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**Criminal justice responses to the smuggling of migrants  
and trafficking in persons, and links to transnational  
organized crime**

## **Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime**

**Working paper prepared by the Secretariat**

### **I. Introduction: trafficking in persons, smuggling of migrants and organized crime**

1. Trafficking in persons and smuggling of migrants represent serious manifestations of transnational and other forms of organized crime. The involvement of organized criminal groups in their commission and the need to develop appropriate and effective responses at the national and international levels have been acknowledged through the adoption and entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>1</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air,<sup>2</sup> both supplementing the United Nations Convention against Transnational Organized Crime.<sup>3</sup> The two Protocols, together with the Convention, demonstrate the need to effectively implement a broad range of responses to tackle the problem comprehensively and in the proper perspective. This, in turn, highlights the importance of capacity-building and training programmes as a prerequisite for enhancing the coherence, robustness and efficiency of criminal justice policies and strategies against these crimes (see A/CONF.213/PM.1).

2. Trafficking in persons and smuggling of migrants are diverse criminal enterprises that involve licit and illicit actors. One of the best ways to capture the complexity of either human trafficking or migrant smuggling is therefore to think of

\* A/CONF.213/1.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2237, No. 39574.

<sup>2</sup> *Ibid.*, vol. 2241, No. 39574.

<sup>3</sup> *Ibid.*, vol. 2225, No. 39574.



each of them as a transactional network. The key nodes of the networks are the roles that need fulfilment in order for the operation to occur. Despite common elements, there are differences between the criminal activities under discussion, and those differences are crucial when developing appropriate national, regional and international responses. In the case of trafficking in persons, two elements beyond smuggling of migrants must be present: firstly, there must be an act carried out through improper means, such as use of force, coercion, deception or some abuse of power or a position of vulnerability, thus rendering the consent of the person irrelevant; and, secondly, the activity must have been undertaken for an exploitative purpose. The driving economic force behind trafficking in persons is the proceeds derived from the exploitation of the victims. In smuggling, the smuggling fee paid by the migrant is the major source of revenue, and there is usually no continuing relationship between the offender and the migrant once the latter has arrived at his or her destination. It should be noted that in addition to smuggling of migrants, the Smuggling of Migrants Protocol requires the criminalization of enabling illegal stays and producing, procuring, providing or possessing fraudulent travel or identity documents when done for the purpose of enabling smuggling of migrants (art. 6).

3. Both smuggling and trafficking may involve ancillary activities that can play roles in the network as well. For example, some trafficking and smuggling operations require document fraud, money-laundering, corrupt practices, etc. Escort services, debt collectors and security agents are also sometimes part of these operations.

4. In order to use a network approach, it is important to understand that one or more agents can fulfil each of the roles. In trafficking in persons, for example, individuals can serve simultaneously as recruiters, transporters or protectors, or fulfil any number of other roles, thus limiting the number of perpetrators in a group. Small groups of two or three individuals can also specialize in one role. But more traditional organized criminal groups are also actively engaged in trafficking and smuggling. They can focus on fulfilling one, some or all of the roles in the trafficking or smuggling network. Lastly, the network approach helps capture the important link between “upperworld” and “underworld” in trafficking and smuggling cases. Some cases have found businesses that serve as exploiters in a trafficking ring and government officials providing protection from law enforcement. Any categorization of trafficking and smuggling has to incorporate all of these potential actors to result in an accurate portrayal of the variations in trafficking and smuggling groups.

5. Applying this network model, a spectrum of trafficking and smuggling operations emerge. Entrepreneurial operations occupy the smaller-size end of the spectrum of smuggling and trafficking networks. Often, these small groups have only a handful of perpetrators fulfilling one or more roles. It is not uncommon to find two or three perpetrators recruiting, transporting and, in the case of trafficking, exploiting persons. Owing to their small size, these operations often limit the number of persons they are trafficking or smuggling at any given time. While they are less likely to engage in ancillary activities such as money-laundering or document fraud themselves, they will seek out specialists to provide these services when needed.

6. The methods that entrepreneurial groups use to conduct smuggling of migrants and trafficking in persons are often simple and unsophisticated. First, they are much

more likely to operate in specific countries, such as those with which they are familiar through prior citizenship or ethnic heritage. In order to move persons, they often use commercial carriers and seemingly legitimate methods to circumvent immigration controls. Regarding the latter, entrepreneurial traffickers and smugglers often engage in visa shopping.<sup>4</sup> While entrepreneurial trafficking and smuggling groups are small in size and engage in trafficking or smuggling only sporadically, one should not discount the harm that they inflict or assume that they gain paltry sums from their criminal endeavours. In fact, entrepreneurial groups have been known to collect significant sums of money in a short period of time.

