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**International cooperation in cases of trafficking in
persons: considering the needs and rights of victims**

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Background paper prepared by the Secretariat

I. Introduction

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was the principal legally binding global instrument to combat trafficking in persons. The Conference decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.
2. The first, second, third, fourth, fifth, sixth and seventh meetings of the Working Group were held in Vienna on 14 and 15 April 2009; from 27 to 29 January 2010; on 19 October 2010; from 10 to 12 October 2011; from 6 to 8 November 2013; from 16 to 18 November 2015; and from 6 to 8 September 2017, respectively.
3. The present background paper was prepared by the Secretariat to aid the Working Group's discussions during its eighth meeting. It contains a set 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.

II. Issues for discussion

4. The Working Group may wish to address the issues outlined below, among others, when discussing international cooperation in cases of trafficking in persons, considering in particular the needs and rights of victims of such trafficking. These issues relate primarily to international cooperation as part of criminal proceedings,

* CTOC/COP/WG.4/2018/1.



and are also intended to generate discussions concerning actors outside the criminal justice process, good practices that have been identified and gaps and challenges experienced by States. Such discussions should be informed by an overarching human rights-based approach, including a gender- and age-sensitive analysis of the topics under consideration.

Victims' rights

- How can international cooperation measures positively and/or negatively affect victims?
- Which rights of victims must be specifically considered when engaging in international cooperation in cases of trafficking in persons, and by which actors?
- What are some of the practical and/or legal challenges faced when considering victims' rights and needs when engaging in international cooperation?

Protection and assistance, including witness protection

- Are existing cross-border referral mechanisms sufficient to uphold the rights of victims of trafficking in persons? What good practices can be identified regarding cross-border referrals?
- What kind of standard operating procedures would better address the rights and needs of victims of trafficking in persons in international cooperation measures?

Gender- and age-sensitive assistance

- What gender-sensitive aspects of trafficking in persons need to be taken into consideration when engaging in international cooperation?
- How can considerations regarding the best interests of the child be taken into account in international cooperation related to cases of trafficking in persons?

Forms of international cooperation

- What forms of international cooperation have proven to be particularly helpful in upholding the rights and addressing the needs of victims of trafficking in persons?
- How are victims' rights and needs prioritized and addressed in different forms of international cooperation, including, for example, in mutual legal assistance aimed at collecting evidence from and through victims and victim-witnesses?
- How have victim-related issues been considered in the operations of joint investigation teams?
- Do victim-related considerations play a role in extradition and, if so, what are those considerations?
- Which actors are typically involved in informal international cooperation in relation to cases of trafficking in persons? What are their roles and responsibilities?

Non-prosecution and non-punishment

- How are the principles of non-prosecution or non-punishment taken into account in international cooperation? What role, if any, do those principles play in determining the country of jurisdiction for the prosecution of a case of trafficking in persons?

Assistance, return and reintegration

- How can the consistent provision of assistance, protection and support to victims, in accordance with their rights and/or needs, be ensured across borders?
- What types of information do victims of trafficking in persons need in order to make an informed decision about voluntary return?
- What challenges does the issue of return of victims and victim-witnesses to their countries of origin pose to criminal justice responses to trafficking in persons and how can those challenges be dealt with?

Remedies

- How can international cooperation enable or obstruct the availability of remedies to victims?

Relevant actors

- Who are the relevant actors that should address the needs and ensure the rights of victims as part of a transnational response?
- What role can foreign service staff play in victim-centred international cooperation?
- What types of technical assistance and capacity-building are needed to assist States in enhancing a victim-centred approach when engaging in international cooperation?

III. Background

5. Although instances of trafficking in persons can take place entirely within national borders, suspects, victims and evidence are often located in multiple jurisdictions, meaning that successful action against such crimes often requires a coordinated transnational response, entailing criminal investigations and prosecutions in multiple jurisdictions.¹ Efforts to combat organized criminal networks must also be cross-border in nature to ensure that such networks do not simply divert their activities to countries or regions where there is weak cooperation that translates into weak criminal justice responses. The need to strengthen cooperation to prevent and combat trafficking in persons more effectively at the national, regional and international levels is one of the key elements of the Organized Crime Convention, through which States parties have reaffirmed their commitment to denying safe havens to those who engage in transnational organized crime.

6. When undertaking international cooperation in cases of trafficking in persons, a victim-centred approach must prevail. Such an approach must be adopted during investigations, when devising and employing measures of assistance and protection, during voluntary return procedures and in the provision of remedies. A comprehensive response to trafficking in persons, including international cooperation, needs to be based on human rights, be gender- and age-sensitive and follow the principle of non-discrimination, with consideration given to the different needs and vulnerabilities of individual persons. In particular, measures of protection, support and assistance for victims of trafficking in persons should be available without discrimination on any ground, including that of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹ A. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

7. As noted in the *Global Report on Trafficking in Persons 2016*,² the Organized Crime Convention and the Trafficking in Persons Protocol, which enjoy nearly universal ratification, provide States parties with a series of tools to enhance international cooperation to tackle trafficking. Making better and more frequent use of these tools, including mutual legal assistance, joint investigations and special investigative techniques, could invigorate efforts to detect and prosecute complex cross-border cases of trafficking in persons.

