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Item 2 (b) of the provisional agenda*

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**Comments of States parties and observers on the outcome of the tenth meeting of the Working Group on Trafficking in Persons (Vienna, 10-11 September 2020)****Note by the Secretariat****I. Introduction**

1. The tenth meeting of the Working Group on Trafficking in Persons was held on 10 and 11 September 2020, in a hybrid/in-person format, with delegates participating both in person and, in higher numbers, remotely, via the platform Interprefy. The two substantive agenda items of the meetings were: (i) appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked and (ii) best practices in joint investigations and specialized prosecutions. The Working Group was unable to complete line-by-line negotiations of the draft recommendations proposed at that meeting, due to the specific meeting format.
2. In accordance with the agreement of the Working Group on Trafficking in Persons in its meeting of 10-11 September 2020, the following arrangements, which do not constitute a precedent for future Working Group meetings, have been actioned through this Conference Room Paper.
3. The Secretariat, on behalf of the Chair of the Working Group, circulated, on 25 September 2020, via a non-paper, the draft recommendations to the Permanent Missions of Member States which registered to participate in the Working Group, as well as to all registered delegates. The non-paper included all the draft recommendations contained in the draft meeting report documentation, including the annotations noted in the on-screen editing of the draft recommendations text, as of the close of the meeting. While the Working Group agreed in its meeting on the final

* CTOC/COP/2020/1.



text of the first two recommendations, it did not conclude on an overarching chapeau for all the recommendations.

4. Delegations were thus requested to provide any comments on the text of the draft recommendations contained in the non-paper by Monday, 5 October 2020, noting that the outcome of the exercise would be transmitted to the Conference of the Parties to the United Nations Convention against Transnational Organised Crime through this Conference Room Paper.

5. Within this deadline, the following States parties and observers (in alphabetical order) provided comments, either in the form of tracked changes in the text of the draft recommendations or through the submission of narrative information: Austria, Canada, El Salvador, France, Iran (Islamic Republic of), Israel, Kyrgyz Republic, Mexico, Netherlands, Parliamentary Assembly of the Mediterranean, Singapore, Thailand, Tunisia, United Kingdom and United States of America.

6. The text that follows, in sections II and III below, reflects the draft recommendations under discussion as of the close of the meeting of the Working Group as well as all comments received, including of a more general nature. Submissions received in languages other than English (i.e. from Tunisia in Arabic, from El Salvador in Spanish and from France in French) were unofficially translated through the use of available internal resources.

II. Comments of States parties and observers on the draft recommendations of the eleventh meeting of the Working Group on Trafficking in Persons

General draft recommendations

Draft recommendation 1¹

States parties should consider establishing and periodically reviewing national frameworks, as well as implement policies ~~aimed at protecting and assisting victims and survivors~~ [add: Canada] of trafficking in persons, including at the local level, by adopting ~~an integrated and~~ multidisciplinary approach that is integrated across public and private sectors [modify as tracked or with “multi-agency and multidisciplinary approach”]: USA.

[agreed as amended²]

Draft recommendation 2

States parties should ensure the proactive and timely identification of victims and survivors [add: Canada] of trafficking in persons so as to allow the provision of the necessary protection and assistance, as well as the effective prosecution of the perpetrators of this crime.

[agreed³]

Draft recommendation 3

[States parties ~~should be encouraged to provide~~ing [modify as tracked: Colombia, Algeria, Israel, Indonesia] for the availability of temporary residence permits for ~~family members of~~ [delete ‘family members’]: Russian Fed., Tunisia, Iran,

¹ All draft recommendations, with the exception of draft recommendations 11bis and 26bis, were originally provided to the Working Group at its meeting in CTOC/COP/WG.4/2020/L.1/Add.1, which were provided in CTOC/COP/WG.4/2020/L.1/Add.2.

² The recommendation was agreed at the Working Group meeting on 11 September 2020, however, new changes have now been proposed in comments on the non-paper.

³ The recommendation was agreed at the Working Group meeting on 11 September 2020, however, new changes have now been proposed in comments on the non-paper.

