



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

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**Review of the implementation of the United Nations  
Convention against Transnational Organized Crime  
and the Protocols thereto: Protocol to Prevent,  
Suppress and Punish Trafficking in Persons,  
Especially Women and Children**

## **Victim support, witness protection and participation of victims in the criminal justice system and other activities in support of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

### **Report of the Secretariat**

#### **I. Introduction**

1. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in paragraph (m) of its decision 4/4, entitled “Trafficking in human beings”, requested the Secretariat to make available to Member States information on successful practices and measures in relation to victim support, witness protection and the facilitation of the participation of victims in the criminal justice system.

2. The Open-ended Interim Working Group of Government Experts on Technical Assistance, at its meeting held on 1 and 2 October 2009, requested the Secretariat to prepare, for submission to the Working Group at its meeting to be held during the fifth session of the Conference, a report on the current technical assistance programmes and the programmes envisaged for the future, with an evaluation of the outcome of those programmes, as well as a report on the proposals for implementing the priority activities on which technical assistance projects should focus.

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\* CTOC/COP/2010/1.



3. The present report includes information on work done by UNODC in response to those requests.

## **II. Conference decision 4/4. Trafficking in human beings**

### **A. Successful practices and measures in relation to victim support**

4. In connection with the issue of providing protection and support to victims, UNODC advocates a victim-centred approach in the framework of 19 technical assistance projects that address trafficking in persons. For instance, in 2009, UNODC and the Task Force against Trafficking in Human Beings of the Council of the Baltic Sea States collaborated to implement a project entitled “Preparatory Regional Project on Fostering NGO-Law Enforcement Cooperation in Preventing and Combating Human Trafficking in, from and to the Baltic Sea Region”. The aim of the comprehensive regional assessment conducted in the framework of the project was to help lay the foundation for targeted and consistent approaches in the provision of assistance and protection to victims of trafficking in persons by improving cooperation among States and civil society organizations. The research sought to establish a knowledge base on existing cooperation mechanisms, to identify shortcomings and obstacles and to formulate recommendations for improved cooperation.

5. The research was aimed at providing insight into what institutionalized mechanisms and work practices were in place in the 11 member States of the Council of the Baltic Sea States (Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, the Russian Federation and Sweden) to facilitate cooperation among different stakeholders in the area of providing support and assistance to trafficked persons.

6. The research focused in particular on assessing how cooperation among the different actors was addressed or regulated in each country through policy tools such as national action plans, the establishment of national coordination mechanisms, the adoption of formalized cooperation agreements (e.g. memorandums of understanding), as well as key procedures at the operational level. The scope of the research, as formulated by the Task Force against Trafficking in Human Beings, was initially limited to cooperation between law enforcement agencies and non-governmental organizations providing assistance to victims of trafficking in persons. Following further discussion within the Task Force, the scope was broadened to encompass cooperation between State actors and civil society organizations, in acknowledgement of the importance of the numerous practitioners involved in anti-trafficking responses (see [www.cbss.org/Civil-Security-and-the-Human-Dimension/joint-tf-thb-and-unodc-project](http://www.cbss.org/Civil-Security-and-the-Human-Dimension/joint-tf-thb-and-unodc-project)).

7. UNODC has developed and disseminated various tools to assist criminal justice practitioners in responding to trafficking in persons. A victim-centred approach is imperative to any response to trafficking in persons, and tools published by UNODC always feature good practices and recommendations related to treatment and assistance to victims and presumed victims of such trafficking.

8. In 2009, UNODC launched the First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking (see [www.unodc.org/documents/human-](http://www.unodc.org/documents/human-)

trafficking/TIP\_1st\_AidKit\_English\_V0981429.pdf), to support the detection of cases of trafficking in persons and the provision of assistance to victims of such trafficking. The First Aid Kit, available in all of the official languages of the United Nations, is a series of 12 leaflets that make information easily accessible and quickly comprehensible to those who can provide “emergency aid” to a trafficking victim. The aim is to ensure that those who may make the initial contact with potentially trafficked persons take first steps, as with a medical emergency, to identify problems and to stabilize and prepare patients for further treatment by experts.

9. In essence, law enforcement first responders fighting human trafficking carry out similar functions to those initially responding to medical emergencies. In particular, they must be able to: identify human trafficking; stabilize and control the trafficking situation; and prepare victims and pass information on to investigators. The First Aid Kit is not intended as a substitute for an in-depth, specialized response to trafficking in persons, but it is intended to be used as a tool to help those who may come into contact with trafficked persons to take the vital first steps to protect victims and apprehend the criminals involved.

