



UNITED NATIONS
Office on Drugs and Crime



**Assistance for
the Implementation of
the ECOWAS Plan of Action
against Trafficking in Persons**

T R A I N I N G M A N U A L

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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**Assistance for the Implementation
of the ECOWAS Plan of Action
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introduction

Trafficking in Persons has become a major concern for all countries of Western Africa. The Meeting of ECOWAS Heads of States, in December 2001, adopted a Declaration and the ECOWAS Plan of Action against Trafficking in Persons (2002-2003). It directed the ECOWAS Executive Secretariat to prepare proposals for controlling trafficking in persons in the sub-region, with special consideration to the situation of trafficked children.

The UNODC project FS/RAF/04/R60 on the “Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons” will strengthen the capacity of the ECOWAS Secretariat and its Member States in implementing the ECOWAS Plan of Action, particularly as it relates to assessment of existing national legislation and the drafting of new legislation in response to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

This Manual presents the definitions of trafficking in human beings and smuggling of migrants as well as general guidelines on investigation and prosecution of cases related to trafficking in human beings, with a focus on cooperation between ECOWAS Member States. This Manual is to be used as reference material and in training activities under the project.

How to use this Manual

Every section of the Manual includes some tools to help you to better manage your study process. The tools make each section a manageable unit. They include learning objectives, activities, examples and discussion topics that help you apply the course concepts to your previous experience. Relevant legislation is enclosed at the beginning of each section for ease of reference. Please use the self-assessment questions at the end of each section to test your understanding of the material.

This Manual aims to facilitate an interactive relationship between the student and the course material. Below you will find some explanation for each component of the Manual cited above.



Learning objectives

This icon indicates the goal of the section in terms of content and structure.



Activity

Considering your own experience, you will be asked to reflect on some issues and answer some questions.



Key terms

Terms important for the learning process.

**Example**

Each example provides you with a specific situation to illustrate general principles or rules. Consider how the rules preceding the examples apply to them. Try to come up with more examples in your session and apply the various rules.

**Discussion**

This is one of the most important aspects of this Manual. In discussion you can critically examine the rules, structures, and specific situations presented in the Manual. You are encouraged to bring in your own experience to help you understand how the concepts work in practice and how the material applies to your own work. Discussions are also a time to analyse your (and your group's) understanding of the material.

**Legislation**

These sections mention relevant legislation, advice on legislation and recommendations on actions in the absence of legislation.

**Concluding remarks**

The concluding remarks at the end of each section highlight the most important ideas of the section; they can also serve as a guide to the basic structure of the phenomenon of human trafficking as a criminal activity.

**Self-assessment questions**

Questions about the overall section/session in order to help you to test your understanding of the Manual.



Abbreviations

CIS	Commonwealth of Independent States
ECOWAS	Economic Community of West African States
ICMPD	International Centre for Migration Policy Development
ICPO—Interpol	International Criminal Police Organization—Interpol
IGO	Inter-governmental organization
INTERPOL	International Criminal Police Organization
MLA	Mutual Legal Assistance
MoU	Memorandum of Understanding
NGO	Non-governmental organization
TOC Convention	Convention against Transnational Organized Crime
Travaux préparatoires	Preparatory work
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime



General background

This Manual is partly based on two other manuals: UNDP Best Practice Law Enforcement Manual for Fighting against Trafficking of Human Beings, developed in Romania under UNDP project ROM/01/009; and the International Centre for Migration Policy Development (ICMPD) Manual, developed within the framework of the European Union Stability Pact.

UNODC wishes to sincerely thank UNDP Romania and ICMPD for their cooperation and the authorization to use parts of their manuals in the UNODC project activities.

Political background

Western African States adopted a Plan of Action against Trafficking in Persons (2002-2003) within the framework of ECOWAS. The plan will be revised and updated in 2006, as part of a regional conference on trafficking in persons in West and Central Africa to be held in Abuja in June 2006. The existing Plan of Action includes the following objectives:

Legal framework and policy development

1. States who have not yet done so, shall ratify forthwith and fully implement *ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters and ECOWAS Convention A/P1/8/94 on Extradition*.
2. States who have not yet done so, shall sign, ratify, and fully implement the *African Charter on the Rights and Welfare of the Child*.
3. States who have not yet done so, shall sign, ratify, and fully implement the *United Nations Convention against Transnational Organized Crime* and the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention*.
4. States shall adopt laws criminalizing trafficking in human beings in line with the *United Nations Convention against Transnational Organized Crime* and the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* thereto.
5. States shall adopt and implement the laws and administrative structures needed to support the provisions of *United Nations Convention against Transnational Organized Crime* and the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention*, governing international cooperation and assistance in preventing, investigating and prosecuting cases of trafficking by organized criminal groups.
6. States shall adopt legal provisions for the protection of victims of trafficking, and ensure that their domestic legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
7. States shall ensure that their laws and administrative practices provide information to victims about the status of relevant criminal and other legal proceedings and an opportunity to

voice their views and concerns in a manner not prejudicial to the rights of the defence and that the status of any such proceedings are considered prior to any repatriation of the victim.

8. States shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases; and shall give appropriate consideration to humanitarian and compassionate factors in the consideration of permitting victims of trafficking to remain in their territory.

9. States shall take responsibility for victims of trafficking in persons, who are their nationals, or persons with the right of permanent residence in their territory at the time of entry into the territory of the receiving State by facilitating and accepting, with due regard for the safety of such persons, the return of such persons without undue or unreasonable delay.

10. States shall take measures that permit the denial of entry into the country and/or the revocation of visas of persons wanted for the commission of crimes related to trafficking in persons.

11. States shall establish a National Task Force on Trafficking in Persons that will bring together relevant Ministries and Agencies in developing policy and taking action against trafficking in persons, and calling on Inter-Governmental Organizations, non-governmental organizations, and other representatives of civil society, as necessary.

12. The National Task Force designated by each State shall develop recommendations for a national plan of action against trafficking in persons. The National Task Force should also monitor and report through their government to the ECOWAS Secretariat on the progress of the implementation of this Initial Plan of Action.

13. A Unit for the coordination of the efforts to combat trafficking in persons shall be established within the ECOWAS Secretariat. Pending the establishment of this Unit, the Legal Department of the ECOWAS Executive Secretariat shall coordinate and monitor the implementation of this Plan of Action and follow-up on other related developments in Member States in the fight against trafficking in persons.

Protection and support of victims of trafficking in persons

1. States, in cooperation with NGOs and other representatives of civil society as appropriate, shall take measures to create or develop the capacity of the reception centres where victims of trafficking in persons can be sheltered. These centres shall provide physical security, basic material assistance, medical care, and counselling and information to victims of trafficking, particularly on legal assistance, and reporting and filing complaints, taking into account the special needs and legal status of children.

2. States shall encourage victims of trafficking to testify in the investigation and prosecution of cases of trafficking in persons, by giving due consideration to the safety and security of victims and witnesses at all stages of legal proceedings, permitting them to remain in their territory.

3. ECOWAS shall establish a fund for victims of trafficking. The fund shall be used in particular to provide support to States for the repatriation of victims of trafficking.



Prevention and awareness raising

1. States, in partnership with NGOs, other civil society groups, and public and private media, shall develop and disseminate public awareness materials focusing on (a) raising public understanding that trafficking in persons is a crime, and (b) discouraging the demand that leads to trafficking, particularly by addressing those who might exploit victims of trafficking, for example as child domestics or farm labourers.
2. States, in partnership with NGOs, other civil society groups, and public and private media, shall develop and implement public awareness campaigns aimed at potential victims of trafficking, using both traditional channels of information as well as the mass media. Such materials and activities should aim to raise the awareness of potential victims to the types of enticements and recruitment methods used by traffickers. Awareness campaigns should reflect local cultures and traditions and offer information in local languages. Initially, such campaigns should target vulnerable groups, particularly children likely to be trafficked within the sub-region for labour exploitation, and women and children likely to be trafficked for sexual exploitation internationally.
3. States, NGOs and other civil society groups, in consultation with ECOWAS, shall prepare information materials concerning the practice and risks of trafficking in persons. Such materials shall, where appropriate, be disseminated to visa applicants, and distributed to any other part of the travelling public at international borders and on public transportation and carriers.

Collection, exchange and analysis of information

1. States shall establish direct channels of communication between their border control agencies. They shall initiate or expand efforts to gather and analyse data on trafficking in persons, including on the means and methods used, on the situation, magnitude, nature, and economics of trafficking in persons, particularly of women and children. States shall share such information, as appropriate, within ECOWAS, and with law enforcement agencies and other agencies of countries of origin, transit and destination, as well as with the United Nations Office on Drugs and Crime and other relevant international organizations.
2. States with shared borders shall establish joint border patrols trained in the prevention of trafficking in persons. The ECOWAS Unit for the coordination of the efforts to combat trafficking in persons should facilitate, upon request, such coordination efforts.

Specialization and training

1. States shall create special units, within existing law enforcement structures, with a specific mandate to develop and effectively target operational activities to combat trafficking of persons. States shall also consider the establishment of joint investigation units.
2. States shall provide and strengthen training for law enforcement personnel, customs and immigration officials, prosecutors and judges, and other relevant officials, on the prevention of trafficking in persons. The training should focus on the methods used in preventing such trafficking, prosecuting the traffickers, and protecting the rights of victims, including protecting the victims from the traffickers. This training should also

take into account the need to consider human rights and child- and gender-sensitive issues, and it should encourage cooperation with non-governmental organizations and other elements of civil society

3. States shall prepare training materials concerning trafficking in persons for embassy and consulate staff who deal with immigration and visa services. Materials will be developed in consultation with the ECOWAS Unit for the coordination of the efforts to combat trafficking in persons.

Travel and identity documents

1. States shall establish procedures to verify whether a person who is the victim of trafficking in persons is a national or has the right of permanent residence in the State of origin, and to provide such travel documents or other authorization as may be necessary to enable a victim of trafficking in persons who is without proper documentation to travel to and re-enter its territory, on the request of a receiving State.

2. States, at the request of another State, when presented with suspected cases of trafficking in persons, shall verify, within a reasonable time, the validity of travel and identity documents issued or purported to have been issued in their name and suspected of being used for trafficking of persons.

3. States shall take such measures as may be necessary, within available means: (a) to ensure that the birth certificates, and travel and identity documents they issue are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated, or issued; and (b) to ensure the integrity and security of travel or identity documents they issue, and to prevent their unlawful creation, issuance, and use. In this regard, States shall implement Decision C/DEC.1 /5/2000 signed in Abuja on 29 May 2000 relating to the Adoption of an ECOWAS Passport.

4. States shall encourage commercial carriers to take precautions against their means of transport being used in the trafficking of persons, and require, where appropriate and without prejudice to applicable international conventions, such carriers to ascertain that all passengers are in possession of travel documents required for entry into the receiving State. States shall further adopt provisions requiring that all documents for minors travelling alone be held for them by the carrier until they have reached their destination.

Monitoring and evaluation of the initial plan of action

1. States, through their Task Force on Trafficking in Persons, shall coordinate and monitor the ongoing implementation of this Initial Plan of Action at the national level and report, on a bi-annual basis, to the ECOWAS Secretariat.

2. The ECOWAS Secretariat shall coordinate and monitor the implementation of this Initial Plan of Action and report on the progress achieved every six months to the Ministerial Meeting of the Mediation and Security Council.



3. The ECOWAS Secretariat shall organize an Expert Group Meeting for 2003* that shall evaluate the implementation of this Initial Action Plan, and make recommendations for further actions to be taken against trafficking in persons.

This Manual looks at trafficking in human beings as a criminal phenomenon.¹ Also, human trafficking is often (but not necessarily) a transnational phenomenon. The development of joint international cooperation is one of the critical strategies for combating trafficking as a form of (transnational) crime. This manual allows the investigative and prosecutorial efforts to reflect the international characteristics of the crime of trafficking. Moreover, the Manual gives a common understanding of human trafficking as a crime to help members of the judiciary and the law enforcement to understand the methodologies utilized by colleagues in other ECOWAS Member States.

Target audience

This Manual targets the practising members of the judiciary and the law enforcement in the ECOWAS Member States. The problem of trafficking in human beings as a crime and the measures used to combat it have a very large scope. Because of the limited nature of the activities under the UNODC project ‘Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons’, the Manual is not able to cover every issue related to trafficking. Moreover, because of the diversity of legislation, procedures, and investigative and prosecutorial practices in the ECOWAS Member States, the guidelines are, in many instances, limited to broad principles and general summaries of best practices.

Range of experience

The Manual is written for a readership that, while experienced in their particular judicial or investigative fields, has no specific knowledge of trafficking crime. Because of the anticipated level of knowledge about human trafficking of the readership, the Manual includes guidelines at a level that the more experienced members of the judiciary or law enforcement may find simplistic. This is not the intention of the Manual and the more experienced readers are kindly asked to take this into account.

Assumption of legal and ethical compliance

The Manual includes a range of guidelines that are normally strictly regulated by law. Both legal and ethical compliance with national and international law is a prerequisite for public and victims’ confidence in the criminal justice system. To a large extent, this confidence determines the success of the criminal justice system to combat human trafficking.

*Due to the delay in the implementation of the associated UNODC project, this meeting will be held in 2006.

¹Many other equally important perspectives—e.g. trafficking as an issue of economic development, as a gender or migration issue—do not directly fall under the scope of this Manual. Nevertheless, their importance in understanding human trafficking cannot be underestimated.

Key terms

Use of terms:

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Protocol against the Smuggling of Migrants by Land, Sea and Air

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.



section 1

WHAT IS TRAFFICKING IN PERSONS?



Learning objectives

At the end of this section you will be able to:

- Understand the concept of human trafficking;
- Define the chain of crimes (act of trafficking, means of trafficking, purpose of trafficking) that make up human trafficking;
- Make a distinction between human trafficking and smuggling of migrants.

Defining trafficking in persons

There are many definitions of trafficking in human beings. The United Nations Convention on Transnational Organized Crime included a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter the Trafficking Protocol) in order to create an internationally agreed upon definition of how to deal with the trafficking in human beings

The Trafficking Protocol provides the first clear, internationally agreed upon definition of trafficking.

The “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children” defines the key elements of trafficking in persons as:

- The act of recruitment, transportation, transfer, harbouring, or receipt of persons;
- By means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim;
- For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs. (Protocol Art. 3(a))

Consent of the victim is irrelevant where illicit means are established, but criminal law defences are preserved. (Protocol Art. 3(b), Convention Art. 11(6))

In other words, the definition is broken down into three lists of elements:

- **The acts of trafficking;**
- **The means of trafficking; and**
- **The purpose of trafficking (forms of exploitation).**

This definition of human trafficking is a key element of the Protocol. By providing an internationally agreed definition, the Protocol standardizes the approaches to fight human trafficking. The definition can help ensure that legislative, enforcement and administrative measures at the national level are consistent from country to country. Moreover, it provides a common basis for statistical and research purposes.



Legislation

As the definition is adopted at the national level, the focus of all investigative and prosecutorial effort should be placed upon presenting sustainable evidence that supports these three elements.

While the new definition is crucial to an international response to trafficking in persons, it is important to remember that it is not an exhaustive definition, and that the Protocol is limited in scope. The Protocol is intended to “prevent and combat” trafficking in persons and to facilitate international cooperation against such trafficking. It applies to the “prevention, investigation and prosecution” of Protocol offences, where these are “transnational in nature” and involve an “organized criminal group” as defined by the Convention.

Hence, the definition of trafficking in persons in the Protocol is essential to the fight against this crime, but it is not, and should not be, the only tool available. It is crucial that national legislation addresses the issue, in compliance with the Protocol and other international law. The task does not end there: without implementation and enforcement of the national legislation, the law does not have any influence. The target groups of this Manual are those people who can indeed make a difference in putting this definition into practise. The next section examines the practical meaning of human trafficking.



Activity

- Is there a specific law/provision on human trafficking in your country?
- Is the law or the provision in compliance with the definition in the Trafficking Protocol?
- If not, what kind of national legislative amendments would be needed?

What does human trafficking entail?

The act of trafficking, i.e. recruitment, transportation, transfer, harbouring, or receipt of persons, is often only one of many crimes committed against trafficked persons. Often, trafficked persons are subjected to threats, physical and sexual violence or forced confinement; their passports or other documents are confiscated by traffickers or they are forced to work without any payment. These are the means to commit the trafficking act. The purpose of trafficking is always exploitation. Exploitation can take place in various forms and the list in article 3 is not exhaustive. According to the UNODC database on human trafficking flows, the most common form of exploitation globally is for sexual purposes. Other forms include forced or compulsory labour, marriage, adoption and removal of organs.

In a number of cases, corrupt state officials are also involved in trafficking through issuing fraudulent travel documents, forging birth certificates etc. These acts constitute criminal offences in most countries. Investigation and prosecution can include these additional criminal acts to address the full range of crimes in a trafficking case.

Investigation and prosecution of individual acts as mentioned above can be particularly useful in situations and in countries where:

- A distinct criminal offence of trafficking does not yet exist;
- Penalties for trafficking do not sufficiently reflect the nature of the crime and do not have any deterrent effect; or
- In cases where the existing evidence is not sufficient in order to prosecute the suspect for trafficking, but may be sufficient enough to prosecute such cases as bodily injury or sexual assault/rape.

It is important to emphasize, however, that where domestic anti-human trafficking legislation is in place, such offences should not replace investigation or prosecution for trafficking, but should be invoked along with those charges.



Example

A Provincial Court in Austria, Europe, sentenced a trafficker to eight years in prison. The court found him not only guilty of trafficking, but also of other criminal offences, including bodily injury, rape, forced abortion, forgery of documents and damage to property.

The witness statements by the two victims contributed significantly to the outcome of the proceedings. The two women had been expelled from the country, but then travelled back to Austria in order to testify at the main hearing. The cooperation between the court and the involved victim support NGOs in Austria (Intervention Centre for Trafficked Women) and in the country of origin made this possible.

Other applicable provisions of criminal law

Hence, in order to ensure that the legal consequences reflect the gravity of the harm inflicted upon the trafficked person, States could, in addition to prosecuting traffickers under the offence of trafficking in human beings, invoke other applicable provisions of criminal law. These other applicable provisions can be particularly useful in situations and in countries where there is no national legislation on human trafficking as such or where national provisions do not reflect the gravity of the crime. These other applicable provisions are useful also in cases where the existing evidence is not sufficient for the prosecution of trafficking, but may be sufficient to prosecute for example sexual assault or rape.

Such offences include but are not limited to the following:

- Slavery;
- Slavery-like practices;
- Involuntary servitude;
- Forced or compulsory labour;
- Debt bondage;
- Forced marriage;
- Forced abortion;
- Forced pregnancy;
- Torture;
- Cruel, inhumane or degrading treatment;
- Rape;
- Sexual assault;
- Assault;
- Bodily injury;
- Murder;
- Kidnapping;
- Unlawful confinement;
- Labour exploitation;
- Withholding identity papers;
- Corruption.



Discussion

Discuss different types of crimes that take place in connection to human trafficking in your country or the subregion. Are there provisions in the criminal law of your country that account for these criminal acts? On the basis of the legislation in your country, how would you investigate/prosecute these criminal acts?

The issue of consent

The question of the victim’s consent to smuggling or trafficking is one of the key issues in developing a response to trafficking. The language of article 3(b) of the Trafficking Protocol is a compromise on the question of consent.

Article 3

Use of terms

For the purposes of this Protocol:

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

In many trafficking cases there is initial consent or cooperation between victims and traffickers. This is followed by more coercive, abusive and exploitive circumstances. Different countries had various opinions on how to address the issue of consent in the definition of trafficking. Some States argued that any victim consent should be irrelevant. This ensures that the traffickers do not use the victim’s initial consent as a defence against charges of later exploitation to which the victim did not consent. Other States felt that some element of consent was needed to limit the scope of the offence, to distinguish trafficking from legitimate activities and for constitutional reasons.

To resolve the issue, paragraph (b) of the definition clarifies that consent becomes irrelevant whenever any of the means of trafficking are used.²

In other words, consent of the victim could still be used as a defence in domestic law, but it is nullified as soon as such things as threats, coercion, or the use of force are established. The issue of consent is complex in that both consent and coercion take many forms. The following examples illustrate the question of consent.



Example

Victoria left her farming village in Burkina Faso when she was promised a job as a waitress in Gabon. Seeking a way to earn money to support her child and a way to escape bad family conditions, she agreed to leave when a relative referred her to a “recruiter”, a woman who then arranged her transport to Ghana. In Ghana, away from her family and friends, her documents were taken from her and she was sold to the first of a series of pimps. Over the next year she was re-sold several times, forced into prostitution, paid nothing, and brutally beaten. Ultimately she was transported into Gabon, where the police picked her up.

²Trafficking in persons consists of means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.

Victoria's story is common in that she did consent to be taken in this case, to Gabon for a job as a waitress. In many trafficking cases, the false offer includes the promise of a valid work and residency permit. Sometimes the victim will agree to being smuggled into a country illegally in order to find work. Victims clearly do not consent to the subsequent brutal exploitation. It is not possible under international law to consent to torture and abuse.



Example

A "recruiter" brought a young Nigerian woman to Italy. This young woman understood that she would be a prostitute and had given consent to be illegally transported into the country. However, upon arrival she found that she was required to repay an enormous sum to the trafficker. Also, in keeping with traditional Nigerian "magical" practice, the traffickers made a sachet of her blood, hair, and nail clippings that gave them extreme psychological power over her. Italian police report that freed Nigerian women often refuse to give statements until their "magical" sachets are recovered. While some Nigerian prostitutes have purchased their freedom, others fall into enslavement, are paid nothing, and are regularly brutalized.

The fact that the victim knew in advance that she was going to engage in prostitution does not mitigate the criminality of the trafficker—the element of exploitation remains. The gravity of it is not diminished because the victim was aware of the nature of the work but not of the working conditions.