Netherlands, Indonesia, retain: USA] –victims and survivors [add: Canada] of trafficking in persons, ~~in accordance with domestic law~~ [option 1: add ‘in accordance with domestic law’: China, Nigeria, Venezuela, Israel, Netherlands, UK⁴, Indonesia, remove: Tunisia]. [option 2: delete the recommendation: China, Iran, Egypt, Algeria]

[pending]

Draft recommendation 4⁵

[States parties should cooperate, ~~when appropriate~~ [add: Israel] to prevent and address the risk of ~~retaliation or intimidation~~ [add: Canada] ~~retribution~~ [delete: Canada] by traffickers against their victims by ~~making efforts to adequately protect a victim~~ ~~ensuring adequate protection of a victim~~ [modify as tracked: Israel] of trafficking in persons and their family members, ~~when such persons are in different countries~~ [delete: Thailand, Indonesia].]

[pending]

Draft recommendation 5

[States parties ~~should be encouraged to~~ [modify as tracked: Egypt] [retain: “should“: UK] strengthen partnerships with civil society organizations and other relevant stakeholders to support initiatives ~~by implementing coordinated, community-based approaches as part of a data-driven comprehensive prevention strategy including awareness-raising activities~~ [add: Austria] to build knowledge among ~~individuals~~ ~~population~~ [replace with ‘individuals’: Israel⁶, retain ‘populations’: Egypt] persons or groups [remove: Egypt, Russian Fed., retain: USA, Israel] [replace ‘individuals/population’ with ‘persons or groups’: USA, Tunisia] ~~members of society~~ [replace with ‘members of society’: Egypt, remove: Israel] who are vulnerable ~~populations of~~ to trafficking in persons [replace ‘vulnerable populations’ with ‘populations who are vulnerable to...’: Egypt] as well as on the rights of trafficking victims.]

[pending]

Draft recommendation 6

[States parties are encouraged to provide multi-agency and multidisciplinary training, including on organized crime, labour law, ~~gender~~ [add ‘gender’: Portugal, Honduras, Tunisia, Spain, Argentina, Mexico, Colombia, Canada, Sweden, Egypt, Australia, Israel, Netherlands, UK⁷, Indonesia, remove: Iran, Russian Fed., China, Algeria] and migration issues ~~and specific needs of women and girls~~ [replace ‘gender’ with ‘and specific needs of women’: Egypt, remove: Australia], for relevant stakeholders to improve national coordination and international cooperation in the global response to trafficking in persons.]

[pending]

Draft recommendation 7

[States parties should ~~strive to~~ [remove ‘strive to’: Colombia, Nigeria, Tunisia] enhance international cooperation, including by simplifying mutual legal assistance processes ~~in line with article 18 of~~ ~~in accordance with~~ [modify as tracked: Russian

⁴ UK: support in accordance with domestic law or removal of the recommendation.

⁵ Canada: UNTOC itself provides that parties must take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony, and as appropriate their relatives and other persons close to them. It is focused on criminal proceedings.

⁶ Subsequent communication from Israel expresses support for the formulation “persons or groups who are vulnerable to trafficking in persons”.

⁷ UK: would support use of the term “gender”, but recognise that UK has strong approach to VAWG crimes.

~~Fed., Nigeria, Tunisia]~~ the UNTOC ~~and domestic law [add: Canada], especially including [modify as tracked: Colombia, Nigeria]~~ to facilitate the safe and preferably voluntary return of victims ~~and survivors [add: Canada]~~ of trafficking in persons ~~and prohibit refoulement [add 'and prohibit refoulement': Tunisia, Honduras, remove: USA, Netherlands⁸, Indonesia⁹].~~

[pending]

Draft recommendation 8¹⁰

States parties should ~~strengthen cooperation [add: El Salvador]~~ to identify and prosecute the full chain of perpetrators of trafficking in persons, especially the heads of criminal networks and members who have played a key role in the organization of the acts of trafficking, ~~while striving making a parallel effort [modify as tracked: El Salvador] to protect the rights and ensure the prioritizing the protection of the right and the~~ safety ~~[modify as tracked: Israel¹¹] of victims and survivors of trafficking [add: Canada].~~

Draft recommendation 9

States parties ~~are encouraged to should [modify as tracked: UK]~~ make enhanced use of international and regional police bodies, such as INTERPOL, with a specialized expertise on trafficking in persons, including with a view to facilitate the exchange of intelligence and information in the response to this crime.

