



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

Distr.: General
12 July 2021

Original: English

Working Group on Trafficking in Persons

Vienna, 12 and 13 October 2021

Background papers of the Working Group on Trafficking in Persons since its first meeting

Thematic compendium prepared by the Secretariat

I. Introduction

1. For each meeting of the Working Group on Trafficking in Persons, background papers in all six official languages of the United Nations were provided to support the discussions of national experts on specific topics related to the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
2. The present compendium gives an overview of the guidance and knowledge contained in the background papers prepared for the first meeting of the Working Group on Trafficking in Persons, in 2009, to the seventh meeting, in 2020. The aim of the compendium is to facilitate related discussions of the Working Group at its meetings and, more broadly, to provide experts with quick access to existing guidance, which can be used, as appropriate, in the development of national responses to counter trafficking in persons.
3. To help readers navigate the available material, the compendium is organized thematically and includes a short summary of each paper and of the key topics addressed. Although the background papers may cover more than one thematic area, each paper is listed only once in the compendium, under its main topic.

II. Compendium of background papers

Case management

Key topics

Case management systems; coordination and collaboration; specialized practitioners; case coordination mechanisms; gender- and age-sensitive approach.

4. In 2010, for the second meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on good practices and tools for



use in case management, including by front-line law enforcement authorities responding to trafficking in persons (CTOC/COP/WG.4/2010/5).

5. Case management, being the institution of specialized processes or structures to ensure the efficient progression of cases through a judicial system and access to justice, is examined, with advantages outlined and examples provided of the structures and processes that different concepts of case management encompass.

6. A list of unique elements of trafficking in persons cases is provided, along with the specific needs regarding the management of such cases. The applicability of existing case management systems for criminal cases in many countries to the implementation of similar systems for trafficking in persons cases is underlined and detailed.

7. On the subject of implementing a case management system, basic case management measures are identified that could be covered by limited financial resources. The measures identified are as follows: (a) coordination and collaboration among key actors; (b) use of specialized calendars; (c) specialized training for court staff, prosecutors, judges and victim representatives; (d) implementation of case coordination mechanisms and uniform procedures and policies; (e) creation of safe spaces in courthouses; and (f) use of gender- and age-sensitive approaches.

Consular and diplomatic officers

Key topics

Consular and diplomatic officers; prevention; identification of victims; fraudulent documents; protection and assistance; gender- and age-sensitive approaches; safe and voluntary return; training and capacity-building; technical assistance.

8. In 2019, for the ninth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on diplomatic and consular officials and liaison officers in diplomatic and consular missions and their roles in addressing trafficking in persons (CTOC/COP/WG.4/2019/3).

9. The important role of diplomatic and consular officials and liaison officers in diplomatic and consular missions in addressing trafficking in persons is stressed and outlined, including with regard to the prevention of trafficking and in the identification and referral of victims among national citizens abroad. With reference to relevant recommendations previously adopted by the Working Group, the paper contains an overview of the actors, within the structures and functions of a diplomatic mission, including consular officials dealing with visa applications, who might come into contact with instances of trafficking in persons.

10. Guidance is offered on interventions and responses that can be undertaken within consular missions in the following areas:

(a) *Prevention*. Related efforts could include targeted information campaigns, channelled through embassies and consulates, on how to travel safely and stay safe, aimed at nationals in both the host country and the country of origin. In parallel, internal policies should be put in place to protect domestic workers employed by diplomatic or consular personnel from exploitation;

(b) *Identification of victims*. Using existing relevant technical material, consular personnel should be supported in developing thorough knowledge of the indicators of trafficking and should be provided with targeted training;

(c) *Detection of fraudulent documents*. Given their role in processing identity and travel documents, diplomatic and consular officials and liaison officers in diplomatic and consular missions should be appropriately trained on the detection of counterfeit and forged documents;

(d) *Provision of immediate protection and support.* Suspected victims of trafficking identified by diplomatic and consular officials should be provided with direct assistance and/or referred to the appropriate services in the host country;

(e) *Gender- and age-sensitive assistance.* Due consideration should be given to the different needs and vulnerabilities of individual persons in the delivery of protection, support and assistance for victims of trafficking;

(f) *Safe and voluntary return.* Diplomatic and consular officials and liaison officers are uniquely positioned to provide options for safe and voluntary return, while referring people in need of international protection to relevant asylum authorities.