10. Leaflet 6 of the First Aid Kit deals with initial actions as related to presumed victims of trafficking in persons. With regard to addressing presumed victims, it is recommended that if observations indicate that a person has been trafficked or could be a victim of such crime, first responders should try to establish trust and obtain further clues, using a calm and friendly voice and starting a very basic conversation, even if they have the feeling that the person does not speak the same language. First responders are encouraged to attempt to reassure the presumed victims that they are there to help and to ask whether the person needs help, is injured, is hungry or thirsty, is cold or hot, but without making promises that they are not sure that they can keep.

11. In addition, in the First Aid Kit it is recommended that first responders avoid asking direct questions such as “Have you been trafficked?” The person being asked such a question may not understand the question or may have been told by traffickers to answer it with “no”. Instead, law enforcement personnel should, in a neutral way, ask open-ended questions (i.e. questions that require more than a “yes” or “no” answer) to find out if there are further clues that human trafficking has taken place. People who are moving or working of their own free will generally have control over travel and identity documents, choose their travelling companions and friends, are able to move freely and have free time. First responders are encouraged to try to ask questions that will help them understand whether the persons being questioned enjoy freedom of movement. The more a person’s responses suggest that he or she has little choice, freedom or control, the greater the likelihood that he or she has been trafficked. Any statements made by persons in a group should be corroborated by gathering physical evidence: who has travel documents, who, if anyone, has injuries and so on.

12. In leaflet 7 of the First Aid Kit, law enforcement officers are given advice on anticipating and dealing with reactions from victims of human trafficking. Law enforcement officers are advised that, when encountering victims of trafficking, they should keep in mind a number of points, including that victims of such trafficking may have been psychologically and/or physically harmed, may have experienced violence or threats, including threats to report them to the police, and

that they may be illegal residents. Victims of human trafficking are also likely to be extremely intimidated by or under the control of their traffickers and may be frightened and threatened by the presence of law enforcement personnel.

13. In addition, in the First Aid Kit, law enforcement officers are advised to react to a human trafficking situation or to victims of such trafficking by appeasing victims and avoiding confrontation, trying to gain trust by asking harmless, inoffensive questions such as “How are you? Do you need help? Are you thirsty or hungry?” and by taking victims seriously.

14. Leaflet 8 of the First Aid Kit deals with basic considerations regarding child victims of trafficking in persons and stresses that any decision and/or action that affects a child must be taken with the best interest of the child in mind. The leaflet recommends several actions that law enforcement officers must take immediately upon encountering a presumed victim of trafficking who is under 18 years of age, including getting the young person to a safe and comfortable environment as a matter of priority and assuming that the young person’s needs and capacities are different from those of an adult and that the young person is unlikely to be able to make informed decisions. It is also stated in the leaflet that it is sometimes difficult to judge whether a person is a minor; therefore law enforcement personnel are advised that, if they have doubts about whether a person is an adult or a child, they should assume that he or she is a child and act accordingly. In addition, law enforcement officers are warned that an adult accompanying a child may not be the child’s parent or guardian but a trafficker and that law enforcement officers should try to get as many clues as possible to determine the relationship between adults and children at the setting where human trafficking may have taken place.

15. Leaflet 9 of the First Aid Kit contains crucial general principles for dealing with presumed victims of trafficking in persons, including what to do and what not to do with regard to identifying such victims, stabilizing and controlling the trafficking situation and passing on information. Among other things, first responders are told to acknowledge the importance of their role in potentially providing safety and aid to victims of trafficking in persons and to be aware that a case that looks like illegal migration could be a case of human trafficking.

16. The *International Framework for Action to Implement the Trafficking in Persons Protocol* ([www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf)), published by UNODC in 2009, is a technical assistance tool that consists of a narrative part and a set of tables. The narrative contains a description of key challenges in the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,<sup>1</sup> as well as a description of some general measures that can be taken to more effectively address those challenges. The tables provide further details on the measures, using five pillars containing practical actions to support the implementation of the Trafficking in Persons Protocol.

17. Table 2 of the Framework details specific and practical measures that States parties can take to implement their legal obligations to provide protection and assistance to victims, pursuant to the Trafficking in Persons Protocol, such as:

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

- (a) Assess existing legislation on social and victim protection;
- (b) Amend, complete or adopt the necessary legal measures to assist and protect trafficked persons;
- (c) Ensure that the approach to providing protection of and assistance to trafficked persons is based on respect for human rights, refugee protection and sensitivity to gender and child issues irrespective of their cooperation with law enforcement.