Draft recommendation 10

States parties should ~~cooperate in exchanging [modify as tracked: El Salvador],~~ in accordance with their domestic law, information on means and methods used by organized criminal groups for the purpose of trafficking in persons, including on the recruitment, ~~haboring [add to better reflect the Protocol language: Israel]~~ and transport of victims, ~~type of exploitation [add: UK]~~ as well as on trafficking routes and connections between traffickers and other criminal groups.

Draft recommendation 11

States parties are encouraged to ensure the admissibility and use in court proceedings of digital evidence concerning trafficking in persons, in accordance with domestic law and their international obligations concerning human rights, privacy ~~rights [add: Canada]~~ and due process.

Draft recommendation 11bis¹²

States Parties ~~should are encouraged [modify as tracked: El Salvador, UK]~~ to request ~~UNODC UN agencies [modify as tracked: Tunisia¹³, retain as original: Indonesia], as~~

⁸ Netherlands: remove non-refoulement from recommendation. The term is used specifically in asylum cases, the Netherlands has specialised procedures for victims of trafficking.

⁹ Indonesia: agrees with the the USA to remove "prohibit refoulement". The addition is odd since most trafficking victims would like to return to their home country. If the delegation of Honduras and Tunisia added this to protect the victim from being forcibly removed before acquiring justice, Indonesia would propose removing "preferably" for the phrase "to facilitate the safe and preferably voluntary return").

¹⁰ Israel: it is unclear whether the emphasis of the recommendation is on "cooperation" or the "full chain". USA: the term "accomplices" could be used in this paragraph. This term has been used in other multilateral documents related to TIP, including the Global Plan of Action.

¹¹ Israel: victim protection should not be secondary to prosecution - it should be first priority.

¹² Originally provided to the Working Group at its meeting in CTOC/COP/WG.4/2020/L.1/Add.2.

¹³ Tunisia: suggests to expand the scope of provision of technical assistance to the countries, to facilitate the cooperation between them in the field of trafficking in persons across all offices of the UN organization, so that the provision of technical assistance is not limited only to the office of "UNODC".

~~needed, [delete: El Salvador, replace with “as appropriate”: Indonesia]~~ to provide technical assistance to facilitate international cooperation on trafficking in persons.
Draft recommendation 11ter [Proposed by the Kyrgyz Republic]¹⁴

State Parties are encouraged to make every possible effort to improve the exchange of information including on the methods used by organized criminal groups involved in trafficking in persons, as set forth in article 10, paragraph 1, of the Trafficking in Persons Protocol, and to consider developing standard operational procedures to allow law enforcement, immigration, or other relevant authorities of State Parties, as appropriate, to promptly send official information about identified victims to the countries of origin, including information on the acts and means used for the purpose of trafficking in persons in order to initiate a joint parallel investigation.

Draft recommendation 11quater [Proposed by Spain]¹⁵

States parties are invited to consider taking measures to establish as a criminal offence the use of services which are the object of exploitation, as referred in article 3(a) of the Protocol, when there is knowledge that the person is a victim of trafficking in persons.

Agenda item 2

Appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked.

Draft recommendation 12

States parties should ~~consider implement~~ [modify as tracked: UK] a non-punishment principle, ~~enshrined in domestic law [delete: Canada¹⁶] in accordance with their domestic law [add: UK]~~, as an essential part of their commitment to protecting the human rights of victims and survivors [add: Canada] of trafficking in persons. ~~[delete the whole recommendation: France¹⁷] [combine recommendations 12, 13 and 15 and replace with proposal (b) under recommendation 13: USA]~~

¹⁴ This was proposed as an additional recommendation by the Kyrgyz Republic in comments submitted on the non-paper.

¹⁵ This was proposed as an additional recommendation by Spain in comments submitted on the non-paper.

¹⁶ Canada: suggests the deletion as this wording is too prescriptive and appears to require enactment of a defence.

¹⁷ France: the constitutional principle of equality before the law implies that any person can be held criminally responsible for incriminated acts (Preamble to the French Constitution of October 4, 1958 and Art 1, 5 and 8 of the Declaration of Rights of the Man and of the Citizen of August 26, 1789). Consequently, the French legislator did not wish to include a general principle of penal irresponsibility for victims of human trafficking, given the diversity of the situations encountered. However, in addition to the existence of the principle of the opportunity of prosecution, other provisions make it possible to provide for the exemption from liability of victims forced to commit offenses, including the provisions relating to constraint and force majeure provided for in the article 122-2 of the penal code, and those relating to the state of necessity provided for in article 122-7 of the said code.

