



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

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## Working Group on Trafficking in Persons

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### Best practices in joint investigations and specialized prosecutions

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### Background paper prepared by the Secretariat

#### I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate the discussions of the Working Group on Trafficking in Persons at its tenth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations, provides background information on the topic, including on the main challenges, good practices and the previous work of the Working Group on related matters, and lists specific references, resources and tools that States may use to develop a response to trafficking in persons.

#### II. Issues for discussion

2. Delegations may wish to consider the responses of their States to the following issues in preparing for the Working Group's deliberations:

(a) Do States parties have specific legislation regulating the establishment of joint investigations for cross-border trafficking in persons cases?

(i) Do such laws make any distinction between joint investigation teams (JITs) and joint investigative bodies (JIBs)?

(ii) If States parties have legislation regulating the use of JITs, does this legislation provide guidance on to what extent foreign authorities can exercise power in the host State, and on other operational aspects, such as information and evidence-gathering?

(iii) Is evidence gathered in the framework of a joint investigation admissible for the purpose of prosecution?

(b) Do relevant authorities have a dedicated unit for requesting and responding to requests for setting up joint investigations with other States, pursuant to multilateral

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or bilateral agreements? Do they otherwise have the capacity both to use these mechanisms and to meet reciprocal obligations?

(c) Are non-governmental actors allowed to participate in joint investigations, and, if so, to what extent? Is there any guidance at the national level regulating their participation?

(d) In what circumstances do States parties initiate joint investigations?

(i) Is training for criminal justice authorities on joint investigations, including on circumstances where joint investigations are a suitable instrument, provided?

(e) Is the prosecution service able to create a specialized, multidisciplinary team or unit to prosecute complex cases of trafficking in persons?

(i) How are prosecutors chosen for such teams or units?

(ii) Who else may be assigned to such a team or unit?

(iii) What resources or mechanisms are available for long-term or complex investigations?

(iv) If not, how are these cases handled, if at all?

(f) Do specialized human trafficking prosecutors receive training specific to those functions? For example, do prosecutors receive training in interacting with victims of trafficking in a gender- and age-sensitive manner? Have they been trained to conduct interviews using trauma-informed and gender-specific techniques?

(g) What types of capacity-building and technical cooperation are needed to assist States in enhancing the use of joint investigations and specialized prosecutions of cases of trafficking?

(h) What best practices, including cost-effective examples, on successful joint investigations and specialized prosecutions exist at the national or regional level?

3. In discussing best practices in joint investigation and specialized prosecution, the Working Group may wish to consider, among others, the following actions by States parties:

- Strengthen coordinated national and international criminal justice responses for the investigation and prosecution of domestic and cross-border cases of trafficking, including by promoting the use of joint investigations, special investigative techniques and specialized prosecutions.
- Consider the elaboration of clear national legal frameworks and relevant guidance for the establishment and operation of joint investigations of cross-border cases of trafficking, including between more than two countries.
- Ensure that competent national authorities are adequately trained to identify cases in which joint investigations may be needed, including by proactively initiating such cooperation with other concerned States.
- Promote specialization and development of expertise on trafficking in persons among prosecutors and judicial authorities, and consider establishing dedicated multidisciplinary units in this respect, including for the purpose of improving cooperation with counterparts when investigating cross-border cases.
- Ensure the development and regular implementation of up-to-date training curricula for prosecutors and investigators on laws, policies and guidelines, as well as on trends, patterns and indicators of human trafficking, including in its emerging forms, paying particular attention to current challenges such as misuse of technology by traffickers in the different phases of exploitation.
- Ensure that relevant prosecutors and law enforcement officers are appropriately trained on human rights and on victim-centred, gender- and age-sensitive and trauma-informed approaches for conducting interviews with victims, including

child victims, including, as appropriate, in coordination with service and assistance providers.

- Promote the establishment and use of informal communication channels, including global or regional prosecutors and law enforcement networks, to expedite the exchange of knowledge, information and good practices, also with a view to strengthening solid professional contacts among concerned counterparts and facilitating international cooperation.

### III. Background

4. The crime of trafficking in persons can be particularly complex to investigate and prosecute. A primary challenge derives from the fact that while in most recently reported cases trafficking occurs within national borders, in a significant number of instances, it takes place transnationally,<sup>1</sup> thus involving multiple jurisdictions in which suspects, victims, witnesses and evidence may be variably located. Differences in legal systems and the primarily national nature of criminal justice responses in this context may constitute obstacles to, for instance, gathering evidence and sharing important information, ultimately hindering the successful investigation and prosecution of cross-border component of trafficking cases as well as the protection of victims.<sup>2</sup>

5. Further, the crime of trafficking in persons is often perpetrated by complex, transnational organized criminal networks, comprising a range of actors with different roles and responsibilities, such as recruiters, transporters, local agents and actual “end exploiters”. Identifying and prosecuting the full chain of perpetrators, including those acting in the pre-exploitation phase, for instance, may be particularly challenging, especially if they are located in different States.<sup>3</sup>

6. Moreover, owing to the coercive and abusive nature of the relationship between traffickers and their victims, victims are rarely able or willing to come forward to authorities and denounce and/or testify against their perpetrator/s. This fact adds a further layer of complexity vis-à-vis the detection, investigation and prosecution of this crime.<sup>4</sup>

7. Overcoming these obstacles with any lasting impact may therefore require the adoption of special measures and tools of international cooperation and coordination, including the establishment of joint investigations among concerned countries to enhance information-sharing, obtain and corroborate evidence scattered in different jurisdictions and locate suspects, witnesses and victims. Further, due to the difficulties associated with prosecuting trafficking cases, including difficulties of an evidentiary nature, efforts may benefit from the high-level subject matter expertise of prosecutors and judges, including on human rights and on gender- and age-sensitive and trauma-informed approaches.