It is not just trafficking of women into prostitution that leads from consent to enslavement. There are also cases of men recruited to work in construction who consented to what they believed were legitimate temporary jobs only to find themselves locked in to the work site, paid nothing, and physically abused.



Example

On 26 September 2003, Nigerian police rescued 116 male children and young adults from slave camps inside Nigeria. The rescued victims were only some of those enslaved in child-slave camps discovered in the western Nigerian states. The victims of Beninese nationality were camped in the bush without any shelter and forced to sleep outside on the bare ground. They were used to crush granite and stones at quarry sites in the camps. The children's parents had allegedly released them to labour traffickers, many in hope of a better future for their children. Some of the children had been working in the quarries for up to four years.

It is important to note that a child under the age of 18 cannot give his or her consent even if none of the means of trafficking are used. In other words, even if a child is not threatened, no force is used against him or her, and s/he is not coerced, abducted or deceived, a child cannot give a consent to the act of trafficking for the purpose of exploitation. Moreover, even the custodian of the child cannot give a consent to the trafficking act for the purpose of exploitation.

This is why the young boys, who were rescued from Nigerian granite quarries and repatriated, were victims of human trafficking even if they gave their consent to working in the quarry and they were not deceived as to the working conditions. The boys had been recruited, transported across international borders—the act of trafficking—to the granite quarries and exploited for labour purposes—purpose of trafficking. Even if none of the means were utilized, the boys solely because of their age were victims of trafficking.

Smuggling of migrants

This Manual addresses the subject of trafficking in human beings. Nevertheless, it is vitally important to be able to make the distinction between trafficking in human beings and people smuggling.

In order to address the smuggling of migrants, the United Nations Convention on Transnational Organized Crime also included a separate Protocol against Smuggling of Migrants by Land, Sea and Air (hereafter, the Smuggling Protocol). The purpose of the Smuggling Protocol is, “to prevent and combat the smuggling of migrants as well as promote cooperation among States Parties, while protecting the rights of smuggled victims.” The Smuggling Protocol defines smuggling as follows:

Article 3

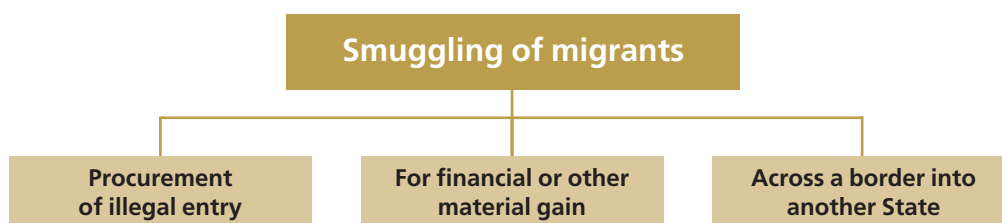
Use of terms

For the purposes of this Protocol:

(a) **“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.**

In other words, the definition is broken into three elements:

- Procurement of illegal entry;
- For financial or other material gain;
- Across a border into another State.



Difference between trafficking in human beings and smuggling of migrants

By this definition, many of the activities of the traffickers (such as the use of fraudulent travel documents) are also smuggling. However, trafficking goes beyond simply the “procurement of illegal entry” into a State.



Legislation

In other words, trafficking in persons is often smuggling *plus* coercion or deception at the beginning of the process and exploitation at the end.

This means that it is often difficult to know whether a particular case falls under the definition of smuggling of migrants or trafficking in human beings. Consequently, in investigation and prosecution it is sometimes necessary to rely on measures against smuggling until the investigators or prosecutors discover the additional elements of trafficking. For this reason it is important that law enforcement personnel as well as judiciary who work in trafficking are familiar with both concepts. The provisions of the two Protocols that concern border controls and travel documents are the same, which demonstrates that smuggling and trafficking in persons share some activities.

The definition of smuggling of migrants and the definition of trafficking in persons also recognize that while victims of trafficking in persons should be treated as victims of criminal activity, migrants who were not exploited are not necessarily victims of crime. It is important to note that trafficked victims are victims of crime regardless of their possible illegal entry into and stay in the country. Law enforcement and judiciary must treat the victims accordingly. The Smuggling Protocol provides some provisions on protection and support for migrants, but these provisions are not as extensive as those for victims of trafficking in persons.³

Differences between trafficking and smuggling

Hence, while there are many similar components within the two types of crime, there are three important differences:

³It should be stressed that the intention in the Smuggling Protocol is to create criminal offences applicable to the *smugglers*. Smugglers are those who smuggle others for gain. The intention of the Smuggling Protocol is not to criminalize the migrants, i.e. those who procure only their own illegal entry. Neither does it intend to criminalize those who procure the illegal entry of others for reasons other than gain, such as individuals smuggling family members or charitable organizations assisting in the movement of refugees or asylum-claimants.

Consent

The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Exploitation

Smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.

Transnationality

Finally, smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.

Many victims of trafficking in persons initially consent to be smuggled from one country to another. This causes some overlap between the phenomena and definitions of trafficking and smuggling that may be confusing. Smuggling and trafficking both involve moving human beings for profit, but in smuggling the relationship between migrants and offenders (the smugglers) usually ends upon arrival in the destination country. The criminal profits from the process of smuggling the migrant alone. In cases of trafficking, some subsequent exploitation for profit, such as coerced labour or sexual exploitation, is also involved.



Self-assessment questions

These questions address the overall section in order to help you to test your understanding of the material.

- What are the trafficking acts according to the Trafficking Protocol?
- What are the means of trafficking according to the Trafficking Protocol?
- What are the purposes of trafficking according to the Trafficking Protocol?
- What does the Trafficking Protocol stipulate with regard to consent to trafficking?
- What are the three main differences between trafficking and smuggling?

Case studies

The following case studies are based on hypothetical examples that have been created to generate consideration of the distinction between human trafficking and smuggling of migrants within the context of articles 3 of both Trafficking and Smuggling Protocols. It is important to remember that there is no exact right or wrong answer to any of the problems and that the goal of the problem scenarios is to encourage discussion.

Case study one—South-East Asia

Nok is a 20-year-old woman from South-East Asia. She is widowed and supports her two small children by selling vegetables. One day, her friend Patnaree approaches her. Patnaree says she can find Nok a job as a domestic worker in Thailand where she can make 10 times her current monthly earnings. Patnaree also promises to make all her travel arrangements and to pay for her trip if Nok agrees to repay her once she starts her new job in Thailand.

Deciding that the extra income will benefit her family, Nok leaves her children in the care of her mother and begins her journey by bus in the company of Patnaree. Nok has no passport, but Patnaree assures her that she will not need one since she has friends at the border. Some miles before the border, they leave the bus and wait at a roadside cafe until they are joined by a truck driver called Than. He and Patnaree clearly know each other and Nok is surprised to see Patnaree pay Than a significant sum of money before they both get into the truck with him and continue their journey to the border. They cross the border without any problems, as Patnaree promised. It is the only time Nok knowingly crosses a border on her trip to Thailand.

The truck driver Than is friendly, but asks that Nok travel in the truck's closed rear compartment so as to avoid problems at the next border. It is dark, hot, and very uncomfortable in the back of the truck, but Nok agrees since she has no passport and can only rely on his advice and goodwill and Patnaree's friendship. That night, however, after a full day's travel, Than stops the truck on a lonely rural road, unlocks the rear compartment, and rapes her by the roadside while Patnaree remains in the cab of the truck and ignores Nok's pleas for help. After the assault, Nok is then forced back into the compartment of the truck, which is again locked behind her.

It is a long trip, and Nok's journey in the rear compartment of the truck comes to an end in an empty field beside a wide river where Patnaree and the driver Than meet four Thai men. They all clearly know each other and one of the four men hands a large roll of cash bills to Patnaree. She then arranges to meet Than again the following week at the same time and place.

The four men then take Nok and Patnaree across the river. Nok is told that she is now in Thailand. She is ordered to get in the back of a truck that is waiting at the side of the river. Nok sees that there are other young women already seated inside, and all of them appear to be very frightened. Nok herself is afraid, no longer believing that she is to be

given the job she was promised, and when she refuses to get into the vehicle one of the men threatens her with a gun. The four men and Patnaree travel together in the cab of the vehicle.

Nok and the other women are taken to a private house in an urban area of a major city. Nok sees Patnaree enter the house together with the four Thai men but does not see her again. One of the four men tells her that Patnaree has returned home.

Over a period of several weeks, the four men repeatedly physically and sexually abuse the women. They do not allow them to leave the premises. One man tells Nok that if she escapes, the police will put her in prison for being in Thailand without a passport and that she will never see her children again. He also threatens to locate and traffic her children if she even tries to escape.

Other men also visit the house, and Nok is forced to have sex with them, for which her four captors receive payment. She is not allowed to retain any of the money and is not allowed to leave the building.

One night, the house is the target of a police raid. Finding Nok without the proper documentation allowing her to be in Thailand, she is arrested and summarily deported.



Discussion

Case study one⁴

Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.

On the basis of the Trafficking and Smuggling Protocols, can it be stated that this case is one of human trafficking and not people smuggling?

Are the three elements of trafficking there?

In this case, what is the act of trafficking? What are the means used to commit the trafficking act? What is the goal of the whole process?

⁴The available information indicates a clear relationship between the friend and recruiter, Patnaree, the truck driver, Than, and the four Thai men.

Within the terms of Article 3 of the Trafficking Protocol, this is a case of human trafficking because the evidence shows that Patnaree recruits (act) Nok and deceives her (means) as to the true objective of the arrangements. Patnaree then participates in the transfer (act) of Nok—through the services of Than, for which he is paid by Patnaree—to the four men in Thailand who then detain and exploit her as a prostitute in their brothel in Thailand (exploitative purpose). All the parties know each other, which indicates an organized network and prior conspiracy between them.

It is apparent that the intention is to exploit her as a prostitute for financial gain and coerce her by threats of reprisals against her and her children if she refuses to comply.

The point to note is that it is evident that the intention of the network is to exploit Nok after the two borders have been crossed and that Nok had entered into a debt bond with Patnaree before they left for Thailand.

It is also worth noting the additional offences that are committed by Patnaree (facilitation of illegal immigration); Than (rape and facilitation of illegal immigration); and the four Thai males (rape, unlawful detention, pimping and facilitation of illegal immigration).

Case study two—Europe

Gina is a 24-year-old sex worker in a south-eastern European city. Lately, business seems to be slowing down, and Gina assumes that it is because she is getting older, combined with the fact that the younger sex workers are stealing her clients. She begins to hear rumours that a number of older women from the same city and area have been making a lot of money abroad so when a local agent named Rudi approaches her about working in Italy, she readily agrees.

Rudi is very helpful. He tells Gina that she will travel to Italy via a boat crossing of the Adriatic Sea and that he will arrange for her to work in the brothels of Milan. He tells her that she will be able to choose her own working hours and earn significant amounts of money for herself after she has re-paid her debt to him. Rudi's total costs for travel and forged documents amount to about €700 but he does not tell this to Gina. Rudi arranges to have someone to meet Gina upon her arrival in Italy.

When she voices concern that she cannot speak Italian, Rudi assures her that many Balkan females arrive in Italy without speaking any Italian but learn it quickly and end up marrying wealthy men. Gina knows that she will not be able to do sex work forever, and is looking for a way to secure her future.

She agrees to reimburse Rudi in the amount of €10,000 for travel, documentation costs, and his expenses and effort. He assures her that she can earn the money to repay him in six months time, by which time she must repay the full amount.

Gina crosses the Adriatic and then travels to Milan concealed in the back of a lorry. The journey takes almost three days. As Rudi promised, someone is waiting for Gina in Milan and collects her from the lorry driver. He is an Italian man named Carlo. A 40-year-old woman named Elisabeth, who acts as the “madam” who controls the activities of the prostitutes, accompanies him. They take her to a private house in a wealthy area of Milan where she recuperates after her long journey.

The next day, at about 10 o'clock in the morning, Carlo and Elisabeth escort Gina to a high-class brothel where she begins to work off her debt. The work is not what Gina expected based on Rudi's promises. She is forced to work very long hours, often beginning at 10 a.m. and finishing at 5 or 6 o'clock the next morning. She must provide all forms of sexual services to the clients, including sexual intercourse without condom protection. When Gina refuses to provide this type of service, Carlo threatens to injure her severely if she does not do as she is told. Carlo takes all of her earnings and only allows her a small allowance for food and cigarettes. He tells Gina that he will continue to take all of her earnings until she has earned enough to repay Rudi and to pay Carlo for all his brothel costs and profit level.



Discussion

Case study two⁵

Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.

On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?

Are the elements of trafficking present?

In this case, what is the trafficking act? What are the means used to commit the trafficking act? What is the goal of the whole process?

Gina consented to prostitution. What does the Protocol stipulate about the meaning of consent?

Case study three—Africa

Akpan is a 12-year-old boy from a rural area in Calabar, Nigeria. His mother Femi is a widow with six children. Because of the harmful widowhood practices rites, caring for the children has become an increasingly difficult task. As the eldest boy in the family, Akpan feels responsible for his siblings, and would like to help his mother feed them. Before his father's death, he would occasionally do odd jobs for neighbours, but these days no one has anything with which to pay him.

One day, Akpan's mother meets a man called Nelson who is looking for strong boys to work on farms in Gabon. When Femi told him that she had a 12-year-old son who was looking for work, Nelson offered her the equivalent of US\$ 10 for his services, promising that her son would have food and accommodation at his place of employment. To Femi, US\$ 10 is a significant amount of money that enables her to feed her other children for some time. The added benefit of one less mouth to feed while Akpan was away encouraged her to agree to the deal.

⁵This is a case of human trafficking notwithstanding the fact that Gina consented to prostitution. Gina is transported into Italy because Rudi recruits (act) Gina by deception (means), both in relation to the conditions under which she will work and as to the costs of her illegal entry into Italy. Carlo exploits her as a prostitute in Milan and takes possession of all of her earnings in order that both he and Rudi can make significant profits from the exploitation of Gina (exploitative purpose).

Carlo coerces her through threats of violence.

The scenario clearly shows a network connection between Rudi, Carlo and Elisabeth and an intention upon their part to coercively exploit Gina as a prostitute for as long as it is possible to do so after she has been illegally smuggled into Italy.

It is also worthy of note that it makes no difference that Gina was already a prostitute before the arrangements were made between her and Rudi or that she was fully aware before she left home that the plan was that she would act as a prostitute in Milan.

The deception that was practised against her was in relation to the costs incurred by Rudi in relation to getting her to Milan and the conditions under which she would have to work and the fact that she was not able to retain any of her earnings.

As with case study one, note the additional offences of facilitation of illegal immigration and pimping committed by Rudi and Carlo.

Although Akpan was sad to leave his family, he was pleased to be able to help his family in this way. Akpan and four other boys who Nelson had also recruited travelled together to the Gabonese border on foot and by lorry. At the border, Nelson smuggled the boys into Gabon. He led them along the edges of several large sugar cane farms, occasionally negotiating with men he found there. After a few days journey, a man named Malam Sule paid Nelson the equivalent of US\$ 50 and Nelson left the boys.

Malam Sule supervised a large number of workers; some of these were boys Akpan's age. He made sure that they all worked very hard in the fields. Their workday started before the sun rose and ended after it set. They were given no payment for their work, but were fed two meals a day, one in the morning and one in the evening. At night, the boys all slept in a small room with a hard dirt floor, without mats or mattresses, although each had a thin wool blanket.

After many months, Akpan grew tired of his poor living conditions and felt very homesick. He had no idea how to return home to his family, but he decided to leave the farm anyway, telling no one of his intention to do so. Shortly after leaving the farm, the police apprehended him as an illegal alien.



Discussion

Case study three⁶

Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.

On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?

Are the elements of trafficking present?

In this case, what is the trafficking act? What are the means used to commit the act? What is the goal of the whole process?

What does the Protocol stipulate about the meaning of consent? Remember that Akpan is 12-years-old.

⁶Akpan is illegally smuggled across the Nigerian-Gabonese border by Nelson. Nevertheless, this is a human trafficking case because Nelson recruits (act) Akpan by exploiting the vulnerability of Femi (means) and by giving payment to Femi (means) to secure her consent for the transfer (act) of Akpan to Gabon with the intention of selling him to farmers for exploitation as a child laborer (exploitative purpose) for which he will receive payment. Nelson's relationship with Akpan remains in place after the illegal crossing of the Gabonese border until such time as he can arrange the sale of the boy to a local farmer. Malam Sule commits the same offence because he receives Akpan (act) with the intention of exploiting him (exploitative purpose) as a child slave labourer. It is important to note here that it is not necessary under the terms of Article 3 of the Trafficking Protocol to demonstrate any means on the part of Malam Sule or Nelson because Akpan is a child. Under the terms of Article 3(c) no means need to be present to commit a trafficking crime through the acts of recruitment, transportation, transfer, harbouring or receipt of a child. The scenario clearly shows that the treatment of Akpan comes within the definition of forced labour under the terms of Article 3.

Case study four—Latin America and United States

Pablo, Chico and Raoul are three Ecuadorian men aged 18 to 21. They grew up together in the same rural village in central Ecuador and have been friends for many years. All three are unemployed and there is no prospect of work in their village or in the surrounding towns. Frustrated by the lack of employment and shortage of money, Pablo in particular is desperate to earn some money. His mother suffers from detached retinas and is becoming increasingly blind. She needs a US\$ 5,000 medical treatment to save her vision.

Manolo, Pablo's friend who has recently been deported as an illegal immigrant from the United States, tells him of a criminal network based in the capital, La Paz, that can get the three men across the borders of Central America and Mexico and into the United States. There they will be able to earn substantial wages working as agricultural labourers in the large fruit and vegetable farms of Southern California. Manolo says that the working hours are very long and the work is extremely arduous. They will be paid much less than the minimum legal wage in the United States, but that at least they will have work and some money. Finally, if Pablo, Chico and Raoul want to get to the United States, the criminals in La Paz will want US\$ 1,000 each in advance.

Pablo speaks to Chico and Raoul about his plan to get to the United States but they both turn him down, as they cannot raise the US\$ 1,000. Pablo speaks with his mother and explains to her that if she can lend him the money from her small amount of life savings, he will be able to get to the United States and earn enough money to send home to her to pay for the surgery. His mother is skeptical and anxious for his safety but agrees to loan him the money.

Manolo accompanies Pablo to La Paz and introduces him to members of the criminal network. Pablo pays the US\$ 1,000 and, after a delay of two days, they conceal him and four other men in a secret compartment in the back of a long-distance truck. The journey takes four days during which time they are allowed out of the compartment for very short periods and are given only a small amount of food and water.

Eventually, the criminals take Pablo and the other men out of the truck in an empty desert area. They then walk for about an hour during the night until the criminals stop and inform them that they have now successfully illegally crossed into the United States. The criminals indicate the direction of the nearest major road and tell the men that they will be able to follow the road for a number of miles until they come to the agricultural area where they can get work with the local farmers. They then leave the scene.

Pablo sets out alone and eventually arrives at a large farm where he can see a number of Latin American males working in the fields picking vegetable and fruit crops. He approaches them and they direct him to the farm foreman who takes him on as a crop-picker.

The foreman tells Pablo that the pay is just two dollars an hour for a sixteen-hour working day, seven days a week and that he will stay in a communal hut with the other workers. Accommodation costs US\$ 10 per week. He will also have to pay for his own food. Nonetheless, Pablo agrees and accepts the job offer.

After he has been working for just over two weeks, the U.S. Border Patrol and Immigration services raids the farm and Pablo and the other farm labourers are arrested as illegal aliens. Pablo is deported back to Ecuador.



Discussion

Case Study Four⁷

Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.

On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?

Are the three elements of trafficking present?

What is the act in the current case? What are the means used to commit the act? What is the goal of the whole process?

⁷This is a case of people smuggling because there is no evidence of a relationship between the criminal network based in La Paz and the exploitation of Pablo within the farming community of Southern California.

The smugglers transfer Pablo but none of the specified means are present; Pablo is not forced or deceived and there is no connection to an exploitative purpose.

Pablo is clearly smuggled illegally across the border of the United States by the criminal network but this is the service that he has paid them US\$ 1,000 in advance for and the criminal smugglers have no further interest in Pablo's future after the illegal entry has been achieved. They immediately leave him to his own devices in the Southern California desert

Pablo is exploited in labour practices that are similar to slavery because he is required to work 16 hours a day for less than the statutory minimum legal wage but this exploitation occurs as a separate crime and is not linked to the criminal network that smuggled Pablo into California.



section2

THE NORMATIVE FRAMEWORK



Learning objectives

At the end of this section you will be able to:

- Determine whether or not your country has signed or ratified the Convention against Transnational Organized Crime (TOC), the Trafficking or the Smuggling Protocols;
- Define the relationship of the Trafficking Protocol to the Convention against Transnational Organized Crime;
- Define the purpose of the Convention against Transnational Organized Crime;
- Define the purpose of the Trafficking Protocol.