*Draft recommendation 13*¹⁸

States parties ~~should~~ are urged to [~~modify as tracked: Singapore, replace with: “are encouraged to provide”~~: Indonesia] consider providinge [~~add: Canada~~], in ~~the~~ accordance with ~~their~~ domestic law, policies and practices [~~add: Singapore~~], that victims and survivors [~~add: Canada~~] of trafficking in persons, including children [~~add: UK~~] are not punished or prosecuted for offences they were compelled to commit as a result of having been trafficked ~~acts that traffickers compelled them to commit~~ [~~modify as tracked: Canada~~], and consider encouraginge [~~add: Canada, replace with “provide”~~: Israel¹⁹] access to remedies if they are punished or prosecuted for such ~~acts~~ offences [~~modify as tracked: Canada~~], such as assistance in clearing their criminal records, or avoid imposition of such records, [~~add: Mexico~~] through expungement, pardon [~~add: Canada~~] or vacatur or shielding relevant records in accordance with their domestic law [~~add: UK~~], and, accordingly, establish domestic laws, guidelines and/or [~~modify as tracked: Canada, Israel~~] policies that ~~clearly~~ [~~delete: Canada~~] espouse these principles. [~~delete and replace with proposal (a): France~~] [~~combine recommendations 12, 13 and 15 and replace with proposal (b): USA~~]

(a) States parties should take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in humans for their involvement in criminal activities which they have been compelled to commit by their traffickers or committed as a direct consequence of being trafficked, endeavour to ensure that such measures are properly applied in practice and, where appropriate, provides them with access to remedies. [France]

(b) States parties should provide, in line with their domestic law, that victims of trafficking in persons are not punished or prosecuted for acts that traffickers compelled them to commit as an essential part of their commitment to protecting the human rights of victims, provide measures to safeguard victims, and encourage access to remedies if they are punished or prosecuted for such acts, such as assistance in clearing their criminal records through expungement or vacatur or shielding relevant records, and, accordingly, establish domestic laws, guidelines and policies that clearly espouse these principles. [USA]

Draft recommendation 14

States parties ~~may~~ are encouraged to [~~modify as tracked: El Salvador~~] consider the establishment of national mechanisms and [~~add: Tunisia~~] an international mechanism, including one that takes into account input of survivors of human trafficking [~~add: USA~~²⁰] to support the development of common terminology, legal definitions and

¹⁸ Canada: proposed revisions aim at reflecting States need for a degree of deference based on their distinct legal and criminal justice systems. The “clear” may be overly prescriptive in the context of this recommendation – there may not be scope to set out clear guidelines given prosecutorial/judicial discretion. From a Canadian perspective, provinces are generally in charge of developing policies/guidelines that speak to these issues. Israel: the first sentence, up to “commit”, seemingly repeats recommendation 12.

¹⁹ Israel: the remedies are within the power of the state, so “provide” seems more appropriate.

²⁰ USA: one of the most important elements to address human trafficking is to implement a survivor-informed practice that incorporates meaningful input from a diverse community of survivors at all stages of a program or project. The survivor voice is a vital part of establishing effective and comprehensive anti-trafficking strategies that advance prosecution, protection, and prevention efforts. Now more than ever, survivors are leaders in the anti-trafficking movement, whether they run organizations, advocate before legislatures, train law enforcement, engage with the public, or collaborate directly with governments to improve domestic and international programs. The term survivor has been used in previous multilateral documents and recommendations. See e.g. the Political declaration on the implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons (RES 72/1, para. 8): “We express solidarity with and compassion for victims and survivors, call for full respect of their human rights, and, recognizing their role as agents of change in the global fight against trafficking in persons, encourage further consideration of incorporating their perspective and experience in all efforts to prevent and combat trafficking in persons. We will provide appropriate care,

indicators for the identification of victims of trafficking in persons, including to ensure their protection and [add: Tunisia] for the purpose of upholding the principle of non-punishment of victims of trafficking. [delete the whole recommendation: Canada²¹, France²²]