Victims' rights

8. The fact that trafficking in persons entails the existence of victims of a crime who have rights and needs distinguishes it from many other forms of organized crime. One of the purposes of the Trafficking in Persons Protocol, as stated in its article 2, paragraph (b), is to protect and assist the victims of trafficking in persons, with full respect for their human rights. The Protocol sets out specific protection and assistance standards for victims of trafficking in persons that are not available under other legal frameworks. Those standards address the issues of privacy and confidentiality, access to information and supporting the expression of victims' views or concerns, as well as measures for their physical, psychological and social recovery (e.g. housing; counselling; medical, psychological and material assistance; employment; educational and training opportunities; availability of residence permits; facilitation of repatriation and non-liability). In the context of criminal proceedings, specific measures include the use of video technology for interviewing at-risk witnesses (in particular children testifying as victims), protocols for ensuring the confidentiality of personal data of witnesses at all stages of criminal proceedings and the provision of legal assistance for victims and witnesses.

9. Victims of trafficking in persons have basic human rights independent of any status as a victim or recognition thereof. The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner of Human Rights (OHCHR) (E/2002/68/Add.1) emphasize that the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims, as violations of the human rights of the victims are both the cause and consequence of the trafficking crime. The following human rights are particularly relevant for victims of trafficking: non-discrimination; life; liberty and security; freedom from slavery, servitude, forced labour or bonded labour; freedom from torture and cruel, inhuman or degrading treatment or punishment; freedom from gender-related violence; freedom of association and movement; physical and mental health; just and favourable conditions of work; an adequate standard of living; social security; and the right of children to special protection.

10. In that connection, victims' rights should be upheld and their needs should be considered in the course of implementing standard international cooperation measures, for example, when the testimonies of victims are sought from another jurisdiction, or when victims are returned to their home countries. Moreover, issues that should be considered when taking a gender- and age-sensitive approach include protection and assistance, including witness protection; non-prosecution or non-punishment of victims; assistance, return and reintegration; and the availability of remedies, in particular compensation. Furthermore, in order to ensure the success of victim-centred international cooperation efforts, the roles, responsibilities and potential contributions of those involved in such efforts should be considered; relevant actors in that regard range from law enforcement officers, prosecutors and judges, to immigration officials, foreign service staff and civil society actors, among others.

² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016* (United Nations publication, Sales No. E.16.IV.6), p. 19, available from www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

11. In order to further promote a rights-based approach, the Working Group, at its first meeting, in 2009, recommended the following ([CTOC/COP/WG.4/2009/2](#), para. 13):

With regard to victim protection and assistance, States parties should:

- (a) Adopt a human rights-based approach to victim protection and assistance that is not contingent on the citizenship and immigration status of the victim;
- (b) Develop and apply minimum standards for the protection and assistance of victims of trafficking in persons;
- (c) Ensure victims are provided with immediate support and protection, irrespective of their involvement in the criminal justice process. Such support may include the right to stay temporarily or, in appropriate cases, permanently in the territory where they are identified;
- (d) Ensure that appropriate procedures are in place to protect the confidentiality and privacy of victims of trafficking;
- (e) Develop, disseminate to practitioners and systematically use criteria for the identification of victims;
- (f) Ensure that national legislation against trafficking in persons criminalizes the threat or intimidation of victims of such trafficking or of witnesses in related criminal proceedings;
- (g) Address the need for a more effective allocation of funds for assisting victims;
- (h) Ensure that responses to child trafficking at all levels are always based on the best interest of the child.

12. Those recommendations remain relevant and should continue to inform all considerations and actions regarding international cooperation in cases of trafficking in persons.

Protection and assistance

13. Victim protection is a core element of the Trafficking in Persons Protocol. The Working Group has in the past discussed the issue of victim protection in general, but has not yet discussed in detail the importance of taking a victim-centred approach in relation to international cooperation. At its seventh meeting, in 2017, the Working Group discussed, among other things, trafficking in persons in the context of conflict situations, and recommended that States parties promote the cross-border provision of protection and assistance among countries of origin, transit and destination ([CTOC/COP/WG.4/2017/4](#), para. 8 (e)), in recognition of the importance of protection and assistance measures in protecting persons who are at risk of being trafficked or have been trafficked, in particular during conflict. In addition, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) has pointed out that measures to counter trafficking should be systematically included in humanitarian action and should be protective, proactive, preventive and collaborative.³ In the context of both conflict situations and humanitarian action, international cooperation is a key prerequisite for such responses.

14. Furthermore, the Special Rapporteur on trafficking in persons, especially women and children, has noted that ensuring adequate protection of and assistance to victims ultimately prevents victims from being revictimized and re trafficked (see [A/69/269](#)). At its first meeting, the Working Group recommended that, with regard to the protection of victims as witnesses, States parties should ensure measures for the protection of

³ Inter-Agency Coordination Group against Trafficking in Persons, issue brief No. 2, on trafficking in persons in humanitarian crises (June 2017), available from icat.network/sites/default/files/publications/documents/ICAT-IB-02-Final.pdf.

victims, including the provision of temporary and safe shelter and witness protection procedures, where appropriate (CTOC/COP/WG.4/2009/2, para. 15). Such protection measures should sometimes include the families of victims. A proactive and systematic approach to the provision of protection in accordance with the provisions of the Trafficking in Persons Protocol was also recommended by the Working Group in 2011 (CTOC/COP/WG.4/2011/8, para. 24). Moreover, at its seventh meeting, the Working Group recommended placing victims in safe and secure shelters or other suitable accommodation without delay, unless circumstances indicate that doing so might affect the security and safety of the victims (CTOC/COP/WG.4/2017/4, para. 7 (c)).