Ratification status of the Convention against Transnational Organized Crime and the supplementing Trafficking and Smuggling Protocols in the ECOWAS Member States as of 1 February 2006

COUNTRY	TOC CONVENTION	TRAFFICKING PROTOCOL	SMUGGLING PROTOCOL
Benin	Signed 13 Dec. 2000 Ratified 30 Aug. 2004	Signed 13 Dec. 2000 Ratified 30 Aug. 2004	Signed 17 May 2002 Ratified 30 Aug. 2004
Burkina Faso	Signed 15 Dec. 2000 Ratified 15 May 2002	Signed 15 Dec. 2000 Ratified 15 May 2002	Signed 15 Dec. 2000 Ratified 15 May 2002
Cape Verde	Signed 13 Dec. 2000 Ratified 15 July 2004	Signed 13 Dec. 2000 Ratified 15 July 2004	Signed 13 Dec. 2000 Ratified 15 July 2004
Côte d'Ivoire	Signed 15 Dec. 2000	Not signed	Not signed
Gambia	Signed 14 Dec. 2000 Ratified 5 May 2003	Signed 14 Dec. 2000 Ratified 5 May 2003	Signed 14 Dec. 2000 Ratified 5 May 2003
Ghana	Not signed	Not signed	Not signed
Guinea	Accession 9 Nov. 2004	Accession 9 Nov. 2004	Accession 9 Nov. 2004
Guinea Bissau	Signed 14 Dec. 2000	Signed 14 Dec. 2000	Signed 14 Dec. 2000

COUNTRY	TOC CONVENTION	TRAFFICKING PROTOCOL	SMUGGLING PROTOCOL
Liberia	Accession 22 Sept. 2004	Accession 22 Sept. 2004	Accession 22 Sept. 2004
Mali	Signed 15 Dec. 2000 Ratified 12 April 2002	Signed 15 Dec. 2000 Ratified 12 April 2002	Signed 15 Dec. 2000 Ratified 12 April 2002
Niger	Signed 21 Aug. 2001 Ratified 30 Sept. 2004	Signed 21 Aug. 2001 Ratified 30 Sept. 2004	Not signed
Nigeria	Signed 13 Dec. 2000 Ratified 28 June 2001	Signed 13 Dec. 2000 Ratified 28 June 2001	Signed 13 Dec. 2000 Ratified 27 Sept 2001
Senegal	Signed 13 Dec. 2000 Ratified 27 Oct. 2003	Signed 13 Dec. 2000 Ratified 27 Oct. 2003	Signed 13 Dec. 2000 Ratified 27 Oct. 2003
Sierra Leone	Signed 27 Nov. 2001	Signed 27 Nov. 2001	Signed 27 Nov. 2001
Togo	Signed 12 Dec. 2000 Ratified 2 July 2004	Signed 12 Dec. 2000	Signed 12 Dec. 2000

Convention against Transnational Organized Crime (TOC)

The growing concern about organized criminal groups and operations that cross national borders led an increasing number of countries to consider and adopt new laws, measures and strategies to deal with the problem. The United Nations Convention against Transnational Organized Crime (hereafter, the TOC Convention) was negotiated and adopted in 2000⁸ in this context. The Convention entered into force in September 2003.⁹

The TOC Convention is the international community's response to the need for a truly global approach to the problem of human trafficking. Its purpose is to promote cooperation both for the prevention of and the effective fight against transnational organized crime (Art. 1). It seeks to enlarge the number of countries that take effective measures against transnational crime and seeks to forge and strengthen the controllers' cross-border links. It respects the differences and specificities of the diverse legal traditions and cultures, while at the same time it promotes a common language that helps to remove some of the existing barriers to effective transnational collaboration.



Legislation

The purpose of the Convention is "to promote cooperation to prevent and combat transnational organized crime more effectively" (article 1).

⁸Once the Convention and its supplementing Protocols were adopted, they were opened for signature. After a country has signed a Convention, it needs to ratify it.

⁹According to the Convention, article 38, it entered into force on the 90th day of the 40th ratification.

Relationship between the Convention and Protocols¹⁰

The Convention against Transnational Organized Crime and the Trafficking and Smuggling Protocols were drafted as a group. The Protocols supplement the Convention. The Trafficking Protocol entered into force in December 2003. The Smuggling Protocol entered into force in January 2004. General provisions against transnational organized crime (e.g. extradition and mutual legal assistance) are included in the parent Convention. Elements specific to the subject matter of the Protocols are included in each of the Protocols themselves (e.g. protocol offences and provisions relating to travel and identity documents).

The Protocols are not intended as independent treaties, so each country is required to be a State Party to the parent Convention in order to become a Party to any of the Protocols. This ensures that to any case that arises under a Protocol, all of the general provisions of the Convention are also available and applicable. Many specific provisions are drafted on this basis; the Convention contains general requirements for mutual legal assistance and other forms of international cooperation. Requirements to render specific assistance such as the verification of travel documents are found only in the appropriate Protocols, for example.



Legislation

General provisions of the Convention on, for example, extradition and mutual legal assistance are applicable to the Trafficking Protocol.

Article 1 of the Trafficking Protocol and article 37 of the Convention establish the following basic principles governing the relationship between the two instruments:

No country can be a Party to any Protocol unless it is also a Party to the Convention.¹¹

The language permits simultaneous ratification or accession, but it should not be possible for a country to be subject to any Protocol obligation unless it is also subject to the obligations of the Convention.

The Convention and the Protocol must be interpreted together.¹² In interpreting the instruments, all relevant instruments should be considered, and provisions that use similar or parallel language should be given generally similar meaning. In interpreting the Protocol, the purpose of that Protocol must also be considered, which may modify meanings applied to the Convention in some cases.¹³

¹⁰Convention Article 37, Protocol Article 1.

¹¹Convention Art. 37 (2).

¹²Convention Art. 37 (4) and Protocol Art. 1 (1).

¹³Convention Art. 37 (4).

The provisions of the Convention apply to the Protocol, mutatis mutandis.¹⁴ The meaning of “mutatis mutandis” is defined in the agreed notes for the travaux préparatoires as, “with such modifications as circumstances require” or “with the necessary modifications”.¹⁵ This means that in applying Convention provisions to the Protocol, minor modifications of interpretation or application can be made to take account of the circumstances that arise under the Protocol, but that modifications should not be made unless necessary, and then only to the extent that is needed. This general rule does not apply where the drafters have specifically excluded it.¹⁶

Protocol offences shall also be regarded as offences established in accordance with the Convention.¹⁷ This is a critical link between the Protocol and Convention. It ensures that any offence or offences established by each country in order to criminalize trafficking in human beings as required by Protocol Article 5 will automatically be included within the scope of the basic Convention provisions governing forms of international cooperation such as extradition (Convention Article 16) and mutual legal assistance (Convention Article 18).¹⁸ Establishing a similar link may be an important element of national legislation.



Activity

Give an example of a general provision included in the Convention against Transnational Organized Crime that has effect on international cooperation between the ECOWAS Member States.

What is the ratification status of the Convention and the two Protocols in the ECOWAS Member States? What implications does this have on international cooperation between the ECOWAS Member States?

Scope of application of the Convention against Transnational Organized Crime

The Convention against Transnational Organized Crime applies to the prevention, investigation and prosecution of the four offences established by the Convention:

1. Participation in an organized criminal group (article 5);
2. Laundering of proceeds of crime (article 6);
3. Corruption (article 8);
4. Obstruction of justice (article 23);

¹⁴Protocol Art. 1 (2).

¹⁵On the meaning of mutatis mutandis, see Interpretative Notes A/55/383/Add. 1, para. 62.

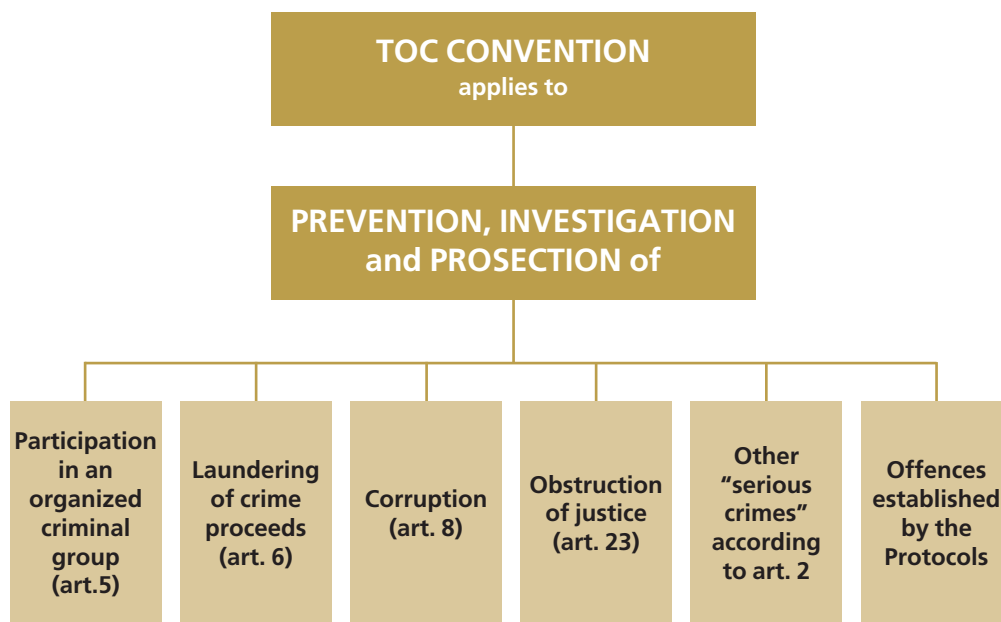
¹⁶Article 11 (6) of the Protocol, for example, states that: “without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.”

¹⁷Protocol Art. 1 (3).

¹⁸In most cases, drafters used the phrase “offences covered by this Convention” to make this link. See for example Convention Article 18 (1), which sets the scope of the obligation to extradite offenders.

Furthermore, the Convention applies to

5. Other “serious crimes” according to article 2;¹⁹ and
6. Offences established by the Protocols, including human trafficking and the smuggling of migrants.²⁰



Transnationality and organized criminal groups

Hence, the Convention and the Protocols are interlinked and must be interpreted together.²¹ Generally, the Convention provisions limit the application of the Protocol to cases where at least one of the offences involved has:

- some element of transnationality; and
- some degree of involvement of an “organized criminal group”.

These limits also apply to the Convention itself and all of the other Protocols.²²

¹⁹“Serious crimes” according to Convention Article 2 (b) are criminal offences punishable under domestic law by a maximum deprivation of liberty of four years or more.

²⁰Convention Article 3, Article 1 of the Protocols.

²¹Protocol Article 4, and Convention Articles 2 and 3, which apply to the Protocol, mutatis mutandis, govern the range of activities and circumstances in which the Protocol will apply, as well as exclusions to its application.

²²In addition to this, Protocol Article 4 then further limits the Protocol itself to matters relating to trafficking in persons.



Key terms

An offence “is transnational in nature” if it meets one of the following conditions:²³

- It is committed in more than one State;
- It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- It is committed in one State but has substantial effects in another State;

The term “organized criminal group” is defined as:²⁴

- A structured group of three or more persons;
- Existing for a period of time;
- Acting in concert with the aim of committing one or more serious crimes²⁵ or offences established in accordance with the Convention (including any applicable Protocols); and
- For the purpose of any financial or other material benefit.

Thus, the Convention against Transnational Organized Crime limits the application of the Trafficking Protocol. This illustrates that it is important to ensure that any legislation that implements the Convention and the Protocols is drafted in a consistent and coordinated manner. For example, one can easily imagine a single case in which investigators encounter human trafficking (Trafficking Protocol), money laundering (TOC Convention) and the smuggling of migrants (Smuggling Protocol), and in which the extradition of offenders is sought (TOC Convention). It will be important to ensure that the countries involved handle all of these forms of cooperation in a consistent manner.



Concluding remarks

UNODC recommends ratifying and implementing the Convention and the Protocols simultaneously.

²³See Convention Art. 3, para.(2).

²⁴See Convention Art. 2, subpara.(a).

²⁵Note that the term “serious crime” is also defined by Convention Art.2, subpara.(b). “Serious crimes” are criminal offences punishable under domestic law by a maximum deprivation of liberty of four years or more.



Discussion

Discuss the benefits of ratifying and implementing the TOC Convention and the Trafficking and Smuggling Protocols simultaneously. What would the benefits be in a trafficking case?

Involvement of transnationality and organized crime in domestic legislation

Hence, the Convention only applies, “where the offence is transnational in nature and involves an organized criminal group.” However, the Convention specifically provides that elements of transnationality or organized crime should not be incorporated into domestic offence provisions.²⁶ While States Parties should have to establish some degree of transnationality and organized crime when requesting cooperation or assistance from other States Parties, their prosecutors should not have to prove either element in order to obtain a conviction for trafficking in persons or any other offence established by the Convention or its Protocols. In other words, some degree of transnationality and organized crime is a prerequisite only when requesting mutual legal assistance or other forms of international cooperation.



Legislation

In cases of trafficking in persons, domestic offences should apply even where transnationality and the involvement of organized criminal groups do not exist or cannot be proven.

Basic principles of criminalization established by the Convention

It is important to bear in mind that the Trafficking and Smuggling Protocols must be read in conjunction with the Convention. The Convention establishes several general principles of criminalization that apply to its Protocols.²⁷

²⁶Convention Art. 34(2).

²⁷It may also be important in some legal systems to ensure that criminal offences under the Convention and the other Protocols are coherent to support the investigation and prosecution of organized criminal groups and their members for any offence, or combination of offences, established by the instruments. In many cases, for example, organized criminal groups involved in illicit firearms trafficking will also be engaged in smuggling or trafficking human beings or narcotic drugs or other commodities, or in other crimes such as money-laundering. National legislatures will wish to ensure that the formulation of the relevant criminal offences under the Convention and its Protocols will support coordinated efforts to investigate and prosecute all of these activities together, where appropriate.

The following principles from the Convention should be particularly taken into account:

1. Minimum standard. Domestic crimes such as the crime of human trafficking may be broader in scope or more severe than those required by the Protocol, as long as all conduct specified by the Protocol is made a crime.²⁸

2. Offences must be “criminal” offences (except for legal persons). Each of the offence provisions in the Convention and the Protocol state that offences must be established as offences in criminal law. This principle applies unless the accused is a legal person in which case the offence may be a criminal, civil or administrative offence.²⁹

3. Sanctions. Sanctions adopted within domestic law must take into account, and should be proportionate to the gravity of the offences.³⁰

4. Non-inclusion of transnationality in domestic offences. As noted, the element of transnationality is one of the criteria for applying the Convention and Protocols (Convention Article 3) and has to be established before requesting international assistance, but transnationality should not have to be proven in a domestic prosecution. For this reason, transnationality is not required as an element of domestic offences. The exception to this principle is any offence that expressly requires transnationality as an element of the offence.³¹

5. Non-Inclusion of “organized criminal group” in domestic offences. As with transnationality, the involvement of an “organized criminal group” has to be established to invoke the obligations for international cooperation but should not have to be proven as an element of a domestic prosecution. Thus, the Protocol offences should apply equally, regardless of whether the offence was committed by an individual, or was committed by individuals associated with an organized criminal group, and regardless of whether this can be proven or not.³²

6. Jurisdiction. The Convention requires States Parties to establish jurisdiction to investigate, prosecute and punish all offences established by the Convention and any Protocols to which the country in question is a State Party.

Jurisdiction must be established over all offences committed within the territorial jurisdiction of the country, including its marine vessels and aircraft. This is called the *principle of territorial jurisdiction*.

If the national legislation prohibits the extradition of its own nationals, jurisdiction must also be established over offences committed by such nationals anywhere in the world. This allows the country to meet its Convention obligation to prosecute offenders who cannot be extradited on request because of their nationality. Jurisdiction established over offences committed by nationals of the State is called the *active personality jurisdiction*.

²⁸Convention Art. 34(3).

²⁹Convention Art.5, 6, 8 and 23. *Liability of legal persons*. Liability for offences must be established both for “natural” or biological persons, and for “legal” persons, such as corporations. Convention Art.10.

³⁰Convention Art. 11(1).

³¹Convention Art. 34(2) and agreed notes for the travaux préparatoires A/55/383/Add.1, para.59.

³²Ibid.

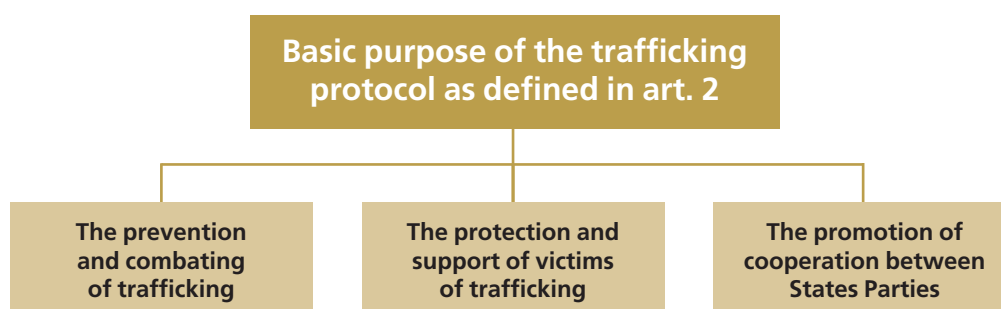
The Convention also encourages, but does not require, the establishment of jurisdiction in other circumstances, such as all cases where the nationals of a State are either victims or offenders.³³ Jurisdiction established over offences committed against nationals of the State is called the *passive personality jurisdiction*.

Purposes of the Protocol

Section 1 of the Manual presents trafficking as defined in the Trafficking Protocol. The following gives a short overview of the purposes of the Trafficking Protocol, including the requirement to criminalize human trafficking.

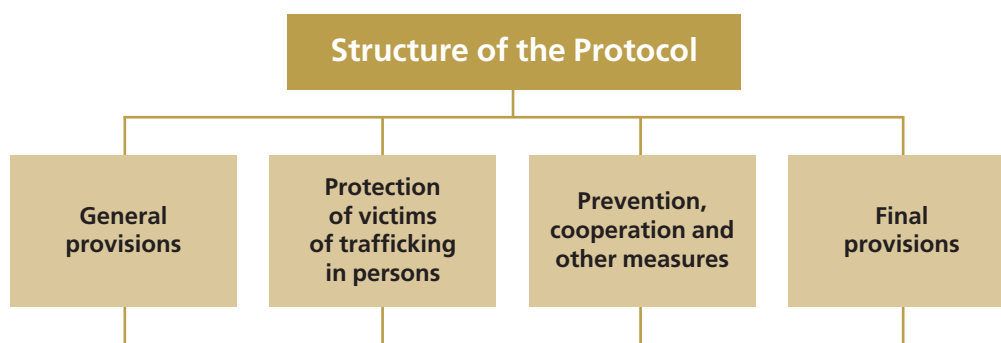
Article 2 of the Protocol establishes the three basic purposes:

- Prevention and combating of trafficking;
- Protection and support of victims of trafficking; and
- Promotion of cooperation between States Parties.



The language of article 2 (a) requires “particular attention” to trafficking in women and children, though it maintains the basic principle that any human being, regardless of age or gender, could become a victim and that all forms of trafficking should be covered by the Protocol. In addition to general rules, more specific provisions may be needed in some areas to take into account the problems of women and children who are victimized.

The purposes of the Trafficking Protocol are reflected in the structure of the Protocol.



³³Convention Art.15, para.(1) (mandatory jurisdiction); Art.15, para.(2) (optional jurisdiction); and Art.16, para.(10) (obligation to prosecute where no extradition due to nationality of offender). See also the discussion of jurisdictional issues in chapter 9 of the Legislative Guide to the Convention.

Criminalization

The general provisions address the relationship between the Trafficking Protocol and the Convention, define the terms of the Protocol and Convention, and oblige State Parties to criminalize the offence of human trafficking. The relationship between the Trafficking Protocol and the Convention as well as the definition of the terms “trafficking in persons” and “smuggling of migrants” have already been discussed above. Let us shortly discuss the requirement to criminalize human trafficking.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of the Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence;
 - (b) Participating as an accomplice;
 - (c) Organizing or directing other persons to commit an offence.

Hence, the Trafficking Protocol requires States to criminalize human trafficking as defined in article 3. In other words, it is not sufficient to criminalize some of the underlying offences to human trafficking but human trafficking itself needs to be criminalized. In addition to the criminalization of the trafficking crime, the Trafficking Protocol requires to criminalize also:

- Attempt to commit the trafficking crime;
- Participation as an accomplice; and
- Organizing or directing others to commit trafficking.

However, the concept of attempt does not exist in the criminal justice systems of some countries. Thus, the framers of the Protocol included the language “subject to the basic concepts of its legal system” to create a general obligation on States Parties to criminalize attempts while not making it fully mandatory for countries where it would be effectively impossible.



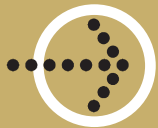
Discussion

Has your country criminalized human trafficking? If not, which underlying offences to human trafficking are criminalized?



Self-assessment questions

- When did the Convention enter into force?
- What is the purpose of the Convention?
- Has your country ratified the Convention?
- What is the scope of the application of the Convention?
- What are the four offences the Convention establishes?
- What does “transnational in nature” mean according to the TOC Convention?
- What is the definition of an “organized criminal group”?
- When did the Trafficking Protocol enter into force?
- When did the Smuggling Protocol enter into force?
- What are the purposes of the Trafficking Protocol?
- What kind of status does the Trafficking Protocol give to women and children?



section3

TRAFFICKING METHODOLOGY



Learning objectives

At the end of this section you will be able to:

- Understand human trafficking as a process;
- Identify, in terms of stability and the future, the strategic risks for a State that are generated by the development of organized human trafficking;
- Define and identify the trafficking methodology;
- Define two critical concepts in trafficking and the lessons learned to rectify the situation.

Global scope of trafficking in persons

Because human trafficking is a form of organized crime, accurate information about trafficking levels is difficult to obtain. Despite the increasing number of reports, reliable estimates of worldwide trafficking in persons are limited.³⁴ If figures on such trafficking are given, they are usually based on published estimates of the level of trafficking and in most cases there is no explanation of how these figures were calculated.

Until the adoption of the Trafficking Protocol, there was no international definition to serve as the basis for research. The covert nature of the activity makes it difficult and even dangerous to gather information from victims or offenders. Specific cases generate much of the hard information that is available. This information is useful for illustrating the nature of trafficking but may not be representative of trends or patterns.