7. At the other end of the spectrum of trafficking in persons and smuggling of migrants networks are large organized criminal groups that control all aspects of the operation. Major transnational networks often have large numbers of perpetrators and operate across wide geographical areas. These networks operate with larger numbers of trafficked persons and smuggled migrants. They tend to operate on a more continuous basis than their entrepreneurial brethren, moving people through their networks constantly. For this reason, they tend to be more innovative and continually search for new routes or ports of entry. Transnational groups also employ numerous routes to multiple destinations, and are often found to engage in activities such as narcotics trafficking and arms smuggling as well. Such groups are more likely to have linkages with ancillary services such as protectors in government, debt collectors, document fraud experts, money launderers and even some form of intelligence-gathering. Moreover, it is with these criminal organizations that one is most likely to find connections to the “upperworld”, either through the use or complicity of businesses or through bribes paid to government officials.

8. Smuggling of migrants by and large follows this model of a spectrum from individual entrepreneurs who guide their charges across sections of border to large, sophisticated transnational smuggling groups that control all aspects of the criminal operation. Unlike trafficking, however, the evidence suggests that migrant smuggling is more closely associated with organized crime. Indeed, numerous researchers have noted that measures Member States have taken to increase border controls and document security measures have made it harder for less sophisticated migrant smugglers to operate. Thus, when demand surges for migrant smuggling, a market opens up for more sophisticated criminal groups to charge higher fees and thus reap larger profits. In sum, migrant smugglers continue to match the increased sophistication of Member States’ efforts to thwart them.

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<sup>4</sup> Visa shopping is the act of filing visa petitions with more than one of a State’s Embassies or Consulates in a region. The theory behind visa shopping is twofold: first, some consular officials may not adjudicate visa applications as strictly as others. Second, applying for only one or two visas at a time, the trafficker is less likely to draw attention to himself or herself.

## **II. Investigation, prosecution and adjudication of trafficking in persons and smuggling of migrants**

### **A. Specialized agencies**

9. In response to these complex crimes, resources must be allocated to detection, investigation, prosecution and adjudication. An approach adopted by many States has been to form specific agencies to accomplish these goals, including special intelligence units, investigative task forces, dedicated prosecution offices and specialized courts. Training is crucial for dealing with the complexities of trafficking in persons and smuggling of migrants. In order to increase cooperation and adopt a comprehensive approach to these crimes and to the involvement of organized crime, linking these units to other relevant units, such as those dealing with financial investigation, corruption, victim and witness protection and organized crime, is very important.

10. Specialized investigative capabilities can also be expanded beyond traditional law enforcement agencies, such as through the empowerment of labour inspectors to investigate labour-related trafficking in persons or migrant smuggling. Border inspectors, customs officials, airport employees and medical personnel can be trained to recognize trafficking and smuggling more readily. Cooperation with the private sector can also be sought to identify potentially suspicious activity for further investigation.

11. The use of intelligence units to support investigations of trafficking in persons and smuggling of migrants is a good practice. Intelligence units play two major roles in such investigations. First, they support ongoing investigations by analysing evidence collected at crime scenes, or lending personnel for cases that require more intensive investigation, or lending specialized skills and technology, such as forensic accounting software for investigators. Secondly, they develop specific intelligence that investigators can use to open cases in a proactive manner. Intelligence units have tapped a wide variety of information sources, including informants, evidence from prior cases, wiretaps and even satellite imagery, to provide investigations with information they can use to start cases against traffickers and smugglers.

12. However, it is hard to evaluate the existing infrastructure for collecting and analysing operational intelligence that supports investigations of trafficking in persons and smuggling of migrants. Intelligence units dedicated to these crimes are relatively new and not yet widely operational. While intelligence units for migrant smuggling grew out of efforts to stem the tide in narcotics trafficking, it is only recently that they have begun to focus on trafficking in persons as well.

13. A number of problems may impede efforts to investigate trafficking in persons and smuggling of migrants. Lack of human and material resources to support investigations is the most prominent of these problems. Infrastructure is another major issue. Some units may lack transportation or communications equipment. Specialized units should have a dedicated budget, particularly as their investigations can prove lengthy, complex and often expensive. Another problem is corruption and collusion among government officials and law enforcement units. Examples range from officials collecting rents or bribes to protect traffickers and smugglers, to

officials who participate in trafficking and smuggling, including the ownership or control of brothels using trafficked women.

