



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

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## Working Group on Trafficking in Persons

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Item 4 of the provisional agenda\*

**Victims of trafficking in persons, with particular emphasis  
on identification**

### **Victims of trafficking in persons, with particular emphasis on identification**

**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 (Organized Crime Convention) acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), supplementing the Organized Crime Convention, was the principal legally binding global instrument to combat trafficking in persons. The Conference further 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. In resolution 5/2, the Conference decided that the working group should hold at least one intersessional meeting prior to the sixth session of the Conference and present its recommendations to the Conference on whether the working group should be extended and, if so, proposed areas for future work.
3. The first, second and third sessions of this working group were held in Vienna, Austria from 14 to 15 April 2009, from 27 to 29 January 2010 and on 19 October 2010 respectively.

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\* CTOC/COP/WG.4/2011/1.



4. The present background paper was prepared by the Secretariat to aid in the discussion of the fourth session of the working group.

## **II. Development of appropriate measures**

5. Member States may wish to take into consideration the following issues in relation to identification of trafficked persons:

- Are there guidelines and referral procedures for the identification of trafficked persons shared by all practitioners involved in anti-trafficking at the national level?
- Is there a national anti-trafficking coordination mechanism in place? Does it include a coordination function for the identification of and assistance to victims of trafficking in persons?
- Is training for a broad range of criminal justice practitioners on identification of trafficked persons institutionalized?
- Is cooperation between law enforcement and service providers regulated based on mutually agreed roles and responsibilities to deal with national and international cases of trafficking in persons?
- Who can identify victims and presumed victims of trafficking in persons?
- Can presumed victims have access to assistance and support services (“low-threshold approach” to identification)?

## **III. Overview of issues**

6. The identification of trafficked persons remains a global challenge, despite increasing attention devoted to the problem and the development of tools and indicators to support the work of criminal justice authorities, assistance service providers, and other relevant practitioners who may come across victims of the crime of trafficking.

7. Difficulties in the identification of victims are manifold and include, among others, different understandings of the definition of the crime of trafficking across countries, as well as among practitioners within the same jurisdiction; the broad range of forms of exploitation that individuals are subjected to, some of which may entail illegal activities; lack of sufficient and adequate resources to conduct the work within law enforcement and other first responders; the relevance of different indicators for different types of exploitation schemes. Other difficulties may be due to the reluctance of victims to report the crime, due to intimidation and fear of retaliation from the criminals, as well as fear of criminalization by the authorities, e.g. for their irregular migration status, labour status, or for illegal activities conducted as a result of the trafficking experience.

8. Victims of trafficking may not be able to identify themselves as such. The effects of post-traumatic stress disorder (PTSD) affecting many victims also have a serious impact on their capacity to report their experiences and seek assistance and protection.

9. Victims of trafficking may be identified by a broad range of actors, e.g. border guards, police, and immigration officers; doctors, medical and social workers; housing, agricultural and labour inspectors; organizations concerned with the rights of migrants, women, children, victims, as well as refugees protection and asylum organizations, or ordinary citizens.
10. As the identification of victims may be a lengthy and difficult process, and to make a quick decision on the status of a person or a child presumed to have been trafficked is often not the best course of action, some countries try to overcome the multiple challenges of identification of victims through procedures that encourage the referral of presumed trafficked persons or children to specialized services as soon as indicators or a suspicion of trafficking are detected.
11. In some countries, the granting of the status of victim is exclusive competence of the law enforcement and criminal justice authorities; in other countries multidisciplinary commissions/bodies including assistance service providers (State or certified NGOs) are given the formal competence to identify victims of trafficking. Furthermore, and irrespective of official identification procedures, in some countries service providers and other first responders may activate a request for immediate support in the presence of a reasonable suspicion that a person may have been trafficked (e.g. through a national referral mechanism, a coordination centre against trafficking in persons, a designated hotline, etc.). This ensures that access to basic support and assistance can be provided to individuals who are suspected to have been trafficked, as identification may be a lengthy process. This approach is referred to as a “low-threshold approach” to identification of victims of trafficking.
12. A possible way to enhance identification capacity is the establishment of multi-agency coordination groups and national referral mechanisms. To achieve effective cooperation among the many bodies, institutions, organizations who may come across victims of trafficking. The cooperation may be achieved through the conclusion of cooperation agreements such as Memorandums of Understanding among/between State actors, e.g. police and labour inspectors, and/or among/between law enforcement agencies and victim service providers.
13. Some countries have also promoted the adoption of shared, mutually agreed guidelines, procedures and indicators for the identification of trafficked persons among all practitioners involved in anti-trafficking efforts at the national or regional level.
14. In the course of victim identification, the special needs of children have to be taken into consideration. In case of first contact with a child who is presumed to have been trafficked, anti-trafficking responses generally require the strict respect of the rule of early involvement of competent authorities to ensure that any decision taken is in the best interest of the child.
15. The principle of non-punishment and non-prosecution of trafficked persons, where applicable in line with national legislation, may contribute to the successful identification of victims of the crime of human trafficking.

