, the agency conducting the criminal proceedings recognizes the tutorship and guardianship agency as their legal representative.

246. Article 45 of the Code of Criminal Procedure stipulates that if the suspect or the accused is a minor, a counsel for the defence must take part in proceedings on substance and in the criminal case.

247. If a defence counsel is not called upon by the suspect or the accused or their legal representatives or by others on their instructions, the criminal prosecution bodies and the court are obliged to ensure the participation of a defence counsel in the criminal proceedings. In such circumstances, a decision by the body conducting the initial inquiry, the detective, the investigator, the procurator, the judge or a court decision on the participation of the defence counsel is binding on the Bar association (or legal aid office).

248. If a person (including a child) has carried out a socially dangerous act prohibited by the Criminal Code owing to circumstances resulting from a crime committed against him or her (including those mentioned in articles 171, 171<sup>1</sup>, 181, 181<sup>1</sup>, 182 and 187 of the Criminal Code), then the act is considered to have been committed in conditions of extreme necessity. In accordance with article 36 of the Criminal Code, such an act is not a crime if it is committed in those circumstances, that is, to prevent or eliminate an imminent danger to a person or to the rights and legal interests of a given person or group of persons, or the interests of society or the State, provided the danger cannot, in the given circumstances, be eliminated by other means and the resulting prejudice is less than that which is prevented.

249. In addition, under Belarusian law, victims of human trafficking are not subject to deportation or other administrative measures for offences related to the circumstances of the crimes of which they are victims.

250. Under Belarusian law, children, like adults, have the right to express their opinions, needs and problems at all stages of court proceedings. They are assisted in this by their legal representatives.

251. Additionally, the Code of Criminal Procedure governs measures to ensure the safety of those taking part in the criminal proceedings (arts. 65–75). These include the following:

- Non-disclosure of identifying information
- Exemption from the requirement to appear in court
- Closed court sessions
- Use of technical monitoring methods
- Interception of conversations conducted over electronic means of communication and of other conversations
- Personal protection, protection of housing and property
- Alteration of passport data and substitution of documents
- Prohibition on the release of information

252. Minors are provided with enhanced legal protection regardless of their situation (whether they are suspects, accused or convicted persons, witnesses or victims) or the severity of the offence. The legal defence system affords minors direct protection, meaning that privileges are set out in the law for all age groups of minors. Minors are provided with dual representation of their interests, with participation by both a defence counsel (lawyer) and the minor's legal representative.

253. The Code of Criminal Procedure provides additional rights to suspects and the accused, including minors, aimed at making the defence of their legal interests more effective. Such persons have the right, when arrested or detained, to receive, free of charge, the legal advice of counsel prior to their first questioning and to have unhindered, confidential discussions alone with their defence counsel, with no limitation on the number or duration of the interviews (articles 41 and 43 of the Code).

## **B. Establishing the age of the victim**

254. When it is ascertained that an offence has been committed, even in situations where the actual age of the victim has not been established, under Belarusian law, criminal proceedings are instituted. When it is established that the victim is a minor, the perpetrator's criminal liability significantly increases.

255. In the absence of any documentation of the victim's date of birth, and if there is some justification to believe the victim is a child, an expert psychiatric examination (a kind of forensic test) is performed to determine the victim's age. The final day of the year of birth as determined by the experts is taken as the date of birth, and when considering the minimum and maximum possible age of the victim, the prosecution office and the court must use the minimum age of the individual as surmised by the expert examination. The procedure to call for an expert examination is set out in articles 226 to 228 of the Code of Criminal Procedure.

256. The expert psychiatric examination is performed by the competent bodies of the State medical forensic examination service, which is directly responsible to the Procurator-General (in accordance with Presidential Decree No. 808 of 29 December 2001 on the State medical forensic examination service).

### **C. Training of persons working with victims of the sale of children, child prostitution and child pornography**

257. In Belarus a great deal of attention is paid to training specialists to combat human trafficking. Since 2005, the Academy of the Ministry of Internal Affairs has provided internal affairs specialists with training in ways to counter human trafficking. Training is also provided to such specialists at the International Training Centre on Migration and Combating Human Trafficking, which opened at the Academy in 2007. The Centre has developed courses for various categories of trainees, including law enforcement and other public officials and representatives of international organizations and NGOs.

