



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

Distr.: General  
1 August 2008

Original: English

[Start]

## Fourth session

Vienna, 8-17 October 2008

Item 2 (e) of the provisional agenda\*

**Review of the implementation of the United Nations  
Convention against Transnational Organized Crime  
and the Protocols thereto: expert consultation  
on protection of victims and witnesses**

## Protection of victims and witnesses

### Note by the Secretariat

#### I. Introduction

1. At its second session, held in Vienna from 10 to 21 October 2005, by decisions 2/1, 2/3 and 2/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to include in its programme of work for the third session consideration of matters related to the protection of witnesses and victims, under articles 24 and 25 of the United Nations Convention against Transnational Organized Crime (the “Organized Crime Convention”);<sup>1</sup> matters related to assistance to and protection of victims of trafficking in persons and status of such victims in receiving States, under articles 6 and 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the “Trafficking in Persons Protocol”);<sup>2</sup> and matters related to protection and assistance measures for smuggled migrants and to return of smuggled migrants, under articles 16 and 18 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the “Migrants Protocol”).<sup>3</sup> On developing questionnaires to collect information relevant to the programme of work of the Conference of the Parties at its third session, the secretariat therefore included questions on the implementation by States parties of the relevant articles of the

\* CTOC/COP/2008/1.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>2</sup> United Nations, *Treaty Series*, vol. 2237, No. 39574.

<sup>3</sup> United Nations, *Treaty Series*, vol. 2241, No. 39574.



Convention and the Trafficking in Persons and Migrants Protocols. Responses by States parties and signatories to those questions are reflected in the reports of the Secretariat on the implementation of the Convention and the Trafficking in Persons and Migrants Protocols (information received from States for the second reporting cycle, CTOC/COP/2006/2/Rev.1, CTOC/COP/2006/6/Rev.1 and CTOC/COP/2006/7/Rev.1 respectively).

2. At its third session, held in Vienna from 9 to 18 October 2006, the Conference of the Parties held consultations of government experts on protection of witnesses and victims under the Trafficking in Persons and Migrants Protocols. Views were exchanged in particular on the distinction between the protection of witnesses and the protection of victims of trafficking in persons, the linkage between the protection of victims of trafficking in persons and their cooperation with authorities, reflection periods, the special needs of child victims, housing services for trafficking victims, cooperation between countries of origin and countries of destination, as well as on protection and assistance measures for smuggled migrants, the root causes of irregular migration, the return of smuggled migrants and protection of their human rights (CTOC/COP/2006/14, paras. 82-112).

3. As a result of its deliberations, the Conference adopted decision 3/3 on implementation of 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, supplementing the United Nations Convention against Transnational Organized Crime. A report on the work done by the United Nations Office on Drugs and Crime (UNODC) to promote the implementation of the Trafficking in Persons and Migrants Protocols, including information on the work done by the secretariat, in particular in the area of victim protection, is before the Conference at its current session (CTOC/COP/2008/8). It provides information on tools developed by the secretariat to assist States in their victim protection efforts, including a leaflet on human trafficking indicators, the UNODC toolkit to combat trafficking in persons, the advanced level anti-human trafficking training manual on the protection of victims, the investigation of trafficking offences and the prosecution of traffickers, and a model law against trafficking in persons. Also to be noted are activities of the secretariat to promote the use and application of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex); the launching by UNODC in February 2008 of *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*;<sup>4</sup> and the ongoing work of the secretariat to develop a model law on witness protection and a model relocation agreement.

## **II. Relevant provisions of the Organized Crime Convention and the Trafficking in Persons and Migrants Protocols**

4. The Organized Crime Convention recognizes the importance of protecting witnesses both as an end in itself and as a means of ensuring their willingness to cooperate in reporting crime and providing evidence to prosecute and convict

---

<sup>4</sup> Available from the UNODC website at [www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf](http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf).

offenders. Article 23 (criminalization of obstruction of justice) of the Convention requires States parties to establish as a criminal offence the use of physical force, threats or intimidation to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding related to the commission of offences covered by the Convention.

5. In article 24 (protection of witnesses), the Convention requires parties to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and, as appropriate, for their relatives and other persons close to them. Such measures may include, without prejudice to the rights of the defendant, establishing procedures for the physical protection of witnesses, such as relocating them and permitting non-disclosure or limitations on the disclosure of information concerning their identity and whereabouts; and providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links. States parties are further required to consider entering into agreements or arrangements with other States for the relocation of witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and, as appropriate, for their relatives and other persons close to them.

6. Article 26 (measures to enhance cooperation with law enforcement authorities) requires States parties to take measures to encourage persons who participate or who have participated in organized criminal groups to supply information useful to competent authorities for investigative and evidentiary purposes and to provide help to competent authorities that may contribute to depriving organized criminal groups of their resources. Article 26 requires that protection measures provided for in article 24 apply to such persons as well.