14. Much like investigations, specialized units are also formed or specialized prosecutors trained to improve capacity to prosecute trafficking in persons and smuggling of migrants. Specialized prosecution units may consist of specially trained prosecutors who have intimate knowledge of legislation, with the best procedures for obtaining convictions and, in the case of trafficking in persons, with working with victims and the service providers who protect them. Most often, these units work closely with the specialized investigation units mentioned earlier. Specialized prosecution units can be regional or provide specialized personnel to local prosecutors on an as-needed basis.

15. Finally, there is a need to improve the adjudication of such cases. Separating smuggling cases from trafficking cases has proved problematic at times. It must be ensured that judges and courts are prepared to adjudicate both types of cases. In some cases, specialized courts have been established to hear trafficking and smuggling cases. This has proved especially important for the handling of trafficking cases involving juvenile victims; some States have established specialized juvenile courts to handle trafficking and related cases. Yet some problems remain, the main ones being untrained judges, shortages of judges and bias among judges, who might view trafficking as a simple case of labour exploitation or prostitution.

## **B. Training**

16. Training is the most frequently used mechanism to remedy many of the problems identified above. Training may focus on specialized investigation, prosecution and adjudication units that handle trafficking and smuggling cases. However, such training can and should go beyond these units to ensure that all stakeholders are aware of these crimes. Specialized training centres for investigators, prosecutors or judges on issues related to trafficking and smuggling can be created. Trafficking and smuggling should also be included as a key element of the general training offered to all police officers, either at the initial training academy or as in-service training. Law enforcement and related personnel can also be sent for specialized training offered by international organizations, foreign governments or non-governmental organizations.

17. Training can include both basic and more innovative topics. The basic topics include the differentiation between smuggling and trafficking, knowledge of national laws, proper investigative techniques and working with trafficking victims or smuggled migrants. Training can also include recognition of document fraud, inspection of travel documents, detection of imposters at the inspection of a crime scene or financial investigations. Focus should also be placed on cross-cultural issues, child witnesses and proper interviewing techniques.

## **C. Coordination and cooperation**

18. Coordination is a crucial element of tackling trafficking in persons and smuggling of migrants. At the broadest level, inter-agency coordinating bodies are

formed to bring together all of the various elements of government policy and programmes against trafficking and smuggling. The mechanism for this can be a high-level coordinating committee that includes representatives from the various agencies that participate in dealing with trafficking and smuggling cases. The purpose of the mechanism is to coordinate efforts and implement required changes in policy or training. Such efforts are a useful way of ensuring that investigators, prosecutors and judges have the support they require to inquire into trafficking and smuggling cases efficiently.

19. At a more operational level, task forces are formed to promote the sharing of information and resources between the various agencies that participate in the investigation and prosecution of trafficking and smuggling cases. This is especially important given the complexity of both trafficking in persons and migrant smuggling. Such cases therefore regularly require other specialized law enforcement units to assist investigators in developing a case. The task forces connect not just investigators and prosecutors but also often include victims' service coordinators and other specialized units, such as asset forfeiture teams. Some of these task forces seek to bring together the various levels of law enforcement and prosecution to facilitate information-sharing between local and national agencies. In some cases, short-term joint investigation teams are created, bringing together relevant investigators, prosecutors and other units for short periods of time or for specific cases. Other practices, such as the use of the Organized Crime Convention as the basis for international cooperation in such cases, are very relevant.

20. Finally, it is important to note that anti-corruption activities are becoming an increasingly important part of the efforts of States to investigate and prosecute trafficking and smuggling. Numerous States have made fighting public corruption a part of their overall strategy against trafficking and smuggling. The aforementioned task forces and other coordinating bodies are therefore now inviting representatives of anti-corruption bodies to participate. Given the high levels of corruption associated with both trafficking and smuggling, this move to make corruption a central part of the strategy against these forms of crime is prudent.

### **III. Protection of victims**

#### **A. Identification of victims**

21. At the point or country of origin, traffickers and smugglers alike take advantage of people's vulnerabilities. Traffickers and smugglers look to profit from such vulnerabilities by offering people incentives and the means to migrate to look for better opportunities.

22. While in transit, smuggled migrants are often exposed to inhuman or degrading treatment or experience life-threatening situations. Victims of trafficking in persons may suffer the same sort of situations, as they are often subject to exploitation for sexual, labour or other purposes.