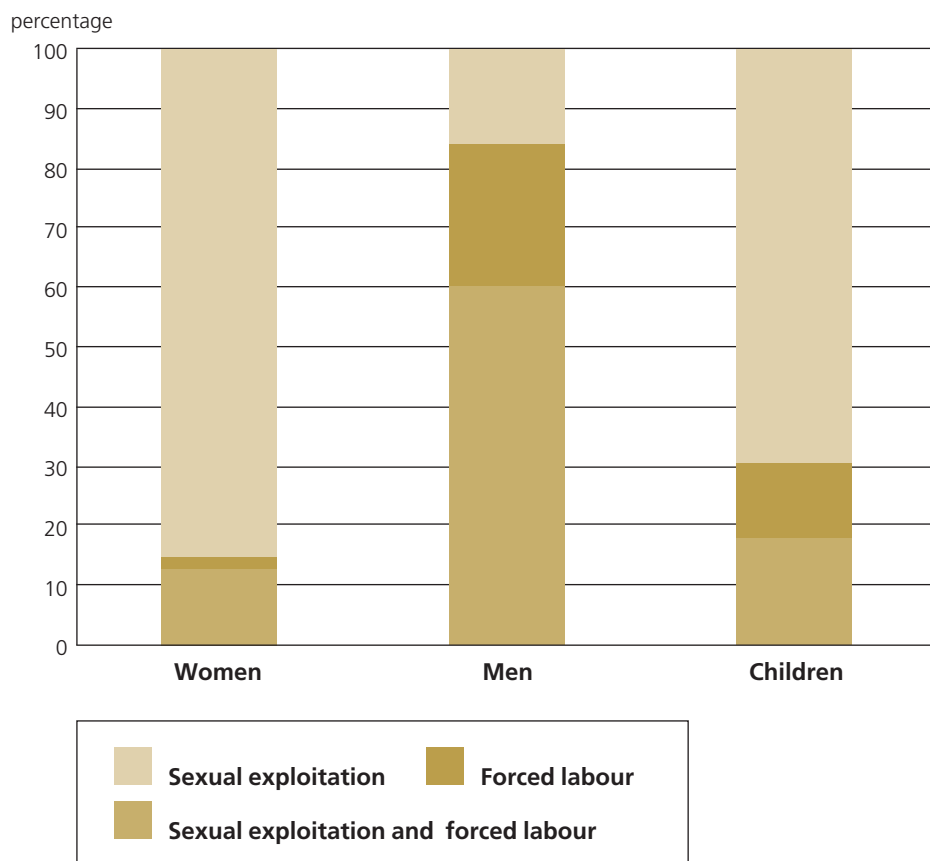
For this lack of reliable information and in order to systematically collect and collate open-source information, a global database on trends in trafficking in human beings was established under the Global Programme against Trafficking in Human Beings of UNODC. A broad range of sources is scrutinized for information on trends in such trafficking and the routes used, characteristics of victims and offenders and criminal justice responses.

³⁴Different sources suggest global totals of between 700,000 and 4 million people trafficked each year. The United Nations suggests that profits of human trafficking total to approximately US\$ 9 billion annually. Once again what we do not know is much greater than what we do know, but the pattern is clear: trafficking in persons is extensive and growing.

In the database, countries are categorized as origin, transit and/or destination. Countries of origin are source countries for victims of trafficking. When comparing the data globally, some regional characteristics can be found. Considering the global inequalities in affluence, it is not surprising that Africa, Asia and the CIS Member States were the main regions where victims of trafficking were recruited. It should also not come as a surprise that developed countries found themselves at the end of the trafficking route. However, less obvious were the results concerning Central and Eastern-Europe, indicating that this is the major transit region. Interesting also was the fact that Asia figured equally as a region of origin and of destination.³⁵

According to the database, women are reported to be the largest group of victims of trafficking. Children are reported to be the second largest group of victims³⁶ and men are mentioned only in 4 per cent of cases. Information is also collected on the type of exploitation suffered by the victims in the country of destination after their recruitment and transportation. Sexual exploitation is the most common form of exploitation, followed by forced labour.³⁷

Sexual exploitation and forced labour among women, men and children



³⁵Kristiina Kangaspunta, "Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings", *Forum on Crime and Society*, vol. 3, Nos. 1-2 (2003).

³⁶A worrying trend is the low age of some victims of trafficking crime in many locations. In sexual exploitation, this development mirrors client demand. For example, trafficked children are increasingly involved in prostitution because the clients hold the belief that sex with children reduces the risk of contracting sexually transmitted diseases. This belief has been proven false.

³⁷Kristiina Kangaspunta, "Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings", *Forum on Crime and Society*, vol. 3, Nos. 1-2 (2003).

Victims are typically recruited from poorer countries, transported through countries that provided geographically expedient and relatively safe routes and faced exploitation in more affluent parts of the world. However, it is important to note that this state of affairs is constantly changing as former origin or transit countries improve their circumstances and become countries of destination.

Human trafficking trends in the ECOWAS region

According to the UNODC global database on trends in trafficking in human beings, the ECOWAS region is diverse. Nevertheless, some general trends can be observed.

The majority of the ECOWAS countries are countries of origin for victims. In particular Benin, Ghana, Sierra Leone and, in particular Nigeria are major countries of origin. Furthermore, many ECOWAS countries are used by traffickers as countries of transit.

Côte D'Ivoire and Nigeria are characterized as very important countries of destination, while Benin, Burkina Faso, Ghana, Togo and recently Liberia can be regarded as less important but still noticeable recipient countries.

The victims are mainly trafficked within the Western African region but also to the European Union as well as North Africa. Further destinations, such as Asia and America, are rare. Hence, as for the destination, the trafficking trend in the ECOWAS region follows a geographic pattern: victims are being transported into neighbouring countries, and often stay within the Western African region.

Forced labour is the most important form of exploitation of trafficking in the ECOWAS region when victims are trafficked within the African continent. In the case of victims destined to the European Union, sexual exploitation is the main purpose of human trafficking.

Trafficking in persons as a process

Trafficking and smuggling cases often share common qualities and even the definitive distinctions between them do not always clarify each case. Often both trafficked and smuggled individuals leave a country of origin willingly, though possibly under different pretences. They may be exposed to similar cases of danger or discomfort during long journeys.

However, upon arrival in the destination country, smuggled individuals are usually free to apply for asylum or look for work in the informal sector. Trafficked persons are caught in a situation of debt bondage and/or forced into slavery-like practices in the sex or labour market. Exploitation usually occurs over an extended period of time during which interdependency may develop between the trafficked persons and the (organized crime) group(s) that traffic them. This interdependency often leads to further networking, extended exploitation, and possible recruitment for criminal purposes.

One can view the trafficking of human beings as a process rather than a single offence:

1. The process of trafficking begins with the abduction or recruitment of a person and continues with the transportation. In case of transnational trafficking, the process continues with the entry of the individual into another country.
2. This is followed by the exploitation phase during which the victim is forced into sexual or labour servitude. This often includes violence against the victim.
3. A further phase may occur that does not involve the victim but rather the offender. Depending upon the size and sophistication of the trafficking operation, the criminal (organization) may find it necessary to launder the criminal proceeds. There may be further links to other criminal offences such as the smuggling of migrants, weapons or drugs.

During this process, the criminals involved, in direct furtherance of the trafficking activity, may perpetrate instrumental criminal activities. The violence associated with maintaining control over victims is an example of these crimes. Other crimes, such as corruption, money laundering, and tax evasion, are secondary, and occur as a result of the trafficking activity. It is important to note that internal trafficking occurs as well and possibly to an even greater extent in many countries than transnational trafficking.

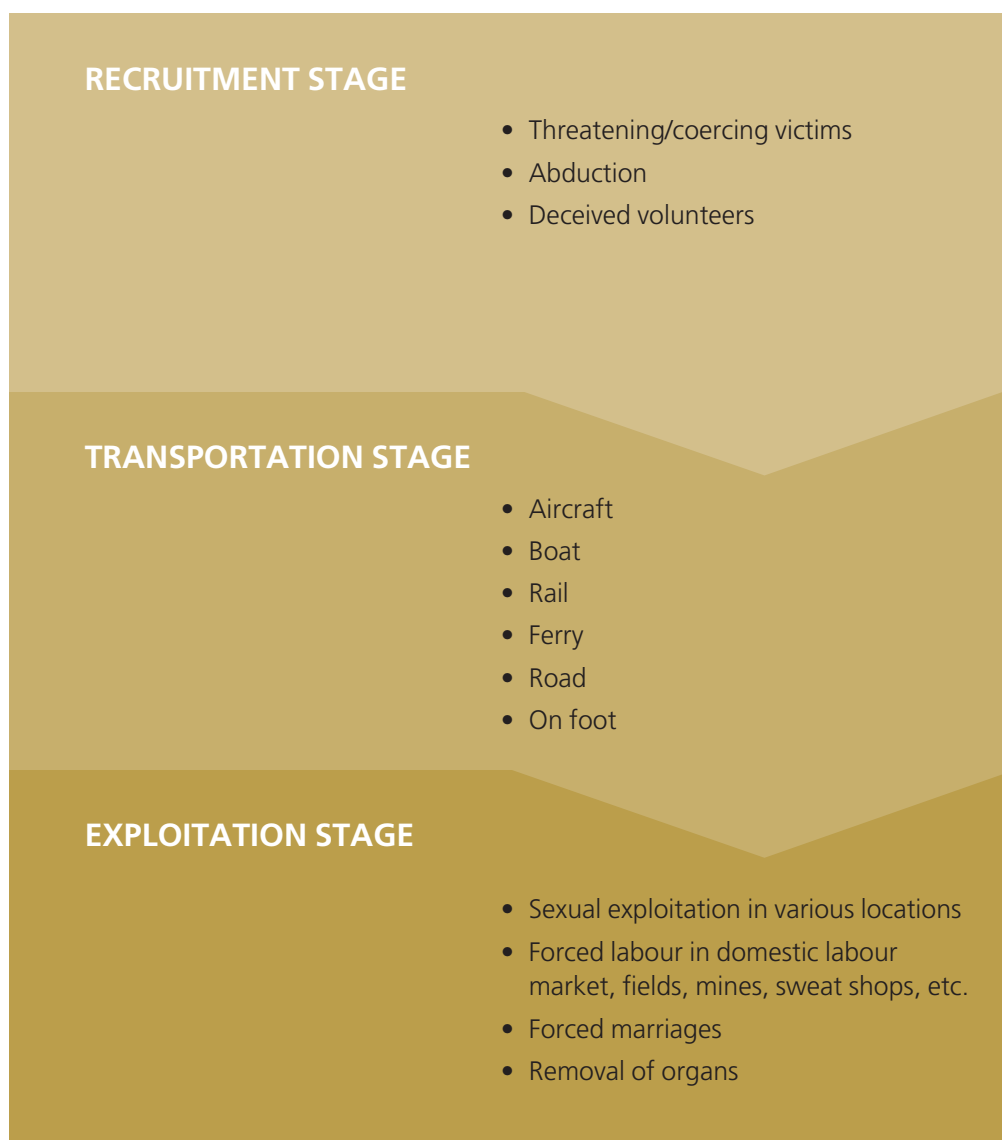
Different phases in trafficking

A typology helps to further understand the nature of the offences related to the trafficking process. The underlying offences in human trafficking are conducted either against individual victim(s) or against the State. For example, in a rape case, the victim is an individual. In document forgery, on the other hand, it is the State that is violated against, not necessarily an individual victim.

Human trafficking can also be characterized in terms of the phase of the trafficking process, i.e.:

1. Recruitment;
2. Transportation and illegal entry of the trafficked person;
3. The exploitation phase;
4. The subsequent phase of profit laundering.

The three phases of the trafficking process



The above chart includes the three stages of the trafficking process. The numbers and types of general trafficking offences are often dependent upon the sophistication of the smuggling and trafficking operation and the criminal groups involved. These operations can be as simple as the smuggling and subsequent trafficking of an individual by another individual over a border without proper documentation or with legal documents, e.g. tourist visas, or they can be as sophisticated as operations that move large numbers of persons using forged documents and that generate huge profits that must be subsequently laundered.

Trafficking may involve offences against the State such as abuse of immigration laws, document forgery, corruption of government officials, money laundering and tax evasion by the traffickers. Other violations are directed against the victims: unlawful coercion or threat, extortion, aggravated and/or sexual assault, rape or even death. The following table shows various offences perpetrated at different stages of the trafficking process.

RECRUITMENT	TRANSPORTATION/ ENTRY	EXPLOITATION	CRIMINAL PROCEEDS
Document forgery	Document forgery	Unlawful coercion	Money laundering
Fraudulent promises	Immigration law abuse	Threat	Tax evasion
Kidnapping	Corruption of officials	Extortion	Corruption of officials/bribery
	Damage to property	False imprisonment	
	Withholding documents	Kidnapping	
		Procurement	
		Document theft	
		Sexual assault	
		Assault	
		Rape	
		Death	
		Forced abortion	
		Torture	

Violence is seldom exercised during the recruitment phase, except in cases where victims have been kidnapped. During this stage, fraudulent promises are often made to secure the willingness of the victim to leave. It is during the transportation phase and, much more commonly during the exploitation phase after entrance into the destination country, that victims suffer threats and violence. In cases of both labour and sexual exploitation, threats or actual violence are often used to maintain control over and to prevent the escape of the victim.

Interdependence between human trafficking and other forms of organized crime

So far this discussion has examined the offences perpetrated by the traffickers in furtherance of the trafficking scheme. However, the networks that smuggle and traffic human beings, as well as the victims themselves, have been linked to other (organized) criminal activities. Criminal groups have been known to make use of existing contacts, routes, corrupt government officials and networks in order to expand their operations. Interestingly, according to research carried out by UNODC, there is a correlation between the organized crime index and prevalence of human trafficking.

This correlation or interlinkage seems to be two-fold: vertical and horizontal.


Vertical inter-linkage

First, trafficking processes seem to consist of chains of individual offences, which are in close relationship with each other. These detected offences relating to trafficking include corruption of officials, document forgery and immigration law abuse.

Horizontal inter-linkage


Second, connections are in place between different criminal activities by the same criminal organization. A criminal organization may develop “horizontal interdependencies” by establishing connections among different activities. The criminal organization is thus able to diversify and expand its markets.

Intelligence sources at Interpol reveal that trafficking in human beings supplements more traditional criminal activities such as drug trafficking, vehicle theft, trafficking in arms, and money laundering. Traffickers have been linked to, for example, money lending, extortion for protection money, and physical violence. Furthermore, traffickers have been known to coerce their victims into prostitution (prostitution being a criminal offence in some countries), into selling drugs, organized begging, and pick pocketing. Organized crime remains profit oriented—the form the exploitation takes depends on the profits.



Concluding remarks

Human trafficking is a form of organized crime.



Discussion

Discuss and indicate whether the “victim” in crimes listed in the table above is the State, or the individual who has been trafficked.

Strategic risks

Once organized human trafficking has gained a foothold within a State it undergoes rapid growth and poses the following strategic risks to the stability and future of that State:

Destabilization of existing sex and labour markets

As trafficked victims are removed from or introduced into illegal sex and labour markets, the potential for violent turf wars increases as the traffickers confront local criminal elements for the control of these lucrative forms of human exploitation.

Growth and diversification of organized crime

Organized trafficking crime does not occur in isolation. Once established, the trafficking networks quickly diversify and develop mutually beneficial affiliations with existing organized criminal organizations that operate in other spheres, such as terrorism, drugs and weapons trafficking as well as smuggling of migrants.

Economic destabilization through growth of money-laundering

The financial profitability of organized prostitution quickly leads to sophisticated forms of internal and external money laundering which may trigger economic destabilization.

Demographic destabilization

Trafficking of human beings on a significant scale can destabilize populations at the micro and macro level, whether in respect of the number of victims being trafficked out of an origin country or in respect to the number of particular ethnic or national groups that are being trafficked into a specific area or market in the destination country.

Growth of public sector corruption

Human trafficking and corruption are clearly connected phenomena. The multi-layered nature of human trafficking creates numerous opportunities for corruption of public officials of various agencies. The ready supply of cash provides the means to undermine the entire counter-trafficking effort within the criminal justice system. Indeed, such is the capacity of corruption that human trafficking crime and its connection to corruption can be said to threaten the capability of the criminal justice system and the confidence of the general public in it.

Destabilization of economic inward investment

This threat may occur as a cumulative product of one or more of the other strategic risks. For example, where the presence of organized trafficking crime has led to endemic money-laundering and public sector corruption to the extent that it undermines confidence in the basic economic fabric, human trafficking may have a negative impact upon the investment strategies of global companies.

**Activity**

In your country, what are the consequences of human trafficking?

Have there been turf wars between rivaling criminal organizations in your country?

To your knowledge, are traffickers in your country involved in other types of criminal activities?

Have you dealt with cases of money-laundering or corruption?

Can you make connections between these cases and human trafficking?

The critical concepts

The broad and serious range of threats posed by human trafficking crime demands a rapid, vigorous and professional counter-trafficking response at both the national and international level. Trafficking crime is an extremely complex, organized and international criminal phenomenon that requires highly professional, skilful and well-informed investigators, prosecutors and judges to combat it.

From the counter-trafficking standpoint, two vitally important factors exacerbate the problems confronting investigators, prosecutors and judges combating trafficking.

First, because of the modus operandi employed by the traffickers, criminal justice practitioners have to anticipate that **victims of trafficking crime are unlikely to be available either as complainants or witnesses.**

This is contrary to the day-to-day experience where the victim of a crime is prepared to cooperate with the law enforcement officers and prosecutors. In trafficking cases, because of threats of reprisals to themselves or to their loved ones, the victims are rarely prepared to come forward, let alone provide detailed statements and live court testimony. This situation creates uniquely difficult problems for the investigator and the prosecutor who are consequently deprived of cooperation from the basic source of information about the crime—the victim.

Lesson learned

Victim-assistance initiatives taken by a number of States are starting to show an increase in the number of victims that are prepared to cooperate with the criminal justice system.

The increasing involvement of the NGO sector in the provision of shelter accommodation and specialist assistance to trafficked victims has the potential to improve the preparedness of victims to become witnesses provided that the criminal justice system develop proper procedures as how to cooperate with the shelter providers.

The NGO sector plays an important role in providing accommodation and assistance to victims of trafficking. This may also improve victims' readiness to bear witness against their traffickers. According to the Trafficking Protocol, criminal justice systems are required, where appropriate, to cooperate with non-governmental organizations in matters that relate to the prevention of trafficking and the provision of assistance to victims.



Discussion

In your country, are there NGOs that could participate in the protection of and assistance to victims?

Secondly, because of the structure and international scale of organized human trafficking, criminal justice practitioners must live with the fact that **it may never be possible to successfully investigate, prosecute and convict the key players in any given network.**

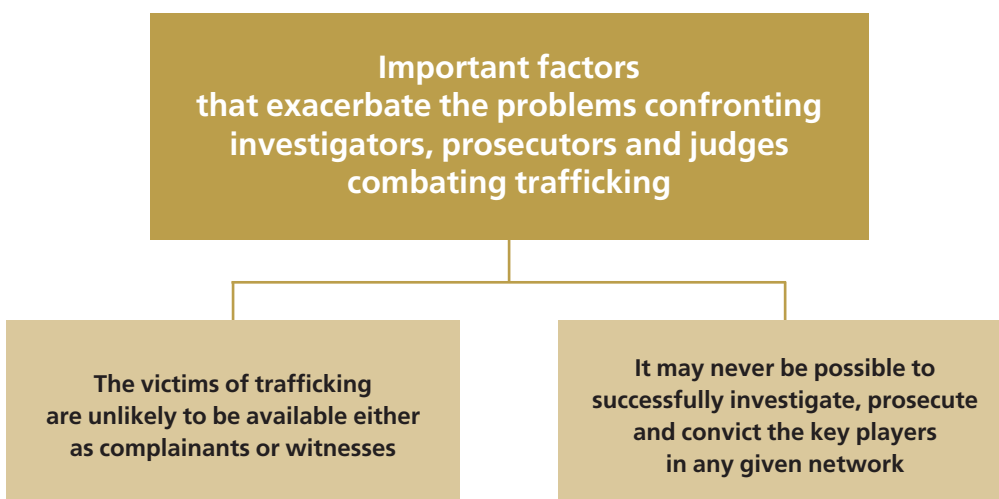
Once again, this is outside of the normal, day-to-day experience where the primary subjects of investigation, prosecution and trial of an organized criminal network are usually at the organizational leaders. However, it is likely that these key individuals deliberately avoid spending time within those jurisdictions that pose a prosecutorial threat to them. These tasks are likely to be delegated to lower level players in the network.

It is vital that action continues to be taken against those intermediate and lower level players who themselves are an indispensable component part of successful trafficking networks.

Lesson learned

The development of international cooperation provides the means by which the major players can be investigated, apprehended, prosecuted and tried, irrespective of where they base themselves.

International cooperation is an important tool to investigate, prosecute and convict the key players in any given network. Some guidelines for international cooperation in the fight against human trafficking are set out in section 6.



Trafficking methodology—supply and demand

As with all forms of organized criminal activity, trafficking in human beings is all about money and profit. Three principal factors behind human trafficking can be stated:

- Within the origin countries, a seemingly endless supply of victims remains available for exploitation. There are various root causes that make people willing to leave their homes;
- Within the destination countries, constantly growing sex and forced labour markets maintain a seemingly endless demand for the services of the victims;
- Organized criminal networks have taken control of this economic “supply and demand” situation to traffic and exploit the victims in order to generate enormous profits for themselves.

Trafficking in human beings is a complex phenomenon within which a number of socio-economic factors interact to create these fundamental principles.

Who are the victims?

Globally, the vast majority of victims come from countries characterized by economic hardship where poverty and lack of opportunity in terms of education and employment predominate. The existence of conflict situations, unrest or instability exacerbates this situation.

In the Western African context, there is high demand for cheap and submissive child labourers. The supply is created through poverty, and inadequate employment and educational opportunities in particular in rural areas. Large family sizes and the ignorance of parents regarding the implications of releasing their children to traffickers compound the problem. Traffickers further abuse the traditional practice of child fosterage, i.e. sending children to live with wealthier relations and friends.

Moreover, the vulnerable position of women in many societies and their lack of opportunity contribute to the growth of trafficking for sexual exploitation. In many societies there is greater willingness of girls to sacrifice themselves in order to assist their families. Hence, trafficking is also a gender issue.