assistance and services for their recovery and rehabilitation, working with civil society and other relevant partners. We will also undertake appropriate measures for access to justice and protections for victims in criminal justice processes, including measures to ensure that identified victims are not penalized for having been trafficked and that they do not suffer from victimization as a result of actions taken by Government authorities, communities and families.”; UNGA Resolution on Improving the Coordination of Efforts to Combat Trafficking in Persons. (A/RES/74/176, para. 7): “Expresses solidarity with and compassion for victims and survivors of trafficking in persons, and calls for the full respect of their human rights and the provision of appropriate victim-centred care and assistance, where applicable, including interpretation and sign language, where appropriate, to victims of trafficking, and services for their rehabilitation in cooperation with civil society and other relevant partners”; UNGA Resolution on Trafficking in Women and girls (A/RES/73/146, paras. 28 and 32): “Invites Governments to consider establishing or strengthening a national mechanism, with the participation of civil society, as appropriate, including non-governmental organizations, such as women’s organizations, and survivors of human trafficking, to ensure a holistic and coordinated approach to anti-trafficking policies and measures, to encourage the exchange of information and to report on data, underlying causes, factors and trends in human trafficking, especially trafficking in women and girls, and to include data on victims of human trafficking disaggregated by sex, age and other relevant factors” and “Calls upon Governments to promote the empowerment of women and girls, including survivors of human trafficking, in all stages of humanitarian response and to consider providing adequate access to redress”; CCPCJ Resolution on Strengthening measures against trafficking in persons (CCPCJ 27/4, paras. 2 and 5): “Encourages Member States to consider developing partnerships and networks that bring together national authorities, businesses, the media, academia, civil society organizations, survivors and other social actors to foster cooperation in the design and implementation of policies and programmes to prevent and eliminate trafficking in persons, including by facilitating the sharing of information, experiences and lessons learned, and acknowledging the significant impact of trafficking in persons on the victims’ immediate family members, especially children, in accordance with the applicable domestic and international law, and to work to address their needs as far as possible” and “Encourages Member States to consider developing programmes and continuing to build on existing ones, in accordance with domestic law, that include input from the private sector, civil society and other social actors, including survivors of the crime of trafficking in persons, with a view to helping victims of this crime to reintegrate into society and find employment and educational opportunities, and, in this regard, invites the private sector to contribute to the development of initiatives with Governments to protect and support victims of trafficking and those who are vulnerable to exploitation, including in the context of corporate social responsibility”; Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 9 to 11 September 2019, Recommendation 7: “States parties should consider consulting victims and survivors of trafficking in persons for both sexual and labour exploitation, members of at-risk groups, civil society, law enforcement, prosecutors and front-line service providers in identifying, developing and adapting strategies and initiatives to counter trafficking in persons” and Recommendation 8 “States parties should, wherever possible, incorporate the input of survivors in the development of policies which seek to eradicate trafficking in persons and support survivors to ensure a victim-centred and trauma-informed approach”.

²¹ Canada: proposed revisions aim at reflecting States need for a degree of deference based on their distinct legal and criminal justice systems. The “clear” may be overly prescriptive in the context of this recommendation – there may not be scope to set out clear guidelines given prosecutorial/judicial discretion. From a Canadian perspective, provinces are generally in charge of developing policies/guidelines that speak to these issues.

²² France: this recommendation appears to us to be far too premature, as many countries have not adopted such national mechanisms, an essential precondition for thinking about the establishment of an international mechanism. France is in the process of designing its own mechanism for identifying and referral of victims of trafficking, and will only be able to participate meaningfully in discussions on an international mechanism once this has been done. Furthermore, the reference to the principle of exemption from criminal liability of victims of trafficking does not suit us, as explained in the commentary on recommendation 12.

Draft recommendation 15²³

States parties ~~should consider~~ shall provide for [modify as tracked: El Salvador] ~~ing~~ measures to identify and [add: UK²⁴] safeguard victims and survivors [add: Canada], especially child victims, [add: USA²⁵] of trafficking in persons, ~~especially children~~ [delete: USA], when any decision is made not to prosecute them. [combine recommendations 12, 13 and 15 and replace with proposal (b) under recommendation 13: USA]

Draft recommendation 16

States parties should promote and [add: UK²⁶] provide support victim-centered and trauma-informed [add: USA²⁷] mechanisms for victims and survivors [add: Canada]

²³ Israel: considers that it is unclear what type of support the recommendation points at.