11. The potential use by diplomatic and consular authorities, particularly liaison officers and staff of judicial authorities, law enforcement and border control agencies and other relevant actors, of international cooperation measures to share information, coordinate operational activities and support investigation and prosecution efforts to tackle trafficking in persons is highlighted.

Crime prevention

Key topics

Crime prevention; multidisciplinary approach; evidence-based responses; corruption; supply and demand; vulnerabilities; awareness-raising.

12. In 2019, for the ninth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on crime prevention measures in trafficking in persons ([CTOC/COP/WG.4/2019/2](#)).

13. A range of approaches to the prevention of crime more broadly and in the context of trafficking in persons are briefly addressed. Emphasis is placed on the need, as the core of any crime prevention strategy, to assess all underlying factors contributing to fostering crime. In the case of trafficking in persons, such factors range from poverty, unemployment and corrupt State institutions to social and cultural patterns, including gender-based discrimination and violence.

14. Guidance is provided on effective crime prevention through multidisciplinary, evidence-based and targeted responses tailored to the specificities of a given context. Community policing approaches, involving a wide range of actors, are discussed as an example of good practice. More generally, emphasis is placed on the need for solid data collection and analysis and effective monitoring and evaluation frameworks, providing for disaggregated results by gender and age, at a minimum.

15. Analysis of prevention strategies for trafficking in persons identifies areas of intervention where prevention efforts could have considerable impact. These include:

(a) Addressing corruption to prevent public sector involvement in trafficking in persons;

(b) Addressing demand for trafficking in goods and services, thereby shifting the focus from the supply side to the demand side, especially on employer demand within the formal industrial and service sectors;

(c) Addressing vulnerabilities to trafficking, including through enhanced protection of the rights of groups that already lack power and status in society;

(d) Undertaking awareness-raising activities that are focused on clear target groups to address the gaps identified and result in the target group not only acquiring awareness but also acting on it.

16. Information is provided on the Education for Justice initiative of the United Nations Office on Drugs and Crime (UNODC), an aim of which is to develop and disseminate educational materials relating to UNODC-mandated areas of crime prevention and criminal justice, including trafficking in persons, across the primary,

secondary and tertiary education levels. Other United Nations advocacy efforts are also noted, such as the World Day against Trafficking in Persons and the UNODC-coordinated Blue Heart Campaign against Human Trafficking.

Criminal justice responses

Key topics

Joint investigations; specialized prosecution; international cooperation; coordination.

17. In 2020, for the tenth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on best practices in joint investigations and specialized prosecutions ([CTOC/COP/WG.4/2020/3](#)).

18. Inherent challenges related to the investigation and prosecution of trafficking in persons cases, in particular cases with transnational elements, are outlined. Joint investigations and specialized prosecutions are noted as particularly relevant and useful tools.

19. Background information is provided on joint investigations as tools of international cooperation, with applicable international legal frameworks, different types, such as parallel joint investigations and integrated investigations, and advantages and related considerations being outlined. Attention is then devoted to specialized prosecutions as important features of national coordinated anti-trafficking criminal justice responses and, specifically, the usefulness and practical implementation thereof, along with applicable legal frameworks. Practical challenges arising in the context of joint investigations and specialized prosecutions are also discussed and, among others, the legislative, operational and procedural obstacles in the setting up and functioning of both are discussed.

20. Examples are provided of promising practices that have emerged regarding joint investigations and specialized prosecutions of trafficking in persons cases. Promising practices in relation to joint investigations include:

- (a) The creation of networks of practitioners to facilitate coordination, information exchange and the establishment of contacts among competent authorities;
- (b) Proactive joint investigations for early identification of relevant cases;
- (c) The integration of members with multidisciplinary expertise to address cross-cutting aspects of trafficking investigations (e.g., financial investigations into illicit profits);
- (d) Pursuing informal cooperation where possible to ensure quicker and more effective communication prior to advancing formal requests for cooperation.

