



Tool 2.4 Assessment of the legal framework

Overview

This tool offers guidelines and resources for assessing a national legal framework. See also Tool 3.2 on criminalization of trafficking in persons.

Legislation, as well as legal procedures and practices, varies widely among States. In some States, existing laws on labour, migration, and organized crime may not have been harmonized with more recent laws or treaty obligations to fight human trafficking. Furthermore, legislation may be required to increase victim protection measures or to prevent trafficking.

A broad and comprehensive assessment of the national legal framework is usually required with regard to human trafficking, including criminal law, labour law, social service and employment laws, immigration and asylum laws, as well as investigative, criminal and judicial procedures.

The assessment questions may include the following:

Does your State have:

- Laws or other measures to criminalize trafficking in persons?
- A definition of trafficking in persons?
- Criteria for determining the consent of a trafficking victim?
- Legislation on trafficking in persons that differentiates between adults and children?
- Provisions to protect the privacy and identity of victims?
- Procedures to provide trafficking victims with information on relevant court and administrative proceedings?
- Measures to provide for the physical, psychological and social recovery of trafficking victims?
- Measures for the physical safety of trafficking victims while they are within your State's jurisdiction?
- Measures that offer trafficking victims the possibility of obtaining compensation for damage suffered?
- Legislative and other measures permitting trafficking victims to remain temporarily or permanently in receiving States?
- Laws or regulations regarding the repatriation of trafficking victims who are without proper documentation?
- Training for law enforcement, immigration or other relevant authorities in the prevention of trafficking in persons?
- Policies, programmes or action plans to prevent and combat trafficking in persons?
- Measures to protect trafficking victims from revictimization?

- Research, information or mass media campaigns to prevent and combat trafficking in persons?
- Measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity?
- Measures discouraging the demand that fosters all forms of exploitation of persons that leads to trafficking?
- Measures for storing and sharing information about the identification of possible victims and/or traffickers in transit?



An example of such an assessment is Questionnaire II “Assessment of legal framework” in *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons* (Warsaw, OSCE, 2004), available at:

www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

Recommended resources

Anti-Trafficking Assessment Tool

(UNODC Regional Centre for East Asia and the Pacific, in collaboration with the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Subregion)

This succinct tool was designed by the UNODC Regional Centre for East Asia and the Pacific and UNIAP for use by non-legal researchers to rapidly assess jurisdictional concordance with the requirements of the Trafficking in Persons Protocol and the Organized Crime Convention. The tool offers checklists relating to mandatory requirements and non-mandatory provisions of the Convention and the Protocol.



The Anti-Trafficking Assessment Tool is available at:

www.unodc.un.or.th/material/document/TraffickingChecklist.pdf

The Human Trafficking Assessment Tool

(Central European and Eurasian Law Initiative of the American Bar Association)

The Human Trafficking Assessment Tool of the Central European and Eurasian Law Initiative of the American Bar Association measures a country’s compliance with the Trafficking in Persons Protocol. It analyses national anti-human trafficking laws and Government efforts to combat trafficking against the obligations set forth in the Protocol and the Convention. The Human Trafficking Assessment Tool is intended to:

- Assist Governments to prioritize areas of concern, draft strong anti-trafficking legislation and implement effective anti-trafficking strategies
- Assist anti-trafficking non-governmental organizations to monitor compliance with the Trafficking in Persons Protocol
- Encourage collaboration between non-governmental organizations and Governments
- Monitor long-term performance of countries through second- and third-round assessments

The tool is divided into two sections; the first is a de jure assessment (focusing on whether the country's domestic laws comply with the obligations set forth in the Trafficking in Persons Protocol) and the second is a de facto assessment (of the country's programmatic efforts to combat trafficking in practice and whether they comply with the Protocol).