258. Prevention of the sexual exploitation of children is included in the further training and retraining system for administrative staff and specialists in the education system.

259. The National Institute of Vocational Education has held further training courses for administrators and teachers in the following areas:

- Monitoring activities as a basis for raising the quality of education in schools
- Maintenance and organization of social work and psychological services at vocational and technical schools and at specialized secondary schools
- Work of school psychologists and school social workers to prevent deviant behaviour among students and to reintegrate schoolchildren who have experienced violence
- Legal and organizational/methodological work to prevent the sale and sexual exploitation of children

260. Training specialists at the Academy of Postgraduate Education have developed a special course for social workers and boarding schoolteachers on the protection, and prevention of the exploitation and sale, of children.

261. The training of teachers working at boarding schools, orphanages, health centres and hospitals and of deputy directors of elementary schools, form masters, school administrators and social workers includes special courses entitled "Children at risk and extreme risk" (four class hours) and "Psychological aspects of sexual behaviour" (four class hours), which deal with efforts to prevent the sale of children and the spread of pornography and child prostitution. The prevention of human trafficking and child prostitution is also studied at the further training faculty for applied psychology.

262. In October 2007 special advanced training courses were held by the Department of Psychology and Social and Educational Work of the Academy of Postgraduate Education

for the leaders of form master methodology associations on psychological and educational approaches to violence within the family and in schools; they included training in the prevention of the sale of children for sexual abuse.

263. Procuratorial officials and judges receive advanced training at the Institute for the Retraining and Further Training of Judges and Officials of the Procurator's Office, the Courts and Other Institutions in the System of Justice, at Belarusian State University. Trainees at the Institute are taught about the latest developments in the field of law, including how to handle cases involving minors. The lectures and workshops are led by very experienced court and procuratorial officials and leading legal scholars from the University's law faculty, the Academy of Public Administration attached to the Office of the President and the Academy of the Ministry of Internal Affairs.

#### **D. Measures providing the conditions necessary for the activities of institutions and organizations working against human trafficking**

264. More than 15 ministries, the media, international organizations and NGOs are engaged in efforts to prevent human trafficking, including the sale of children, child prostitution and child pornography.

265. As mentioned previously, the Ministry of Internal Affairs coordinates the efforts of State bodies in combating human trafficking.

266. The above bodies have not registered a single incident involving attacks or threats made in connection with the work done to combat human trafficking.

267. Interference in the legal activities of State bodies is a criminal offence (articles 364–366 and 388–390 of the Criminal Code).

#### **E. Fair and impartial trial of the accused**

268. The provisions guaranteeing the rights of the accused to a fair and impartial trial are contained in the Constitution (arts. 21–27) and the Code of Criminal Procedure (arts. 7–25).

269. The Constitution stipulates that the Government guarantees the freedom, inviolability and dignity of the individual. Any restriction or deprivation of liberty may be imposed only in situations and according to procedures established by law. Persons remanded in custody have the right to have the legality of their arrest or detention reviewed by a court.

270. The Code of Criminal Procedure stipulates that no one may be considered to have committed an offence unless his or her guilt has been proven in a procedure established by law and a valid verdict of a court has entered into effect. Accused persons are not obliged to prove their innocence. No persons may be compelled to give evidence or testimony against themselves, members of their families or close relatives. Evidence gathered in violation of the law has no legal force.

#### **F. Rehabilitation of victims of the sale of children, child prostitution and child pornography**

271. A system has been developed in Belarus to carry out programmes to support and protect victims and witnesses of the sale of children.

272. The rehabilitation and social reintegration of victims of human trafficking, including of children who are victims of sexual or other exploitation, is provided free of charge. They include the following forms of assistance:

- The provision of temporary residences, including room and board
- Legal assistance, including legal advice
- Medical care provided by State health-care agencies, including at in-patient facilities
- Psychological assistance in the form of preventive, diagnostic and other corrective treatment and counselling and socio-educational assistance
- Assistance in finding permanent employment
- Tracing the family of underage victims or placing them in foster care or, when that is not possible, a children's home

273. The labour, employment and social services system of the Ministry of Labour and Social Protection includes 156 local social services centres. The centres have 140 social rehabilitation and recovery units which assist victims of human trafficking.