21. Promising practices in relation to the establishment and implementation of specialized prosecutions include:

- (a) The provision of training on up-to-date trafficking trends, indicators and patterns and on human rights, gender- and age-sensitive and trauma-informed approaches;
- (b) The creation of regional and international networks of prosecutors to share knowledge and information on trafficking in persons;
- (c) The integration of specialized prosecutors into joint investigations to contribute their specialized expertise and provide law enforcement officers with legal advice on, for example, areas of evidence admissibility for future trials.

Demand

Key topics

Supply and demand; employer demand; consumer demand; third-party demand; public-private partnerships; international guidance; regional guidance; national guidance; national response; international cooperation; awareness-raising; training and capacity-building; demand for forced labour; demand for sexual services; demand for sex with children.

22. In 2013, for the fifth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on how to reduce demand, including by fostering public-private partnerships and identifying factors that drive trafficking in persons (CTOC/COP/WG.4/2013/3).

23. Insights are provided on the concept of demand in the context of trafficking in persons, with analysis of the difference between employer demand, consumer demand (passive or active) and third-party demand (e.g., recruiters, agents, transporters and others who participate knowingly in the movement of persons for the purposes of exploitation). Examples of measures enacted to discourage demand are provided, including the criminalization of the use of services generated by trafficking victims. Challenges in establishing the element of mens rea, that is, proving that end users have knowingly used the services of a trafficking victim, are noted.

24. Guidance is provided on international frameworks, including public-private partnerships, supporting prevention efforts in countries of origin, transit and destination by focusing on the demand that fosters all forms of trafficking and the goods and services produced as a result of trafficking in persons. The relevant provisions of the Organized Crime Convention are detailed, as are relevant resolutions and decisions of the Conference of the Parties to the Convention, commitments contained in the United Nations Global Plan of Action to Combat Trafficking in Persons and guidance offered by other United Nations entities and mechanisms, including the Special Rapporteur on trafficking in persons, especially women and children, and the Inter-Agency Coordination Group against Trafficking in Persons.

25. Information is provided on regional frameworks addressing demand for trafficking in persons, with a focus on the Council of Europe Convention on Action against Trafficking in Human Beings and directive 2011/36 of the European Parliament and of the Council of the European Union, on preventing and combating trafficking in persons and protecting its victims. Examples of national laws criminalizing the use of services of trafficked persons are also provided.

26. In 2011, for the fourth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on international cooperation in combating trafficking in persons with respect to addressing supply and demand and capacity-building and awareness-raising (CTOC/COP/WG.4/2011/5).

27. An overview is provided of the issue of demand in the context of trafficking in persons, including what is understood by the term, and relevant international guidance. Particular emphasis is placed on the difference between consumer or primary demand and derived demand by exploiters, the former being generated directly by people who actively or passively buy the products or services of trafficked persons and the latter by people who stand to make a profit from the transaction, including pimps and brothel owners, the various intermediaries involved in trafficking, factory owners and farmers.

28. International and regional legal frameworks on international cooperation between States are outlined with a view to more effectively preventing and combating trafficking in persons. Best practices are highlighted, including: (a) fostering informal and formal methods of cooperation; (b) integrating victim service providers to ensure

appropriate assistance, return and reintegration, all based on prior risk assessment; (c) developing joint awareness-raising campaigns; and (d) fostering cooperation between consular authorities.

29. In 2010, for the second meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on good practices and tools in reducing the demand for exploitative services (CTOC/COP/WG.4/2010/3).

30. The term "demand" in the context of trafficking in persons is conceptualized and it is noted that, while the concept lacks an internationally agreed definition, it is most commonly understood as the desire for a particular commodity, labour or service that is, in principle, exploitative or that breaches the human rights of the person delivering it.