According to the UNODC global database on trends in trafficking in human beings, in most ECOWAS countries, children are the most affected as victims for forced labour and to a lesser extent for sexual exploitation. Women are the second largest group of victims, in particular for the purpose of sexual exploitation. The proportion of trafficked men in the ECOWAS region is not known.

Who are the traffickers?

Trafficking is mainly controlled and exploited by organized criminal groups. The potentially high profits and minimal risk of detection and punishment make human trafficking a tempting enterprise in many countries of the world. While the profitability from human trafficking may match that of narcotics trafficking, the penalties imposed—if convicted—are not comparable. Conviction for human trafficking is likely to attract a minimal sentence which itself acts as a magnet to organized criminals.

Human trafficking is not exclusively under the control of major criminal networks. The groups can be fairly small and operate in loose connection with each other when it is mutually beneficial to do so. These groups may specialize in different phases of the trafficking process: recruitment, transportation, exploitation and laundering of proceeds of crime.

In larger organized criminal groups, the different phases of the trafficking process and different types of crimes may be diversified among different subgroups. These groups are specialized and know very little, if anything at all, about the organization. Some lower subgroups do not seem to be aware of the fact that they form a part of an organized criminal structure. Indeed some of the subgroups do not seem to form a part of the structure itself but knowingly or unknowingly participate in the organized crime activity chain.

Such diversification of tasks naturally minimizes the law enforcement risk and gives the misleading impression that there is no organization behind trafficking. On the other hand, the diversification also constitutes a point where law enforcement interventions might significantly impact the whole organized crime activity chain.

Trafficking groups and networks may consist of ethnically or nationally homogeneous groups trafficking in victims from the same background. They are equally likely to develop into mixed groups where the perpetrators and the victims are made up of a number of different national and ethnic backgrounds.

What are the crimes?

Trafficking crime involves victims. The victims of this phenomenon are likely to suffer the most serious human rights abuses. The most serious abuses associated with trafficking include abduction, sexual and physical violence, rape/sexual assault, torture and slavery. Some victims are murdered and even those that are rescued are unlikely ever to recover from the psychological damage that they have suffered.

Trafficking also includes the pivotal crimes of abuse of immigration laws, illegal border crossings and the production and possession of forged documentation.

The following are some offences associated with human trafficking:

- Slavery;
- Slavery-like practices;
- Involuntary servitude;
- Forced or compulsory labour;
- Debt bondage;
- Forced marriage;
- Forced abortion;
- Forced pregnancy;
- Torture;
- Cruel, inhuman or degrading treatment;
- Rape;
- Sexual assault;
- Assault;
- Bodily injury;
- Murder;
- Kidnapping;
- Unlawful confinement;
- Labour exploitation;
- Withholding of identity papers, and
- Corruption.

What is the modus operandi?

The modus operandi of criminal groups vary widely across the global spectrum. In general, the modus operandi involves vulnerable victims who are transported from one location to another for the purposes of lucrative exploitation to the benefit of organized criminals.

International experience shows that the following general points can be set out:

The recruitment stage

For trafficking to work, the traffickers have to either force or convince the victims to leave their familiar surroundings and to travel with them. This can be achieved in a number of ways. Some victims are abducted by force, sometimes after having been drugged. Many leave of their own free will after entering into an agreement with the recruiter. Often the victim meets the recruiter through personal contacts, recruitment agencies or newspaper advertisements.

Some of these “voluntary” victims are completely deceived as to the true nature of the traffic, believing instead that they are offered normal jobs in the destination country. Others know what work they will do, for example, in the commercial sex industry, but are deceived as to the working and living conditions, the financial arrangements and levels of personal freedom.

Victims frequently agree to pay back a sum of money for items such as travel documentation, travel costs and infrastructure costs. This creates the “debt-bondage” arrangement within which the victim can never earn sufficient money to clear her original debt to the trafficker. The original debt is likely to rise incrementally because of hidden infrastructure costs in the destination country such as advertising or premises rental costs, or for liability. These hidden costs are often not disclosed to the victim at the recruitment stage.

Transportation/entry stage

Transportation routes and methods depend upon geographical circumstances. Victims are trafficked by aircraft, boat, rail, ferry and road or simply on foot in order to reach the destination country. The route may include a transit country or it may be direct between the origin and destination locations. The crossing of borders may be done overtly or covertly, legally or illegally. Traffickers often produce false documentation for the victims and accompany them on the transportation stage to ensure their security.

Exploitation stage

The level of exploitation depends upon conditions within the local sex or forced labour industry and the level of law enforcement supervision. In the sexual exploitation industry, victims may engage in the provision of prostitution services either in the street in red light areas, in brothels, in erotic or lap-dancing clubs, hostess bars, escort agencies, sauna and massage parlours, private addresses etc. In the forced labour market, victims may engage in work in the domestic labour market, farms, fields, mines, sweat shops, factories etc. Victims may also be trafficked for the purpose of removing their organs, forced marriages or adoption.

Often, victims are required to work long hours. In the sex industry, victims are often required to provide whatever sexual service the clients require. In order to ensure the compliance of the victims, various control mechanisms may be employed by the traffickers.

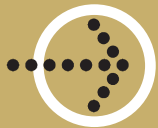
The most common are:

- Immediate physical and/or sexual abuse;
- Seizure and retention of travel and identity documents;
- Detention and constant supervision in the “safe houses” maintained by traffickers without the possibility of normal social contact with others;
- Constant moving of locations and personnel to prevent the victims from establishing any form of relationship with other victims or gaining detailed knowledge of the trafficking operation;
- Placing them in fear of seeking police assistance, with threats of exposure;
- The use or threats of physical and sexual violence towards them or their loved ones in their country of origin.



Self-assessment questions

- What are the different phases of trafficking?
- What are the likely consequences for the victims of trafficking?
- What are the strategic risks for the stability and the future of the state?
- Why are victims of trafficking unlikely to be available as complainants or witnesses?
- Why is it that it may never be possible to successfully investigate and prosecute the key players in any given network?
- What are some principal root causes of trafficking?
- What are some of the underlying offences in human trafficking?
- What are the main stages of the modus operandi in the trafficking crime activity?



section4

THE INVESTIGATIVE PRINCIPLES



Learning objectives

At the end of this section you will be able to:

- Identify the geographical, structural and commercial components of the trafficking activity and see how to use these in the investigative activity;
- Identify and prioritize the overall objectives of the investigative process;
- Identify the duties imposed upon the investigator by best practice principles of the humanitarian treatment of trafficked victims;
- Define and identify the investigative options, their features and their benefits;
- Define and identify the parallel financial investigative principles.

General investigative principles

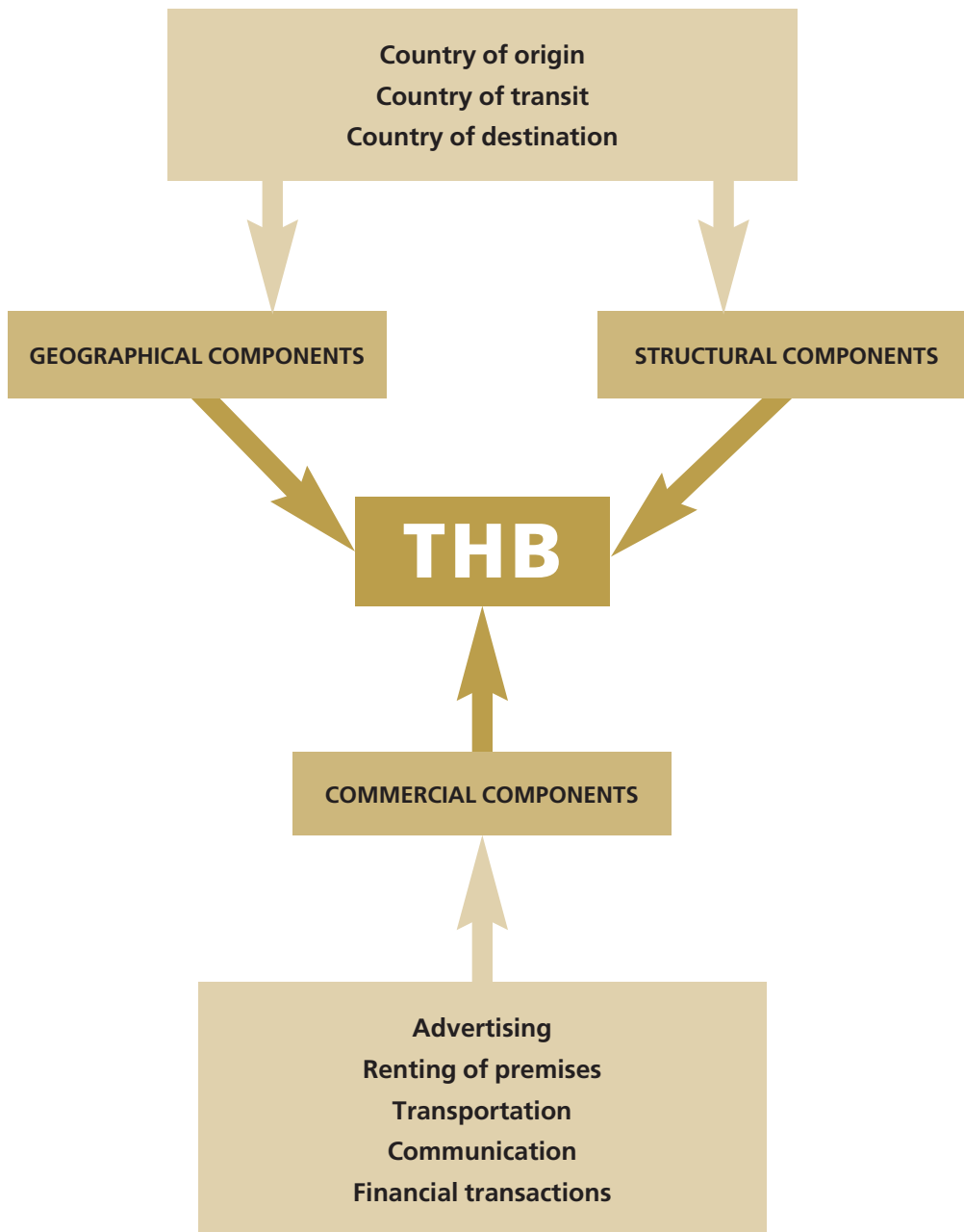
The investigative options must reflect the geographical, structural and commercial components that make up the crime of human trafficking.

Geographically and structurally, these options can be expressed as follows:

- Country of origin—recruitment and export
- Country of transit—transportation
- Country of destination—reception and exploitation

Within these three divisions, the commercial characteristics inherent in this type of crime mean that the traffickers are compelled to become involved in one or more of the following activities at any or all of the three phases shown above, irrespective of the nature of the planned exploitation:

- Advertising—as part of the recruitment or exploitation process
- Renting of premises—“safe houses”, brothels, factory or sweat shop premises etc.
- Transportation—identity and travel documents—transit process
- Communications—organizing the recruitment and exploitation
- Financial transactions —applicable to all of the above
 - Advertising
 - Renting of premises
 - Transportation
 - Communication
 - Other financial transactions



Activity

Considering your experience, list the evidential opportunities for the investigator that come from the commercial components of trafficking.

The evidence that is created within these commercial imperatives is the traffickers' "Achilles Heel". Trafficking for the purpose of any form of exploitation can only function by utilizing these processes to some degree. All the components—geographical, structural and commercial—create evidential opportunity for the investigator. This rule is particularly applicable in cases of sexual exploitation.

Prostitution

This applies to prostitution in all its known forms—street walking, private apartment or private house brothels, sauna and massage parlours, hostess or lap-dancing bars and escort or “call-girl” agencies.

Forced labour

This applies to forced labour in all its known forms—sweatshops, factories, fields, farms, mines, markets, domestic labour market etc.

Personal contact


This includes personal contact not only with the victims and associated employees³⁸ but also with recruiters such as employment or tourist agencies, professionals such as advertising agents, leasing agents, port and airline officials, telephone company employees and bank officials.

Documentary records

The personal contacts above also result in the creation of independent documentary records that can be retrieved, analysed and adduced in evidence such as leasing agreements, travel tickets and identity documents, entry landing cards, itemized telephone bills and bank deposits and transfer documents.

Evidential material will come into being at any one of the three stages in the trafficking process. This chapter provides guidance to enable investigators to fully exploit these evidential opportunities and thereby secure the following objectives:

- Rescue of the victims
- Apprehension and conviction of the traffickers
- Confiscation of the traffickers’ criminal assets



Concluding remarks

Hence, the overall objectives of the investigative process are:

- Rescue of the victims
- Apprehension and conviction of the traffickers
- Confiscation of the traffickers’ criminal assets

The investigative options

In effect, there are three counter-trafficking investigative options:

- Re-active investigation—victim-led;
- Pro-active investigation—intelligence generated, police-led;
- Disruptive investigation—a multi-agency alternative option.

³⁸Such as, in sexual exploitation sauna, hotel or bar receptionists.

Re-active victim-led investigative option

This Manual addresses the subject of victims from the perspective of the unequivocal humanitarian and legal duty of law enforcement officers and members of the judiciary to treat the victims of trafficking in accordance with their fundamental rights.

This humanitarian approach is based on the principle that

- Genuine trafficked victims should be treated as victims of serious crime and must not be re-victimized and criminalized by law enforcement agencies.

Law enforcement agencies must be particularly careful to avoid re-victimizing or criminalizing victims of trafficking. This is a highly complex and sensitive issue that hinges on the ability of law enforcement officers to determine who are genuine trafficked victims and who are smuggled migrants. Both phenomena include a range of similar offences, such as potential illegal border crossing, possession of forged documents etc.

The point at which law enforcement officials make the determination of whether a case is trafficking or smuggling is central to the issue of re-victimization and criminalization of victims. Again, it is crucial for law enforcement to be able to distinguish between trafficking and smuggling.

- The safety of the victims and their families and loved ones is the paramount consideration and the direct responsibility of the investigator at all times.



Activity

Considering the highly complex and sensitive issues that have to do with the victims of trafficking, describe the duties of the investigator.

Notwithstanding that the only effective response to trafficking victims is a multi-agency one, the responsibility of victim safety at the investigation stage resides and remains with the law enforcement investigator. It cannot be abrogated or delegated to other agencies.

- The investigator has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.

Safety and the possibility of reprisals against the victims and their families is always a feature of trafficking crime. It is never possible to completely eradicate the risk factors. However, the duty of the investigator is to ensure that the risks in each case are assessed from the outset and that the assessment process is continuously reviewed and updated. Moreover, the duty of care does not end with the conclusion of the trial process in cases where the victims have testified.

- The investigator has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities and potential consequences and risks attached to any decision that they may be called upon to make.

Cooperation with law enforcement officers always involves an element of risk for the victims of trafficking and possibly for their families. The critical point is that the victims are made fully aware of all of the issues and risks attached to any decision they are asked to make by the investigator so that they can reach a fully informed decision. Traffickers constantly deceive victims; the situation should never arise whereby trafficked victims can justifiably claim that they were deceived for a second time by law enforcement officers.

- The investigator has a clear duty to ensure that the victims are made fully aware of all available support measures and services that exist to help them overcome their ordeal and that the victims are enabled to establish initial contact with those services.

Trafficked victims may never recover from the physical, sexual and psychological damage that they have suffered. Nevertheless, it is vital that they have access to the full range of support and care services that exist to aid them in the recovery process. It is not the role of the investigator to provide this care and support; the NGO sector provides these services and is better equipped to do so than law enforcement officers.

The critical point is that it is the duty of the investigator to ensure that the victims are fully informed of the help that is available to them and that they are enabled to get in touch with the relevant organizations. To facilitate this duty, investigators should develop a network of liaison contacts with the relevant governmental and non-governmental organizations that provide such support services.



Activity

Make a good list for your network of liaison contacts in your country with relevant governmental and non-governmental organizations that provide support services for trafficked victims.

Pro-active investigative option

For the purposes of this manual, the pro-active option in the context of trafficking in women and children for sexual exploitation means:

- The investigation, arrest and successful prosecution of traffickers without relying on the cooperation and testimony of the victims.

It is important to note that while the pro-active option is most effective in the investigation of trafficking for sexual exploitation, it can also be effectively deployed against trafficking for other forms of exploitation. Obviously, given that labour exploitation or domestic slavery is less visible than sexual exploitation, the tactical options are more limited, but many of the component parts of the option are still applicable.

By using a combination of intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques, law enforcement can identify the traffickers and prosecute them for the offences that are most appropriate both to the circumstances of the case and the country within which the investigation is being conducted.

- In pro-active investigations, a combination of intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques are used.

The use of this option is simply an acknowledgement on the part of law enforcement agencies of the real and often insuperable difficulties confronting the victims of trafficking crime who may wish to testify against their exploiters but who are prevented from doing so for fear of reprisals against themselves or their loved ones.

The pro-active option provides the means whereby law enforcement agencies can take steps to combat the traffickers without the complaint and evidence of the victims.

It is not intended to exclude the victims from the prosecution process; the testimony of the victim will always remain the prime source of quality evidence. This option simply acknowledges the current reality that such testimony is not often forthcoming.

The pro-active option may not be readily applicable to all jurisdictions because the issue arises in some countries as to whether law enforcement agencies can proactively investigate a crime and prosecute the perpetrator(s) for it without the complaint and testimony of the victim. And yet the majority of law enforcement agencies include anti-drug and anti-terrorist squads in their configuration and their work is almost always intelligence-led and rarely dependent upon the personal complaint of a victim of drug deal or terrorist atrocity.



Discussion

Describe and discuss how the pro-active option is applicable in your country's jurisdiction.

Terrorism and drug trafficking crimes receive a major proportion of law enforcement resources because of the threat they pose to the safety and well-being of civil society as a whole. The investigative action taken to combat them is a critical part of the duty of law enforcement agencies to protect the public. Law enforcement must target their investigative resources to combat areas of criminality that reflect the concerns of civil society.

Pro-active operations can be resource intensive, take time and be expensive. However, given the gravity of the human impact upon the victims of trafficking and the strategic risks that it poses to economic and civil society, the expenditure of the resources can be justified and should be committed.

- Trafficking in human beings can and should be considered in the same vein as terrorism and drug-related crime and subject to the same investigative options.

Experience has shown that pro-active investigation is an effective weapon and that it should be considered wherever possible. Traffickers are particularly vulnerable to pro-active, intelligence-led investigation.

Disruptive investigative option

The use of the disruptive option may be appropriate for a variety of reasons:

- Where the level of risk to the victims demands an immediate response that precludes the pro-active option but may require an immediate intervention and disruption thereafter;
- Where the pro-active option is not viable for operational reasons, such as where geographical and/or topographical features make surveillance on target premises impracticable, or where it is impossible to achieve undercover penetration of the network;
- Where legislative, procedural or resource implications preclude the use of pro-active tactics;
- Where the disruptive option provides a faster response to specific complaints from local residents or other interested groups.

Irrespective of why the disruptive option is more appropriate, two key points should be noted:

- Disruption may temporarily relieve the situation—it does not provide a solution and only displaces the problem to another location;
- The key to success with the disruptive option is the use of creative and innovative multi-agency tactics to create so many daily problems as to make it virtually impossible for the traffickers to continue to operate in their current format and location.

The Achilles' heel of the traffickers



Activity

Considering the commercial aspects of human trafficking, list the potential sources of information and discuss the main weaknesses of the trafficking process.

Experience and best practice show that the pro-active option is a very effective method to combat traffickers who exploit their victims in the sex industry. Consider the crime from the same commercial perspective as the traffickers: traffickers regard human beings as commercial commodities that are to be recruited, transported and exploited for profit—it is a criminal business that is ultimately all about profit and money. The traffickers may vary their modus operandi, alter the routes, switch their identities and use a range of other tactics to maximize their profits and avoid detection. But there is one feature of the crime of trafficking in particular for the purposes of sexual exploitation that they cannot disassociate themselves from if their business is to be profitable: that is the need to market the product.

As with all commercial activity requiring the sale of goods—in this case the goods sold are human beings—it cannot operate without marketing those goods by advertising their availability to potential buyers. This commercial imperative creates the Achilles' heel of all traffickers that they are unable to escape. There is no commercial point in trafficking new victims into a country unless the clients are made aware of their arrival and availability. This can only be achieved by some form of advertising, irrespective of whether the marketing and advertising is simply by word of mouth on the street or a sophisticated Internet advertisement site.

What this means in terms of law enforcement is that:

- Provided an investigator knows where to look, prostitution or forced labour premises can be identified and located;
- If the clients can locate the prostitutes or the forced labour force, so can the investigators. If you can locate prostitution, sweat shops, mines, factories, farms etc. where exploitation takes place, you can locate the traffickers.

These points are more applicable to trafficking for sexual exploitation. In other forms of exploitation there is less likely to be any element of marketing or advertising of the availability of the victims of labour exploitation or domestic servitude. Nonetheless, while the exploitation may be less visible, the products of the forced labour, such as agricultural produce or clothing, may well be marketed or advertised and this may create an investigative opportunity if intelligence is available to indicate slave labour exploitation. Resources should be dedicated for pro-active investigations of human trafficking.



Activity

Which pro-active investigative techniques are in use in your country?
Have you personally used those techniques?

Dual investigative focus

Within those countries that already have specific counter-trafficking law, a dual investigative focus is effective. Pro-active investigation of the underlying offences in human

trafficking simultaneously with pro-active investigation of human trafficking itself does not represent duplication of efforts. Rather, it is complementary to the pro-active investigation of human trafficking as such. This dual investigative focus is recommended especially in cases where it is not clear whether the offence amounts to smuggling of migrants or to trafficking in people.

In cases where a trafficker cannot be convicted of the trafficking offence, the trafficker might still be convicted of smuggling of migrants. Thus, the dual investigative focus may underpin the prosecution of the traffickers for both crimes. The same investigative tactics can be deployed to adduce the evidence that can then be utilized in the prosecution of traffickers for human trafficking and related as well as underlying offences.