15. In addition, the Trafficking in Persons Protocol highlights, in its article 6, paragraph 1, the importance of protecting the privacy and identity of the victims of trafficking, including, by making legal proceedings relating to such trafficking confidential. The Special Rapporteur has also emphasized the need for privacy and confidentiality for victims (A/69/269, annex).

16. At its second meeting, in 2010, the Working Group recommended that, in conformity with article 25 of the Organized Crime Convention, States parties should adopt measures to assist and protect victims, regardless of whether or not they cooperated with the criminal justice authorities. The absence of testimony would not rule out the provision of assistance. Furthermore, it recommended that States parties should acknowledge the importance of voluntary victim-witness cooperation in seeking convictions for trafficking in persons (CTOC/COP/WG.4/2010/6, para. 36). Along those lines, at its seventh meeting, the Working Group recommended that States parties should work to gather relevant and corroborative evidence, for example, by means of proactive investigations, as opposed to relying solely on victim testimony, with the aim of reducing the burden on victims as the only source of evidence (CTOC/COP/WG.4/2017/4, para. 7 (b)). Moreover, the willingness of victims to cooperate with law enforcement agencies, and to participate in related criminal proceedings, should not occur at their expense. The Working Group, at its second meeting, in 2010, recommended that, States parties should ensure that acts and procedures of their criminal justice system do not cause secondary victimization (CTOC/COP/WG.4/2010/6, para. 53).

Gender- and age-sensitive approach

17. The *Global Report on Trafficking in Persons 2016* reaffirmed that women make up the majority of detected victims of trafficking in persons, followed by child victims. However, the share of male victims detected has steadily increased. Taking a gender- and age-sensitive approach when responding to trafficking in persons is therefore important. Such an approach does not imply an exclusive focus on women and children, but it does call for gender and age aspects to also be considered when developing responses to trafficking in persons. It also includes the need to fully take into account the different protection and assistance needs of women, men, girls and boys.

18. At its sixth meeting, in 2015, the Working Group recommended that States parties should consider a gender approach and the best interests of the child when applying key concepts of the Trafficking in Persons Protocol (CTOC/COP/WG.4/2015/6, para. 26). That was reaffirmed by the Working Group at its seventh meeting, at which it recommended ensuring that the protection of victims in appropriate housing is gender-specific, taking into account the different vulnerabilities of women, men and children, and where necessary, the provision of appropriate psychological assistance, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society (CTOC/COP/WG.4/2017/4, para. 8 (c)).

19. A gender- and age-sensitive approach also prioritizes the needs and rights of victims in responses against trafficking. In that regard, at its second meeting, the Working Group emphasized the importance of a victim-centred approach by recommending that, with regard to developing a comprehensive, multidimensional

response to trafficking in persons, States parties should apply a victim-centred approach, with full respect for the human rights of victims of such trafficking (CTOC/COP/WG.4/2010/6, para. 9).

International cooperation and cases of trafficking in persons

20. The Organized Crime Convention is aimed at, inter alia, promoting international cooperation in relation to the offences covered by the Convention and its Protocols. Formal and informal types of international cooperation are provided for in the Organized Crime Convention and its Trafficking in Persons Protocol in order to address trafficking in persons.⁴

21. Formal international cooperation relates primarily to mutual legal assistance and extradition. Mutual legal assistance is the process States use to request and provide assistance in gathering evidence and information for use in criminal cases. Common requests made in the context of mutual legal assistance involve, for example, the collection of evidence by means of search and seizure; the taking of statements; the transfer of prisoners to provide testimony; videoconferencing; locating persons, including suspects or witnesses; providing documents or records; recovering proceeds of crimes; and facilitating the voluntary appearance of persons in the requesting State. In particular where such measures might affect victims and victim-witnesses, the consideration of their rights and needs should be of utmost priority. Such consideration could concern, for instance, breaches to the right to confidentiality arising as a result of the disclosure of sensitive information in the context of document exchanges.

22. Formal international cooperation also enables joint investigations, the application of special investigative techniques as well as cooperation for the purpose of confiscation and seizure of illicit assets derived from trafficking in persons. As regards extradition, which refers to the formal process whereby a State requests to receive a person from another State in order to face prosecution or serve a sentence in the requesting State, considerations relating to victims and witnesses also need to be taken into account. For instance, the physical presence in a country of the alleged perpetrator following extradition, whether it is in the victim's country of origin or country of residence, may create a risk to the personal safety of the victim, who might face threats, retribution or intimidation. It also increases the risk of retraumatization.

23. Informal cooperation can include actions or initiatives that might be relevant for a successful transnational response to trafficking in persons but that are not included in formal judicial cooperation measures. Examples include informal police-to-police cooperation and other types of agency-to-agency cooperation, networks of prosecutors and cooperation among police attachés in embassies abroad or among staff at the national central bureaux of the International Criminal Police Organization (INTERPOL). In addition, civil society organizations can be included in efforts relating to the international coordination of health care, psychosocial services or vocational training, which are subjects of particular relevance to discussions on protection and assistance measures for victims of trafficking in persons. Informal cooperation is often built on trust and the careful forging of working relationships, and the proactive sharing of information can strengthen such relationships. In that regard, exchange mechanisms between competent authorities at the national level must be well established in order to support the exchange of information. Whatever form it takes, informal cooperation must comply with legal requirements and respect the rights of victims.