31. A brief analysis of demand as categorized by the form of exploitative purpose is provided, which addresses in particular:

(a) *Demand for forced labour*. Specifically, the connection of this phenomenon to illegal or informal, or poorly regulated or unregulated, economic sectors is described. It is emphasized that increases in economic instability can aggravate conditions that render people vulnerable to trafficking in persons;

(b) *Demand for sexual services*. Information is provided on trends in the use of sexual services, including the extent of the phenomenon and gender-related aspects. Different approaches related to the issue of prostitution are provided, and it is noted that the Trafficking in Persons Protocol remains neutral on the matter;

(c) *Demand for sex with children*. On the basis of the legal definition of child under the United Nations Convention on the Rights of the Child, the extent of the phenomenon is discussed.

32. Guidance is provided for States' responses, and good practices to discourage demand are listed. Such good practices include broadening awareness to factors that underpin the demand, raising public awareness about products and services that are produced by exploitative and forced labour, enforcing labour standards through labour inspections and considering criminalizing the use of services of victims of trafficking in persons.

33. Existing international normative and policy guidance is outlined in which States are called upon to tackle demand for trafficking in persons. These include the Trafficking in Persons Protocol and the Office of the United Nations High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking. Examples are also provided of criminal justice responses at the national level that address the use of services from persons with the knowledge that they are victims of trafficking in persons.

Identification

Key topics

Identification of victims; international guidance; regional guidance.

34. In 2011, for the fourth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on victims of trafficking in persons, with particular emphasis on identification (CTOC/COP/WG.4/2011/4).

35. Challenges related to the identification of victims of trafficking in persons are presented. Among these, the reluctance of victims to report the crime is noted, as are different understandings of the definition of the crime of trafficking across countries and among practitioners within the same jurisdiction and the relevance of different indicators for different types of exploitation schemes. Best practices in the identification of victims, including the establishment of multi-agency coordination groups and national referral mechanisms, the adoption of shared, mutually agreed

guidelines, procedures and indicators for the identification of trafficked persons, the adoption of child-sensitive approaches and the application of the principle of non-punishment of victims, are described.

36. Normative and policy frameworks to consider when identifying victims of trafficking are detailed. These include, in particular, relevant provisions of the Organized Crime Convention, related previous recommendations of the Working Group, the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the United Nations Global Plan of Action to Combat Trafficking in Persons. Relevant guidance emanating from the *Model Law against Trafficking in Persons* is also highlighted.

37. Regional instruments are noted, with a focus on the Council of Europe Convention on Action against Trafficking in Human Beings and directive 2011/36 of the European Parliament and of the Council of the European Union.

International cooperation

Key topics

Victims' rights; victim-centred approach; gender- and age-sensitive approach; international cooperation; protection and assistance; non-punishment; return and reintegration; remedies and compensation.

38. In 2018, for the eighth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on international cooperation in cases of trafficking in persons and considering the needs and rights of victims (CTOC/COP/WG.4/2018/2).

39. The importance of victim-centred approaches when undertaking international cooperation in cases of trafficking in persons is stressed. Such approaches should take into account the victims' individual vulnerabilities, their human rights and gender and age sensitivities and should follow the principle of non-discrimination.

40. Victims' rights are outlined, and applicable legal human rights frameworks protecting such rights, as well as specific protection and assistance standards set out in the Trafficking in Persons Protocol, are highlighted. Rights that need to be particularly considered in responses to trafficking in persons, including in instances of international cooperation, such as confidentiality of personal data of witnesses and access to legal assistance, are also outlined. Previous recommendations of the Working Group are recalled.

41. The provision of assistance and protection to trafficking victims is discussed, as are the standards set out in the Trafficking in Persons Protocol, as well as other available international guidance, such as that provided by the Special Rapporteur on trafficking in persons, especially women and children, and the Working Group itself in previous meetings. Gender- and age-sensitive approaches and relevant international guidance are also touched upon.

42. Attention is given to international cooperation, both formal and informal, and considerations relating to victims and witnesses that need to be taken into account during the different stages of cooperation are highlighted. For example, the physical presence in a country of the alleged perpetrator following extradition may create a risk to the personal safety of the victim and increase the risk of retraumatization.

43. The important issue of non-prosecution and non-punishment of trafficking victims who were compelled to commit crimes in connection with their exploitation is addressed. While acknowledging that neither the Organized Crime Convention nor the Trafficking in Persons Protocol explicitly require States to include such provisions in domestic law, the principle has become a recognized international standard, and examples of relevant guidance are provided.