An Introduction to the Human Trafficking Assessment Tool (American Bar Association/Central European and Eurasian Law Initiative, Washington, D.C., 2005) is available at:

http://www.abanet.org/rol/publications/assessment_tool_htat_manual_intro_2005.pdf

Promising practice

Assessment of the legal system in Moldova

In 2005, an assessment was conducted of compliance by Moldova with the Trafficking in Persons Protocol, using the Human Trafficking Assessment Tool of the Central European and Eurasian Law Initiative of the American Bar Association (see above). This assessment was a pilot implementation of the tool. A team of experts reviewed laws, codes, action plans and other documentation relevant to human trafficking and responded to questions pertaining to compliance by Moldova with the Trafficking in Persons Protocol that closely reflected the language of the Protocol's substantive provisions. Assessment of the implementation of the Protocol in practice was based on interviews with law enforcement officers, prosecutors, Government officials, representatives of international organizations and members of the non-governmental organization community. Non-governmental organization focal groups also responded to questions relating to victim protection and prevention measures, and high-school students were interviewed to gauge the impact of awareness-raising campaigns.



The full assessment report is available at:

www.abanet.org/rol/publications/moldova-htat-eng-may-2005.pdf

Assessment of the legal system in Viet Nam

A group of legal experts in the Department for Criminal and Administrative Laws of the Ministry of Justice of Viet Nam conducted an assessment of the Vietnamese legal system in relation to the Trafficking in Persons Protocol. This assessment was undertaken in the framework of a UNODC project, “Strengthening of the legal and law enforcement institutions in preventing and combating trafficking in persons in Viet Nam”, and in collaboration with UNICEF. The assessment report—entitled “Assessment of the legal system in Viet Nam in comparison with the Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime”—addresses the areas of investigation and prosecution, victim protection and support, repatriation and reintegration, and international and regional cooperation. Under each section it assesses Vietnamese domestic law against international law and makes recommendations to bring it further into line with international law.



The full report is available at:
www.unodc.org/vietnam/en/publications.html

Comparative Analysis of International Instruments and Macedonian Legislation on Counter-Trafficking and Illegal Migration (International Organization for Migration, 2007)

This trilingual comparative study of the domestic legislation of the former Yugoslav Republic of Macedonia and of the Trafficking in Persons Protocol (and the Migrants Protocol) assesses the compliance of the anti-trafficking legislation of the former Yugoslav Republic of Macedonia against international instruments in the areas of investigation and prosecution, protection and prevention. The study offers recommendations for the amendment of the legislation of the former Yugoslav Republic of Macedonia to bring it into greater compliance with international instruments.



The full report is available at:
www.iom.hu/PDFs/TEMIS%20Analysis.pdf

Legal Review on Trafficking in Persons in the Caribbean

In June 2005, the IOM conducted a legal review of trafficking in persons in the Bahamas, Barbados, Guyana, Jamaica, Netherlands Antilles, Saint Lucia and Suriname. The review provides a comparative assessment of international and regional instruments, and of domestic legislation, considers the criminal justice system and protection policies of those countries and makes recommendations for the reform of current strategies.



The review is available at:
www.oas.org/atip/atip_Reports.asp

Assessment of specific aspects of the existing legal framework

At another stage of strategic planning, given local knowledge of typical patterns of trafficking, it may be necessary to assess more specifically the provisions of immigration, labour or criminal law that are being exploited or abused by traffickers.

An example of one such legal assessment *Trafficking in Women in Canada: a Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides*. In this analysis, the Canadian legal framework regulating the hiring of immigrant live-in caregivers is examined and issues are identified in relation to immigration law, social legislation, labour law and human rights and contract law. The analysis also examines the mail-order bride trade. It addresses many legal areas indirectly governing this phenomenon in the absence of legislation specifically addressing the mail-order bride industry: contract law, immigration law, the laws on marriage and divorce, private international law and criminal law.



The analysis can be consulted at:
www.swc-cfc.gc.ca/pubs/pubspr/066231252X/200010_066231252X_2_e.html