23. At the country of destination, the status of smuggled migrants as irregular immigrants makes them vulnerable to abuse and discrimination, while trafficked victims suffer exploitation at the hands of their traffickers.

24. The differences between trafficking in persons and smuggling of migrants must be understood before an effective policy response to both crimes can be developed and implemented. There are increasing reports of abuse by smugglers against those who are smuggled. In this regard, smugglers and the activity of smuggling have the potential to seriously endanger the life and health of those who are smuggled. The death and serious injury toll from smuggling has increased dramatically in recent years, pointing to the potentially serious human rights abuses that smugglers can commit against those who employ their services.<sup>5</sup>

25. Smuggled migrants are not victims of the crime of smuggling, but may be victims of other crimes and breaches of their human rights throughout the smuggling process. It is important that the rights of smuggled migrants be upheld and taken into consideration when dealing with migrants found in a smuggling situation. Without protecting their rights, criminal justice systems are not likely to be able to use smuggled migrants as witnesses in cases against their smugglers.

26. The early identification of trafficked persons is a prerequisite for their recognition as victims and, consequently, their access to assistance and protection. Persons who are likely to be in contact with victims (such as police and justice officials and staff of health, social and other services) should receive training to enable them to identify victims and be sensitive to their needs.

27. It is crucial to enlist the cooperation of all persons and groups that come into contact with victims of trafficking, such as border guards; police and immigration officers; doctors; medical and social workers; labour, housing and agricultural inspectors; consular staff; staff of organizations concerned with the rights of immigrants, women and victims; and refugee protection and asylum organizations. Proper training can help them to identify trafficked persons and victims in order to refer them to victim-support organizations. A network of professionals and agencies should be involved in the identification of potential victims and should work together in order to protect victims and ensure a referral network without gaps. Outreach work can be a crucial element of efforts to identify and support victims of trafficking in the environment in which they are forced to work.<sup>6</sup>

28. The identification of victims of trafficking at an early stage is complicated by a number of factors. For example, the identification of victims at the border or during immigration inspection is unlikely, since victims are often not aware that they are being trafficked. However, asking some simple questions about their intended stay and plans of travel or work in the country of destination has led to the early discovery of trafficking cases. Likewise, targeted, evidence-based awareness campaigns are effective mechanisms for engaging the public in identifying trafficking victims, but they need to go beyond simplified views of trafficking or just one form of trafficking and present the public with the full picture of how trafficking operates. For example, awareness must be raised of the fact that trafficking is both international and domestic, that it is not just for sex or labour but

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<sup>5</sup> International Migration and Human Rights, Global Migration Group, October 2008. Available from [www.globalmigrationgroup.org/pdf/Int\\_Migration\\_Human\\_Rights.pdf](http://www.globalmigrationgroup.org/pdf/Int_Migration_Human_Rights.pdf).

<sup>6</sup> United Nations Office on Drug and Crime (UNODC) Online Toolkit to Combat Trafficking in Persons, chap. 6, Victim Identification. Available from [www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-chapter-6-victim-identification.html](http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-chapter-6-victim-identification.html).

also for domestic servitude and that it is not limited to women and children, but also includes men.

## **B. Protection and support in court proceedings**

29. Smuggled migrants who have fallen victims to crime, and victims of trafficking generally, should have at least the same rights as the victims of other violent or sexual crimes in terms of the services provided to them at trial. There are few dedicated programmes designed especially for trafficking victims. However, it is important that prosecutors and judges understand the nature of trafficking and employ any tools available to avoid undue harm to and secondary victimization of the victim. Prosecutors and judges must protect the victim without impeding the ability of the court to function and provide a fair adjudication of the case.

30. Depending on the legal system, a number of mechanisms can be employed to protect and support victims and witnesses during trial proceedings. Such measures may include videotaped testimonies prior to trial that allow victims or smuggled migrants to return to their countries of origin before the trial concludes; testimony of a victim or smuggled migrant via live television from the country of origin; shields that prevent the victim from physically facing the trafficker in court; courtroom regulations that allow the judge to remove the public from the courtroom during the victim's testimony; laws that shield the identity of the victim or the smuggled migrant from press coverage of the trial; non-punishment of victims for unlawful acts committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons; and physical protection of the victim or smuggled migrant and their families.

## **C. Return and reintegration**

31. A number of initiatives exist to improve the return and reintegration of victims of trafficking or smuggled migrants.<sup>7</sup> The majority of repatriation or return mechanisms involve either international, regional or non-governmental organizations that provide various services depending on the needs of States. Typical services include counselling, transportation, resettlement and tracking of victims after they have returned to their countries of origin. The organizations also act as intermediaries between government agencies in the destination and origin countries, reducing the burden on government officials and increasing the attention delivered to victims.