44. The issue of assistance, return and reintegration, in particular as facilitated by informal cooperation in the form of collaboration among victim service providers, is then addressed. Important measures that need to be taken to ensure the safe return and repatriation of victims, including the provision of appropriate protection, assistance and rehabilitation, and assistance with reintegration upon return, are highlighted. Relevant tools and guidance available to States on the topic are noted.

45. The right of victims to be able to seek remedies is addressed and it is noted that the remedies need to be adapted to the specific case and the needs and wishes of the victim, as well as to treaty-based rights and national laws. Relevant guidance from OHCHR, the Special Rapporteur on trafficking in persons, especially women and children, and previous recommendations of the Working Group encouraging States to establish procedures to allow victims to obtain compensation and restitution is provided.

46. Finally, the roles of relevant actors involved in the protection of and respect for the rights of victims, including victim service providers, immigration authorities, law enforcement and judicial organizations and civil society, are discussed. Close coordination between all such actors, including at the national and international levels, is called for.

National coordination and cooperation

Key topics

National coordination mechanisms; national coordinator functions; national rapporteur functions; operational indicators; monitoring and evaluation.

47. In 2015, for the sixth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on national coordination mechanisms against trafficking in persons (CTOC/COP/WG.4/2015/3).

48. The paper begins with an outline of the relevant provisions of the Trafficking in Persons Protocol, with a specific focus on article 9.

49. Guidance is provided on types and functions of national coordination mechanisms, with a focus on national coordinators, inter-agency coordination bodies and national rapporteurs – the first two largely having the role of facilitators of different agencies engaged in combating trafficking in persons, while the latter being often mostly responsible for research into, monitoring of and reporting on the trafficking situation and patterns, trends and national responses.

50. Operational indicators to evaluate the effectiveness of national coordination mechanisms are suggested. These include the existence of a centralized system for data collection on trafficking in persons, evidence of clear and effective division of labour among all identified stakeholders dealing with trafficking in persons and regular meetings of stakeholders.

Non-punishment

Key topics

Evolution of the principle; justification for the principle; investigation, detention and laying of charges; prosecutions; sentencing and liability; criminal records; statutory provisions; statutory defences; non-punishment principle; duress model; causation-based model.

51. In 2020, for the tenth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on guidance on the issue of

appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked (CTOC/COP/WG.4/2020/2).

52. Background information is provided on the evolution and rationale of the principle of non-punishment of trafficking victims. The principle encapsulates the notion that trafficked persons should not be subject to arrest, charge, detention or prosecution, or be penalized or otherwise punished for illegal conduct that they engaged in as a direct consequence of being trafficked.

53. Broad trends on the implementation of the non-punishment principle at the national level are provided, and the challenges linked to the lack of comparable data are noted. Guidance is provided on the range of approaches by which the principle of non-punishment can be incorporated into national responses at different procedural stages of the criminal justice system, including:

(a) *Laying of charges*. Where domestic systems allow, police officers and prosecutors might make use of their discretionary powers and decide, for example, not to proceed with laying charges, or recommending that charges not be laid, against a trafficking victim, where evidence suggests that an illegal act has been committed as a direct consequence of trafficking;

(b) *Sentencing and liability of victims of trafficking*. Sentencing mitigation can be used in cases where no specific principles governing non-punishment exist;

(c) *Criminal records*. In a number of jurisdictions, legislative provisions have been enacted to enable victims of trafficking to have their criminal records expunged;

(d) *Enactment of statutory provisions on non-punishment*. Analysis is provided of national practices in the application of statutory defences, including their availability, scope, threshold, burden of proof and standard of proof.

54. In 2010, for the second meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on non-punishment and non-prosecution of victims of trafficking, and administrative and judicial approaches to offences committed in the process of trafficking (CTOC/COP/WG.4/2010/4).

55. Existing frameworks are outlined that support the implementation of the non-punishment principle for victims of trafficking for their involvement in unlawful activities as a direct consequence of their situation as trafficked persons. While neither the Organized Crime Convention nor the Trafficking in Persons Protocol include an explicit obligation for States parties to refrain from criminalizing victims of trafficking, a number of non-binding guidelines, action plans, declarations and resolutions promote the application of the principle.