Example

The Al Capone theory

While the intention of any investigative effort is to convict the trafficker for the crime of trafficking, it is important not to forget the lessons of the Al Capone case in Chicago.

This notorious gangster who had been linked to multiple murders, extortion and racketeering over many years had successfully evaded police efforts to convict him. He was eventually removed from circulation for 11 years for tax evasion.

Hence, if it is not possible to convict the trafficker for the crime of trafficking, it may be possible to convict him or her for other associated crimes that come to light during the course of the pro-active investigation into the trafficking activity. This option should always be pursued. The main objective is to remove the trafficker from circulation so that he or she cannot continue to exploit vulnerable victims.



Activity

Give examples of the underlying offences within the crime of human trafficking.

Selection of the best location

Clearly, traffickers are likely to commit a range of associated, underlying offences such as physical and sexual abuse of the victims, the facilitation of illegal immigration, production and possession of forged documents, etc. These offences may be committed in any of the three locations of origin, transit, and destination. However, it is necessary to consider in which location the investigative effort is most likely to come up with the best evidence and to prove effective and fruitful in terms of successful prosecution.



Activity

In which location is the investigative effort most likely to find the best evidence and to prove effective in terms of successful prosecution? Why?

The logical answer is within the countries of destination.

Firstly, traffickers are clever, cunning criminals who go to great lengths to conceal their criminality. During the origin and transit stages of trafficking and the associated offences, the crime is more difficult to identify and investigate because it is not of itself easily visible because the exploitation phase has not yet begun.

However, it is more difficult to conceal the marketing and supply of the prostitution services, for the commercial reasons stated above, in the country of destination. The sexual exploitation, forced labour and the profits derived from the exploitation have to be managed, controlled and laundered at the source by the traffickers. The traffickers are most vulnerable to effective investigation while they perform these functions in the destination countries.

Secondly, it is more difficult to obtain a conviction for committing, attempting to commit or conspiring to commit trafficking crime, or many of the other associated offences, at the origin and transit stages. This may be impossible without the cooperation and testimony of the victim because the exploitation has not yet occurred in the majority of cases. Yet again, the victim is unlikely to know much detail of the trafficking activity or of what is eventually intended for him or her. In addition, as stated earlier, victims are often not willing to provide testimony.

For these reasons, the destination countries offer the best potential for collecting quality evidence against the traffickers. However, that does not mean that the investigative effort should only be focused in the countries of destination. When specific legislation is in force it may be possible to utilize pro-active methods to attain evidence of trafficking activity such as “recruiting” and “transfer” before the trafficker and victim pass beyond the national border. This allows for prosecution in the origin country’s jurisdiction for the full trafficking offence. However, the best chance of gaining the highest quality evidence upon which to base a trafficking prosecution is likely to exist in the destination countries where the traffickers are at their most vulnerable to investigation.

Joint international pro-active operations

The most effective manner to achieve successful prosecution is through a coordinated, pro-active investigation in each of the three stages of origin, transit and destination. Investigative experience shows that the best way to deliver this objective is the use of joint international pro-active investigative operations.

To successfully combat any form of transnational crime, including human trafficking, it is essential that law enforcement agencies and judiciaries cooperate with each other.

Traffickers commit the crime of transnational human trafficking in more than one jurisdiction. Joint investigations reflect this situation. Indeed, joint operations allow for the collection of evidence in each of the jurisdictions where the crime is committed. While traffickers are more vulnerable in the countries of destination, they also tend to be surveillance conscious and more cautious in their activities. Traffickers are often less concerned to conceal and protect themselves from investigation in the countries of origin or transit; they feel safer.

Joint international operations mean that investigators in the origin, transit and destination countries can use these evidential opportunities and gather valuable corroborative evidence of the recruitment, transportation and exploitation phases. Hence, joint operations increase the ability of criminal justice systems to combat human trafficking: they allow the investigators to agree in advance the overall strategy to bring the traffickers to justice. The overall strategy includes the agreement as to where the main investigative effort is to be focused, decisions as to the methods of coordination, the tactics to be employed to collect the evidence, the offences to be targeted and the best location for the prosecution.

The key to successful joint investigations is close coordination from the outset. Informal contacts between the law enforcement agencies often contribute to efficient collaboration and help to identify an investigative counterpart that does not pose a security risk to the operation or to the victims involved and that has the capacity and ability to conduct the type of investigations proposed. Prior to joint investigations and in accordance with the national law, consultations need to take place between the investigators and the prosecutors. The purpose of these consultations is to review the available material, identify the operational objectives and to ensure that all the legislative and procedural points have been considered.

Parallel financial investigation

It would be difficult to overstate the critical role of financial investigation in the successful investigation of human trafficking. There are two principal reasons for this:

- The crime itself is all about money; the initial investment to create the infrastructure and deliver the personnel for exploitation, the on-going management of the proceeds of the exploitation and, finally, the laundering and movement of the profits.
- Trafficking is a crime that takes time to establish and develop—therefore it becomes a lifestyle crime. Such lifestyle topics such as the mode of travel, expenditure on luxury items such as cars and jewellery, leisure activities such as restaurants and casinos etc., all require means and methods of purchase.

As with any law enforcement guidance that is prepared on a multi-national basis, diversity of legislation, procedure and resources is an issue. This is the case with financial investigation. Clearly, to implement the recommendations in this section, adequate legislation and trained financial investigators make the use of the tactics more effective. The golden rule is: follow the money and you will find the trafficker.

The pro-active financial investigation can be applied both during the pre-arrest and post-arrest investigative phase. Where it is applied during the pre-arrest phase, the use must be considered against the risk of disclosure of the operation. However, most

versions of assets confiscation legislation contain punitive provisions for any individual or institution that discloses the fact of a financial enquiry to the account holder. This reduces the security risks that are always attached to pro-active enquiries in the pre-arrest phase.

Pro-active use and coordination during the pre-arrest phase



Activity

Why is financial investigation so important during the pre-arrest phase?

Financial investigation during the pre-arrest phase is of particular value for two main reasons:

- The investigation of financial transactions and the analysis of the results will often provide important information that can be used to ensure that the operation progresses in the most efficient manner.

For example, investigation of the purchase of travel tickets might reveal details of future travel arrangements which can then become the focus of surveillance activity at the exit and entry points; analysis of credit card expenditure may reveal details of the airline, hotel, restaurant or casino most regularly used by the trafficker in any of the country locations of origin, transit and destination. This intelligence can again be used in the allocation of surveillance resources.

- As far as is possible in the circumstances of the case, pre-arrest financial investigation is designed to identify the amount and location of the criminal assets derived from the crime.

Provided that this has been achieved, it is then possible to:

- Coordinate the arrest phase with the financial sequestration procedures in order to arrive at the optimum position of synchronized arrest of the traffickers and sequestration of their assets.

There are yet two further benefits to be gained from the parallel financial investigation of traffickers:

- Investigators get double value from the same evidence.

Firstly, the evidence of large-scale financial gain and expenditure, far in excess of any legitimate source of income, supports the prosecution case in a way that is almost impossible for the trafficker to rebut. Secondly, the same financial evidence forms the basis of the post conviction assets confiscation proceedings.

- The ability of law enforcement agencies to identify, investigate, sequester and confiscate the assets derived from trafficking sends a powerful and symbolic message to the criminals.

This is particularly important in the current climate where trafficking is perceived as a “high profit/low risk” crime and where traffickers regard the short prison sentences as simply a business risk. The situation is immediately transformed once the successful financial investigation means that the equation reads “no profit/short term of imprisonment.”

This Manual cannot consider every variation of assets confiscation law that exists. As a rule, legislation on the subject is extremely complex and requires specialist investigators to use it to its full potential. The lesson to be learned here is that financial investigation should be a part of the counter-trafficking response. Early liaison should be established with the office that carries out functions on financial investigation.



Key terms

- *General investigative principles*—geographical, structural and commercial components of trafficking
- *Core components of trafficking as a commercial activity*—advertising, rentals, transportation, communications, financial transactions
- *Reactive victim-led investigative option*—investigation that is based solely upon the complaint of the victim and which generates specific duties imposed by the best practice humanitarian principles
- *Pro-active investigative option*—acceptance of reality and exploitation of the Achilles’ heel of traffickers based upon intelligence-led police activity that is not dependent upon the testimony of a victim
- *Investigative focus*—identification and selection of most effective investigative strategy
- *Parallel financial investigation*—simultaneous, coordinated investigation of the money route to reinforce the exploitation of the Achilles’ heel of the traffickers—dual evidential benefits
- *Disruptive investigative option*—intervention that is required if the level of risk to the victim is high and demands an immediate response that precludes the pro-active option



Self-assessment questions

- Which are the structural, geographical and commercial components of the human trafficking for sexual exploitation crime?
- What are the overall objectives of the investigative process?
- What is the Achilles' heel of traffickers?
- What are the three investigative options?
- What are the best practice principles in the reactive victim led investigation?
- What are the advantages of pro-active investigation compared with the reactive investigation?
- Why are joint international operations beneficial?
- What are the benefits of financial investigations?
- When is the disruptive investigative option the most appropriate option? What are the limitations of the disruptive investigative option?



section5

THE VICTIM, AND THE VICTIM AS A WITNESS



Learning objectives

At the end of this section you will be able to:

- Understand the meaning of re-victimization;
- Understand what the consequences of trafficking can be for the victim;
- Understand why special attention should be given to protection and assistance for victims in human trafficking cases;
- Understand why victim support agencies, primarily NGOs, have an important role to play in combating human trafficking;
- Know the international provisions of victim protection and assistance in human trafficking cases.



Activity

Consider how difficult it would be for you to tell about the most difficult experience in your life in front of strangers.

Re-victimization

Trafficking in human beings for a variety of exploitative purposes is an international organized criminal phenomenon that has grave consequences for the safety, welfare and human rights of its victims. Human trafficking is a “high profit/low risk” criminal activity that destroys the quality of life, and sometimes the life itself, of its victims. It is no exaggeration that this crime is modern-day slavery. Bear in mind the human factor when dealing with victims of the crime of human trafficking.

Trafficked victims are potentially the most valuable assets of the counter-trafficking response. Because of the central role they play and, more importantly, for humanitarian reasons, particular consideration must be given to the risk that victims will have to face

their traffickers during court proceedings. Obviously, such a confrontation can threaten the physical safety of victims and in many cases cause re-victimization, or psychological distress that compounds the trauma and mental stress that the victim has already experienced. This generally makes the victim's recovery process much more difficult and makes the victim less likely to be able to cooperate with law enforcement. As a result, the confrontation can undermine the ability of the victim to participate actively in court proceedings. There are different strategies to avoid such confrontation through protection of and assistance to victims and witnesses of trafficking.

During the hearing, the risk of intimidation and re-victimization is at its greatest. After the hearing, the risk of retaliation on the part of the trafficker remains. Many jurisdictions have adopted laws and practices that seek to minimize these risks. In trafficking cases, it is indispensable to find solutions that allow the victim to testify without being confronted with the offender. It is important to find these solutions within the framework of national legislation and with the available technical equipment or resources.

There are several interests of the victim at stake that have to be taken into account:

- **Security risks:** If the victim shows up at the courthouse, s/he can be attacked when entering or followed when leaving the premises. Even within the courthouse s/he can be attacked or threatened by the perpetrators.
- **Re-victimization:** Excessive questioning can result in a mental overstrain or psychological distress. This can cause secondary victimization, particularly when questions show disrespect to the victim.
- **Moral stress:** Reporting personal experiences in public, particularly when the victim's intimate life is involved, will often result in feelings of shame or guilt.

There are a variety of measures to cope with these issues, which work best in combination with one another. However, all efforts to protect the victim against confrontation with the defendant have to take into account that, from a legal point of view, the rights of the defendant to a fair trial, including the right to examine or have examined witnesses against him, limit these efforts. The principles of fair trial require that, in appropriate cases, the interests of the defence are balanced against those of witnesses or victims called upon to testify. Indeed, the necessity to take the rights of the victim into account and, moreover, to balance these rights against the rights of the defendant require special consideration, particularly when it comes to victims of violence, to severely traumatized or highly vulnerable victims. The Trafficking Protocol includes provisions on protection of victims which are discussed below.



Discussion

Do you personally know a victim of trafficking? What is his or her story?

Trauma

Even without re-victimization, victims of trafficking often suffer from post-traumatic disorder or trauma. The following example includes some symptoms of trauma.



Example

A 36-year-old woman from a Western African country is a victim of human trafficking. Over a period of many years she is sexually exploited and victimized by domestic violence. She has to tolerate this situation without any emotional contact with others for years (numbing).

When the prosecution accuses her trafficker, her situation changes. She goes through many hours of interrogation by the police, judge and prosecutor. She has the opportunity to stay in a shelter for female rape victims for a couple of months. Sadly, her contact to her home country and family are lost.

During this time, she develops sleep disturbances with nightmares (intrusion).

In the daytime she lacks concentration, which severely harms her ability to communicate with her legal defender properly. She experiences flashbacks with memories of traumatic events in her past. She avoids personal relationships, especially with men (avoidance).

She feels guilty about what happened. Finally, she visits a physician, because she experiences panic attacks and irregular heartbeat (hyper arousal).

These symptoms of trauma persist in the victim in various ways for a long time after he or she has escaped from the traffickers. Law enforcement and victim assistance agencies must be aware of the effects of trauma and the process through which the victim recovers.

Often, victims of trafficking who have lived in the bonds of violent relationships for a long time are not able to cast off these bonds the moment the police intervene. Violent relationships leave strong and lasting effects on the emotions and mental state of the victim. This makes it difficult for the victim to free him or herself from the relationship. When living under the permanent threat of violence, victims start to identify with the person(s) controlling them and to take their views. When a person experiences violence for a long time, that person loses self-esteem and stops valuing their own needs and desires. Because of the often violent situation, victims of trafficking become disoriented and lose control over their lives; they tend to forget their situation and who they are. The victims remain fearful for a long time after leaving the perpetrators. This fear prevails as the strongest emotion in the subsequent life of the victim. For a victim of trafficking who has lived under life-threatening violence for some time, freeing him or herself from these bonds will take a long time. The process is paved by setbacks and doubt.

During an initial intervention phase, therefore, victims are often simply not able to judge what is in their best interest. For this reason it would be asking too much of the victim to expect her or him to decide about measures of protection or law enforcement. During

this initial period, law enforcement authorities have to make decisions about such measures without asking the victim about his or her preference. It should be kept in mind that any mental overstrain risks the danger of revictimization. Indeed, during the initial phase it is important to restore the victim's basic feelings of orientation, security and control. This can only succeed within a very simple and transparent framework of action that does not leave complex decisions to the victim. To establish control over the victim, traffickers deprive the victim of physical, mental, moral, social and economic resources. Only after the victim has experienced assistance and empowerment for some time will he or she be in a position to autonomously decide about his or her future life. Thus interventions have to be planned in two phases. In the first phase, state authorities have to carry all the responsibility to protect the victim and to safeguard his or her rights and interests.



Discussion

What are the results or effects of the interrogation or cross-examination on the trafficked victim? Discuss. Have you come across victims of crime who suffer from post-traumatic stress disorder or trauma?

Relevant articles to this section

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic, legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings.
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Legal provision on protection of victims

It is Articles 6, 7 and 8 of the Protocol which include measures that must or may be taken into account in respect of trafficking victims. These Protocol Articles should be read and implemented in conjunction with Convention Articles 24 and 25, which make provisions for victims and witnesses that apply to all cases covered by the Convention.

Essentially, the intention of Protocol Articles 6, 7 and 8 is to supplement the general rules of the Convention for dealing with witnesses and victims. In other words, the provisions in the Trafficking Protocol provide for additional assistance and support specifically established for victims of trafficking. Thus, where the Trafficking Protocol applies, victims are covered by both Protocol Articles 6, 7, and 8, and by Convention Article 25. Convention Article 24 covers victims to the extent that they are also witnesses.

Generally the Protocol provisions in Articles 6, 7 and 8 can be divided into two categories:

- Mandatory procedural requirements and basic safeguards, and;
- Discretionary requirements that provide assistance and support for victims.

The discretionary, optional nature of the social obligations reflects concerns about the high costs and difficulties in delivering social assistance to victims (or indeed, the general population) in many developing countries.

The various obligations apply equally to any State Party in which the victims are located, whether a country of origin, transit or destination.³⁹



Activity

Which provisions in articles 6, 7 and 8 are mandatory and which discretionary?

³⁹See agreed notes for the travaux préparatoires, A/55/383/Add.1, para.71.

Generally, the Trafficking Protocol provisions that set out procedural requirements and basic safeguards are mandatory, while requirements to provide assistance and support for victims incorporate some element of discretion.

Protection of victims' identity and/or privacy

Article 6(1) of the Trafficking Protocol requires that measures be taken to protect the privacy and identity of victims. Such protection includes the confidentiality of legal proceedings to the extent that this is possible under domestic law. Procedural laws may require amendment to ensure that courts have the authority to shield the identities or otherwise protect the privacy of victims in appropriate cases. This may include various means of keeping the proceedings confidential, for example:

- By excluding members of the public or media representatives, or;
- By imposing limits on the publication of specific information, such as details which would permit identification of the victim.

Measures to protect the identity of the victim include presenting evidence anonymously. However, giving evidence anonymously does not protect the victim's identity when it is easy for the offenders to recognize who s/he is. In these cases, it should be considered whether to conduct the interview only in the presence of the (investigative) judge, the public prosecutor, an interpreter, a person (often preferably a woman) from the victim support agency, and the legal counsel of the victim.

If the interview is conducted without the presence of the defendant or his or her counsel, the outcome has to be submitted in a written version to the defendant and his counsel following the testimony. This allows them to ask for additional questions, which is the right of the defendant to confront the victim-witness. If such additional questions are proposed again, the victim will have to be asked to testify, for example, on camera. The documentation can then be introduced in the trial, national laws permitting. If it is not necessary, or not possible, to render anonymity to the victim, the best way to organize the testimony of the victim is by video-taping his or her statements. In this case, the defence counsel may be allowed to be present at the hearing on camera. If this would pose a risk to the safety of the victim or to the process of his or her recovery, the defendant and his counsel shall be given the opportunity to take notice of the outcome of the interview later on and ask for supplementary questions to be forwarded to the victim during a second hearing on camera.⁴⁰

To conclude, it is crucial to bear in mind that denying information to the defence must be reconciled with the defendant's rights, including the right to confront witnesses and the right to the disclosure of any information that might be exculpatory or assist the

⁴⁰To safeguard the interests of the victim, a very strong tool is to take evidence with closed-circuit television. This allows the victim to be visually and acoustically present at court hearings without entering the courthouse. The victim can stay in a friendly and comfortable atmosphere while his or her rights are exercised in court by his or her legal counsel. Such a solution needs timely preparation and requires adequate equipment. If this equipment is available, it is a highly appropriate way to meet the legitimate interests of both the defendant and the victim. On one hand, the defendant's counsel can exercise the defendant's right to confront the victim. On the other hand, this is done at a secure distance, limiting the risk of intimidation. Even under these circumstances the public should be excluded from the hearings if the victim is asked to report on matters of intimacy or sexual violence. The right of the victim to have his or her privacy respected outweighs the interest of the public to monitor court proceedings during the statement of the victim. This is even more the case when the victim is present in court.

defence. Excluding the media or public from legal proceedings limits the effectiveness of openness and transparency as a safeguard to ensure the propriety of the proceedings. It may infringe the rights of the media to free expression. One option is to permit exclusion, but to create a preference for open proceedings and to require the courts to find some justification before ordering them closed.

The victim is not to be questioned about his or her personal history. The defence counsel may try to undermine the trustworthiness of the victim by showing that he or she is not a person who can be trusted because of his or her personal history. Although this might be in the interest of the defendant, to question the personality of the victim adds to the disrespect shown against him or her, intensifies his or her feelings of guilt and the inclination to blame him- or herself and, therefore, can cause secondary victimization. This conflict of interest clearly has to be solved in favour of the victim.

Therefore, it is important not to allow questions that refer to the personality or the personal history of the victim. Most of all, in particular in cases of sexual exploitation, it is irrelevant what sexual experiences the victim had before the crimes happened and whether or not he or she has worked in the sex industry before. It is important to keep in mind that a person who decides to work in the sex industry is still entitled to our full respect and to the full range of human rights. Therefore, it is of no relevance whether a person has worked as a prostitute or not before they came into contact with the traffickers.

Participation of victims in proceedings

The obligation to provide victims with information and an opportunity to present their views and concerns is mandatory according to the Trafficking Protocol.⁴¹ Factors such as age, gender and special needs are to be taken into account when fulfilling this obligation.

A supportive person of the victim's choice should accompany the victim of trafficking in the courtroom. If the victim of trafficking is a female, she may find it particularly encouraging to be accompanied by another woman. Usually this is the woman who takes care of the victim at the support agency, possibly an NGO.

Administrative measures that require officials to provide victims with information and to furnish any practical assistance needed can fulfil this obligation. Ideally, prosecutors and judges should not deny information or exclude participation of victims on any basis other than prejudice to the rights of the defence. One possible means to enable the participation of the victim is the idea of a victim statement about the impact of the offence. This is a process that is separate and distinct from calling upon a victim to provide evidence of guilt.

Judges and prosecutors who deal with human trafficking cases should be aware of this option. Cooperation between the criminal justice system as a whole and civil society, including non-governmental organizations, is crucial in this situation.

⁴¹Protocol Article 6, paragraph (2). The basic obligation to ensure that victims are permitted an opportunity to participate is set out in Convention article 25, paragraph (3).

Physical safety of victims

In order to avoid intimidation and retaliation, the Trafficking Protocol requires governments to “endeavour to provide” for the safety of trafficking victims.⁴² The Convention obligation is to take any measures that are appropriate within the means of the State Party concerned. According to the Trafficking Protocol, practical steps are required to “endeavour” to protect safety. If the victim is asked to attend the court hearings, the protection measures have to start as soon as he or she approaches the court building. The police should accompany the victim until he or she has left the courthouse and has returned to a safe place. Additionally, the victim should be protected at the courthouse by providing, where possible, separate waiting facilities. This ensures that he or she does not come into contact with the offenders or their friends or family members.