24. At its second meeting, the Working Group recommended that, with regard to coordination, States parties should increase efforts to enhance cross-border criminal justice action, including, where appropriate, by making increased use of joint investigations, special investigative techniques, information-sharing and the transfer

⁴ In the Organized Crime Convention under its arts. 1, 7, 13, 16, 18, 20, 26, 27, 29, 30 and 31, and in the Trafficking in Persons Protocol under its arts. 2, 6, 9, 10 and 11.

of knowledge regarding the use of those measures (CTOC/COP/WG.4/2010/6, para. 14). Furthermore, at its fourth meeting, in 2011, the Working Group recommended that States parties should acknowledge the concept of shared responsibility in implementing measures to counter trafficking in persons, thus bringing together countries of origin, transit and destination in the development of evidence-based strategies and activities (CTOC/COP/WG.4/2011/8, para. 30). The Working Group thus stressed multidimensional measures to support coordination and cooperation at the national and international levels.

Non-prosecution and non-punishment

25. Victims of trafficking in persons are sometimes involved in illegal activities as part of their exploitation. As reported in the United Nations Office on Drugs and Crime (UNODC) *Global Report on Trafficking in Persons 2016*, it was found that victims of trafficking in persons were trafficked for the purpose, among others, of committing various illegal activities. In addition, as part of the trafficking offence, persons might have been brought into a country illegally or with forged papers. Even though neither the Organized Crime Convention nor the Trafficking in Persons Protocol explicitly oblige States parties to refrain from holding the victims of trafficking criminally liable, the principles of non-punishment and non-prosecution have now become recognized international standards. In particular, as stated in its article 2 (b), one of the purposes of the Trafficking in Persons Protocol is to protect and assist victims of such trafficking, with full respect for their human rights. In that regard, States should therefore apply the principles of non-punishment and non-prosecution in the context of international cooperation.

26. In addition, the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002 call for non-prosecution and non-punishment of victims as long as their involvement in unlawful activities was a direct consequence of the trafficking crime. In 2010, the General Assembly adopted the Global Plan of Action to Combat Trafficking in Persons, in which it called on Member States to ensure that victims of trafficking in persons are treated as victims of crime (General Assembly resolution 64/293, annex, para. 27). Furthermore, in its article 26, the Council of Europe Convention on Action against Trafficking in Human Beings provides that each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

27. In line with other non-binding guidelines, action plans, declarations and resolutions, the Working Group has discussed the issue of non-prosecution and non-punishment. At its first meeting, the Working Group recommended that, with regard to ensuring the non-punishment and non-prosecution of trafficked persons, States parties should consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts (CTOC/COP/WG.4/2009/2, para. 12). This was restated by the Working Group at its fifth and seventh meetings, in 2013 and 2017, respectively. An essential element of protection of victims of trafficking and their rights must be that States do not prosecute or punish trafficked persons for trafficking-related offences and that States should not prosecute or punish trafficked persons for crimes they may have committed in the course of trafficking (CTOC/COP/WG.4/2010/4, para. 10).

Assistance, return and reintegration

28. In some cases of trafficking in persons, the victims might return to their home countries owing to immigration law requirements or their personal wishes. In accordance with article 8, paragraph 2, of the Trafficking in Persons Protocol, the return of a victim to a home country should be safe and should preferably be voluntary. ICAT has maintained that the return or repatriation of a trafficking victim is not a suitable option where there is a risk of being re-trafficked or where the return

would otherwise not be safe and sustainable.⁵ Informal cooperation in the form of collaboration among victim service providers is particularly relevant in relation to the safe return and repatriation of victims of trafficking in persons. At its fourth meeting, the Working Group recommended that States parties should cooperate with countries of origin, including with civil society, in order to provide appropriate protection, assistance and rehabilitation for victims of trafficking in persons and assist with their reintegration upon return, where appropriate (CTOC/COP/WG.4/2011/8, para. 42). In any case, the customary principle of non-refoulement under international law⁶ should always guide decisions on returning victims of trafficking to their home countries. Such an approach also accords with article 14, paragraph 1, of the Trafficking in Persons Protocol.

29. In its publication entitled *Enhancing the Safety and Sustainability of the Return and Reintegration of Victims of Trafficking*, the International Organization for Migration outlined recommendations regarding the safe and sustainable return of victims of trafficking.⁷ These included, for instance, that victims of trafficking should be accompanied in the reintegration process, ensuring that their human rights are fully protected throughout the process. Furthermore, the return of victims should be carefully planned and coordinated between the actors involved, and should also include risk assessments and the involvement of the local police to ensure the security and safety of the returned victims and their families. Other factors that should be considered include follow-up with law enforcement regarding the prosecution of the case, assistance with economic and educational opportunities and access to compensation.