56. Analysis is provided of the two existing main models adopted by States to deal with non-punishment: (a) the "duress" model, by which people should not be held responsible for the commission of offences that they were compelled to commit; and (b) the "causation" model, according to which trafficked persons are not to be held liable for offences that are directly connected or related to the trafficking. Examples are provided of domestic legal provisions incorporating those models in the context of trafficking in persons.

Organ removal

Key topics

Definition and criminalization; actors involved; modus operandi; organ brokers; international and regional instruments.

57. In 2011, for the fourth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on trafficking in persons for the purpose of removal of organs (CTOC/COP/WG.4/2011/2).

58. Clarifications are provided regarding definitions and criminalization in relation to this form of crime. It is noted, for example, that the Trafficking in Persons Protocol includes the removal of organs as one of the forms of exploitation pertaining to the definition of trafficking in persons.

59. The issue of consent in cases of trafficking in persons for the purpose of removal of organs is underlined. Consent to the exploitation in such cases is in fact often linked to the use of illicit means, most commonly the abuse of a position of vulnerability and deception, which are notably more challenging for prosecutors to establish.

60. Insights are provided on the range of actors involved in this particular form of exploitation, including hospital and medical staff, and on the *modi operandi* of traffickers through whom organs are most frequently obtained. The role of brokers recruiting donors from among vulnerable populations is also briefly examined.

61. Available, relevant international and regional guidance on addressing trafficking in persons for the purpose of organ removal is outlined, including General Assembly resolutions, resolutions of the Conference of the Parties to the Organized Crime Convention, the World Health Organization guiding principles on human cell, tissue and organ transplantation and the 2008 declaration of Istanbul on organ trafficking and transplant tourism.

Protection and assistance

Key topics

Protection and assistance; identification; referral; reflection period; non-punishment; remedies and compensation; return and reintegration; gender- and age-sensitive approaches.

62. In 2017, for the seventh meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements ([CTOC/COP/WG.4/2017/2](#)).

63. A brief framing of the subject matter is provided, as one of the key objectives of the Trafficking in Persons Protocol. While considerable progress has been made in the provision of different forms of protection and support for victims of trafficking, the upholding of victims' rights varies across jurisdictions. Previous guidance by the Working Group on protection and assistance is outlined.

64. Focus is placed on the issue of identification of victims. Analysis and guidance concerning approaches to enhancing identification, as well as challenges in identifying trafficking victims in mixed migration flows, is provided.

65. Specific attention is given to the following forms of protection and assistance:

(a) Referral of trafficking victims to assistance agencies for immediate protection and support as a good practice, and the types of services that might be included in such early assistance;

(b) Availability and advantage of recovery and reflection periods, as well as the protection of victims who decide to cooperate with the judicial process;

(c) Application of the non-punishment principle for victims of trafficking, with reference to previous recommendations of the Working Group;

(d) Access to remedies and obstacles to effectively accessing them, as well as the provision of legal assistance, with a focus on individuals caught in mixed migration flows;

(e) Residence and safe and voluntary return, including relevant international guidance;

(f) Protection and assistance to child victims of trafficking, including in mixed migration flows, taking into account their special needs;

(g) Gender-responsive elements of trafficking assistance measures.

66. Details are provided of applicable international and regional normative and policy frameworks related to protection and assistance, as contained in the Organized Crime Convention, the Trafficking in Persons Protocol, the United Nations Global Plan of Action to Combat Trafficking in Persons, the Council of Europe Convention on Action against Trafficking in Human Beings, the Association of Southeast Asian Nations Convention Against Trafficking in Persons, Especially Women and Children, and the *Model Law against Trafficking in Persons*.

Recruitment agencies and recruitment fees

Key topics

Recruitment agencies; recruitment fees; legal and regulatory frameworks; national legislation.

67. In 2015, for the sixth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on the role of recruitment agencies and recruitment fees in trafficking in persons ([CTOC/COP/WG.4/2015/2](#)).