32. In addition, innovative ways are being developed to fund and implement repatriation programmes for victims. Some destination States are setting aside funds that are available not only for victims' services and counselling but also repatriation and follow-up care in the country of origin, as needed. While destination State Governments sometimes provide these funds, in other cases Governments are finding alternate sources of funding. Asset forfeiture is becoming a more common

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<sup>7</sup> UNODC Toolkit to Combat Trafficking in Persons, tool 7.7, "Mechanisms for the safe return and reintegration of victims of trafficking". Available from [www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_7-7.pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-7.pdf).

source of funding for repatriation. In some cases, businesses that have unwittingly hired trafficked labourers have voluntarily contributed funds to repatriate the victims. Some States have set aside a portion of the funds raised through licensing and certification of migrant workers to create funds for victims of trafficking. States are also increasing direct government-to-government programmes for repatriation, both bilaterally and regionally.

#### **D. Training and outreach**

33. Training is often identified as the most promising practice for promoting the early identification of victims of trafficking or recognition of smuggled migrants as witnesses. Intensive training programmes focused on the type of intervention (law enforcement, immigration, labour, health care, etc.) are far more effective than more generalized training courses given to mixed audiences. Focused training allows the instructor to emphasize the particulars of the trainees' contact with victims of trafficking or smuggled migrants. Moreover, training given to all members of an organization is thought to be more effective than more limited training courses, since it is not easy to predict when a victim or a smuggled migrant might come into contact with a member of the organization. It is vital that training provide a clear definition and understanding of trafficking and smuggling to avoid confusion and misperceptions. Finally, training needs to be made sustainable so that turnover within organizations does not lead to gaps in recognition of victims.

34. Outreach is also an important element for the early identification of victims of trafficking in persons. The involvement of survivors of trafficking in public outreach programmes, where appropriate, may enhance their impact on victims and the public at large. Outreach programmes are also more effective when they help to reduce the stigma often felt by victims, which can diminish their desire to seek help. Last, outreach should educate the public to re-examine marginalized domestic communities for potential abuse and trafficking victims. Too often, trafficking is perceived to include only foreign victims, a perception that diverts attention from numerous categories of domestic victims.

35. While the content of training and outreach campaigns will vary, how potential victims or smuggled migrants answer some basic questions can often yield clues to their true circumstances. States have used variations of the following questions to identify trafficking: What type of work do you do? Are you being paid? Can you leave your job? Can you come and go as you please? Have you or your family been threatened? What are your working and living conditions like? Where do you sleep and eat? Do you have to ask permission to eat/sleep/go to the bathroom? Are there locks on your doors/windows that you cannot unlock? Has your identification or documentation been taken from you? The answers to these and similar questions serve as indicators of potential foul play that professionals can act upon. Similar questions to identify smuggling of migrants include: Who arranged your travel? How did you get here? What methods of transport were used? What did you do for food/water/toilet? How did they treat you? How much did you pay for the journey? Is there any further cost? What documents did you need to travel?

## **E. Coordination and cooperation**

36. While procedures and processes differ widely among States, some rules are generally applicable to establishing a good working relationship with victims of trafficking and smuggled migrants. The most frequently offered advice is to develop a close working relationship with victim advocates or other support persons, who in turn can develop bonds of trust with the victim and help improve the chances of cooperation. Thus, the first step in obtaining cooperation from a victim is to certify the victim, if needed, and ensure that he or she is in the care of a recognized and well-trained victim advocate. In cases of smuggling, providing some form of protection to the migrant is often a prerequisite for his or her cooperation with the justice system. In some States, investigation teams include witness assistance officers so that when victims are first identified there is a certified advocate or another support person on the scene to begin the process of aiding the victim. Prosecutors will also normally determine whether the victim's cooperation is required to make a case against the trafficker so as to avoid unnecessary stress for the victim. The same applies to smuggling of migrants. If the victim's cooperation is required, prosecutors and investigators often ask for a victim advocate or another support person to join them for the initial interview to help reassure the victim and ensure that his or her interests are well served. Should the victim provide testimony, it is vital that prosecutors and lawyers work together to prepare him or her for the testimony and other aspects of the trial. In cases of smuggling of migrants, the debriefing of those who have been smuggled is probably the most overlooked area in investigations. Smuggled migrants are often simply sent back to their country of origin. Beyond the human considerations, this can also result in the loss of witness testimony and other evidence.