8. Both joint investigations and specialized prosecutions in the context of trafficking in persons are well-established practices and have been increasingly used by States parties over the years. The international community has time and again reaffirmed the need and commitment to invigorate investigative and prosecutorial efforts through international cooperation and coordination at the national, regional

<sup>1</sup> The *Global Report on Trafficking in Persons 2018* indicates that since 2010, there has been a steady increase in the detection of victims in their country of nationality, thus reflecting a general increasing trend in domestic trafficking. A significant amount of cases detected also occurred at the regional and subregional levels, while a smaller share of detected victims were identified beyond regional borders. For more information, see the *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No. E.19.IV.2), p. 41.

<sup>2</sup> Pauline David, Fiona David and Anne Gallagher, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases* (Jakarta, 2010), p. 1.

<sup>3</sup> United Nations Office on Drugs and Crime (UNODC), *Evidential Issues in Trafficking in Persons Cases: Case Digest* (Vienna, 2017), pp. 125–126.

<sup>4</sup> *Ibid.* p.12.

and international levels and through the specialization of stakeholders, and while legal, practical and economic challenges remain for successfully utilizing these tools, a plethora of promising practices, including cost-effective solutions, have emerged in both areas.

### **Joint investigations of trafficking in persons cases**

#### *Legal frameworks*

9. In complex transnational cases of human trafficking, time-bound joint investigations between the investigative authorities of two or more concerned States have proved to be an efficient and effective form of international cooperation for successfully dismantling criminal networks and rescuing victims.

10. Most countries have already adopted domestic legislation allowing them to conduct joint investigations. However, in the absence of such laws or where legislation is limited, the provisions of ratified international or regional instruments can be invoked as a legal basis for initiating this kind of cooperation.<sup>5</sup>

11. For instance, article 19 of the United Nations Convention against Transnational Organized Crime lays out the legal framework for the establishment of such joint investigations. Specifically, the instrument encourages, but does not require, States parties to establish joint investigations by way of bilateral or multilateral agreements or arrangements or on a case-by-case basis, always in respect of the sovereignty of the State party in which the investigation is to be conducted.

12. Article 19 is applicable, *mutatis mutandis*, to the criminal offences covered in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>6</sup> thus extending the legal basis for joint investigations to trafficking in persons cases. In addition, the Trafficking in Persons Protocol acknowledges the importance of promoting international cooperation to prevent, suppress and punish this crime by setting it out as one of its trifold purposes in its article 2.

13. There are a number of other international and regional multilateral agreements dedicated to regulating matters of international cooperation in criminal matters, such as mutual legal assistance and extradition, including the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries (2006), and the Inter-American Convention on Mutual Legal Assistance in Criminal Matters (1996). Instruments containing provisions specifically on joint investigations include, for instance, the United Nations Convention against Corruption, of which article 49 mirrors the provision on joint investigations contained in article 19 of the Organized Crime Convention, and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, which is used along with the Council of the European Union framework decision 2002/465/JHA on joint investigation teams,<sup>7</sup> providing extensive guidance with regards to the establishment of joint investigation teams in the framework of requests for mutual legal assistance.<sup>8</sup> In particular, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union regulates, in its

<sup>5</sup> *Toolkit to Combat Trafficking in Persons* (United Nations publication, Sales No. E.08.V.14), p.195.

<sup>6</sup> Article 1, paragraph 2, 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>7</sup> Due to the slow rate of ratification of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, the Council of the European Union framework decision on joint investigation teams was adopted with implementation to be completed by 1 January 2003. The framework decision will cease to have effect once the Convention has entered into force in all European Union countries.

<sup>8</sup> These joint investigation teams are of the “integrated” type, which is further discussed in the next section in this paper under the heading, “Types of joint investigations”.

article 13, aspects including team composition, leadership, terms of operation, division of tasks and power, and other procedural and operational matters.

14. The provisions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union relating to joint investigations are mirrored in article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, as well as in article 27 of the Police Cooperation Convention for South-East Europe.

15. In addition to multilateral treaties, bilateral treaties between States regulating international cooperation on criminal matters, including the establishment of joint investigations, are often pursued.

#### *Types of joint investigations*

16. An informal expert working group on joint investigations, which met in the margins of the fourth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, identified two models for joint investigations that have emerged out of States' practice. The first model consists of joint parallel investigations being carried out respectively in the jurisdictions concerned (and thus, not located in the same State, in other words, not co-located), where officials coordinate and exchange information to achieve a common goal. The evidence collected in the course of such parallel investigations will serve the purpose of separate criminal proceedings.<sup>9</sup>

17. The second model is the so-called "integrated model," whereby a mixed team composed of officers from the States concerned is formed.<sup>10</sup> Once the need and legal basis for joint investigations are established, usually the specific terms and conditions of operations under this model will be negotiated and laid out in ad hoc agreements by the States concerned, in accordance with national laws. In this regard, States may negotiate matters stemming from the purpose of the investigations, duration, modalities, team composition, place of operations, access to and exchange of information and evidence, investigative measures to be used, and other coordination and communication issues.<sup>11</sup>

18. The informal expert working group further identified two sub-typologies of integrated joint investigations: an "active" typology, whereby the members of States other than that of the operation take an active role in the investigations and have a certain degree of operational powers in the host State; and a "passive" typology, whereby the member/s from the seconding State/s perform a more advisory or consultative function and thus play a less active role in the investigations. Integrated joint investigations are usually located in the State of operation ("co-located").

19. It was noted that the active typology usually takes place when the investigations are conducted between neighbouring countries, while the passive typology as well as parallel investigations are normally preferred by countries in different geographical regions. In trafficking cases, countries of destination and countries of origin of victims may even be in different continents, adding a further layer of complexity to the effective coordination of activities.