²⁴ UK: suggest looking at this recommendation and recommendation 16 below – to either combine or draw out more that support for victims should be unconditional regardless of whether they support a prosecution.]

²⁵ USA: recommends combining this paragraph with 12 and 13 (drafted paragraph of combination of 12, 13, and 15 included in proposal (b) under paragraph 13. If this paragraph is retained, USA highly recommends moving “especially children” higher up in the paragraph as noted in track changes. The way that the current paragraph reads implies that a decision could be made to prosecute children which we do not think was the intent.

²⁶ UK: providing support alone will not encourage victims to leave exploiters unless they know about it. Also suggest looking at this recommendation and recommendation 15 above – to either combine or draw out more that support for victims should be unconditional regardless of whether they support a prosecution.

²⁷ USA: a trauma-informed approach recognizes signs of trauma in individuals and the professionals who help them and responds by integrating knowledge about trauma into policies, procedures, practices, and settings. This approach includes an understanding of the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach places priority on restoring the survivor’s feelings of safety, choice, and control. Programs, services, agencies, and communities can be trauma-informed. Placing the crime victim’s priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on self-determination, and assisting victims in making informed choices; ensuring that restoring victims’ feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims. A victim-centered approach should also incorporate a trauma-informed, survivor-informed, and culturally competent approach. Victim-centered and Trauma-informed have been noted in previous resolutions and recommendations, e.g.: CCPCJ resolution 27/4 (2018), para.11: “Stresses the need for Member States to consider the rights of victims of trafficking in persons, consistent with their domestic law, and to consider including, through victim-centred and trauma-informed measures, to encourage the cooperation of victims and witnesses in criminal proceedings against offenders, specific programmes to protect the privacy and identity of victims and witnesses, ensure their safety before, during and after criminal proceedings and protect their immediate family, as appropriate, from retaliation, and also stresses the importance of proactive investigations and of developing evidence-based investigation techniques that are not solely dependent on victim testimony”; CCPCJ resolution 28/1 (2019), para. “Encourages Member States to consider adopting a victim-centred and trauma-informed approach in their crime prevention strategies, policies and programmes and to take into consideration the input of victims in their development and implementation, where appropriate”; Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 9 to 11 September 2019, Recommendation 3: “States parties should, in accordance with national legislation, on a voluntary basis, share best practices detailing the roles and responsibilities of civil society organizations and non-governmental organizations, such as community-based organizations and faith-based organizations, in referral mechanisms, to support policies, including by promoting a victim-centred and trauma-informed approach, bearing in mind the age and gender of victims of trafficking in persons or other vulnerable members of society”; Recommendation 6: “States parties should carry out relevant research involving academic and other institutions on new trends in trafficking in persons, including voluntary, trauma-informed interviews with victims to develop or adjust prevention strategies”; Recommendation 8: “States parties should, wherever possible, incorporate the input of survivors in the development of policies which seek to eradicate trafficking in persons and support survivors to ensure a victim-centred and trauma-informed approach”; and Recommendation 31: States parties should, whenever possible, incorporate the input of victims and/or civil society organizations in the development of training materials for diplomatic and consular officials or

of trafficking in persons that encourage victims and survivors [add: Canada] to leave their exploiters and ~~provide them with the confidence~~ protect their lives, liberties and security to [modify as tracked: Mexico] to ~~support~~ assist [modify as tracked: Israel] prosecutions of traffickers.

Draft recommendation 17

States parties should ensure that investigators and prosecutors are trained to ~~support~~ ensure [modify as tracked: Israel] effective implementation of ~~the non-punishment principle of victims for acts that traffickers compelled them to commit [add: France, retain “the” and “principle”: UK]~~ and in a trauma-informed approach [replace with: “victim centred approach: Indonesia] that takes into account age-, gender-, culture- and disability-sensitive perspectives [add: Canada] to minimize retraumatization of ~~victims and survivors [add: Canada,] of trafficking in persons [delete the whole sentence: Singapore, UK]~~ and ensure ~~encourage [modify as tracked: Singapore]~~ an understanding of the impact of trauma on the individual victim to enable them to participate effectively in prosecutions of their perpetrators. [Israel suggests to split this recommendation into two separate recommendations at the word “principle”, as both refer to training but the subject matter differs. The following proposal is suggested in this regard:

States parties should ensure that investigators and prosecutors are trained to support ensure effective implementation of the non-punishment principle.]