18. In addition, the Framework provides operational indicators that States parties can use to determine whether their implementation measures are effective. For instance, the following may indicate the existence of effective practical measures for the protection and assistance of victims:

- (a) Existence of appropriate legislation or other measures to protect and assist trafficked persons in compliance with the Trafficking in Persons Protocol and other relevant international and regional relevant human rights instruments;
- (b) Committed budget allocations;
- (c) Existence of appropriate legal measures to assist and protect trafficked persons;
- (d) Evidence that the provision of protection of and assistance to victims of trafficking in persons is based on respect for human rights, refugee protection and sensitivity to gender and child issues and is not made contingent on willingness or ability to cooperate;
- (e) Number of trafficked persons that have access to protection and assistance measures regardless of gender, age, nationality or form of exploitation.

## **B. Successful practices and measures to facilitate the participation of victims in the criminal justice system**

19. The various tools developed and disseminated by UNODC to aid criminal justice practitioners in responding to trafficking in persons also address issues of victim assistance and protection in cases where the victims decide to participate in the criminal justice system. In this regard, UNODC advocates for various victim-centred principles and topics, including timely and proper identification of victims, non-prosecution and non-punishment of victims, provision of information regarding criminal proceedings, the right to participate in any judicial proceedings, confidentiality, provision of assistance regardless of cooperation with a criminal investigation and/or prosecution and victim and witness protection in court.

20. For instance, the *Model Law against Trafficking in Persons*,<sup>2</sup> published by UNODC in 2009, includes several provisions aimed at facilitating the participation of victims in the criminal justice system, some of which are described below. In article 18 of the Model Law, regarding the identification of victims of trafficking in persons, it is stated that a national coordinating body, established pursuant to article 35, shall establish national guidelines/procedures for identification of such

<sup>2</sup> United Nations publication, Sales No. E.09.V.11.

victims and shall develop and disseminate to professionals who are likely to encounter such victims information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of such victims. In addition, to ensure the proper identification of such victims, “the [competent authorities] shall collaborate with relevant state and non-state victim assistance organizations to identify victims”.

21. With regard to non-prosecution or non-punishment of victims of trafficking in persons, it is stated in article 10 of the Model Law:

1. A victim of trafficking in persons shall not be held criminally or administratively liable [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.

2. A victim of trafficking in persons shall not be held criminally or administratively liable for immigration offences established under national law.

22. In article 24 of the Model Law, there is a mandatory provision on participation of victims in the criminal justice system:

The [Ministry of Justice] [prosecutor] and/or [court] and/or [other competent authority] shall provide the victim with the opportunity to present his or her views, needs, interests and concerns for consideration at appropriate stages of any judicial or administrative proceedings relating to the offence, either directly or through his or her representative, without prejudice to the rights of the defence.

23. Another important principle that may help facilitate the participation of victims in the criminal justice system is ensuring that temporary residence permits for victims are not dependent upon cooperation with any prosecution that may arise. In option 1 of article 31 of the Model Law, it is stated:

1. If the competent authorities [name the authority] have identified a person as a victim of trafficking, he or she shall be issued a temporary residence permit for at least a period of six months, irrespective of whether he or she cooperates with the [competent authority], with the possibility of renewal.

24. In addition, numerous provisions in the Model Law (e.g. regarding the protection of data and privacy; the protection of victims and witnesses in court; the relocation of victims and witnesses; the victims’ right to initiate civil action and receive compensation; recovery and reflection periods while a decision on granting the status of victim is being made) are aimed at ensuring the maximum participation of victims in the criminal justice system.

### **C. Successful practices and measures in relation to witness protection**

25. *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* ([www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf](http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf)), published by UNODC in 2008, includes details on protection measures that are appropriate for victims of trafficking in persons. A

court may decide to apply specific measures during the hearing of testimony to ensure that victim-witnesses testify free of intimidation and fear for their lives. The measures can also be applied in cases involving trafficking in persons to prevent the revictimization of victim-witnesses by limiting their exposure to the public and the media during the trial. The measures include: use of a witness's pretrial statement instead of in-court testimony; presence of an accompanying person for psychological support; testimony via closed-circuit television or videoconferencing; use of voice and face distortion; removal of the defendant or the public from the courtroom; and anonymous testimony.