20. In terms of team composition, practice shows that the designation of participants in integrated joint investigations depends on the legal systems of the States concerned. For instance, civil law systems, in addition to designating law enforcement officers,

<sup>9</sup> Roger Britton and others, *Trafficking in Persons and Smuggling of Migrants: Guidelines on International Cooperation* (Vienna, UNODC Regional Programme Office for South-Eastern Europe, 2010), p. 40.

<sup>10</sup> CTOC/COP/2008/CRP.5, pp.10–11.

<sup>11</sup> European Judicial Training Network, "Using the joint investigation team as a legal tool for investigating human trafficking for sexual exploitation within the EU", pp. 11–12. The Network of National Experts on Joint Investigation Teams developed a model agreement in 2017 to facilitate the setting up of joint investigation team, see Council of the European Union resolution 2017/C 18/01, on a model agreement for setting up a joint investigation.

often designate judges and prosecutors due to their active investigatory functions.<sup>12</sup> Moreover, States may wish to include other participants such as, for example, members of international or regional law enforcement organizations (i.e., the International Criminal Police Organization (INTERPOL) or the European Union Agency for Law Enforcement Cooperation (Europol)), or members of non-governmental organizations. Cooperation with non-governmental organizations has proved positive in some instances where those organizations were able to refer cases and provide intelligence as well as provide assistance to vulnerable victims once identified.<sup>13</sup> However, more guidance is needed with regard to the extent and modalities of involvement, including additional legislation to comprehensively regulate this kind of cooperation.<sup>14</sup>

21. With respect to the typologies noted above, the UNODC publication entitled *Trafficking in Persons and Smuggling of Migrants: Guidelines of International Cooperation* addresses the existence of joint investigative bodies, which is a concept introduced in article 19 of the Organized Crime Convention but which lacks an official interpretation. The informal expert working group, in this regard, refers to JIBs as rather permanent structures established pursuant to a bilateral agreement. It further notes that JIBs may be more apt to serve the investigations of certain crimes, including more long-term and non-isolated cases, such as trafficking in persons.<sup>15</sup>

#### *Advantages and related considerations*

22. As noted, joint investigations have proved to be very successful in dismantling criminal networks perpetrating cross-border trafficking. In particular, joint investigations help the officials involved to quickly exchange information without formal requests, secure and corroborate evidence, make the necessary strategic decisions to ensure the effectiveness of the investigations and avoid duplication of work or jurisdictional issues, as well as strengthen joint real-time coordinated action, including for future prosecutions.<sup>16</sup>

23. Members of joint investigations have noted the benefits such as the ability to carry out tasks, including interviews and searches, with more agility, and pursue immediate relevant action; the use of direct investigative measures without needing multiple request letters; more efficient evidence-gathering for the purpose of prosecutions; and the possibility of developing joint investigation and prosecution strategies.<sup>17</sup>

24. Conducting joint investigations between countries of destination and countries of origin for trafficking in persons can be crucial for the success of an investigation. Human traffickers tend to be more vigilant in concealing their activities from law enforcement authorities in countries of destination. This creates an opportunity for countries of origin to gather evidence on pre-exploitation activities, including recruitment and the transfer of victims, that can help foster investigations and prosecutions of members of the criminal network acting in different phases of the crime and ultimately help with its dismantling.<sup>18</sup>

25. At the same time, the involvement of both countries of origin and destination in trafficking in persons investigations, combined with more effective coordination and

<sup>12</sup> Ibid.

<sup>13</sup> United Kingdom of Great Britain and Northern Ireland, Secretary of State for the Home Department, *First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking* (October 2012), p. 49. The publication refers, specifically, to joint investigations conducted between the United Kingdom and Poland and Bulgaria.

<sup>14</sup> CTOC/COP/2008/CRP.5, p. 14.

<sup>15</sup> Britton and others, *Trafficking in Persons and Smuggling of Migrants*, p. 41. See also CTOC/COP/2008/CRP.5, p. 7.

<sup>16</sup> United Kingdom, Crown Prosecution Service, "Joint investigation teams", 10 March 2020. Available at [www.cps.gov.uk/legal-guidance/joint-investigation-teams](http://www.cps.gov.uk/legal-guidance/joint-investigation-teams).

<sup>17</sup> Organization for Security and Cooperation in Europe, *Resource Police Training Guide: Trafficking in Human Beings* (Vienna, 2013), p. 166.

<sup>18</sup> *Toolkit to Combat Trafficking in Persons*, p. 213.

exchange of information between the relevant authorities, and the ability to quickly overcome translation/interpretation challenges, can lead to the early identification of victims and their referral to protection and assistance services, which should be a core component of all criminal justice responses to trafficking in persons.

26. A further advantage of joint investigations is that they allow for the informal exchange of knowledge between the authorities of the States involved, which can result in a better understanding of all aspects of the crime. Moreover, by building trust and relationships, by the time operations have ended, the officers involved will have established contact points with their counterparts that can foster further formal and informal cooperation in future cases.

### **Specialized prosecutions**

#### *Importance of specialized expertise on trafficking in persons*

27. As noted, multiple challenges are commonly experienced in the investigation and prosecution of trafficking cases. At the domestic level, investigative authorities (including law enforcement, prosecutors and judicial authorities) may lack familiarity with the crime type and its indicators and patterns, which often results in fewer detections and/or prosecutions of cases. At times, trafficking activities may be inaccurately prosecuted under less severe offences in order to secure a conviction.<sup>19</sup> Lack of experience may thus translate into a failure to appropriately punish perpetrators, and negatively affect the ability of victims to receive the necessary protection and assistance.