37. States should be encouraged to continue to improve their efforts on repatriation and, in cases of trafficking, ensure that repatriation is voluntary. States should continue to improve their responses to requests for repatriation or return. In destination States, Governments should act quickly when victims request repatriation, while in source countries Governments should respond when destination States seek confirmation of a victim's or smuggled migrant's citizenship. Stateless victims or smuggled migrants are increasingly being encountered. Destination States may not be in a position to repatriate because of a lack of effective repatriation measures between the two countries involved or because of the potential for persecution of the victim or smuggled migrant in the country of origin. States should also continue to improve the tracking and monitoring of victims after they have been repatriated to avoid further victimization or potential re-trafficking. Finally, in line with the principle of non-punishment of victims, States should avoid imposing legal or financial penalties on victims after their return.

## **IV. Prevention of trafficking in persons and smuggling of migrants**

38. Effective action to prevent and combat trafficking in persons and smuggling of migrants requires a comprehensive international approach, including measures to protect victims of such trafficking and the rights of smuggled migrants and to prosecute traffickers and smugglers. To prevent human trafficking effectively, the

Trafficking in Persons Protocol requires States to endeavour to undertake measures such as social and economic initiatives, research and media campaigns targeting potential victims. This response calls for a wide range of actors, from legislators and law enforcers to the media and the public, to cooperate in designing and implementing creative initiatives.

39. Comprehensive and effective strategies for preventing trafficking in persons and smuggling of migrants include a criminal justice approach to dismantle the networks, but also awareness-raising and the reduction of demand for trafficked victims. While awareness campaigns and other mechanisms help to reduce the pool of potential trafficking victims or smuggled migrants, demand reduction programmes help to reduce the flow of trafficked persons. And as much as poverty, gender inequality, corruption and other socio-economic forces have been identified as “push” factors, root causes of the supply for trafficking and smuggling, there is no denying that demand is at the root of the profits that traffickers reap. Historical and contemporary studies agree that breaking the cycle of trafficking cannot be achieved without dealing with demand.

40. Examples of measures to address the demand side include measures to broaden awareness of, attention to and research into all forms of exploitation and the factors that underpin demand; to raise public awareness regarding products and services that are produced by exploitative and forced labour; to regulate, register and license private recruitment agencies; to sensitize employers not to employ victims of human trafficking in their supply chain, whether through subcontracting or directly in their production; to enforce labour standards through inspections and other relevant means; to support the organization of workers; to increase the protection of the rights of migrant workers; and to criminalize the use of the services of victims of human trafficking. An increased focus is also placed on prevention of re-trafficking. Generally, this is a part of the repatriation process. States and cooperating organizations in the repatriation process need to ensure that victims are placed in a rehabilitation course after returning to their home country.

41. From a criminal justice perspective, the challenge is to dismantle the smuggling networks and address the conditions in which they can flourish while protecting the rights of smuggled migrants. Unless the organized criminal groups that smuggle migrants are dismantled, smugglers will continue to operate and quickly adapt their methods and routes to changing circumstances such as improved border controls or changes in visa regimes. Similarly, where efforts are focused primarily on strengthening border controls, the effect is often to increase demand for smuggling services to enter countries illegally. This highlights a key need to complement border controls by increasing law enforcement efforts to dismantle the smuggling of migrants networks and through enhanced international law enforcement cooperation between countries of destination, transit and origin. It is also important to inform people who are vulnerable to being smuggled that migrant smuggling is a crime often committed by dangerous organized criminals who subject them to inhuman and degrading conditions or even endanger their lives and safety. In this context, awareness should be raised of the risks posed by being smuggled, including the risk of death. Public information campaigns should also address basic human rights standards. Holistic approaches to awareness-raising would also seek to raise people’s awareness of legal channels of migration, so as to reduce their vulnerability to smugglers offering illegal channels.

## **V. Data collection**

42. Knowledge of and research into the specific national, regional and international context of trafficking in persons and smuggling of migrants is a prerequisite for the elaboration, implementation and evaluation of strategies against trafficking in persons and smuggling of migrants and the development of evidence-based policies. Knowledge and research are also paramount for overcoming the current remaining confusions between the crimes and the violations of human rights they entail.