30. In line with the provisions of the Trafficking in Persons Protocol on access to information for victims of trafficking, the International Centre for Migration Policy Development (ICMPD), in its *Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU*,⁸ emphasized the importance of an informed decision on the part of a victim in relation to return, which can be understood to mean that the decision to return should be made freely, taking into consideration all available and detailed information on all the options for and risks of remaining in a place or returning home. The decision process should include a period of time for reflection and should be based on thorough risk and social inclusion assessments. In particular, access to cross-border protection and assistance measures that are supported by systematic and strong international cooperation should be considered. It is also important to consider the possibility that the return of victims of trafficking in persons might hamper the prosecution of traffickers, not only because victims are often returned without having been identified as such, but also because, in cases where they have been properly identified, their return might prevent their further involvement in possible criminal proceedings against traffickers. Often, criminal justice responses are detached from measures related to immigration law, which prevents coordination among the actors involved. Therefore, both immigration and criminal justice system actors should take into consideration the needs and rights of victims and coordinate their measures.

⁵ Submission by the Inter-agency Coordination Group against Trafficking in Persons to the co-facilitators of the high-level meeting of the General Assembly on the appraisal of the United Nations Global Plan of Action to Combat Trafficking in Persons, available from <http://icat.network/sites/default/files/publications/ICAT%20submission%20to%20the%20GPA%20Appraisal%20Process.pdf>.

⁶ See, for instance, art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The principle of non-refoulement is part of the principle of *jus cogens* and binds all States, irrespective of whether they have ratified the Convention against Torture.

⁷ International Organization for Migration, *Enhancing the Safety and Sustainability of the Return and Reintegration of Victims of Trafficking* (Paris, 2017).

⁸ International Centre for Migration Policy Development. *Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU* (Vienna, 2010), available from www.icmpd.org/fileadmin/ICMPD-Website/ICMPD_General/Publications/2010/TRM_EU_guidelines.pdf.

Remedies

31. OHCHR has underlined that trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies, which can include a range of measures such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These remedies have also been called for by the Special Rapporteur in order to support victims of trafficking (see [A/69/269](#)). However, 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. ICAT has described remedies as being essential for the recovery and reinstatement of the victims, as well as their protection from revictimization, and has outlined the following specific recommendations regarding remedies and international cooperation, which apply to international cooperation in general and are not limited to the provision of remedies, and should thus be considered in order to strengthen international cooperation overall:

International cooperation should be strengthened between and among States and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained provision of effective remedies to victims, including by:

- (a) Strengthening international cooperation between criminal law enforcement and labour law enforcement institutions;
- (b) Mobilizing resources for national action programmes and international technical cooperation and assistance;
- (c) Cooperating to address and prevent the use of trafficking by diplomatic personnel;
- (d) Promoting mutual legal and technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating human trafficking;
- (e) Acknowledging the violation of trafficked persons rights and corresponding state sanctions against perpetrators through national data collection, and contributing to the international public record collected in the UNODC Case Law Database.⁹

32. The Organized Crime Convention and the Trafficking in Persons Protocol do not specifically require States parties to provide remedies to victims of trafficking in persons. However, they do establish that legal mechanisms need to be in place to provide victims of trafficking with the opportunity to claim compensation. Such mechanisms often provide victims with access to legal advice and information on the availability of compensation and how it can be claimed.

33. At its first meeting, the Working Group recommended that, with regard to the compensation for victims of trafficking, States parties should consider the possibility of establishing appropriate procedures to allow victims to obtain compensation and restitution ([CTOC/COP/WG.4/2009/2](#), para. 14). At its third meeting, the Working Group recommended that, at the beginning of a penal investigation, States parties should endeavour to integrate a section dedicated to property and the possibility of seizing and confiscating goods obtained by criminal means ([CTOC/COP/WG.4/2010/7](#), annex, recommendation (g)). Also at its third meeting, with regard to international cooperation, the Working Group recommended that States parties should ensure that the immigration status of the victim, the return of the victim to his or her home country or other absence of the victim from the jurisdiction does not prevent the payment of compensation ([CTOC/COP/WG.4/2010/7](#), annex, recommendation (h)).

⁹ Inter-Agency Coordination Group against Trafficking in Persons, “Issue Paper – Providing Effective Remedies for Victims of Trafficking in Persons” (New York, 2016).

34. Cooperation with national tax services and the inclusion of financial investigative units as part of the overall investigation and the international cooperation process might also need to be considered in order to support the confiscation of criminal proceeds, which could be used, for example, to provide compensation to victims.

Relevant actors

35. The importance of a multidisciplinary, coordinated response to trafficking in persons has been repeatedly emphasized. Close coordination between the different actors, including at the national and international levels, is required in order to protect and respect the rights and needs of victims of trafficking. In fact, successful cooperation across borders often requires effective national coordination practices as a prerequisite. In particular, a victim-centred approach requires the involvement of victim service providers, which are often located outside of the criminal justice system. Moreover, immigration authorities who are involved in return decisions can be of particular importance when considering victims' rights and needs. At the national level, national referral systems and coordination networks exist in order to clarify roles and responsibilities and coordinate the different actors in the response to trafficking in persons. Ideally, focal points should exist for both national and international coordination efforts, as well as for handling requests for cooperation.

36. At its second meeting, in 2010, the Working Group encouraged States parties to note the important role of civil society in the fight against trafficking in persons and recommended that they seek to effectively integrate civil society into national, regional and international strategies to prevent such trafficking, as well as into strategies to protect and care for victims of such trafficking, in accordance with domestic regulations (CTOC/COP/WG.4/2010/6, para. 11).