Essentially the same provisions as may be needed to ensure the protection of witnesses in organized crime cases may need to be considered. In severe cases, even relocation of the victim or issuance of new identity documents may be appropriate. Cooperation between prosecutors, judges and law enforcement officers is crucial here.

Witness/victim protection programmes

In many countries, police have designed witness-protection programmes primarily targeted at securing persons who, because of their insider’s knowledge and their contribution to the prosecution of members of criminal organizations, form an imminent threat to organized crime groups. Hence, these groups can be expected to make considerable efforts to eliminate these witnesses. Because of the danger to the witness, these programmes often involve creating a new identity for the witness and transferring him or her to another country. Usually these measures are also extended to close family members of the witness.

For several reasons, these programmes cannot simply be applied to the protection of victims of trafficking. Firstly, they are extremely expensive. Secondly, to ask the victim and her family to adopt a new identity and to give up all social contacts places them under considerable additional strain and will very often seem disproportionate to the benefits obtained. Thirdly, the police are not the adequate institution to provide the support in the psychological recovery process that victims of trafficking require.

Therefore, the protection of victims of trafficking calls for tailor-made solutions that are implemented in the closest possible cooperation between the police, victim support agencies, including NGOs, prosecutors and judges. The aim of these programmes will be to empower the victim and to enable him or her to overcome victimization. Ultimately the victim will live his or her life in safety without depending on protection measures of state institutions for the rest of his or her life. Therefore, the final goal of such a programme should be safety, not protection, meaning that the victim is in a position to look after his or her security needs in autonomy.

⁴²Protocol Article 6, subparagraph (5). Convention Articles 24 and 25 both refer to the dangers represented by “intimidation and retaliation” for those who cooperate with authorities, whereas Protocol Article 9, subparagraph (1)(b) also refers to protection from the risk of “revictimization”, a significant problem in trafficking cases.

Pre-trial detention

Pre-trial detention of defendants can serve many purposes:

- To protect the victim against acts of retaliation or intimidation;
- To secure the presence of the defendants;
- To prevent the defendants from agreeing on their stories, from destroying material evidence or from influencing witnesses.

Thus, prosecutors and judges may find it advisable to put suspects of human trafficking cases in pre-trial detention. This means that proceedings must be accelerated in order to keep the detention as short as possible. It is in the interest of the victim to conduct proceedings without any undue delay and to finish them within a reasonable period of time. Very often the victim will not give evidence until s/he is confident that the offenders are kept in detention and therefore do not threaten his or her safety or that of her family.

It is essential that a victim be given advance notice of the defendant's release should the defendant be released before the court hearings or during the trial phase. This notice can be given directly or, preferably, by way of the victim support organization, including NGOs, so that necessary measures for victim protection can be considered. Sometimes prosecutors or judges may overlook the security implications of their actions, but the risk of harm to the victim should the trafficker be released without warning is significant. The agency administering the warning to the victim—either the courts or the support organization—must be responsible to provide advance notice.

Possibility of obtaining compensation

The possibility of obtaining compensation is a mandatory requirement of the Trafficking Protocol.⁴³ The Trafficking Protocol does not specify any potential source of compensation, which means that any measure offering the possibility to obtain compensation, including the following, would suffice to meet the Protocol requirement:

- Provisions allowing victims to sue offenders or others under statutory or common-law torts for civil damages;
- Provisions allowing criminal courts to award criminal damages (i.e., to order that compensation be paid by offenders to victims), or to impose orders for compensation or restitution against persons convicted of offences; and
- Provisions establishing dedicated funds or schemes whereby victims can claim compensation from the State for injuries or damages suffered as the result of a criminal offence.



Discussion

Discuss the possibilities for compensation for trafficking victims in your country.

⁴³Protocol Article 6, subparagraph (6). See also TOC Convention Art.25(2).

Status and repatriation of victims



Discussion

What are the laws/regulations/rules governing repatriation in your country?

States are not obliged to adopt legislation governing status and repatriation, but legislators may find it advisable to adopt legislative guidance for officials responsible for repatriation.

The Convention and Trafficking, as well as Smuggling, Protocols are primarily criminal justice instruments, and apart from criminal proceedings against offenders there are no formal judicial or administrative proceedings in which the status of trafficking victims as such can be determined.

Hence, it would be recommended to amend immigration legislation, criminal law statutes and other relevant legislation to incorporate the definition of “trafficking in persons.” This would allow for those who claim to be victims an opportunity to do so in appropriate proceedings, including proceedings to deport them as illegal immigrants and proceedings in which they are prosecuted for criminal offences alleged to have been committed while they are victims.

Legislative provisions could be adopted that require officials or tribunals responsible for matters relating to illegal immigration and deportation not to order or carry out orders of deportation under certain conditions:

- Periods where a victim may be or was required in criminal proceedings against alleged traffickers;
- Periods where a victim may be or was required in criminal proceedings in relation to other offences covered by the Convention;
- Periods where a victim may be or was required in civil proceedings against alleged offenders.

Alternatively, legislation could direct such officials or tribunals to verify whether any relevant proceedings were ongoing and if so, to take the status of such proceedings into consideration before deporting a victim. The right of victims to present their views and concerns at the appropriate stages of court proceedings may require the deferral of deportations until that stage has been reached.

Any repatriation of victims must be with “due regard...for the safety of that person...”. This requirement applies to victims who have not been witnesses. It also applies to countries to which the victim is repatriated as a national or permanent resident, even when the victim has not testified or has done so in another country.

A State Party to which one of its nationals or permanent residents is to be repatriated is to issue any necessary travel or identity documents upon request. This is primarily an

administrative obligation, but may require legislation to ensure that the appropriate officials or agencies are both able and obliged to issue the documents.

Social assistance and support of victims

Article 6(3) of the Trafficking Protocol contains an extensive list of support measures intended to reduce the suffering and harm caused to victims and to assist in their recovery and rehabilitation. As noted above, these benefits are not obligatory because of their high costs and the fact that they apply equally to all States Parties in which victims are found, regardless of the level of socio-economic development or availability of resources.

There are several practical reasons to reduce the negative effects on victims, aside from the humanitarian objectives discussed above. First, providing support, shelter and protection for victims increases the likelihood that they are willing to cooperate with and assist investigators and prosecutors. Cooperation of victims as witnesses is a critical factor in a crime where the victims are almost always witnesses and intimidation by traffickers is repeatedly cited as a major obstacle to prosecution.

More generally, addressing the social, educational, psychological and other needs of victims as soon as they are discovered may ultimately prove less costly than dealing with them at a later stage. This is a particularly compelling justification where child victims are concerned, as children and adolescents harmed by trafficking may later become offenders. Prosecutors and judges who deal with trafficking cases should ensure that the necessary resources are allocated and officials assigned and instructed to deal with victims.

A significant problem in trafficking cases is that offenders often control victims by convincing them that they will be arrested and prosecuted or deported if they approach authorities to complain or ask for help. Victims tend to approach NGOs that offer shelters, counselling, and other services rather than State-based agencies in such cases. The viability of NGOs in this role depends on their status as independent from the State and in ensuring that potential victims are aware of this status. Thus while some degree of regulation of NGOs (e.g., to establish basic security requirements and safety standards) may be needed, legislators should consider the implications and may wish to use as much restraint as possible in developing and applying such regulations.

While the Trafficking Protocol makes some provision for the assistance and support of victims, there is no specific requirement or process established whereby the status of victims as such could be established. Government officials should consider establishing some process or processes whereby victims or others acting on their behalf can seek such status in cases where steps are taken to provide assistance to victims. Generally, these might involve any or all of the following:

- Allowing courts that deal with trafficking cases to certify as such any victims who are identified during the proceedings, whether or not they actually participate in those proceedings;

- Allowing a judicial or administrative determination to be made based on the application of law-enforcement, border-control or other official who encounters victims in the course of investigations or prosecutions; and/or⁴⁴
- Allowing a judicial or administrative determination to be made based on the application of the alleged victim personally or some representative, such as an NGO representative.⁴⁵

The role of victim support agencies during investigation, prosecution and trial

In order to protect the rights of the victim and, as a consequence, to encourage the cooperation of the victim during criminal proceedings, it is essential that there is close cooperation and communication between law enforcement authorities, the judiciary and victim support agencies, primarily NGOs. The law enforcement officers and prosecutors have to know whom to contact in case that they have a reason to believe that a person is a victim of trafficking. They must also know that this contact reliably offers the victim professional support and empowerment.

This certainty should also work in the opposite direction. When a victim support agency identifies a potential victim of trafficking, the agency should feel confident that the police are informed and able to handle the case appropriately. In this instance the police must take into account that the potential victim may be in imminent danger by virtue of his or her attempt to escape from the traffickers through the contact with the NGO.

Therefore, even when national legislation does not provide for the formal recognition and funding of support agencies, cooperation should be established on a more informal basis, such as a memorandum of understanding or another kind of agreement. It is of great importance that the specialized staffs of NGOs or public social services are allowed to accompany the victim in court proceedings and to interact with the judiciary system in their supportive and intermediary role.

Status of victim support agencies

Law enforcement authorities and victim support agencies, particularly when they are local NGOs, have little in common. They differ in power, in resources, in most aspects of internal organization, in working methods, in flexibility and often also in the way they perceive social problems. The first step toward good cooperation is not to ignore but to become fully aware of these differences and their implications. NGOs should recognize that simple, strict and uniform routines are a method to secure equal treatment of similar cases of many actors over a long time period and that hierarchy is an indispensable element of a system that provides security.

Authorities in turn have to understand that NGOs, in spite of their limited resources and lack of power, want to be treated as partners with equal rights when it comes to

⁴⁴Such a process would be particularly important in obtaining the cooperation of victims, as it would enable assurances of safety to be given prior to any prosecution of the offenders.

⁴⁵This may require a separate legislative provision from the preceding in order to require some extrinsic evidence of victimization in cases where the application is not brought or supported by law enforcement.

cooperation. An effective cooperation between the judiciary and victim support agencies will need as a basis:

- A common understanding of the problem,
- Agreed aims of the cooperation,
- A clear understanding of the distinct roles of the actors, and
- Respect and a sufficient understanding of the other actors and the way they work.

Means to foster the basis for cooperation include:

- The establishment of a “coordination group” or a “task force” meeting regularly, including law enforcement authorities, judges, prosecutors and victim support agencies, including NGOs;
- The organization of joint trainings involving the professional groups mentioned above;
- The joint elaboration of common strategies and procedures;
- The signing of a Memorandum of Understanding (MoU) between the organizations represented in the “coordination group” or a similar body, which spells out in detail the roles and functions of all actors at the different stages of the proceedings; the MoU can set out the options and conditions for victims who decide to testify or cooperate by other means; the representation of the judiciary in the group deciding on such a MoU must be able to guarantee that the agreed conditions of victims’ cooperation are valid and reliable throughout the entire proceedings;
- The establishment of specialized law enforcement units, prosecutors and judges;
- The ability of NGOs to understand the work of the judiciary and to cooperate improves when their staff includes members with a legal background who can function as intermediaries between NGOs and the judiciary.

State actors in particular have to keep in mind that victim support agencies are not created to help the State but the victim. Full solidarity and confidentiality in favour of the victim are basic principles of the entire work of victim support agencies, just as impartiality and transparency are principles governing public authorities and especially the judiciary. Victim support agencies should not, therefore, be required to perform any kind of monitoring of the victim as they are not performing law enforcement functions.

Functions of victim-assistance

The functions of victim-assistance during the court proceedings include:

- Measures to give the victim mental and social support in order to reassure and empower the victim (very often this will include cross-cultural aspects that are far beyond being only a matter of language); accompaniment during court investigation hearings and trial to ensure that attendance is not more inconvenient than necessary;

- Often victim shelters that are organized by an NGO are the primary resource of victim protection and it is left to the support agency to mobilize additional protection measures by the police, if necessary;
- Measures to protect the privacy of the victim, primarily to protect the victim against harmful media coverage;
- Provision of information to the victim about the criminal justice process and the role of the victim, including the rights of victims in court proceedings;
- Assistance to the victim in learning about developments and the status of proceedings, such as the arrest or release of offenders, the filing of charges, the schedule of court proceedings, and the outcome of the trial;
- Assistance to the victim in making use of available mechanisms to express his or her concerns and interests and to see to it that they are taken into consideration. It is an important function of the victim support agency to encourage and enhance an active participation of the victim during court proceedings;
- Assistance with filing claims for compensation or receiving other financial assistance, unless the victim receives legal advice from a lawyer;
- Information and assistance in the court room.

Providing victims with information about the criminal justice process and their rights empowers the victims. Information can relieve victims' anxiety about the unknown, prepare them for what to expect and enable them to participate actively in court proceedings. Thus the provision of information should include instructions on how victims are entitled to participate in the proceedings and how to make their views and concerns known.

If the victim has to attend the trial in the courtroom, preparations must be done well in advance. The victim should be informed of who will be present in the courtroom, what the roles and functions of the different actors are and what the course of proceedings will be. It will improve the victim's preparation to visit the courtroom before the proceedings, either during another proceeding or when the courtroom is available, and to explain to the victim who will be seated in what place.



Activity

Discuss how these different measures can be implemented in your home country. How can you foster cooperation between NGOs and the criminal justice system?



Example

Sarah's story

One day while shopping in the local market, Sarah, a 17-year-old Nigerian girl, met a man who claimed to represent a programme that sponsored Nigerian girls to study in Europe. He was very friendly, seemed to have good credentials, and gave her many details about the programme. She thought it was an opportunity she could not pass up and, despite her father's concerns, decided to go with the man to what she thought was a school in Italy. He promised her that it would be easy to learn Italian and that there would be other young international students in the house where she would live. Sarah was eventually taken to Italy, via Hungary and Austria.

The man took away her passport and forced her to remain in the buildings where they stayed along the way. She was not allowed to contact her family on the entire trip. The journey took over a month, but the man continually reassured Sarah that he was only finalizing arrangements for her arrival in Italy. But when they finally reached their destination they were not at a school but at a brothel. The man sold Sarah to the madam for US\$ 10,000. She was forced to work as a prostitute for one and a half years under threat of violence if she did not meet her required daily earnings. She had to turn over all of her earnings to the madam.

One night, while working on the street, the police demanded to see Sarah's papers. The madam had not given her the correct visa so she was detained and told she would be deported on the next flight out to Nigeria. The police made no effort to find out if Sarah was a victim of trafficking, nor did they offer her any support or protection against potential harm from her traffickers. This is a common experience for prostitutes detained without proper visas. Because of an agreement of readmission between the Nigerian and Italian governments, the Italian police are authorized to deport Nigerian nationals within 48 hours if their visas have expired or they do not have valid identity papers.

When she reached Nigeria, Sarah was again detained, interviewed and fingerprinted. She underwent a mandatory HIV/AIDS test and the authorities sent her on her way. The police did not check to see if she was a victim of trafficking nor did they provide her or her family with any support or protection. Soon, the man who had arranged her travel to Italy heard of her return and began threatening to kill Sarah and her family if she did not repay the debt she owed him. Sarah's family had no means by which to repay the debt. Because of the severity of the threats and the danger to her family, Sarah felt she had no choice but to agree to return with the man to Europe. She thought it was her only chance of earning the money the agent demanded.



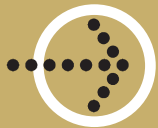
Discussion

In the light of Protocol Articles 6, 7 and 8, what kind of protection and assistance would Sarah need and deserve? In your country, who could give such protection and assistance? How could re-trafficking be prevented?



Self-assessment questions

- What are some consequences of trauma for an individual victim?
- Why is the empowerment of the victim beneficial in bringing perpetrators of trafficking to justice?
- What are the potential measures to protect a victim's identity and/or privacy?
- How can the physical safety of victims be protected?
- What are the different methods to provide compensation?
- Why should the criminal justice system cooperate with victim support agencies, including NGOs?
- What are some ways to foster this cooperation between the criminal justice system and victim support agencies?



section 6

INTERNATIONAL COOPERATION



Learning objectives

At the end of this section you will be able to:

- Understand what type of information sharing the Convention against Transnational Organized Crime and the Trafficking Protocol encourage;
- Know the obligations of State Parties regarding repatriation of victims;
- Explain the type of border measures required to combat human trafficking;
- Understand why cooperation with non-governmental organizations and other actors of the civil society is needed;
- Know what mutual legal assistance entails;
- Know the alternative to formal mutual legal assistance;
- Understand how the effectiveness of mutual legal assistance can be enhanced;
- Understand the basic principles regarding preparation of requests for mutual legal assistance.

Relevant articles to this section

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel and identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

Legal provisions on cooperation

Unlike the Convention against Transnational Organized Crime, there is no single Article of the Trafficking Protocol that deals with cooperation between States Parties as a general subject. Instead, various Articles set out a series of specific obligations to cooperate with other States Parties with respect to specific subject matter and, in two cases, obligations to cooperate with entities who are not States Parties to the Protocol. As with other Protocol requirements, the Protocol provisions must be read and applied together with the corresponding Convention Articles. For example, apart from the specific obligation to assist in verifying travel or identity documents under the Trafficking Protocol Article 13, there are no mutual legal assistance requirements in the Protocol because Convention Article 18 already covers these comprehensively.

Information-sharing (Article 10)

Protocol Article 10 requires the sharing of information about a range of relevant matters, including the identification of possible victims and/or traffickers in transit and information about the various means used by offenders, including the misuse of travel or identity documents.

The sharing of information raises some concerns about confidentiality. The obligation to share is limited to such sharing as is in accordance with domestic law. States that receive information are obliged to comply with any restrictions placed on the use of the information by the sending State Party. Generally, this may include:

- Restrictions on the cases or types of cases in which the information could be used as evidence, e.g. restrictions on use in non-criminal matters, such as immigration-related proceedings;
- More general restrictions intended to prevent disclosure to the public or potential criminal suspects.

Both the ECOWAS Convention A/A.1/7/92 on Mutual Assistance in Criminal Matters and Article 18 of the TOC Convention on mutual legal assistance provide a legal basis for a State to send another State information or evidence it believes is important to combat crime. This information sharing can take place even in cases where the other country has not made a request for assistance and may be completely unaware of the existence of the information or evidence.

Before a State decides to spontaneously share sensitive information or to place strict restrictions on the use of the information they provide to another State, the requested



Discussion

Do direct channels of communication exist between ECOWAS Member States?
How could such channels be established/improved?

State should discuss the transaction with the receiving State. In order to efficiently combat human trafficking, States should establish direct channels of communication, particularly with officials in neighbouring countries.

Repatriation of victims (Article 8)

States are obliged to “facilitate and accept” the repatriation of any victim who is a national of that State or who had a right of permanent residence⁴⁶ in their country at the time the victim entered the country that now seeks repatriation. Actual repatriations should preferably, but not necessarily, be voluntary, and take into consideration the status of any ongoing legal proceedings involving the victim as such.⁴⁷

Indeed, as mentioned in Section Four, the presence of victims as witnesses in the criminal proceedings is often crucial. This is why it is necessary to establish links between law enforcement, prosecution officials and immigration authorities responsible for deporting and repatriating victims. Law enforcement and prosecution officials who are developing a criminal case against traffickers should ensure that victims are not removed before they can participate effectively in the criminal process. Countries should also consider training for officials likely to be involved in the return of victims, bearing in mind:

- The requirements to ensure that basic rights are respected;⁴⁸
- The preservation of other rights, notably those associated with asylum-seekers;⁴⁹ and
- The obligation of States Parties to ensure that the provisions of the Protocol are not applied in a discriminatory manner.⁵⁰

Repatriation should not be carried out until the State ascertains the nationality or residency status of the victim.⁵¹

States Parties must cooperate in other specific ways in support of repatriation. They must:

- Assist in verifying nationality and residence status upon request; and
- Agree to issue any travel documents or other authorizations needed to permit the victim to travel for repatriation.

These measures must be undertaken with “due regard for the safety” of the victim(s) involved.⁵²

⁴⁶Regarding the meaning of “permanent residence”, see the agreed notes for the travaux préparatoires, A/55/383/Add.1, para.72. It should be noted that the basic obligation to accept repatriation of nationals or residents under the Trafficking Protocol differs from the scope of the similar obligation in the Smuggling Protocol.

⁴⁷Art.8(2). The major concern about ongoing legal proceedings arose from cases cited by some delegations in which victims have been deported from some countries by immigration authorities before they could be called as witnesses or provide other assistance to prosecution authorities.

⁴⁸Art.8(5).

⁴⁹Art.14(1).

⁵⁰Art.14(2). This obligation includes precautions against both discrimination based on the status of victims as such and generally-recognized principles of non-discrimination.

⁵¹A/55/383/Add. 1, para.113.

⁵²Art.8(2). See also the general obligations to protect and assist victims in Protocol Art.6(5) and Convention Art.25.



Example

On 26 September 2003, Nigerian police rescued 116 male children and young adults from slave camps inside Nigeria. The rescued victims were only some of those enslaved in child-slave camps discovered in the western Nigerian states. The victims of Beninese nationality were camped in the bush without any shelter and forced to sleep outside on the bare ground. They were used to crush granite and stones at quarry sites in the camps. Some of the victims had been working in the quarries for up to four years.

The children were repatriated under a Memorandum of Understanding signed in August 2003 between Presidents Mathieu Kerekou of Benin and Olusegun Obasanjo of Nigeria. Nigerian authorities predicted up to 6,000 more children could be rescued and repatriated to Benin in the following months.



Activity

The repatriation of victims of trafficking raises difficult policy issues for many governments. Discuss the policy of your government. In your opinion, what would be a good policy regarding victims of trafficking?