43. Although most countries have adopted a specific offence on trafficking in persons, and have some legislation to tackle smuggling of migrants, there are still diverse approaches to the Protocols and, in particular, the definitions of trafficking in persons used by States. In order to strengthen national, regional and global efforts to fight trafficking in persons and smuggling of migrants, a better understanding of the scope and nature of these crimes is needed. In addition, there is a need for additional targeted and qualitative research to provide insight into the multifaceted dimensions of the crimes. Research should include knowledge of the legal, social, cultural and economic circumstances that make children and adults vulnerable to trafficking in persons and willing to take high risks to leave their country; knowledge of the demand factors that fuel all forms of trafficking in persons; knowledge of the routes, changes in patterns and trends and *modi operandi* of the perpetrators; and knowledge of the social, cultural and legal responses that enable effective protection, rehabilitation, and integration or reintegration of victims and of repatriated smuggled migrants. Knowledge of social and economic factors is also necessary, in order to develop comprehensive approaches to smuggling of migrants in the wider context of migration and development.

44. More sophisticated methods for case management and data collection for trafficking and smuggling cases are being developed by States. However, the number of cases brought to the attention of the authorities remains limited.

## **VI. Further development of appropriate criminal justice responses**

### **A. Implementation of the United Nations Convention against Transnational Organized Crime and its Trafficking in Persons Protocol and Smuggling of Migrants Protocol**

45. Since the General Assembly's adoption of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, promoting ratification and providing assistance in the implementation of the instruments have been priorities for the United Nations Office on Drugs and Crime (UNODC). As at 3 February 2010, the Convention had 153 States parties, the Trafficking in Persons Protocol 135 and the Smuggling of Migrants Protocol 122. An overview of national measures and practices for the implementation of the provisions of the Trafficking in Persons Protocol and some of the provisions of the Smuggling of Migrants Protocol has

shown that the majority of States parties to the Protocols have adopted at least a basic legislative and institutional framework to ensure the implementation of the provisions under consideration. However, in view of the varying capacity of Member States to fully implement existing or future measures in the areas under discussion, more concerted efforts have to be made to develop effective and multidisciplinary strategies and build dedicated and sustainable resources to implement such strategies (see CTOC/COP/2006/6/Rev.1 and CTOC/COP/2006/7/Rev.1).

46. Such strategies should focus on the five pillars of intervention needed to ensure an effective and comprehensive response: prosecution, protection, prevention, national coordination and cooperation, and international cooperation and coordination.

47. Trafficking in persons and smuggling of migrants remain largely underprosecuted and unpunished, making them low-risk crimes for criminals. Although many countries have specific offences criminalizing trafficking in persons and smuggling of migrants and related conduct, many countries still do not have a legal framework covering all provisions of the Protocols. Conviction rates remain low.

48. Many victims of trafficking are not identified and therefore remain unprotected. Migrants who have been the object of smuggling are often not informed of their rights and are interviewed as potential witnesses to the crime of smuggling. The identification of trafficked persons as victims or smuggled migrants as witnesses to a crime — or potential victims of a crime — is a prerequisite for their capacity to participate in the criminal justice system. Many countries still need to establish or improve processes and corresponding referral mechanisms for victims of trafficking and smuggled migrants, including those migrants who may have a legitimate claim for asylum.

49. Prevention is one of the most important aspects of effective anti-human trafficking and anti-migrant smuggling responses. However, not all prevention strategies are integrated into broader policies, and many lack evidence-based research and planning, as well as impact evaluations.

50. Trafficking in persons and smuggling of migrants are complex, multifaceted crimes. The fight against trafficking and smuggling require the involvement of all sectors of society and a wide array of national institutions. This can lead to duplication of efforts, inefficient use of resources and incoherent or contradictory interventions, and can result in a less effective response. Inter-agency coordination and cooperation mechanisms must be in place to allow for information exchange, strategic planning, division of responsibilities and sustainability of results.

51. Trafficking in persons and smuggling of migrants are crimes that are committed across borders and therefore require Member States to cooperate and coordinate among themselves and with international and regional organizations. Member States often do not have the capacity to prevent, investigate, adjudicate and punish transnational crimes because international cooperation is inadequate. Moreover, international mechanisms or structures must be in place to improve the coordination of efforts of international and regional organizations.