68. Background information is provided on the role played by abusive and fraudulent recruitment practices and recruitment fees in fostering the exploitation and abuse of workers, especially migrant workers. Details are given on how recruitment agencies contribute to increasing workers' vulnerabilities to trafficking in persons or are directly involved in criminal trafficking networks aiming to exploit workers, and on the most common *modi operandi*.

69. An overview is provided of relevant international normative frameworks, with a focus on the Organized Crime Convention, the United Nations Convention against Corruption, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant International Labour Organization conventions. An analysis and specific examples are included of national legislation addressing recruitment agencies and/or the charging of recruitment fees.

70. The analysis also explores challenges experienced by law enforcement and criminal justice practitioners in investigating and prosecuting persons or holding liable businesses that are involved in such recruitment practices, including difficulties in proving trafficking in persons at the recruitment stage, as well as jurisdictional challenges related to investigating and prosecuting those involved when recruitment agencies are based in different countries to those where the exploitation takes place. Related examples of national practices and initiatives are provided and analysed.

Interpretation and implementation of the Trafficking in Persons Protocol and the Organized Crime Convention

Key topics

Abuse of a position of vulnerability; consent; exploitation; means; international and regional guidance; national approaches; exploitation of the prostitution of others and sexual exploitation; forced labour or services; forced or servile marriages; slavery; practices similar to slavery; debt bondage; serfdom; servitude.

71. In 2015, for the sixth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on key concepts of the Trafficking in Person Protocol, with a focus on the UNODC issue papers on abuse of a position of vulnerability, consent and exploitation ([CTOC/COP/WG.4/2015/4](#)).

72. An account is provided of those aspects of the definition of trafficking in persons contained in the Trafficking in Persons Protocol that continue to be the most challenging for practitioners, as well as their application in domestic criminal law. These include terms that are not defined elsewhere in international law or commonly known in major legal systems of the world. The focus is on the concepts of abuse of a position of vulnerability, consent and exploitation.

73. With regard to abuse of a position of vulnerability, which is one of the illicit “means” of the trafficking in persons definition provided in article 3, paragraph (a), of the Protocol, a definition is provided based on the *travaux préparatoires*. Guidance is offered on how to interpret the term “vulnerability”, with further discussion focusing on the two related evidentiary requirements of the Protocol terminology, namely the proof of the existence of a position of vulnerability on the part of the victim, and proof of intent to abuse that vulnerability as the means by which a trafficking act was undertaken.

74. The irrelevance of consent given by trafficking victims to the exploitation when the use of illicit means has been established is reiterated. Examples of national practices that incorporate the element of irrelevance of consent in domestic law, as well as the related challenges such as disagreement between State practitioners as to whether it is sufficient in any case to simply establish the use of a specific means or whether it is also necessary to prove that the means used actually vitiated consent of a victim, are shared and discussed.

75. In addressing the concept of exploitation, it is recalled that the term is not defined in the Protocol but that the instrument provides a non-exhaustive list of exploitative purposes, which is frequently transposed or supplemented with additional forms of exploitation in domestic laws. Noting that certain forms of exploitation raise particular practical and evidentiary challenges, attention is paid to the need to balance flexibility in determining what constitutes exploitation in any specific scenario and clear parameters to uphold the principle of legality, with the utility of definitions from other international instruments. The definition and interpretation of specific forms of exploitation mentioned in the Protocol is also addressed, including forced labour, servitude and the removal of organs.

76. In 2013, for the fifth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group’s discussion on forms of exploitation not specifically mentioned in the Trafficking in Persons Protocol but that have arisen in national, regional or international contexts or practice ([CTOC/COP/WG.4/2013/4](#)).

77. The non-exhaustive nature of the list of exploitative purposes contained in the definition of trafficking in persons in article 3 of the Trafficking in Persons Protocol is restated. In response to this, States have, since the adoption of the Protocol, associated a great number of exploitative purposes with trafficking in persons, including online sexual exploitation, exploitation in the fishing, garment, mining, construction and other industries, exploitation in private households and exploitation for witchcraft practices.