37. International law enforcement coordination efforts include cooperation through international and regional law enforcement and judicial organizations. Furthermore, at its sixth meeting, in 2015, the Working Group recommended that States may consider instructing and training, where needed, their relevant diplomatic and/or consular staff and may consider, where possible, establishing a network of specialized attachés to prevent trafficking in persons (CTOC/COP/WG.4/2015/6, para. 14).

38. The ICMPD *Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe* of 2010 described, inter alia, the need to clearly specify the roles and responsibilities of the different actors and the need to include monitoring and evaluation as part of the mechanism, as well as the importance of committing to a human rights-based and gender- and age-sensitive approach.

IV. Guidance for response

A. Guiding principles

39. The overarching principles that guide the consideration of the needs and rights of victims throughout international cooperation efforts have been promulgated in numerous treaties and resolutions, and are derived directly from the Universal Declaration of Human Rights. The UNODC *International Framework for Action to Implement the Trafficking in Persons Protocol*¹⁰ articulates these guiding principles in order to address the challenges faced in the response to trafficking in persons in a comprehensive way. As mentioned, these guiding principles include the principle of non-discrimination as well as human rights-based and gender- and age-sensitive approaches to tackling trafficking in persons.

40. The Trafficking in Persons Protocol favours a human rights-based approach and does not narrow or diminish any rights, obligations or responsibilities under international humanitarian law, international human rights law or the international

¹⁰ www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf.

instruments relating to the status of refugees and the principle of non-refoulement contained therein (see art. 14, para. 1, of the Protocol). Furthermore, article 14, paragraph 2, reaffirms the principle of non-discrimination in relation to a person's status as a victim of trafficking in persons.

B. Organized Crime Convention and Trafficking in Persons Protocol

41. The Trafficking in Persons Protocol links international cooperation and measures for victim protection and assistance. In the preamble of the Protocol, States parties declare that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights”.

42. Moreover, the normative text of the Protocol, in particular its articles 6, 7 and 8, concerns the protection of victims of trafficking in persons. The protection measures set out in article 6 refer to privacy and confidentiality; access to information; legal representation; measures to support victims' physical, psychological and social recovery (accommodation, counselling, information, medical, psychological and material assistance, etc.); and the possibility of obtaining compensation. Article 7 deals with the possibility for victims to temporarily or permanently remain in the receiving country and article 8 deals with the repatriation of victims.

43. The Organized Crime Convention addresses aspects of witness protection and assistance to and protection of victims in its articles 24 and 25. While article 24 identifies appropriate measures to protect witnesses from potential retaliation or intimidation, including with regard to the protection of relatives or persons close to the victim, article 25 specifies appropriate assistance and protection measures, including access to compensation and restitution and participation in criminal proceedings.

44. In its resolution [55/25](#), by which it adopted the Organized Crime Convention, the General Assembly expressed their conviction about the urgent need to strengthen cooperation to prevent and combat organized criminal activities more effectively at the national, regional and international levels. Furthermore, Member States expressed their determination to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level.

45. The purpose of the Organized Crime Convention is clearly stated in its article 1 as promoting cooperation to prevent and combat transnational organized crime more effectively. Thus, the Convention contains provisions on extradition (art. 16); mutual legal assistance (art. 18); transfer of sentenced prisoners (art. 17); joint investigations (art. 19); special investigative techniques (art. 20); transfer of criminal proceedings (art. 21) and disposal of confiscated proceeds of crime or property (art. 14). The existence of a wide array of relevant provisions on different forms of international cooperation offers States parties the opportunity to use both the Trafficking in Persons Protocol and the parent Convention as practical tools to enhance international cooperation in cases of trafficking in persons.

46. The particularly relevant paragraphs of article 16, on extradition, include paragraph 3, which emphasizes that the offences established under the Convention and the Protocols thereto should be extraditable; paragraph 4, which explains that the Convention can serve as the legal basis for extradition in the absence of a specific extradition agreement; and paragraph 17, which calls for States parties to conclude bilateral or multilateral agreements in support of effective extradition.

47. Regarding article 18, it is important to pay particular attention to paragraphs 1 (which addresses reciprocity), 2 (on granting mutual legal assistance to the fullest extent possible), 3 (which specifies the forms of mutual legal assistance) and

30 (which proposes the conclusion of bilateral or multilateral agreements). Regarding specific measures to protect victims as part of mutual legal assistance, article 18, paragraph 18, enables the use of videoconferencing as a means of providing evidence in cases where it is not possible or desirable for the witness to appear in person in the territory of the requesting State.

48. Furthermore, the rights of victims are also considered in the context of international cooperation for the disposal of confiscated proceeds of crime or property in article 14, paragraph 2, which requires States parties to give priority consideration to the return of confiscated proceeds of crime or property to the requesting State so that the compensation can be given to the victims of the crimes concerned.

49. Moreover, the transfer of criminal proceedings as outlined in article 21 may also help to ensure that criminal proceedings are conducted in the best-placed Member State, while protecting the rights and interests of victims. The jurisdiction must be chosen in a transparent and objective way in order to safeguard legal certainty for citizens, avoid risks of infringement of the *ne bis in idem* principle and improve judicial cooperation in criminal matters between authorities that may exercise parallel competence.