## **IV. Guidance for response**

### **A. Organized Crime Convention and Trafficking in Persons Protocol**

16. The Organized Crime Convention and the Trafficking in Persons Protocol do not mention the identification of victims explicitly. However, article 25 (1) of the Organized Crime Convention states that “Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation”.

17. Furthermore, the preamble to the Trafficking in Persons Protocol declares 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.

18. Article 2, paragraph (b) further states that one of the purposes of the Trafficking in Persons Protocol is to “protect and assist the victims of such trafficking, with full respect for their human rights”.

19. Article 6, paragraph 4, of the Protocol stresses that “States parties shall take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children.

(d) If the victim is an unaccompanied minor the [competent authority] shall:

(i) Appoint a legal guardian to represent the interests of the child;

(ii) Take all necessary steps to establish his or her identity and nationality;

(iii) Make every effort to locate his or her family when this is in the best interest of the child.”

### **B. Working Group on Trafficking in Persons**

20. The Open-Ended Interim Working Group on Trafficking in Persons recommended at its first session, held on 14-15 April 2009:

With regard to training, States parties should provide training to front-line law enforcement officials (police officers, labour inspectors, immigration officers and border guards), soldiers involved in peacekeeping missions, consular officers, prosecutorial and judicial authorities, medical services providers and social workers, involving relevant non-governmental organizations and civil society representatives, where appropriate and in line with national legislation, in order to enable national authorities to respond effectively to trafficking in persons, especially by identifying the victims of such trafficking. The Secretariat should step up the provision of capacity-building activities to requesting States by organizing training courses and seminars (paragraph F).

With regard to ensuring the non-punishment and non-prosecution of trafficked persons, States parties should:

(a) Establish appropriate procedures for identifying victims of trafficking in persons and for giving such victims support;

(b) 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 (paragraph H).

With regard to victims protection and assistance, States parties should (e) develop, disseminate to practitioners and systematically use criteria for the identification of victims (paragraph I).

With regard to the provision of technical assistance to implement the Trafficking in Persons Protocol, the Secretariat should (c) develop, disseminate and systematically use criteria for the identification of victims, in consultation with States parties (paragraph N).

### C. Additional international guidance

21. The *OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking*,<sup>1</sup> guideline 2, stresses that “a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place. [...] States and, where applicable, intergovernmental and non-governmental organizations, should consider:

- Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
- Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
- Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.
- Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

<sup>1</sup> The principles were developed by OHCHR in 2002 as a means of providing practical, rights-based policy guidance on the prevention of trafficking in persons and the protection of victims of trafficking. Available at [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf).

- Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
- Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
- Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

22. The *United Nations Global Plan of Action to Combat Trafficking in Persons* (A/RES/64/293), paragraphs (17), (20), (28), and (29) urges Governments to:

- Develop or strengthen processes for the identification of victims, such as those developed, inter alia, by the United Nations Office on Drugs and Crime and other organizations, including appropriate and non-discriminatory measures that help to identify victims of trafficking in persons among vulnerable populations;
- Reinforce efforts regarding the provision of identity documents, such as the registration of births, in order to lower the risk of being trafficked and to help to identify victims of trafficking in persons;
- Review existing national services available to victims of trafficking in persons, consistent with the Convention and the Trafficking Protocol, strengthen those services where needed, and support the establishment or strengthening of appropriate referral mechanisms;
- Strengthen or continue to strengthen the capacity of relevant officials likely to encounter and identify possible victims of trafficking in persons, such as law enforcement personnel, border control officers, labour inspectors, consular or embassy officials, judges and prosecutors and peacekeepers, and ensure the availability of needed resources to the relevant sectors and institutions, including those of civil society.”

23. The *Model Law against Trafficking in Persons*, in a commentary introducing Article 18 emphasizes that:

“A person should be considered and treated as a victim of trafficking in persons, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of victim.

It is advisable to develop guidelines for law enforcement agencies to assist them in the identification of victims and their referral to appropriate assistance agencies. Such guidelines should include a list of indicators that could be reviewed and updated as needed at regular intervals. Part of these guidelines may concern a recovery or reflection period for all victims of trafficking, in which they can begin to recover, consider their options and take an informed decision on whether or not they want to cooperate with the authorities and/or act as witnesses.

This provision is also applicable to countries of origin, which should endeavour to identify victims among returning nationals.”

Further to this, Article 18 of the Model Law against Trafficking in Persons recommends that:

“The national coordinating body (...) shall establish national guidelines/procedures for identification of victims of trafficking.

The national coordinating body shall develop and disseminate to professionals who are likely to encounter victims of trafficking information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of victims of trafficking in persons.

With a view to the proper identification of victims of trafficking in persons, the [competent authorities] shall collaborate with relevant state and non-state victim assistance organizations.”

24. With respect to children victims of trafficking, the Model Law against Trafficking in Persons, Article 22, stresses that:

“All actions undertaken in relation to child victims and witnesses shall be based on the principles set out in the Convention on the Rights of the Child and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, in particular the principle that the best interests of the child must be a primary consideration in all actions involving the child and the principle that the child’s view must be considered and taken into account in all matters affecting him or her.”