28. As indicated in the *Global Report on Trafficking in Persons 2018*, convictions for trafficking cases, while having generally increased globally, remained quite low in the reporting period, with the result that perpetrators enjoyed a large degree of impunity.<sup>20</sup>

29. Specialized expertise in detecting human trafficking cases and conducting investigations and prosecutions both domestically and across borders might therefore help strengthen criminal justice responses to this crime. In this regard, States parties may consider conducting specialized prosecutions in cases of trafficking by creating dedicated prosecutorial units or teams with substantive expertise and overall understanding of the crime of trafficking in persons, which can devote their resources solely to the investigation and prosecution of such offences.<sup>21</sup> Where resources are limited, the specialization of one or more prosecutors within existing prosecution services can also constitute a viable alternative.

30. In general, the establishment of specialized prosecutions is a widely used practice in many jurisdictions. In addition to the crime of trafficking in persons, specialized prosecutions are often instituted for especially complex crimes, such as national and transnational organized crime, including mafia-type offences, corruption,<sup>22</sup> terrorism and cybercrime, as well as for those offences that involve particularly vulnerable victims, such as domestic and sexual violence, and child abuse.<sup>23</sup>

<sup>19</sup> In such cases, it is important to recall article 11, paragraph 2, of the Organized Crime Convention, concerning the use of discretion in prosecution, adjudication and sanctions of transnational crime, which should take into account the seriousness of offence.

<sup>20</sup> *Global Report on Trafficking in Persons 2018*, pp. 23–24.

<sup>21</sup> UNODC, *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide*, Criminal Justice Handbook Series, (Vienna, 2014), p. 27.

<sup>22</sup> Article 36 of the United Nations Convention against Corruption, for example, requires States Parties to ensure the establishment of a body or bodies or the existence of persons specialized in combating corruption through law enforcement.

<sup>23</sup> See UNODC, *The Status and Role of Prosecutors*, p. 28; see also UNODC, “Access to justice: the prosecution service”, Criminal Justice Assessment Toolkit (Vienna, 2006), p. 15; Jennifer G. Long and John Wilkinson, “The benefits of specialized prosecution units in domestic and sexual violence cases, *Strategies in Brief*, No. 8 (December 2011).

31. In the case of trafficking in persons, having dedicated specialized prosecutors at the national or subnational level and, where resources allow, establishing relevant specialized bodies or units can have a positive impact on the overall effectiveness of anti-trafficking responses. The *Global Report on Trafficking in Persons 2018* draws a link between the development and strengthening of institutional frameworks in reporting countries, including the strengthening of investigative and/or prosecutorial coordination and capacity, and the overall improvement of criminal justice responses recorded in the past few years.<sup>24</sup>

#### *Legal frameworks*

32. While the Organized Crime Convention and its Trafficking in Persons Protocol do not contain specific provisions for the establishment of specialized prosecutions for the fight against transnational organized crime and human trafficking, the *International Framework for Action To Implement the Trafficking in Persons Protocol*, developed by UNODC as a technical assistance tool to assist States parties to better implement the Trafficking in Persons Protocol, recommends the establishment of relevant institutions, such as specialized units, as a way to improve prosecution efforts and implement the Protocol requirements.<sup>25</sup>

33. In addition, other international and regional instruments touch upon this specific measure. For instance, the Council of Europe Convention on Action against Trafficking in Human Beings requires States parties, in its article 29, to adopt measures to ensure that persons or entities are specialized in the fight against trafficking and the protection of victims. Such persons or entities should be independent as provided by national law and be equipped with adequate training and financial resources to carry out their tasks. To do so, the Council of Europe Convention envisages two main modalities: States may decide to have a number of specialized officers within existing bodies, including judges and prosecutors, with expertise on trafficking in persons, or to establish units or teams solely dedicated to combating human trafficking, either as separate entities or within existing bodies. Such units or teams, in addition to having expertise and being provided with adequate resources to centralize all the information necessary to combat human trafficking, may also establish partnerships and cooperation with their counterparts in other countries.

34. Moreover, recommendation 8 of the Council of Europe Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system, recommends to States the specialization of prosecutors in the fight against certain complex crimes, such as organized crime, in larger offices or at the regional or national level, as a matter of priority. Additionally, the recommendation encourages the development of teams of specialists, including multidisciplinary teams with different backgrounds, to be considered in order to improve operational effectiveness.<sup>26</sup>

35. In Latin America, the Ibero-American Association of Public Prosecutors adopted in 2019, with the support of UNODC, the Protocol on inter-institutional cooperation between Ibero-American public prosecutors to strengthen the investigation of, attention to and protection of victims of the crime of trafficking in persons and the smuggling of migrants. The Protocol, in its article 17, encourages parties to create specialized prosecutors' offices for national coordination in each of the public ministries.

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<sup>24</sup> *Global Report on Trafficking in Persons 2018*, pp. 21–22.

<sup>25</sup> UNODC, *International Framework for Action To Implement the Trafficking in Persons Protocol*, 2009, pp. 10 and 17.

<sup>26</sup> Explanatory report to the Council of Europe Convention on Action against Trafficking in Human Beings, commentary to article 29 of the Convention, paras. 292–293.

*Advantages and related considerations*

36. As noted, specialized prosecutors have substantive knowledge of the main elements, indicators and patterns that characterize offences of trafficking in persons for different exploitative purposes, enabling them to navigate the complexities arising throughout the processes and ultimately build stronger cases before the courts. Specialized prosecutors can also be equipped with specialized legal and forensic knowledge as part of their training to deal with certain evidentiary challenges typical of human trafficking cases, such as the presence of biological evidence on the crime scene, which may prove important, for example, in cases of trafficking in persons for the purpose of sexual exploitation.<sup>27</sup>

37. Due to cross-cutting aspects typical of human trafficking cases, whereby the main trafficking offence is often linked to the commission of other crimes or violations, such as money-laundering, immigration or labour offences, specialized prosecution units or entities can particularly benefit from a multidisciplinary team composition. States parties may consider creating multi-agency and multidisciplinary teams with specialized human trafficking knowledge, where specialized prosecutors may represent one component, while other members may include, for instance, financial investigators, labour officials, or migration authorities, who have specific expertise on relevant matters.<sup>28</sup> Moreover, such specialized teams should include social protection services, if possible health-care providers, and non-governmental stakeholders (providing assistance and protection services to victims, including shelter, health care and legal assistance), so as to ensure that criminal justice responses include the provision of relevant protection and assistance for victims.