50. Article 27, paragraph 2, of the Organized Crime Convention explicitly states that States parties may consider the Convention as the basis for mutual law enforcement cooperation. The article also ensures cross-border cooperation in the repatriation and relocation of victims and victim-witnesses.

C. Additional international guidance

51. Some of the Sustainable Development Goals set out in the 2030 Agenda for Sustainable Development¹¹ are particularly relevant to the discussion of international cooperation that takes into consideration the needs and rights of victims of trafficking in persons. These include, in particular, Goal 17, which calls for strengthening the means of implementation and revitalizing the global partnership for sustainable development, and Goal 5, which is aimed at achieving gender equality and empowering all women and girls. In addition, the following targets of the Sustainable Development Goals are relevant for addressing trafficking in persons: eliminate all forms of violence against women and girls (target 5.2); eradicate forced labour, slavery and human trafficking (target 8.7); facilitate orderly, safe, regular and responsible migration and mobility of people (target 10.7); end abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2); significantly reduce illicit financial and arms flows (target 16.4); and enhance international support for effective and targeted capacity-building (target 17.9).

52. In its resolution [64/293](#) on the Global Plan of Action to Combat Trafficking in Persons, the General Assembly reiterated its strong condemnation of trafficking in persons and identified it as a serious threat to human dignity, human rights and development. The Plan for Action included the following purposes:

(a) Promote comprehensive, coordinated and consistent responses, at the national, regional and international levels, to counter trafficking in persons;

(b) Promote a human rights-based, gender- and age-sensitive approach in addressing all factors that make people vulnerable to trafficking in persons and strengthening the criminal justice response, which are necessary to prevent trafficking in persons, protect its victims and prosecute its perpetrators;

(c) Foster cooperation and coordination among all relevant stakeholders, including Member States, international organizations, civil society organizations and the private sector, and within various entities of the United Nations system, taking into account existing best practices and lessons learned.

¹¹ General Assembly resolution [70/1](#).

53. A number of paragraphs of the Global Plan for Action emphasize in particular the importance of victim protection and assistance and international cooperation, with specific focus on the following issues: the rights of victims, their status as victims of a crime and the availability of national services in general (paras. 26–28); non-punishment and non-prosecution (para. 30); privacy and safety (para. 31); recovery and rehabilitation (para. 32); the potential right to remain (para. 33); repatriation (para. 34); specialized services (para. 36); the best interest of the child (para. 37); compensation (para. 39); the important role of civil society organizations (para. 40); and the provision of information (para. 41). In addition, a number of paragraphs specifically relate to international cooperation, describing the need for coordination and cooperation (para. 48), information exchange (para. 49), mutual legal assistance (para. 51), extradition (para. 52), law enforcement cooperation (para. 54) and technical assistance (para. 55).

D. Regional guidance

54. Chapter III of the Council of Europe Convention on Action against Trafficking in Human Beings describes measures to protect and promote the rights of victims, guaranteeing gender equality and an age-responsive approach, in particular with regard to child victims. Paragraphs 1 and 2 of article 12, paragraphs 1 and 2, of the Council of Europe Convention identifies certain protection and support measures that should be made available to victims of trafficking in persons. These include assistance measures in support of physical, psychological and social recovery such as, for example, safe accommodation, psychological and material assistance, medical treatment, interpretation and translation, counselling, access to information, legal representation and access to education for children. Article 13, paragraph 1, of the Convention establishes a recovery and reflection period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim. Furthermore, article 14 relates to the availability of residence permits and conditions for such availability. Articles 15 and 16 deal with compensation and legal redress and repatriation and return of victims, respectively. Articles 27 and 28 outline protection measures for victims during criminal proceedings. In particular, article 28, paragraph 5, describes the need to consider international cooperation to fulfil such measures. Chapter VI of the Convention addresses international cooperation and cooperation with civil society. The chapter outlines general principles and measures, as well as more specific procedures.

55. Paragraph 6 of the Declaration on the Fight against Trafficking in Persons of the Economic Community of West African States (ECOWAS) calls attention to the need for specific international cooperation measures and directly links such measures to the well-being of victims by expressing the commitment to take measures, in close consultation with the countries of origin, transit and destination and with the victims themselves, for the care and repatriation of any of its citizens who have been victims of trafficking whether within the territory of Member States, or outside the ECOWAS subregion.

56. The Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, Especially Women and Children also directly links international cooperation and victim protection, asserting that cooperation is imperative to the successful investigation, prosecution and elimination of safe havens for the perpetrators and accomplices of trafficking in persons and for the effective protection of and assistance to victims of trafficking. Article 13 of the ASEAN Convention relates to cross-border cooperation aimed at preventing and detecting trafficking in persons. Specific protection measures for victims are outlined in article 14. Article 15 concerns the repatriation and return of victims. Articles 18 to 22 specifically address mutual legal assistance, extradition, law enforcement cooperation and confiscation of criminal proceeds, respectively.