## **B. Enhancing the provision of technical assistance**

52. The provision of technical assistance, upon request, to Member States to implement the Organized Crime Convention and its Trafficking in Persons and Smuggling of Migrants Protocols is fundamental. UNODC, as custodian of the United Nations Convention against Transnational Organized Crime and the two Protocols, assists Member States in the implementation of those instruments. The primary goals of UNODC with respect to combating the distinct but interrelated crimes of trafficking in persons and smuggling of migrants is to promote global adherence to the Convention and its Protocols and assist States in their efforts to fully implement them. The key aims of the Convention and its Protocols are to prevent and combat trafficking in persons and the smuggling of migrants; protect the rights of smuggled migrants and victims of trafficking; prosecute those who traffic persons and smuggle migrants; and promote cooperation between Member States in achieving these goals. In providing technical assistance for the global achievement of these goals, the UNODC response is focused on seven working areas: prevention and awareness-raising; data collection and research; legislative assistance; strategic planning and policy development; criminal justice system responses; protection and support for smuggled migrants and trafficking victims; and international cooperation.

53. Challenges to UNODC in the provision of technical assistance include attracting sufficient resources; ensuring the sustainability of technical assistance activities; and developing and sustaining mechanisms to cooperate more effectively with other relevant organizations to ensure that there is no duplication of efforts.

## **VII. Conclusion: a global response**

54. The review of the implementation of the two Protocols has been an indispensable component of the work of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime since its establishment. In this context, information gathered on national implementation efforts has shown that the majority of the States parties responding have adopted legislative and institutional frameworks to ensure the implementation of the two Protocols. It is inevitable, however, that, in view of the different levels of capacity of Member States to fully implement measures in the areas under discussion, more concerted efforts are necessary to assist Member States in need in developing effective and multidisciplinary strategies against trafficking in persons and smuggling of migrants, and in building dedicated and sustainable resources to implement such strategies. Bearing this in mind, and taking into account the recommendations of the regional preparatory meetings, the Twelfth United Nations Congress on Crime Prevention and Criminal Justice may wish to consider the following recommendations:

(a) Member States should ensure the development, implementation, monitoring and evaluation of comprehensive and evidence-based policies to combat trafficking in persons and smuggling of migrants and ensure coherence with other related policies;

(b) Member States should establish a system or mechanism of multidisciplinary cooperation and coordination among relevant stakeholders, such as governmental institutions, non-governmental organizations, service providers, health institutions, child protection agencies or entities, trade unions, workers' and employers' organizations and the private sector;

(c) Member States should develop or strengthen their legislation against trafficking in persons and smuggling of migrants to ensure that all forms of trafficking in persons and smuggling of migrants, as well as related conduct, are criminalized; should ensure that prosecution of trafficking in persons rather than related offences is prioritized and that prosecution efforts are targeted on dismantling the criminal networks behind the smuggling of migrants; should protect the rights of victims of trafficking and of smuggled migrants; should establish and ensure the implementation of judicial procedures to avoid the revictimization of victims of crime and protect witnesses; should prosecute traffickers and smugglers; should ensure that penalties and sanctions are appropriate and proportionate to the gravity of the crime; should pursue international cooperation vigorously; and should ensure that proceeds of crime are confiscated;

(d) Member States should develop or strengthen the skills and capacity of criminal justice agencies responsible for combating trafficking in persons and smuggling of migrants to ensure that they have the skills to detect the involvement of organized crime proactively and on the basis of intelligence, as well as take appropriate measures to combat it, including through the use of special investigative techniques; financial investigation; crime scene investigation; and international cooperation. Criminal justice agencies should also have the capacity to identify victims of trafficking in persons and to ensure that the rights of those victims and of smuggled migrants are protected, including through appropriate referral mechanisms;

(e) Member States should gather more comprehensive and precise national information on the state of trafficking in persons and smuggling of migrants and engage in regional and international initiatives to collect data on trafficking in persons and the smuggling of migrants. Data from law enforcement and criminal justice systems should be developed into intelligence and made available in disaggregated form in order to gain a better understanding both of the complex links existing among trafficking in persons, smuggling of migrants and other forms of organized crime and of the appropriate criminal justice system responses to those crimes;

(f) Member States should establish comprehensive policies and programmes to prevent trafficking in persons and smuggling of migrants and develop or strengthen measures to reduce vulnerability to trafficking in persons and smuggling of migrants by addressing the root causes, including the demand that fosters all forms of trafficking in persons;

(g) Member States should ensure that adequate resources are provided so that the technical assistance capacity of the United Nations to combat trafficking in persons and smuggling of migrants, and their links to organized crime, can meet these challenges;

(h) The Conference of the Parties to the United Nations Convention against Transnational Organized Crime should be provided with the support that is

necessary to realize its full potential and to perform the challenging functions foreseen by its mandate. In that connection, UNODC should be provided with adequate resources to fully accomplish its assigned functions as secretariat of the Conference.

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