38. Having a wider pool of expertise within the specialized team can help build a stronger, proactive and evidence-based prosecution (i.e., by gathering evidence, including on suspicious financial transactions, through the support of financial investigators, cybercrime experts and others), instead of relying primarily on testimonial evidence from victims, which may not be willingly given and/or fall short in terms of quality, as occurs in many cases.

39. In addition, specialized prosecutors may be better at dealing with victims of human trafficking than are non-specialized prosecutors. Their familiarity with the type of trauma experienced by victims and crime-specific dynamics pertaining to such cases will better enable them to deal with certain challenges arising, including reluctance to appear in a trial. If trust is built with victims and witnesses, they may cooperate more willingly in the investigations and provide testimonies in the proceedings. Moreover, specialized prosecutors can ensure that protection and services are promptly provided.<sup>29</sup>

40. Further, it is likely that specialized prosecutors will amass accumulated knowledge and expertise throughout the years, thus functioning as a sort of knowledge hub for human trafficking investigations and prosecutions, which can be further shared with relevant counterparts in the investigations.

41. Making use of specialized prosecutions can also help set precedents in court on certain trafficking-related challenges<sup>30</sup> For example, an effective trafficking prosecution based on specialized skills and knowledge may result in a sentencing outcome that better reflects the particular realities of the crime. This may, in turn, provide a basis for similar sentencing outcomes in future cases. Another example

<sup>27</sup> UNODC, *The Status and Role of Prosecutors*, p. 36. See also UNODC, *Evidential Issues in Trafficking in Persons Cases*, p. 47, to learn more about the kinds of evidence in trafficking in persons cases.

<sup>28</sup> UNODC, *The Status and Role of Prosecutors*, p. 27; United States Department of State, “Dedicated Prosecution Units”, 20 June 2020.

<sup>29</sup> United States Department of State, “Dedicated Prosecution Units”. See also United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), “Establishing special prosecutorial units”, 23 December 2011 and Long and Wilkinson, “The benefits of specialized prosecution units”, p. 2.

<sup>30</sup> United States Department of State, “Dedicated Prosecution Units”.

relates to the way a court may consider credibility questions pertaining to the victim. A strong judicial pronouncement on the reasons why, for example, trafficking victims may provide inconsistent evidence – based on strong advocacy by experienced prosecutors – may make it more likely that future cases involving similar situations will be addressed effectively by the courts.

42. Finally, additional advantages relating to this practice include an overall better coordination of prosecution efforts of human trafficking cases at the national level, given that investigation and prosecution activities will be concentrated among fewer units or individuals with specialized expertise throughout the territory (or centralized in case dedicated units are established at the national level), and better regional and international cooperation and coordination. Entities in charge of specialized prosecutions are well placed to establish informal channels of communication and information-sharing with their counterparts in other countries, due to their shared expertise and experiences.<sup>31</sup>

#### **IV. Practical challenges arising in the context of joint investigations and specialized prosecutions**

43. While joint investigations and specialized prosecutions have proved to be successful practices to improve the investigation and prosecution of complex national and cross-border cases of trafficking in persons, practical challenges may arise in these contexts.

##### *Joint investigations*

44. Regarding joint investigations of trafficking in persons cases, a number of obstacles may be identified:

##### Legislative

- Lack of clear legal frameworks at the national level and of guidance on how to establish joint investigations, including in terms of regulating the extent of power that foreign authorities can exercise under the integrated model for joint investigations, as well as other operational aspects, such as control of operations and direct information-sharing.
- One of the purposes of joint investigation is gathering evidence in different jurisdictions in a format that is admissible for future prosecutions. However, there is reportedly fear that admissibility challenges may arise in court for the evidence gathered in the framework of a joint investigation (including, for instance, when resulting from the use of investigative methods which are allowed in one jurisdiction but prohibited in another).<sup>32</sup> In this regard, legal instruments do not provide sufficient guidance on standardized methods of gathering evidence usable in court.
- Differences in domestic legislation regulating the operations of joint investigations by the concerned parties, as well as the investigative methods used, for instance, in areas such as surveillance, rules on disclosure and confidentiality of documents, interceptions and civil criminal infiltrations, can constitute challenges to effective joint investigations. This can be particularly the case when the countries concerned have different legal systems.

<sup>31</sup> Morten Bergsmo, ed., *Thematic Prosecution of International Sex Crimes*, 2nd ed., Forum for International Criminal and Humanitarian Law (FICHL) Publication Series, No. 13 (Brussels, Torkel Opsahl Academic EPublisher, 2018), pp. 243–244. The publication explores the use of specialized bodies in the context of sex crimes. However, the conclusions drawn on the advantages of specialized prosecutions can also apply to trafficking cases.

<sup>32</sup> Council of Europe, Conclusions of the 14th Annual Meeting of National Experts on Joint Investigation Teams (JITs), document No. 12133/18, p. 4.

- Civil and criminal liability of foreign law enforcement officers when operating in the territory of the host State.