274. The social protection and rehabilitation of victims of human trafficking are provided free of charge and, together with other forms of assistance, include temporary places of residence in "crisis rooms" (similar to shelters) created in the local social services centres. Seventeen such units have now opened (1 in Vitebsk province, 2 in Gomel province, 11 in Mogilev province, 2 in Minsk province and 1 in Minsk). People may be referred to them by the authorities or may call on them independently.

275. The Minsk municipal social services centre for families and children provides round-the-clock information services, including a hotline dealing inter alia with human trafficking problems. A database of organizations that inform women how to travel to and live in other countries in safety has been set up at the Minsk local social services centres.

276. In Brest province, at the Pinsk local social services centre, a residential unit has been established serving inter alia victims of human trafficking.

277. In Mogilev, the Mogilev provincial department for medical and psychological assistance to victims of violence and human trafficking operates within the provincial diagnostic health centre.

278. Minors can receive rehabilitation services at the 146 socio-educational establishments of the Ministry of Education (of which 10 are social and educational centres, 37 are children's social shelters and 99 are centres set up in shelters). Confidential hotlines are widely in use at social and educational centres to provide counselling to children experiencing difficulties. There are 10 children's homes that can provide rehabilitation services for children under the age of 3.

## **G. Rehabilitation of foreign or stateless victims of the sale of children, child prostitution and child pornography**

279. Under article 11 of the Constitution, foreign nationals and stateless persons in Belarus enjoy the same rights and freedoms and fulfil the same obligations as citizens, unless otherwise provided in the Constitution, laws and international agreements.

280. Under the Rights of the Child Act, child refugees who have lost their homes and private property owing to military activity or ethnic or other types of armed conflict are entitled to protection. The local authorities and administrative bodies where such a child is located take steps to find the child's parents or relatives and to provide material, medical

and other assistance, if necessary ensuring health services and placing the child in a boarding school or another educational establishment.

281. By law, internal affairs agencies may issue foreign and stateless victims of human trafficking with authorizations for a temporary stay in Belarus if their authorized duration of stay in Belarus lapses and they are actively facilitating human trafficking investigations. The authorization generally lasts less than a year and is issued to permit such persons to take part in criminal proceedings. The internal affairs services also provide such victims with social protection and rehabilitation services.

## **H. Compensation for damages from persons responsible under the law**

282. Issues related to compensation for damages resulting from offences are governed by the Code of Criminal Procedure (chap. 17, Civil suits in criminal proceedings, arts. 148–157).

283. Under Belarusian law, during criminal proceedings, civil suits brought by natural or legal persons are also considered, as are civil suits filed by a procurator for compensation of material or moral injury resulting directly from an offence, or from the actions of a person unfit to plead when such actions are recognized by criminal law to be dangerous to society.

284. Under article 149 of the Code of Criminal Procedure, from the beginning of a criminal case until the end of the judicial examination, natural or legal persons who have suffered prejudice owing to an offence or the actions of a person unfit to plead (when such actions are recognized by criminal law to be dangerous to society) and the representatives of such persons are entitled to bring civil action against the accused or those who are materially liable for their actions. The dismissal of a suit brought by them under civil proceedings precludes their right to file the same claim during the criminal proceedings.

285. To defend the interests of minors and also of persons duly recognized as having no legal capacity, civil suits may be filed by their legal representatives.

286. When required to do so to defend the interests of citizens, legal persons or the State, or in the public interest, the procurator too may bring civil action during a criminal case.

287. A civil suit may be brought either in writing or orally. Oral statements are duly noted in the record of proceedings. A civil suit brought as part of a criminal procedure is considered by the court in conjunction with the criminal case.

288. Persons who have not brought civil claims during criminal proceedings and those whose claims have not been considered are entitled to bring claims under the civil procedure.

289. During consideration of a civil claim brought under the criminal procedure, the basis, conditions, amount and means of compensation for prejudice are determined in accordance with the law currently in force. Where the law states that this is necessary, international agreements and the laws of States with which treaties on legal assistance have been concluded are applied (article 153 of the Code of Criminal Procedure).

## **VII. International assistance and cooperation**

290. In combating human trafficking, Belarus actively cooperates with international organizations such as the United Nations Office on Drugs and Crime, the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), the International Organization for Migration (IOM) and various international NGOs in the field. It also cooperates in regional and bilateral contexts.