26. In the publication it is stated that there are usually no statutory restrictions on the types of crime or witness for which such measures can be allowed. Their application may be requested by the prosecutor and decided by the court after it has heard the defence. The court's decision is usually open to appeal. The elements typically taken into account by courts when ordering the application of procedural measures are: nature of the crime (organized crime, sexual crime, family crime etc.); type of victim (child, victim of sexual assault, co-defendant etc.); relationship with the defendant (relative, defendant's subordinate in a criminal organization etc.); degree of fear and stress of the witness; and the importance of the testimony.

27. Procedural measures to protect the victim-witness can be grouped into three general categories depending on their purpose:

(a) Measures to reduce fear through the avoidance of face-to-face confrontation with the defendant, including the following measures:

- (i) Use of pretrial statements (either written or recorded audio or audio-visual statements) as an alternative to in-court testimony;
- (ii) Removal of the defendant from the courtroom;
- (iii) Testimony via closed-circuit television or audio-visual links, such as videoconferencing;

(b) Measures to make it difficult or impossible for the defendant or organized criminal group to trace the identity of the witness, including the following measures:

- (i) Shielded testimony through the use of a screen, curtain or two-way mirror;
- (ii) Anonymous testimony;

(c) Measures to limit the witness's exposure to the public and to psychological stress:

- (i) Change of the trial venue or hearing date;
- (ii) Removal of the public from the courtroom (in camera session);
- (iii) Presence of an accompanying person as support for the witness.

28. Those measures may be used alone or in combination to produce a greater effect (for example, videoconferencing with shielding or anonymity with face distortion). In the application of procedural measures, due consideration should be given to balancing the witness's legitimate expectation of physical safety against the defendant's basic right to a fair trial.

29. In addition, the measures described above are also reflected in the provisions of the Model Law against Trafficking in Persons on general protection of victims and witnesses, which specifically apply to protection during pretrial criminal investigations and to the protection of victims and witnesses in court.

### **III. Technical assistance activities in support of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

30. The Commission on Crime Prevention and Criminal Justice, in its resolution 19/4, entitled “Measures for achieving progress on the issue of trafficking in persons, pursuant to the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World”, highlighted the commitments made by State parties to the United Nations Convention against Transnational Organized Crime<sup>3</sup> and the Trafficking in Persons Protocol; highlighted in particular the fact that, under the Protocol, States were urged, inter alia, to take or strengthen measures to alleviate the factors that made persons, especially women and children, vulnerable to trafficking, and to adopt or strengthen legislative and other measures through bilateral and multilateral cooperation in order to discourage the demand that fosters all forms of exploitation; and underlined the importance of the support provided by the UNODC to Member States in implementing the Convention and the Protocol and welcomed the development of tools enabling their application, in particular the general framework for action to implement the Protocol.

31. UNODC supports States in implementing the Trafficking in Persons Protocol. In June 2010, UNODC was implementing 19 technical assistance projects throughout the world addressing all aspects of the Protocol. Each project is tailored to the specific needs of a country or region, all reflect the underlying principle of the Protocol that a comprehensive State response balances effective criminal justice action with addressing the needs of trafficked persons as victims of crime. The focus of individual projects varies, but the core standardized activities include the development of legislation, national strategies, local capacity and expertise.

32. The UNODC outcome-oriented strategy focuses on developing good practice materials and training programmes, which are then put to use in technical assistance programmes and disseminated for use by Member States and others actively involved in efforts to counter trafficking in persons. A core function of UNODC is the development of practical tools for criminal justice actors, including law enforcement officers, victim assistance providers, prosecutors, judges, policymakers and administrators.

33. Building on the many tools and publications prepared by UNODC in recent years to address trafficking in persons,<sup>4</sup> and taking into account a number of

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<sup>3</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>4</sup> See the working paper prepared by the Secretariat on proposals for technical assistance activities designed to meet the needs identified in the priority areas determined by the Conference (CTOC/COP/2008/16).

requests received from Member States in Central America and other regions, a dissemination project has been developed by UNODC and is currently being implemented. A thorough needs assessment will be carried out to complement the information already gathered through UNODC project counterparts and the Organization of American States. By disseminating publications, such as the *Global Report on Trafficking in Persons*, awareness of the issue of trafficking in persons and its global dimension will be raised, which in turn could serve as a basis for the development of knowledge-based strategies to combat trafficking in persons and generate more data and research on that crime.