#### Procedural

- In most cases, joint investigations are established when parallel national investigations are already taking place. However, there may be reluctance to start this procedure if the national investigations are at different stages.<sup>33</sup>

#### Operational

- Lack of clarity as to the competent authority who is to provide authorization to initiate joint investigations as well as of contact points in the counterparts.
- Under the integrated, active model (JITs), a leader is designated. The existence of double leadership – one at the national police level and another in the JITs level – can create confusion in case of contradicting orders.
- Language barriers between law enforcement officers of different countries may represent an obstacle, especially where interpretation is very costly.

#### General

- Lack of sufficient specific training for criminal justice authorities. In particular, the lack of knowledge about the circumstances in which joint investigations are a suitable instrument and about the modalities of establishment may cause delays in processes.
- Lack of human and financial resources may constitute an obstacle, especially with regards to attendance in operational meetings and participation of members from foreign countries.
- Lack of a common understanding of the term “teams” and “bodies” across jurisdictions: in some countries, joint investigations are conducted by specific teams with specific leaders, while in others, teams may be established on an ad hoc basis, leading to obstacles related to team composition and hierarchy.
- Lack of trust on the part of victims of trafficking in the authorities of the home country may pose challenges with respect to the extent of inclusion of law enforcement authorities of countries of origin in the investigation and prosecution of cases.

#### *Specialized prosecutions*

45. As for specialized prosecutions, obstacles and challenges may include the following:

#### General

- There is a general lack of guidance on how and in what modalities States should pursue the goal of having prosecutors with specialized expertise in human trafficking cases. In addition, despite wide acknowledgement of the advantages of having specialized prosecutors for trafficking in persons cases, there is a general lack of research on the efficacy of this practice.
- Establishing units dedicated to the prosecution of trafficking in persons may require significant economic and human resources. In some countries, such specialized units would not be a desirable option, and the specialization of a number of prosecutors may be a viable alternative. In addition, even where such units exist, prosecutors may lack the capacity to carry out their tasks and at the same time provide tactical advice to other non-specialized units.
- Specialization of prosecutors may not be undertaken due to the perception that it may add complexity in the system.

<sup>33</sup> Ibid., p. 7.

- Close cooperation of prosecutors with law enforcement authorities in the investigations may compromise the impartiality and objectivity of the prosecution. To face this challenge, some jurisdictions have opted for dividing tasks among the specialized prosecution units and designating a group for the provision of legal advice to investigators, while another group takes over the case and assesses whether to prosecute it.
- Specialized prosecutors need to undertake regular training to be able to handle emerging issues in the field of trafficking and be provided with up-to-date tools for investigation. However, economic constraints may pose an obstacle to providing and receiving such training.

#### Operational

- As specialized units on different crimes proliferate at the national level, a lack of coordination between such units where cases have overlapping mandates (such as organized crime cases and human trafficking cases) may become a challenge. In some cases, lack of coordination may result in specialized prosecutors not being consulted by local police at the onset of investigations.

## V. Promising practices on joint investigation and specialized prosecution

46. A number of promising practices have emerged regarding both joint investigations and specialized prosecutions of trafficking in persons cases.

47. In terms of joint investigations, for instance, practices of coordination and information exchange among competent authorities may help establish contacts across jurisdictions and foster further use of this instrument. One notable regional network assisting the establishment of joint investigations is the Network of National Experts on Joint Investigation Teams, established by the European Union Agency for Criminal Justice Cooperation (Eurojust) in 2005. The Network hosts an annual meeting of national authorities with a view to encouraging the use of JITs, facilitating their establishment and fostering the sharing of experience and best practices in the European region.<sup>34</sup> A result of this initiative is also the “Joint investigation teams practical guide”, developed in cooperation with Eurojust, Europol and the European Anti-Fraud Office (OLAF), which provides practical information and guidance for practitioners in setting up JITs.<sup>35</sup>

48. UNODC has been supporting the consolidation of the Ibero-American Network of Specialized Prosecutors against Trafficking in Persons and the Smuggling of Migrants (REDTRAM), a network of the Ibero-American Association of Public Prosecutors, through multiannual technical assistance initiatives such as the TRACK4TIP programme and the Global Action to Prevent and Address Trafficking in Persons and Smuggling of Migrants (GLO.ACT). UNODC contributed to REDTRAM annual meetings in 2017, 2018 and 2020, in which the network decided to develop joint investigation teams for specific cases of human trafficking and migrant smuggling in the region, which became operational in 2019.<sup>36</sup>

49. Technical cooperation provided by international and regional organizations in setting up joint investigations can also support successful operations as well as helping build national capacities. For instance, in 2018–2020 UNODC provided support that led to a joint investigation between Malawi and Zambia initiated in September 2019, which led to the prosecution of four individuals for trafficking in

<sup>34</sup> European Union Agency for Criminal Justice Cooperation (Eurojust), Practitioner’s area, “JITs Network: the Network of National Experts on Joint Investigation Teams”. Available at [www.eurojust.europa.eu/](http://www.eurojust.europa.eu/).

<sup>35</sup> See Council of the European Union, Network of National Experts on Joint Investigation Teams, “Joint investigation teams: practical guide”, document No. 6128/1/17 REV 1 (Brussels, 2017).

<sup>36</sup> For more information, see UNODC, “Supporting victims, strengthening States: GLO.ACT supports regional network of prosecutors”, 11 December 2018.

persons in February 2020. The investigation was conducted by the Police of Malawi through the Mchinji District Coordination Committee against Trafficking in Persons established with the support of UNODC in 2018, together with the Zambia Police. Furthermore, in 2018, Eurojust supported 21 JITs that were investigating trafficking in persons cases.<sup>37</sup>

50. Proactive joint investigations should also be sought as an effective practice to respond to trafficking in persons. The early identification of relevant cases for which the establishment of a joint investigation is needed, as well as agreeing in advance on the overall prosecution strategy (such as which type of evidence is needed, the best location for investigation, etc.), can be crucial to dismantling the full chain of perpetrators of trafficking in persons activities and to preparing a solid case for prosecution, while at the same time having significant benefits for the early identification of victims.<sup>38</sup> In this sense, the inclusion of countries of origin, transit and destination in proactive JITs (as well as reactive JITs) can have significant benefits. Where necessary, amending relevant legal frameworks to allow for such an inclusion should be pursued.