Draft recommendation 17bis [Proposed by Israel as separated from draft recommendation 17]

States parties should ensure investigators and prosecutors are trained, and in a trauma-informed approach to minimize retraumatization of victims of trafficking in persons and ensure an understanding of the impact of trauma on the individual victim to enable them to participate effectively in prosecutions of their perpetrators.

Draft recommendation 18

To further ~~to the [modify as tracked: Israel]~~ implementation of ~~the non-punishment principle of victims for acts that traffickers compelled them to commit, [add: France]~~ ~~[delete “Further to the implementation of the non-punishment principle”: Canada, USA]~~ States parties should uphold the rights of victims and survivors [add: Canada] of trafficking in persons by seeking to prevent revictimization, including through cooperation with Ombudsman Offices/Human Rights Institutions and [add: Mexico] civil society, survivors of trafficking in persons, academia, and other social actors [add: USA²⁸].

Draft recommendation 19

~~States parties should encourage R~~ relevant regional and international organizations are encouraged [modify as tracked: Thailand] to ~~promote [replace “States parties should encourage relevant regional and international organizations to promote” with “States parties should encourage national institutions to adopt”: Mexico]~~ a victim-centred and trauma-informed [delete: Singapore, replace with “victim centred approach”: Indonesia] approach, including the proactive and timely identification of victims and survivors [add: Canada] of trafficking in persons, ~~and the non-penalization of these victims for unlawful acts that traffickers compelled them to commit [delete: Canada].~~ Also, States parties should promote this approach in regional and international organizations. [add: Mexico]

liaison officers on indicators of trafficking in persons in order to ensure a victim-centred and trauma-informed approach”.

²⁸ USA: see justification for the term “survivor input” in footnote 16.

Draft recommendation 20

States parties ~~are encouraged to~~ should [modify as tracked: UK] provide information on ~~the~~ implementation of ~~the~~ non-punishment principle of victims for acts that traffickers compelled them to commit [add: France], ~~including their existing legislation~~ [delete: Canada²⁹], [replace with: “including domestic legislation, policy and”] [UK], case law where relevant [add: Canada], their [add: UK] related challenges ~~and~~ [delete: USA] good practices and lessons learned [add: USA], for inclusion in the UNODC SHERLOC Database. This will [add full stop and start a new sentence as proposed: UK], to support the development of a global overview of the implementation of non-punishment of victims for acts that traffickers compelled them to commit [add: France] ~~this principle~~ and improve responses to victims and survivors [add: Canada] of trafficking.

Agenda item 3

Best practices in joint investigations and specialized prosecutions

Draft recommendation 21

States parties should consider establishing dedicated prosecution units to consolidate and disseminate specialized anti-trafficking in persons expertise, inter alia by ~~through~~ [modify as tracked: Israel] partnering with local prosecutors, in accordance with their domestic law. State parties should ~~and~~ provide [split the sentence and modify as tracked: UK] specialized and/or joint training for professionals in the criminal justice system, such as [add: Canada] judges, prosecutors, ~~and~~ [delete: Canada] law enforcement, and other relevant actors [add: Canada].

Draft recommendation 22

While recognizing the importance of formal MLA Agreements [add: Indonesia] ~~s~~ State parties should strengthen their collaboration to more effectively combat trafficking in persons, and should consider going beyond formal mutual legal assistance agreements to developing [delete: Indonesia] coordinated trans-border information exchange, investigations and prosecutions to the extent consistent with domestic law, and with full respect for human rights and due process guarantees [add: Canada] insofar as their legislation and legal systems will allow [add: UK³⁰] based on the spirit of cooperation and principle of reciprocity [add: Indonesia].

Draft recommendation 23³¹

States parties should promote and encourage relevant regional and international organizations to promote [add: USA] specialized prosecution units [delete “specialized prosecution units”] [Israel³²], coordinated cross-border investigations, and regional collaboration, and consider exchange programmes for law enforcement officials particularly from priority countries (source and destination) [add: UK³³] to strengthen the effectiveness of criminal justice responses to trafficking in persons and share promising good [modify as tracked: UK] practices across jurisdictions.