34. In addition, there are a number of groups that are targeted directly with the dissemination of tools such as the *Toolkit to Combat Trafficking in Persons*,<sup>5</sup> *Combating Trafficking in Persons: A Handbook for Parliamentarians*<sup>6</sup> and the newly released Criminal Justice Assessment Toolkit ([www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html](http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html)). Criminal justice practitioners, and all relevant Government authorities dealing with trafficking in persons will benefit from those tools. It is important that those stakeholders gain a deeper understanding of the crime and how to respond to it. The wide dissemination of the *Framework for Action, the Toolkit*, the anti-trafficking training manual for criminal justice practitioners ([www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html](http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html)) and the First Aid Kit, among others, ensures the technical support for the implementation of practical measures to combat trafficking in persons in the context of a comprehensive strategy.

35. UNODC believes that data on the extent and nature of the complex crime of trafficking in persons are crucial to the design and implementation of effective countermeasures. UNODC launched in June 2010 a report entitled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*,<sup>7</sup> which contains a chapter focusing on trafficking in persons for sexual exploitation in Europe. The assessment and research activities conducted by UNODC on trafficking in persons and related activities have contributed to improving the knowledge of shortcomings in the implementation of the Trafficking in Persons Protocol.

36. UNODC has worked closely with national authorities in developing policies and action plans to counter trafficking in persons, and technical assistance has been provided for the establishment of the relevant infrastructure. UNODC has supported States and other stakeholders in their efforts to prevent trafficking in persons and to develop national, regional and global awareness-raising campaigns targeting different groups.

37. At its meeting held in October 2009, the Open-ended Interim Working Group of Government Experts on Technical Assistance recommended to the Conference that technical assistance projects should focus on a number of priority activities, including assisting States parties and, where appropriate, non-parties in their efforts to promote cooperation to combat transnational organized crime through implementation of the provisions of the Organized Crime Convention and the

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<sup>5</sup> United Nations publication, Sales No. E.08.V.14.

<sup>6</sup> United Nations publication, Sales No. E.09.V.5.

<sup>7</sup> United Nations publication, Sales No. E.10.IV.6.

Protocols thereto,<sup>8</sup> giving particular attention to mutual legal assistance and extradition (CTOC/COP/WG.2/2009/4, para. 2 (c)).

38. Pursuant to that recommendation, in November 2009, UNODC held a workshop on international legal cooperation in trafficking in persons cases for member States of the Association of Southeast Asian Nations (ASEAN). The objective of the workshop was to contribute to the improvement of legal cooperation between ASEAN member States in the investigation and prosecution of cases involving trafficking in persons by:

(a) Ensuring that practitioners were aware of recent legal and policy developments and effective practices in international legal cooperation in such cases;

(b) Ensuring, through practitioner input, the relevance and technical quality of a draft ASEAN handbook on international cooperation in trafficking in persons.

39. In addition, in March 2010, UNODC organized two regional training sessions on international cooperation in criminal matters related to cases involving trafficking in persons and smuggling of migrants. The first training session was conducted in South Asia and involved the participation of Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka. The second training session was provided in cooperation with the Southern African Development Community and focused on improving cooperation in Southern Africa.

40. UNODC is also implementing the project “Strengthening Law Enforcement Capacity (Border Control Operations) and Criminal Justice Response to Smuggling of Migrants and Trafficking in Persons (2009-2012)”, which supports the South African border control operations coordinating committee in the implementation of the response of the national integrated border management strategy for the period 2008-2010 to the smuggling of migrants and trafficking in persons in and through South Africa, providing technical assistance to promote integrated border management by enhancing cooperation between all national border management agencies, with the aim of achieving cooperation, coordination, mutual support, information-sharing and joint operations among those agencies.

41. The General Assembly, in its resolution 61/180, requested the Secretary-General to entrust the Executive Director of UNODC with coordinating the activities of the Inter-Agency Cooperation Group against Trafficking in Persons. The Inter-Agency Cooperation Group is currently working on a joint publication on efforts to counter human trafficking.

42. UNODC manages the Global Initiative to Fight Human Trafficking (UN.GIFT), in cooperation with the Office of the United Nations High Commissioner for Human Rights, the United Nations Children’s Fund, the International Labour Organization, International Organization for Migration and the Organization for Security and Cooperation in Europe. UNODC is also a member of several regional coordination initiatives, such as the Expert Coordination Team of the Alliance against Trafficking in Persons of the Organization for Security and

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<sup>8</sup> United Nations, *Treaty Series*, vols. 2225, 2237, 2241 and 2326, No. 39574.

Cooperation in Europe and the Global Migration Group. UNODC works to reduce duplication of effort and promotes coordination and cooperation in that area.<sup>9</sup>

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<sup>9</sup> For more details on the work done by UN.GIFT, see the report of the Secretariat on the Global Initiative to Fight Human Trafficking (CTOC/COP/2010/11).