51. In addition, training to improve the understanding and knowledge of authorities and officers responsible for deciding whether to set up joint investigations should be further promoted. International and regional organizations have long supported these kinds of efforts at the international, regional and national levels by delivering technical assistance and capacity-building training sessions on setting up and conducting joint investigations, including mock exercises and training of trainers – training of trainers being a particularly useful format for improving the sustainability of efforts.<sup>39</sup>

52. In conducting joint investigations of trafficking cases, it is also crucial that authorities in the concerned countries consider the systematic application of parallel financial investigations, special investigative techniques and the seizure of assets and the confiscation of the proceeds of crime. For that reason, States may wish to consider the integration of members with multidisciplinary expertise and training to also cover those aspects. A recent example of a successful multidisciplinary joint investigation is Operation Webmaster, supported by Europol, in which a joint investigation team was set up between Finland, Spain and Sweden, leading, in March 2019, to the arrest of six traffickers involved in human trafficking for sexual exploitation. This joint operation made use of financial investigations into the proceeds of crime, which led to the freezing and seizure of the criminal assets amounting to 1.5 million euros.<sup>40</sup>

53. In addition, practice has shown that while the investigative component in joint investigations most often has proved effective and successful, it is not always been matched by the effective provision of protection and assistance to victims. Creating synergies with other actors from the outset of a joint investigation, in particular stakeholders from protection and assistance services, should be considered a good practice to ensure that victims are protected and that their participation in criminal proceedings is encouraged.

54. Lastly, to overcome lengthy procedures in setting up joint investigations, the role of informal cooperation between law enforcement and judicial authorities cannot

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<sup>37</sup> For more information, see Eurojust, “Tackling cybercrime through joint investigation teams”, 7 June 2019.

<sup>38</sup> See a recent example of a successful proactive joint investigation, United States Attorney’s Office, Middle District of Florida, “Joint investigation nets multiple arrests in undercover sex trafficking operation”, 4 March 2020.

<sup>39</sup> For instance, from 18 to 21 February 2020, the Ibero-American Network of Specialized Prosecutors against Trafficking in Persons and the Smuggling of Migrants held a meeting in Santa Cruz, Plurinational State of Bolivia, where the Network requested UNODC to provide support in adapting the mock trial training methodology to promote a joint investigation team on trafficking cases.

<sup>40</sup> For more information, see European Union Agency for Law Enforcement Cooperation (Europol), “Parallel investigations bring down sexual exploitation network and freeze criminal profits in 12 countries”, 10 July 2019.

be overstated. Such informal exchange among counterparts is low-cost and yet crucial to ensure quicker and more effective communication prior to advancing formal requests of cooperation. In addition, personal contact can create a relationship of trust and mutual understanding, which can ultimately be beneficial in the course of investigations. States parties should therefore consider promoting informal channels of communication between concerned authorities at all levels, wherever appropriate.

55. For what concerns specialized prosecutions, best practices include training of specialized prosecutors on human rights and on gender- and age-sensitive and trauma-informed approaches. This will help them better deal with victims of this crime, including child victims, on the one hand, to ensure that protection and assistance is adequately afforded to victims, and, on the other, to increase understanding of the traumas experienced (both physical and emotional), avoid revictimization instances and foster more active participation of victims and witnesses in the proceedings.

56. Ongoing training in human trafficking trends, indicators and patterns is also crucial to ensure specialized prosecutors are equipped with up-to-date knowledge so that they can better deal with emerging issues related to trafficking, including the misuse of technology by traffickers to recruit and exploit victims.

57. Creating networks of specialized prosecutors at the regional and international levels is also an effective way to share knowledge and expertise, learn from others' experiences and practices and build common understanding. At the international level, an example of such a network is the Trafficking in Persons Network for Prosecutors of the International Association of Prosecutors, comprising prosecutors specialized on trafficking in persons from all parts of the world who gather to exchange experiences and good practices and to support better formal collaboration<sup>41</sup> Regionally, a further example beyond the afore-mentioned REDTRAM, is the West African Network of Central Authorities and Prosecutors against Organized Crime, established in May 2013 with the support of UNODC, which comprises specialized prosecutors and magistrates from 15 countries across West Africa and is aimed at strengthening capacity and operational cooperation among authorities responsible for international cooperation in criminal matters, in particular, to more effectively combat all forms of organized crime, including trafficking in persons.<sup>42</sup>

58. Moreover, specialized prosecutors, due to their high-level of knowledge, will serve as a knowledge hub on trafficking in persons in their countries, and, through, for instance, shadowing programmes, they may be suited to effectively share expertise with junior prosecutors wishing to specialize in trafficking in persons. This can be a cost-effective way of providing much-needed continuity of expertise and training.

59. It is also a good practice that specialized prosecutors keep themselves informed on potential changes in the law on human trafficking, both statutory and case law, in order to ensure that investigation and prosecution of cases are up to date throughout the process.

60. In those jurisdictions where there are centralized units at the State level mandated to prosecute trafficking in persons cases and, at the same time, specialized prosecutors at the provincial level, practice has shown that it is important to ensure coordination so to establish which prosecutorial level would achieve the best outcome.