This provision addresses the special status of child victims, on the basis of article 6 of the Protocol, as well as the Convention on the Rights of the Child. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also provide guidance on this matter.

In addition to any other guarantees provided for in this Law:

(a) Child victims, especially infants, shall be given special care and attention;

(b) When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;

(c) Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care.”

## D. Regional guidance

25. The Council of Europe Convention on Action against Trafficking in Human Beings,<sup>2</sup> article 10 (1), (2), (3) and (4) state that:

“Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organizations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organizations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.”

“When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

As soon as an unaccompanied child is identified as a victim, each Party shall: (a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child; (b) take the necessary steps to establish his/her identity and nationality; (c) make every effort to locate his/her family when this is in the best interests of the child.”

26. The *Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* provides that:

“Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organizations.”

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<sup>2</sup> Available at [www.coe.int/T/E/human\\_rights/trafficking/PDF\\_Conv\\_197\\_Trafficking\\_E.pdf](http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf).



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## Annex

### Key tools and recommended resources

#### UNODC Trafficking in Persons Toolkit

The UNODC Toolkit to Combat Trafficking in Persons seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Chapter 6 of the Toolkit addresses the issue of victim identification and provides reference tools, sets of checklists, indicators, and training material on identification, including screening and interview techniques tips, and forms, for different practitioners.<sup>3</sup>

#### UNODC/UN.GIFT Model Law against Trafficking in Persons

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Trafficking in Persons Protocol. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. Each provision provided in the Model Law is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. Of relevance are Articles 18 and 22.<sup>4</sup>

#### UNODC Anti-human Trafficking Manual for Criminal Justice Practitioners

The *Anti-Human Trafficking Manual for Criminal Justice Practitioners* is the result of a global cooperative process in which expert representatives from academia, NGOs, international organizations, 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 for Criminal Justice Practitioners is to support criminal justice practitioners in the prevention of human trafficking, the protection of its victims, the prosecution of its culprits and in the international cooperation needed to achieve these goals. Module 2 of the Manual deals with the identification of victims of trafficking in persons.<sup>5</sup>

#### UNODC Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking

The *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* provides comprehensive guidance for assessing the criminal justice response to trafficking in persons in a given State. The toolkit consists of a set of tools designed to enable experts from international organizations, non-governmental organizations, national development agencies, other governmental entities and competent institutions, to conduct a comprehensive assessment of selected aspects

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<sup>3</sup> Available at [www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html](http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html).

<sup>4</sup> Available at [www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf).

<sup>5</sup> Available at [www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html](http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html).

of a country's criminal justice response to trafficking in persons. This includes (a) identifying gaps in the existing criminal justice response to trafficking in persons; (b) facilitating the formulation and development of technical assistance projects that adequately respond to the gaps and needs identified; and (c) facilitating the development of indicators for evaluating the impact of technical assistance projects. Acknowledging the complexity of the crime of trafficking in persons, the toolkit broadens the scope of traditional criminal justice responses by including all relevant actors and measures involved in appropriately prosecuting the perpetrators and adequately assisting the victims of trafficking in persons.<sup>6</sup>

#### **UNODC/UN.GIFT First Aid Kit for Use by Law Enforcement First Responders in addressing Human Trafficking**

People providing first aid take first steps to identify problems and to stabilize and prepare patients for further treatment. Law enforcement first responders fighting human trafficking carry out similar functions. They take first steps to identify human trafficking; stabilize and control the human trafficking situation; and prepare victims and pass information on to investigators. The first aid kit is intended as a tool to help non-specialized law enforcement officers who may come into contact with trafficked persons to take the vital first steps necessary to protect victims and catch the criminals involved.

#### **ILO/UNICEF/UN.GIFT Training manual to fight trafficking in children for labour, sexual and other forms of exploitation**

This manual specifically focuses on children, including labour issues. It is comprised of textbooks for self study and an exercise book with a menu of assignment options that trainers can choose from for tailor-made training courses. It also includes a facilitators' guide for use by those facilitating training. The manual addresses the needs of governments; workers' and employers' organizations; and NGOs and international agencies working at the policy and outreach level. Given the dynamic and evolving nature of child trafficking and its responses, the manual is updated regularly.

#### **UNICEF Guidelines on the Protection of Child Victims of Trafficking**

These guidelines are based on international human rights instruments and describe standards for the protection of trafficked children from their identification through to their recovery and integration. The aim of these guidelines is to assist governments and State actors, international organizations and NGOs or other service providers as a platform for developing policies and practices, at the national, bilateral and international levels.

#### **UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking**

This Reference Guide is meant to serve as an implementation book for the UNICEF Guidelines on the Protection of the Rights of Child Victims of Trafficking as it gives information about the steps and procedures that constitute "good practice" in the

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<sup>6</sup> Available at [www.unodc.org/unodc/en/human-trafficking/publications.html](http://www.unodc.org/unodc/en/human-trafficking/publications.html).

protection and assistance of child victims of trafficking. As such, the Guide is a practical tool for policymakers and practitioners from governmental, non-governmental and international organizations responsible for protecting and assisting child victims of trafficking across Europe.

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