78. Exploitative purposes contained in the definition of article 3, including forced labour, exploitation of the prostitution of others, other forms of sexual exploitation, slavery and practices similar to slavery, servitude and forced marriage, are analysed with a view to providing interpretation and guidance on situations that might fall within the definition of those practices.

79. Guidance is provided on the basis of the *Model Law against Trafficking in Persons* on other forms of exploitation that States might consider including in their national legislation, as well as guidance emanating from other international and regional frameworks, and national practices.

80. Also in 2013, for the fifth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group’s discussion on analysis of key concepts of the Trafficking in Persons Protocol, with a focus on consent ([CTOC/COP/WG.4/2013/2](#)).

81. Analysis is focused on the element of consent as contained in the definition of the trafficking in persons (Trafficking in Persons Protocol, art. 3, para. (b)), and particularly the discourse about the irrelevance of victim consent where illicit means, such as deception, have been used.

82. Differing national approaches in dealing with consent are discussed. It is noted that, while some States have fully aligned their national definitions with that of the Protocol, others have included only means that clearly vitiate consent, leaving out, for example, the abuse of a position of vulnerability. In addition, the role in criminal proceedings of alleged consent by a victim is discussed, with a warning about the implications of putting too much focus on the behaviour of a victim rather than on criminal behaviour.

83. Reference is provided to international and regional normative and policy guidance relating to the issue of consent, including with regard to children, such as guidance stemming from the Trafficking in Persons Protocol, previous recommendations of the Working Group, the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, directive 2011/36 of the European Parliament and of the Council of the European Union, and the League of Arab States Model Law to Combat the Crime of Trafficking in Persons. Finally, examples of national responses on the issues are outlined.

84. In 2011, for the fourth meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on analysis of key concepts and focus on the concept of abuse of power or of a position of vulnerability ([CTOC/COP/WG.4/2011/3](#)).

85. Policy advice is provided on the interpretation of the concept of abuse of power or of a position of vulnerability, as part of the definition of trafficking in persons, in accordance with article 3 of the Trafficking in Persons Protocol. The analysis provided includes reference to the intentions of the Protocol's drafters, by drawing from relevant official interpretative material as well as other policy documents prepared by UNODC.

86. The relativity of the concept of vulnerability of a person to personal, circumstantial and contextual factors is noted and the necessary abuse of such vulnerability by a trafficker in order to construct the crime of trafficking in persons is emphasized. The analysis is complemented by an overview of the relevant applicable international, regional and domestic guidance.

87. In 2010, for the second meeting of the Working Group, the Secretariat drafted a background paper to inform the Group's discussion on analysis of key concepts of the Trafficking in Persons Protocol ([CTOC/COP/WG.4/2010/2](#)).

88. Guidance is provided on the interpretation of challenging concepts contained in the Protocol and it is noted that some of those concepts are not fully defined, resulting in different interpretations and applications across jurisdictions.

89. Analysis and guidance are provided on the following specific concepts:

(a) Exploitation of the prostitution of others and sexual exploitation: the definitions provided in the *Model Law against Trafficking in Persons* are outlined but it is noted, however, that the definition of prostitution is intentionally left to be determined in domestic law;

(b) Forced labour or services: the definition provided in the *Model Law against Trafficking in Persons* is recounted and elements are outlined for the identification of forced labour situations, as provided by the International Labour Organization. The interpretation of sexual exploitation in the framework of forced labour is also discussed;

(c) Forced or servile marriage: the definition provided in the *Model Law against Trafficking in Persons* is outlined;

(d) Slavery: the definition provided in the *Model Law against Trafficking in Persons* is recounted, and the difficulties linked with using the definition provided in the Slavery Convention of 1926 are noted;

(e) Practices similar to slavery: the definition provided in the *Model Law against Trafficking in Persons*, as well as an alternative definition, are outlined and discussed;

(f) Debt bondage: the definition provided in the *Model Law against Trafficking in Persons* is recounted;

(g) Serfdom: the definition provided in the *Model Law against Trafficking in Persons* is outlined;

(h) Servitude: the definition provided in the *Model Law against Trafficking in Persons* is recounted.