61. Finally, where national law allows, specialized prosecutors should participate in joint investigations together with law enforcement to contribute with their specialized expertise and help provide law enforcement officers with legal advice on, for example, areas of evidence admissibility for future trials. In addition, the inclusion of specialized prosecutors in such process would ensure that prosecutions occur following joint investigation operations. In 2019, UNODC supported an INTERPOL-led joint investigation, known as Operation Turquesa (28–31 October), in which

<sup>41</sup> For more information, see [www.iap-association.org/TIPP/Home.aspx](http://www.iap-association.org/TIPP/Home.aspx).

<sup>42</sup> For more information, see UNODC, West African Network of Central Authorities and Prosecutors against Organized Crime. Available at [www.unodc.org/](http://www.unodc.org/).

authorities from 20 countries across the Americas acted on leads and carried out nearly 1 million checks at air, land and sea borders in order to disrupt the organized crime groups behind key smuggling routes to the United States of America and Canada. The operation led, among other things, to the identification of human trafficking victims.<sup>43</sup> Currently, UNODC is working with REDTRAM to facilitate the monitoring of the case files opened under Operation Turquesa at the country level, with a view to ensuring that specialized prosecutions promptly take place in the aftermath of the operation.

## VI. Previous Working Group recommendations on related topics

62. The Working Group on Trafficking in Persons has, to date, formulated more than 250 recommendations advising States parties on the implementation of the Trafficking in Persons Protocol.

63. With regards to joint investigations, the Working Group has made relevant recommendations at its first, second, fourth and ninth meetings, which were held respectively on 14 and 15 April 2009, 27–29 January 2010, 10–12 October 2011 and 9–11 September 2019. In particular, the Working Group’s past recommendations have repeatedly emphasized the following: (a) the importance of facilitating usage of the Organized Crime Convention provisions related to the use of joint investigation teams and special investigative techniques in the investigation of cases of trafficking in persons at the international level; (b) the use of joint investigations as a practical means of offering technical assistance to other States and strengthening a transnational criminal justice response to trafficking in persons, with particular emphasis on joint operations between countries of origin and destination; (c) the use of joint investigation in cases of trafficking in persons for the purpose of organ removal; and (d) the need to establish joint investigation teams for specialized investigations and to respond to extradition and mutual legal assistance requests in an efficient way in responding to cases of trafficking in persons, including in relation to the proceeds of crime.

64. While the Working Group on Trafficking in Persons has not adopted recommendations specific to the establishment of specialized prosecutions as a way to strengthen efforts to counter trafficking in persons, recommendations were adopted at its second meeting on the importance of establishing national coordination mechanisms, also at the level of investigation and prosecution,<sup>44</sup> as well as on the importance of delivering up-to-date training to specialized staff in the criminal justice system, including court staff, on sensitization to trauma and appropriate gender- and age-related, cultural and other considerations. Moreover, at its fifth meeting, the Working Group recommended the delivery of specialized training on persistent and emerging trafficking-related issues to specialized staff, including law enforcement officers and criminal justice responders.<sup>45</sup>

## VII. Key tools and recommended resources

### 1. International Framework for Action to Implement the Trafficking in Persons Protocol

65. The *International Framework for Action to Implement the Trafficking in Persons Protocol* is a technical assistance tool to support Member States in effectively implementing the Trafficking in Persons Protocol. The *Framework for Action* consists

<sup>43</sup> For more information, see INTERPOL, “People smuggling networks hit hard in Operation Turquesa”, 14 November 2019.

<sup>44</sup> CTOC/COP/WG.4/2010/6, para. 15.

<sup>45</sup> CTOC/COP/WG.4/2010/6, para. 61, and CTOC/COP/WG.4/2013/5, para.33. (The recommendation refers to the increased use of the Internet to recruit victims by traffickers.)

of a narrative part and a set of tables. The narrative describes key challenges in the implementation of the Trafficking in Persons Protocol and proposes general measures that can be taken in order to more effectively address these challenges. The set of tables details those measures further, through five pillars containing practical actions to support the implementation of the Trafficking in Persons Protocol, including with regard to investigation and international cooperation.<sup>46</sup>

## **2. Toolkit to Combat Trafficking in Persons**

66. The *Toolkit to Combat Trafficking in Persons* seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society. Specifically, the *Toolkit* is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Chapter V of the *Toolkit* addresses law enforcement and prosecution, including joint investigations, and provides reference tools, sets of checklists, indicators, and training material related to core considerations related to law enforcement responses to trafficking in persons. Chapter IV deals with the international mechanisms for criminal justice cooperation, including law enforcement cooperation.

## **3. The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide**

67. *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide* is a joint publication of UNODC and the International Association of Prosecutors, which is aimed at assisting Member States in their review or development of rules for the prosecution service, in accordance with the international standards and norms. It seeks to illustrate those standards and norms and to expose readers to different noteworthy practices, including specialization of knowledge.

## **4. ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases**

68. The *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, a joint publication of UNODC, the Association of Southeast Asian Nations (ASEAN) and the Government of Australia, provides guidance regarding measures for international legal cooperation, with a focus on States members of ASEAN. Various types of international cooperation are outlined, including informal police-to-police cooperation and more specific, formal types of cooperation. It is designed as a practical tool to equip criminal justice practitioners, primarily law enforcement officers, prosecutors, central authority lawyers and others within the ASEAN region, to respond to the challenges posed by trafficking by adequately investigating and prosecuting trafficking cases and executing international assistance requests.

## **5. Council of the European Union “Joint investigation teams: practical guide”**

69. The “Joint investigation teams: practical guide” of the Council of the European Union provides information, guidance and advice on the formation of JITs by European practitioners. It was developed and launched in 2017 by the European Union Network of National Experts on Joint Investigation Teams in cooperation with Eurojust, Europol and OLAF and builds upon a previous manual on the basis of practical experience acquired in European Union States. It also incorporates a JITs Model Agreement for use by States.

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<sup>46</sup> See particularly table 1, “Prosecution”, and Table 5, “International cooperation/coordination”.