7. The importance of addressing the needs of the victims of crimes covered by the Convention, in particular the need for assistance and protection, is also recognized by the Convention. The provisions of article 24 (protection of witnesses) also apply to victims insofar as they are witnesses. Moreover, article 25 (assistance to and protection of victims) requires States parties to take appropriate measures to provide assistance and protection to victims, in particular in cases of threat of retaliation or intimidation. The Trafficking in Persons Protocol includes, in articles 6, 7 and 8, an articulated set of provisions for the protection of victims of trafficking in persons. Article 6 (assistance to and protection of victims of trafficking in persons) requires States parties to protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to such trafficking confidential, as well as to endeavour to provide for the physical safety of victims of trafficking in persons while they are within their territory. Article 7 (status of victims of trafficking in persons in receiving States) requires States parties to consider adopting legislative or other measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases. Article 8 (repatriation of victims of trafficking in persons) provides that the return of a victim of trafficking to the State of nationality or of permanent residence shall be with due regard for the safety of that person.

8. The Migrants Protocol provides that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been smuggled

(article 5, criminal liability of migrants). Such a provision should have the effect of encouraging migrants to testify and provide evidence against their smugglers. Article 16 (protection and assistance measures) further requires States parties to take all appropriate measures to preserve and protect the internationally recognized rights of smuggled migrants, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups; and to afford assistance to migrants whose lives or safety are endangered by reason of having been smuggled.

### III. Possible questions for discussion by the Conference

9. The Conference of the Parties, within the framework of its expert consultation on protection of victims and witnesses, may wish to discuss the following questions:

(a) General issues of protection of victims and witnesses:

(i) What good practices exist to protect victims, in particular to prevent their secondary victimization<sup>5</sup> by police, prosecutors, judges, medical professionals and other relevant services?

(ii) What type of information provided to victims has proven successful in facilitating their protection? What is the most effective way of communicating such information?<sup>6</sup>

(iii) Measures to protect victims of trafficking in persons include the provision of temporary or permanent visas and residence permits. What good practices exist in terms of the criteria used to decide upon the issuance of such visas and permits to victims of trafficking?

(iv) What good practices exist in terms of protection offered by the relevant embassies and consulates of nationals who become victims of trafficking?

(v) What kind of services provided by non-governmental organizations have proven most successful in ensuring the protection of victims and witnesses?

(vi) What practices and approaches have been effective in guaranteeing respect of the confidentiality of data related to victims and witnesses by (a) non-governmental organizations and (b) the media, taking into account the principle of freedom of speech and expression?

(b) In-court protection of witnesses:

(i) What measures and practices have proven effective in ensuring the safety of witnesses in the process of giving testimony?

---

<sup>5</sup> “Secondary victimization” means victimization that occurs not as a direct result of the criminal act, but through the response of institutions and individuals to the victim.

<sup>6</sup> In some countries relevant information is provided to victims of crime only if a victim expressly requests such information, following what is referred to as an “opt-in” policy. The “opt-out” policy, instead, follows the principle that a victim would automatically receive all relevant information unless he or she expressly requested not to receive it.

- (ii) What good practices exist in terms of the conditions and criteria on the basis of which the application of in-court protection measures may be ordered? How are the special needs of children best addressed in this context?
- (iii) What are the main obstacles to the adoption of measures for the in-court protection of witnesses? How can they be overcome?
- (c) Witness protection programmes:
  - (i) What are the main challenges faced in the development and implementation of witness protection programmes? What good practices exist in this field, in terms of criteria for selecting eligible witnesses and applicable procedures?
  - (ii) What are the main challenges faced in relocating witnesses? What are the main challenges faced in changing the identity of witnesses? What good practices exist in this field? What measures and provisions have proven effective in ensuring the confidentiality of information related to witnesses under a witness protection programme?
  - (iii) What good practices exist for the financing of witness protection programmes, taking into account the fact that their costliness is, in many countries, a major obstacle to their implementation?
- (d) International cooperation in protecting victims and witnesses of crime:
  - (i) What kind of bilateral, regional and international cooperation mechanisms exist that constitute good practices in victim and witness protection?
  - (ii) What practices have been effective in terms of the international relocation of witnesses?
  - (iii) What experiences have there been in conducting hearings of witnesses by videoconference?<sup>7</sup>
  - (iv) What good practices exist in ensuring the safety of victims of trafficking in the context of returning such victims to their country of origin?

---

<sup>7</sup> Paragraph 18 of article 18 (mutual legal assistance) of the Organized Crime Convention provides that, wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by videoconference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party.