291. Additionally, in July 2007, INTERPOL and the law enforcement agencies of Belarus, Italy, the Russian Federation, the United States and Ukraine, with the help of 30 companies from the United States involved in the Financial Coalition against Child Pornography, collaborated in a police operation code-named “Tornado” to combat child pornography on the Internet. During the operation, Belarusian law enforcement agencies arrested 11 members of a criminal organization that posted child pornography on commercial websites. This resulted in the closing down of 270 websites offering child pornography that had been visited by persons from more than 140 countries. In 2009 the criminals were sentenced to deprivation of liberty for periods of between 4 and 12 years.

292. Since June 2008 the Ministry of Internal Affairs has taken part in a special international operation against child pornography on the Internet known as “Carousel-2”, initiated by the law enforcement agencies of Brazil.

293. In Belarus, international technical assistance projects and programmes are being implemented with IOM, UNDP and UNICEF to provide assistance in combating human trafficking.

294. Among the projects that have been implemented, two that are worthy of mention are an IOM programme entitled “Combating human trafficking: Republic of Belarus”, which included a number of projects implemented between September 2002 and December 2005, and a project of the European Union, UNDP and the Belarusian Government entitled “Combating trafficking in women in the Republic of Belarus”, implemented between June 2003 and December 2005.

295. Since 2007, IOM and the Ministry of Internal Affairs have been implementing a project entitled “Combating human trafficking: Republic of Belarus”, focusing on cooperation and coordination between State agencies and NGOs. An advisory committee comprising representatives of IOM, the Ministry of Internal Affairs, other government bodies and NGOs has been set up to ensure the project is implemented effectively.

296. In 2009 implementation began of a joint project of the European Union, UNDP and UNICEF entitled “Preventing, Fighting and Addressing the Social Consequences of Trafficking in Human Beings in the Republic of Belarus”. The project is aimed at strengthening the country’s national capacity in combating human trafficking through preventive measures and the improvement of victim protection and rehabilitation.

297. Belarus is taking active steps to attract international attention to the problem of violence and human trafficking.

298. On 5 March 2005,\* at the initiative of Belarus and the Philippines and with the assistance of the United Nations Office on Drugs and Crime and the Vital Voices Global Partnership, an international NGO, an international conference was held at United Nations Headquarters in New York entitled “Trafficking in Women and Girls: Meeting the Challenge Together”. The conference was attended by over 400 people from more than 90 countries, including representatives of international and national NGOs and civil society groups.

299. A significant example of constructive international cooperation was provided by the joint international conference of IOM, the Organization for Security and Cooperation in Europe (OSCE) and UNICEF entitled “Combating the demand for trafficking in persons: expansion of cooperation between countries of origin and destination countries”. This event was held in Minsk on 26 and 27 October 2006 with the participation of representatives of

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\* Actual date of conference: 5 March 2007 – Translator.

40 States of the European Union, the Commonwealth of Independent States and the Middle East, along with those of 12 international organizations and 8 NGOs.

300. On 9 and 10 April 2008 an international conference entitled “Violence against Children: Challenges and Ways of Prevention” was held in Minsk; it was organized by the Ministry of Internal Affairs with the cooperation of the national authorities and the representatives in Belarus of IOM, UNICEF, the Central European Initiative (CEI), the United Nations Population Fund (UNFPA) and OSCE. The event was attended by the representatives of 26 States and 10 international and regional organizations, as well as 9 NGOs. The participants conducted a review of international legislation protecting children against violence, discussed global initiatives and studies in this field and exchanged views and experiences related to the protection of children against violence and how to prevent it from occurring.

301. At the Summit of Heads of State and Government held in September 2005 in New York, President Alyaksandr Lukashenka of Belarus launched an initiative to intensify efforts to combat trafficking in human beings, attacking in particular demand for “human commodities”.

302. Further to this initiative, Belarus has put forward the idea of developing, under the aegis of the United Nations, a global plan of action to combat human trafficking, which would inter alia address the prevention of the sale of children, child prostitution and child pornography. This initiative is supported by a large number of countries, international organizations and the Secretary-General of the United Nations. Consultations for drawing up a global plan of action began at the sixty-fourth session of the United Nations General Assembly.

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