²⁹ Canada: not all states will proceed via legislation, in accordance with the fundamental principles of their domestic legal system.

³⁰ UK: it requires all State parties have enabling legislation to allow for this. This recommendation and recommendation 23 could be consolidated and combined into one.

³¹ Canada: draft recommendations 22 through 25 contain overlapping elements pertaining to prosecution, and to a lesser extent, investigation. These could be streamlined. Anywhere that joint or shared efforts on prosecution and investigation are contemplated, there must be a reference to subject to domestic law, and fully respecting the due process guarantees and human rights of persons affected.

³² Israel: consider deleting as already mentioned in recommendation 21.

³³ UK: suggest focus on State parties priority countries. This recommendation and recommendation 22 could be consolidated and combined into one.

Draft recommendation 24

States parties ~~are encouraged to should~~ [modify as tracked: UK] establish, whenever possible and relevant, and to the extent consistent with domestic law, and with full respect for human rights and due process guarantees, [add: Canada] in accordance with domestic law [add: Indonesia] joint or coordinated [add: Indonesia] investigation teams, including within the framework of existing international and regional coordination mechanisms, such as INTERPOL, ~~and [delete: UK] Europol and through Eurojust [add: UK],~~ in order to ~~better respond to the crime of trafficking in persons and hold its~~ improve investigation, disruption and prosecutions of all perpetrators ~~accountable [modify as tracked: UK] and uphold the rights of all victims involved [add: UK].~~

Draft recommendation 25

States parties are encouraged, where appropriate [add: Indonesia] to deploy specialized prosecutors with expertise in the victim-centered and trauma-informed approach, [add: USA³⁴] organized crime, international cooperation and victim vulnerabilities to work closely with investigators from the early stages of investigations, to provide direction and build strong prosecution cases, to the extent consistent with domestic law, and with full respect for human rights and due process guarantees [add: Canada] [replace with “in accordance with their domestic legislation”]: UK].

Draft recommendation 26

States parties ~~should are encouraged to~~ [add: UK] cooperate with United Nations entities and other relevant international organizations, including national and international parliaments, in order to benefit from the dedicated network such as the one of the Parliamentary assembly of the Mediterranean [add: Parliamentary Assembly of the Mediterranean] to facilitate international cooperation in the fight against trafficking in persons, in particular, to identify and address gaps in legislative frameworks that hamper effective, transnational cooperation in criminal matters, and to promote the ~~harmonization– alignment [modify as tracked: Canada³⁵]~~ of anti-trafficking in persons laws with a view to enabling the establishment of joint investigations.

Draft recommendation 26bis.³⁶

States Parties should ~~ensure–encourage [modify as tracked: Singapore]~~ that prosecutors and law enforcement officials are appropriately trained on human rights and on victim-centred, gender-, ~~disability-~~ [add: Canada] and age-sensitive and ~~trauma-informed [delete: Singapore, Indonesia]~~ approaches when interacting with victims ~~and survivors [delete “survivors”÷France, retain: Canada]~~ of trafficking [add: Canada].

III. Comments of States parties and observers in the form of narrative information

Iran (Islamic Republic of)

The Islamic Republic of Iran considers the Working Group as a proper platform which has contributed considerably to the fight against Trafficking in Persons, through exchanging best practices and experiences. However, as stipulated in the non-paper,

³⁴ USA: see justification for the victim-centered and trauma-informed approach under footnote 23.

³⁵ Canada: ‘harmonization’ of laws suggests we should all have exactly the same legal provisions, when we all need to fulfil our obligations, in a manner consistent with our legal system and legislative practice. This is not always possible.

³⁶ Originally provided to the Working Group at its meeting in CTOC/COP/WG.4/2020/L.1/Add.2.

any published outcome of the 10th session of the Working Group would be a non-negotiated and therefore, non-legally-binding recommendation.

Any proposals or requests offered by the Working Group could be productive in efficiently combating trafficking in persons, as long as it remains in the scope of the provisions of the Convention and its Protocol. As such, if proposed recommendations touch upon the agreed language, such recommendations are to be addressed inclusively in line with the domestic laws of the State Parties.

It is expected that UNODC addresses, within its mandate, the real challenges and impediments on international cooperation to effectively responding trafficking in persons and works towards removing barriers in this regard, such as those related to unilateral coercive measures.