V. Key tools and recommended resources

Model Law against Trafficking in Persons

57. The UNODC *Model Law against Trafficking in Persons*¹² is aimed at assisting States in implementing the provisions contained in the Trafficking in Persons Protocol. It is intended to facilitate the review and amendment of existing legislation and the adoption of new legislation. Each provision of the *Model Law* is accompanied by a detailed commentary, providing several options for legislators, as appropriate, as well as legal sources and examples. Of particular relevance are its article 10, on non-liability (in chapter V), chapter VII, on victim and witness protection, assistance and compensation, and chapter VIII, on immigration and return. The commentary to article 26 of the *Model Law* emphasizes, on the basis of article 24 of the Organized Crime Convention, that States parties should consider entering into agreements with other States for the relocation of victims and witnesses. Furthermore, article 26 establishes that the relocation may take place when necessary to safeguard the physical safety of victims or witnesses, at the request of the victims or witnesses or in consultation with them. Certain factors to take into consideration when deciding on an application for residence status submitted by a victim of trafficking are outlined in the commentary to article 31, including risk of retaliation or persecution, the prospects for social inclusion and an independent, sustainable and humane life, and the availability of adequate, confidential and non-stigmatizing support services in the country of origin. In paragraphs 27 and 28, it is reiterated that the immigration status of victims or the return to their home country should not influence the right and availability of compensation.

Anti-Human Trafficking Manual for Criminal Justice Practitioners

58. The UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners*¹³ is the result of a global cooperative process in which expert representatives from academia and non-governmental and international organizations, as well as law enforcement officers, prosecutors and judges, from all over the world contributed their expertise and experiences. In line with the Trafficking in Persons Protocol, the purpose of the *Anti-Human Trafficking Manual* is to support criminal justice practitioners in the prevention of trafficking in persons, the protection of its victims, the prosecution of its culprits and the international cooperation needed to achieve those ends. Module 6 deals specifically with international cooperation, with a strong focus on international legal cooperation. Modules 11, 12 and 13 deal with victims' needs in criminal justice proceedings, protection and assistance to victim-witnesses and compensation for victims, respectively.

Recommended Principles and Guidelines on Human Rights and Human Trafficking

59. The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking¹⁴ provide useful, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights-based approach into national, regional and international anti-trafficking laws, policies and interventions. The 11 recommended guidelines are aimed at promoting and protecting human rights in relation to human trafficking and identifying and protecting victims of trafficking, with a special concern for child victims. They are also focused on identifying and prosecuting traffickers, preventing trafficking in persons and ensuring an adequate legal foundation with access to remedies. The Recommended Principles and Guidelines call for enhanced international cooperation in combating trafficking in persons.

¹² United Nations publication, Sales No. E.09.V.11.

¹³ www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html.

¹⁴ www.ohchr.org/Documents/Publications/Traffickingen.pdf.

Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked

60. The UNHCR “Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked”¹⁵ emphasize that the instruments relating to international refugees apply to the context of trafficking in persons. They specifically affirm that persons who have been trafficked, who fear persecution upon repatriation to their home country or being trafficked, and who meet the definition of a refugee should be recognized as refugees and protected accordingly.

Association of Southeast Asian Nations Handbook on International Legal Cooperation in Trafficking in Persons Cases

61. The *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*,¹⁶ a joint publication of UNODC, 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.

Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU

62. The *ICMPD Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe* are aimed at facilitating support to transnational victims through institutionalized cooperation mechanisms and procedures employed by multiple anti-trafficking stakeholders throughout South-Eastern Europe. As a contribution to efforts to combat and reduce trafficking in persons, five standard operating procedures to be applied in cases of trafficking were developed. The procedures are focused on identifying, assisting, protecting, including and returning trafficked persons, and on prosecution procedures. Each section of the *Guidelines* contains good practices, practical guidance and implementation aspects. Part B. offers practical tools to implement the guidelines.

Human Trafficking Case Law Database and Case Digest on Evidential Issues in Trafficking in Persons Cases

63. The UNODC Human Trafficking Case Law Database (www.unodc.org/cld) is aimed at enabling judges, prosecutors, policymakers, the media, researchers and other interested parties to broaden their knowledge of how different States use their respective laws to combat trafficking in persons, with the ultimate goal of contributing to enhancing the global criminal justice response. In October 2016, UNODC launched the publication entitled *Evidential Issues in Trafficking in Persons Cases: Case Digest*,¹⁷ which is aimed at assisting criminal justice practitioners worldwide in addressing recurring evidential issues that are typical to cases of trafficking in persons. The *Case Digest* contains an analysis of 135 cases from 31 jurisdictions and provides the reader with a range of options and possibilities for

¹⁵ www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html.

¹⁶ www.unodc.org/documents/humantrafficking/ASEAN_Handbook_on_International_Legal_Cooperation_in_TIP_Cases.pdf.

¹⁷ https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf.

dealing with particular evidential challenges. Most cases in the *Case Digest* are drawn from the Human Trafficking Case Law Database.

Providing effective remedies for victims of trafficking in persons

64. The issue paper entitled “Providing effective remedies for victims of trafficking in persons”,¹⁸ developed jointly by the member agencies of the Inter-Agency Coordination Group against Trafficking in Persons, is based on a literature review of international law and jurisprudence that sets out States obligations to provide victims of trafficking in persons with effective remedies. It identifies opportunities and obstacles in implementing those international standards at the national level and identifies some common challenges that victims of trafficking face in accessing remedies.

¹⁸ www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_3._Providing_Effective_Remedies_for_Victims_of_Trafficking_in_Persons_2016.pdf.