Border measures and travel documents (Articles 11-13)

Articles of the Trafficking Protocol that deal with border measures are identical to the corresponding provisions of the Smuggling Protocol. This is why joint implementation is recommended. Nevertheless, it should be noted that there are significant differences between smuggling and trafficking, particularly with respect to the people affected. Persons who have been trafficked are victims of crime and are generally far more vulnerable to harm, both as a result of the trafficking and subsequent exploitation and through intimidation or retaliation on the part of traffickers. Under Article 11, States are required to strengthen border controls to the extent possible and to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. Under Article 12, they are required to ensure the integrity and security of their travel documents. Under Article 13, they are also required to “verify within a reasonable time” the legitimacy and validity of any documents issued.⁵³

⁵³Implementing the requirement to verify travel or identity documents may require additional resources or administrative changes to permit the process to be completed in the relatively short time-frames envisaged by the Protocol.



Activity

Make a short list of some ways to create direct channels of communication or of ways to improve existing channels. What are the benefits of strong communication between government agencies? How does improved communication between departments and agencies affect the victims?

Obligations to cooperate with entities which are not States Parties to the Protocol (Articles 6 (3) and 9 (3))

In the case of providing assistance to victims and the establishment of prevention measures, the importance of “...non-governmental organizations, other relevant organizations and other elements of civil society” was recognized, and cooperation with these entities is required, where appropriate. Protocol Articles 6 (3) and 9 (3) recognize the importance of “non-governmental organizations, other relevant organizations and other elements of civil society” in providing victim assistance and establishing prevention measures. Cooperation with these entities is required where appropriate. This cooperation recognizes that many victims fear deportation or prosecution in their destination countries and are reluctant to come forward to officials or agencies too closely associated with the State. The value and principal role of NGOs in such situations lies in their independence and ability to act on behalf of victims, often serving as a bridge between otherwise-isolated victims and officials.



Legislation

Strong communication between government departments and agencies and cooperation between governmental and non-governmental organizations is a key to successfully fighting human trafficking.

Mutual legal assistance in criminal matters (Article 18 of the Convention against Transnational Organized Crime)

Article 18

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in Article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in Article 3,

paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Why is mutual legal assistance needed?

In the context of globalization, national authorities increasingly need the assistance of other countries for the successful investigation, prosecution and punishment of offenders, particularly those who commit transnational offences. The ability to assert jurisdiction and secure the presence of an accused offender in your territory accomplishes an important part of the task, but does not complete it.

The international mobility of offenders and the use of advanced technology, among other factors, make it more necessary than ever that law enforcement and judicial authorities collaborate and assist the State that has assumed jurisdiction over the matter.

What can mutual legal assistance entail?

Mutual legal assistance is a form of international cooperation by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases. It covers a wide and ever expanding range of assistance. According to the Convention against Transnational Organized Crime, legal assistance may include:

- Taking evidence or statements;
- Effecting service of judicial documents;
- Executing searches and seizures;
- Examining objects and sites;
- Providing information, evidence and expert evaluations, documents and records;
- Tracing proceeds of crime;
- Facilitating the appearance of witnesses; and
- Any other kind of assistance not barred by domestic law.

The TOC Convention also applies to the international cooperation regarding the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (see Convention Article 13).

What can be the grounds for refusal of mutual legal assistance?

Previous efforts to improve international mutual legal assistance have often been frustrated not only by slowness and inefficiency that render the implementation of bi- or multilateral Mutual Legal Assistance Treaties and Conventions problematic in practice, but also by legal hurdles.

Typically, assistance has been denied in cases of:

- Non-extraditable offences;
- Lack of dual criminality; and
- Incompatibility with domestic law.

For example, countries have refused legal assistance for certain offences of political and fiscal natures, offences that are not punishable in the requested State, cases where the

offender has already served the sentence or has been acquitted (*non bis in idem* principle—double jeopardy), or when foreign procedures violate certain international standards, such as the International Covenant on Civil and Political Rights.

ECOWAS Convention A/P.1/7/92 on Mutual Assistance in Criminal Matters, July 1992

The ECOWAS Convention Mutual Assistance in Criminal Matters entered into force on 28 October 2003. As of July 2004, it is ratified by the following countries: Burkina Faso, Gambia, Ghana, Guinea, Mali, Nigeria, Senegal, Sierra Leone, and Togo.

The scope of application of mutual legal assistance, as defined by the ECOWAS Convention, article 2, includes:

- Taking evidence or statements;
- Assisting in assuring the availability of detained persons or others to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Executing searches and seizures;
- Forfeitures and confiscations of the proceeds of crime;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

The Convention does not apply to extradition. There is another ECOWAS Convention, A/P1/8/94 on Extradition.⁵⁴ As of August 2004, the ECOWAS Convention A/P.1/8/94 on Extradition has not yet entered into force. According to the ECOWAS Convention on Extradition, extradition means the surrender of all persons within the territory of the requested State:

- Who are wanted for prosecution for an offence; or
- Who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.

Central authority

According to the ECOWAS Convention on Mutual Legal Assistance, article 3, it is the competent authority that makes and receives requests for mutual legal assistance. The TOC Convention, Article 18(3) further obliges the State Parties to notify the Secretary-General of the authority designated as the central competent authority.

In order for other States to be aware of the central competent authority and to plan and draw up requests, the information on the central authority must be accurate, up to date and widely available.

⁵⁴The ECOWAS Convention on Extradition has been ratified by the following ECOWAS Member States: Burkina Faso, Ghana, Guinea, Mali, Nigeria, Senegal, and Sierra Leone.



Activity

Has your country ratified the ECOWAS Convention on Mutual Assistance in Criminal Matters? Has your country ratified the TOC Convention? Is there a legal basis for mutual assistance between your country and the neighbouring countries?

States that have not already done so should establish a central authority that facilitates the making and execution of requests. The central authority should be staffed with practitioners who are legally trained and who have developed institutional expertise and continuity in the area of mutual legal assistance. A central authority need not be established by legislation—an administrative structure would suffice.



Discussion

Is there a central authority in your country? If there is no central authority in your country, who could become one? Who currently deals with requests for mutual legal assistance from your neighbouring countries? How could mutual legal assistance between ECOWAS Member States be improved?

Reducing delay

Significant delay in the execution of requests is often partly caused by delay in consideration of the request by the receiving central authority and delay in the transmission of the request to the appropriate executing authority. Appropriate action should be taken to ensure that central authorities examine and prioritize requests promptly upon receipt and transmit them to executing authorities without delay.

States could place time limits on central authorities for request processing. They are further encouraged to afford foreign requests the same priority as similar domestic investigations or proceedings.

Alternatives to mutual legal assistance

A formal mutual legal assistance request is not always necessary to obtain assistance from another State. Mutual legal assistance is the only option only in cases where coercive measures are needed. This is because coercive measures normally require judicial authority.

Police channels

The fastest, cheapest, and most flexible way to seek information or intelligence is through police-to-police contact, rather than the more formal route of mutual legal assistance. This direct method should be used whenever possible.

Such contact can be carried out through:

- ICPO/Interpol/Europol;
- Local crime liaison officers;
- Under any applicable memoranda of understanding; or
- Any regional arrangements, formal and informal.

Voluntarily given or publicly available evidence

While police channels can never be used to initiate coercive measures, such channels may be used to obtain evidence that is either given voluntarily (e.g. statements) or from public records or other publicly available sources.

A very urgent request

Many States permit very urgent requests to be made orally or by fax between law enforcement officers. Advance preparations can be made or urgent non-coercive assistance given at the same time as a formal request is routed between central authorities.



Concluding remarks

Always inform the central authority of the prior informal channel contacts.

Use of joint investigative teams

This refers to the use of joint investigative teams comprised of officers of two or more States in human trafficking cases that have transnational dimensions. States should make full use of the benefits of the exchange of financial and other intelligence between appropriate agencies. Appropriate safeguards should naturally be introduced to ensure protection of confidentiality.



Discussion

Has your country used the method of joint investigation teams? Describe.

Maximizing effectiveness of mutual legal assistance

Direct contacts

Personal contacts are often crucial to open communication channels and to develop the familiarity and trust necessary to achieve the best results in mutual legal assistance casework.

In order to facilitate this, clearly state the contact details of the responsible officials, including phone, fax and possible email addresses, in the request.

Sometimes it may be desirable to establish contact with the official in the requested State before sending the request, in order to clarify legal requirements or simplify procedures. Such contact can be initiated through the police channels, including existing police attaché networks.



Concluding remarks

Please make sure to get the contact details of your colleagues in the neighbouring countries!

Liaison officers

It is beneficial for States to participate in the exchange of liaison police officers, magistrates or prosecutors with States with whom there is significant need for mutual legal assistance.

Posting a permanent staff member to the central authority of that country or arranging short-term staff exchanges are both methods that facilitate mutual legal assistance. On-site initiatives often produce faster and more useful mutual legal assistance than is usually possible through distance.

Preparing effective requests for mutual legal assistance

Preparation of a request for assistance involves consideration of a number of requirements, including:

- The requirements of the ECOWAS Convention on Mutual Legal Assistance, or another international Treaty such as the TOC Convention;
- Domestic law; and
- The requirements of the requested State.

However, overly careful attention to detail could result in a request that is unduly lengthy or so prescriptive that it holds back the requested State from resorting to alternative methods of securing the desired end-result.

Accordingly, the following basic principles should be taken into consideration:

- To be very specific in the presentation;
- To link the existing investigation or proceedings to the assistance required;
- To specify the precise assistance sought; and
- Where possible, to focus on the end-result and not on the method of securing that end-results. For example, it may be possible for the requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant.

Adequate resources

An effective mutual legal assistance programme needs to have proper resources in terms of both central and competent authorities and necessary infrastructure. Appropriate resources should be allocated to mutual legal assistance.

Asset sharing

The sharing of confiscated assets between States is an important way to encourage co-operation. The TOC Convention, Article 14 (3), supports asset sharing.

Optimizing language capacity

Staff at the central authority should have the capacity for different languages. Language capacities enhance the overall capacity for informal communication. Access to reliable translation services is also of critical importance to ensure reliability. Creative solutions may need to be found for language problems. For example, the staff at the central authority could seek assistance from other governmental departments and missions abroad or even from the requesting or requested State.



Discussion

Does the competent authority in your country have adequate resources to deal with requests for mutual legal assistance? If not, what resources are lacking? How could the situation be improved?



Self-assessment questions

- What are the two legal instruments that can be used as a legal basis for mutual legal assistance in the ECOWAS region?
- What kind of information sharing does the Trafficking Protocol require?
- How are States Parties to the Trafficking Protocol obliged to cooperate in support of repatriation?
- Why is cooperation with NGOs crucial to successful combat against human trafficking?
- What can be the grounds for refusal of mutual legal assistance?
- Has your country ratified the ECOWAS Convention on mutual assistance in criminal matters?
- What are the alternatives to mutual legal assistance?
- Why are direct contacts in the neighbouring countries recommended?

CHECKLIST FOR MUTUAL LEGAL ASSISTANCE

The request should include the following:

Identification

Identification of the office/authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office/authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer/prosecutor and/or judicial officer (form I)

Prior contact

Details of any prior contact between officers in the requesting and requested States pertaining to the subject matter of the request

Use of other channels

Where a copy of the request has been or is being sent through other channels, this should be made clear in the request

Acknowledgement of the request

A cover sheet incorporating the acknowledgement for completion and return to the requesting State

Indication of urgency and/or time limit

A prominent indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit

Confidentiality

A prominent indication of any need, and the reason, for confidentiality and the requirement to consult with the requesting State, prior to the execution if confidentiality cannot be maintained

Legal basis for the request

A description of the basis upon which the request is made, e.g., bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity

Summary of the relevant facts

A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s)

Description of the offence and applicable penalty

A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State

Description of the evidence/assistance requested

A description in specific terms of the evidence or other assistance requested

Clear link between proceeding(s) and evidence/assistance sought

A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (i.e., a description of how the evidence or other assistance sought is relevant to the case)

Description of the procedures

A description of the procedures to be followed by the requested State's authorities in executing the request to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the requesting State, and reasons why the procedures are required

Presence of officials from the requesting State in execution of request

An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested

Language

All requests for assistance should be made in or accompanied by a certified translation into a language as specified by the requested State

Note: Where it becomes evident that a request or the aggregate of requests from a particular State involve a substantial or extraordinary cost, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed, and the manner in which the costs are to be borne.

The following case studies have been created to generate consideration of international cooperation and the different forms that it takes. It is important to remember that there is no exact right or wrong answer and that the goal of the problem scenario is to encourage discussion: What are the available tools for international cooperation according to the TOC Convention and ECOWAS Convention on Mutual Assistance in Criminal Matters? Please consider at least the following:

- Sharing of intelligence
- Formal/informal cooperation
- Joint investigations
- MLA/extradition
- Prevention

Case study 1

In July of 2003, 16 women aged 16 to 31 from Beautyland were arrested along with their alleged traffickers in the capital of Happyland. There were indications that the women had been trafficked for prostitution from Beautyland to Happyland en route to Italy and Holland. At the time of arrest, the women were in good health and showed no signs of abuse. They had been housed secretly in villas in the capital of Happyland while en route to Europe. According to their testimonies, the trip to Europe was supposed to be executed by plane.

The majority of women were employed as hairdressers prior to being recruited. The alleged traffickers promised the women well-paid and secure jobs in Europe. No work permit was required. According to testimonies, in previous cases, the alleged traffickers had promised similar positions to women and girls who were forced to prostitute themselves once they arrived in Europe.

The alleged traffickers were arrested on charges of document fraud, specifically fraudulent travel documentation. Five of the six arrested alleged offenders were from Beautyland and one was from Loveland. Their age ranged from 23 to 38 years of age. According to evidence, the alleged offenders' professions ranged from resellers to carpenters and students. None of the alleged offenders had been previously registered in police archives.

The arrests of the alleged traffickers were attributed to the cooperation between police of Happyland and Interpol of Beautyland. They collaborated in collecting evidence and conducting witness interviews leading to the discovery of the women disseminated among the villas in the capital of Happyland. The alleged traffickers have been placed in pre-trial detention, while the victims were transferred to the Embassy of the Beautyland in Happyland.

Case study 2

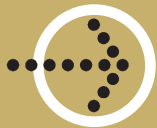
On 26 September 2003 police of Sekosekoland rescued 116 male children under the age of 18, from slave camps inside Sekosekoland, in a border town between Sekosekoland and Tukutukuland. The rescued victims, all, were only some of those enslaved in

child-slave camps discovered in the western Sekoseko States. The victims of Tukatuku nationality were camped in the bush without any shelter and forced to sleep outside on the bare ground. They were used to crush granites and stones at quarry sites in the camps. The victims' parents had sold them to labour traffickers for as little as US\$ 30. Some of the victims had been working in the quarries for up to four years.

The rescue resulted in nine arrests for trafficking offences. Those arrested confessed that the victims (most of them children) were transported into Sekosekoland in sacks that were passed as goods from Tukatukuland at the Sekoseko border. Most of the victims are said to be on the list of missing persons compiled by the Tukatuku authorities. Preliminary police reports showed that at least 13 trafficked children died in the last three months.

All the victims were repatriated to Tukatukuland. Also the traffickers of Tukatuku nationality, arrested for the trafficking offence, were handed over to the Tukatuku authorities together with a case file on the criminal case by the Sekoseko Police Force.

In repatriating the victims and arresting the traffickers, Sekoseko authorities were working in compliance of the MOU (Memorandum of Understanding) signed in August 2003 with Tukatukuland. Under the accord, both countries agreed that criminals identified in future shall be returned immediately to the appropriate authorities in the requesting country. They also agreed to identify, investigate and prosecute agents and traffickers, as well as to protect victims of human trafficking and return them promptly to their countries of origin. Sekoseko authorities estimate at least 6,000 other children from Tukatukuland still labour in the quarries.



UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/55/383)]

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

Expressing its appreciation to the Government of Poland for submitting to it at its fifty-first session a first draft United Nations convention against transnational organized crime and for hosting the meeting of the inter-sessional open-ended intergovernmental group of experts, established pursuant to resolution 52/85 of 12 December 1997, on the elaboration of a preliminary draft of a possible comprehensive international convention against transnational organized crime, held in Warsaw from 2 to 6 February 1998, 1 A/C.3/51/7, annex.

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998,

Expressing its appreciation to the Government of Thailand for hosting the Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

Deeply concerned by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

Noting with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly, *Determined* 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,

Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, which carried out its work at the headquarters of the United Nations Office for Drug Control and Crime Prevention in Vienna, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the High-level Political Signing Conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;

3. *Requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Palermo in accordance with resolution 54/129;

4. *Notes* that the Ad Hoc Committee has not yet completed its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;

5. *Requests* the Ad Hoc Committee to continue its work in relation to this draft Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;

6. *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;

7. *Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;

8. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;

9. *Decides* that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making

adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;

10. *Decides also* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

11. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention to serve as the secretariat for the Conference of the Parties to the Convention in accordance with article 33 of the Convention;

12. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above.

62nd plenary meeting
15 November 2000

United Nations Convention against Transnational Organized Crime

Article 1

Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2

Use of terms

For the purposes of this Convention:

(a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

Article 3

Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

- (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
- (b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

Article 4

Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5

Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
 - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
 - a. Criminal activities of the organized criminal group;
 - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above described criminal aim;
- (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6

Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (b) Subject to the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7

Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8

Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9

Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10

Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in

connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12

Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

- (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
- (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16

Extradition

This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they

will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion,

nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17

Transfer of sentenced persons States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judi-

cial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting

State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21

Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22

Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23

Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24

Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25

Assistance to and protection of victims

1. 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.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26

Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

- (i) The identity, nature, composition, structure, location or activities of organized criminal groups;
- (ii) Links, including international links, with other organized criminal groups;
- (iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

- (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
- (ii) The movement of proceeds of crime or property derived from the commission of such offences;
- (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28

Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.
2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.
3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:
 - (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
 - (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
 - (c) Monitoring of the movement of contraband;
 - (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
 - (e) Collection of evidence;
 - (f) Control techniques in free trade zones and free ports;
 - (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
 - (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
 - (i) Methods used in the protection of victims and witnesses.
2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31

Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

- (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
- (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
- (iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and
- (iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32

Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33

Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its

accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37

Relation with protocols

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring 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,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the

right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links

between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions**Article 14**

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention 3 and the 1967 Protocol 4 relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of

migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development, Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues, Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) “Fraudulent travel or identity document” shall mean any travel or identity document:

- (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
- (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (iii) That is being used by a person other than the rightful holder;

(d) “Vessel” shall mean any type of water craft, including non-displacement craft and sea-planes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5

Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- (a) The smuggling of migrants;
- (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

- (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
- (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:

- (a) To board the vessel;
- (b) To search the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

- (a) Ensure the safety and humane treatment of the persons on board;
- (b) Take due account of the need not to endanger the security of the vessel or its cargo;
- (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
- (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

- (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
- (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct

set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,⁵ where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention 3 and the 1967 Protocol 4 relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.

Article 20

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly by respective Governments, have signed this Protocol.



ECOWAS INITIAL PLAN OF ACTION AGAINST TRAFFICKING IN PERSONS (2002-2003)

Executive Secretariat

Dakar, December 2001

This document outlines the most urgent actions against trafficking in persons to be taken by ECOWAS Member States within the years 2002-2003, with a focus on criminal justice responses. A more detailed and far-reaching action plan should be developed in the year 2003 on the basis of an in-depth evaluation of the implementation of the Initial Plan of Action.

Legal Framework and Policy Development

1. States who have not yet done so, shall ratify forthwith and fully implement *ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters and ECOWAS Convention A/P1/8/94 on Extradition*.

Input: National Government
Success indicator: Conventions ratified
To be completed by: as soon as possible, but not later than December 2002

2. States who have not yet done so, shall sign, ratify, and fully implement the *African Charter on the Rights and Welfare of the Child*.

Input: National Government
Success indicator: Charter ratified
To be completed by: as soon as possible, but not later than December 2002

3. States who have not yet done so, shall sign, ratify, and fully implement the *United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention*.

Input: National Government, ODCCP/CICP
Success indicator: Convention and Protocol ratified
To be completed by: as soon as possible, but not later than December 2002

4. States shall adopt laws criminalizing trafficking in human beings in line with the *United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* thereto.

Input: National Government
Success indicator: Criminal Code amended
To be completed by: December 2003

5. States shall adopt and implement the laws and administrative structures needed to support the provisions of *United Nations Convention against Transnational Organized Crime* and the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*, supplementing the Convention, governing international cooperation and assistance in preventing, investigating and prosecuting cases of trafficking by organized criminal groups.

Input: National Government
 Success indicator: Criminal Code amended
 To be completed by: December 2003

6. States shall adopt legal provisions for the protection of victims of trafficking, and ensure that their domestic legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Input: National Government
 Success indicator: Criminal and/or Civil Code and Procedures amended as appropriate
 To be completed by: December 2003

7. States shall ensure that their laws and administrative practices provide information to victims about the status of relevant criminal and other legal proceedings and an opportunity to voice their views and concerns in a manner not prejudicial to the rights of the defense and that the status of any such proceedings are considered prior to any repatriation of the victim.

Input: National Government
 Success indicator: Criminal and/or Civil Code and Procedures amended as appropriate
 To be completed by: December 2003

8. States shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases; and shall give appropriate consideration to humanitarian and compassionate factors in the consideration of permitting victims of trafficking to remain in their territory.

Input: National Government
 Success indicator: Immigration code and regulations amended
 To be completed by: December 2003

9. States shall take responsibility for victims of trafficking in persons, who are their nationals, or persons with the right of permanent residence in their territory at the time of entry into the territory of the receiving State by facilitating and accepting, with due regard for the safety of such persons, the return of such persons without undue or unreasonable delay.

Input: National Government
 Success indicator: Immigration and emigration regulations amended, system of repatriation established
 To be completed by: December 2003

10. States shall take measures that permit the denial of entry into the country and/or the revocation of visas of persons wanted for the commission of crimes related to the trafficking in persons.

Input: National Government
 Success indicator: Immigration and emigration regulations amended
 To be completed by: December 2003

11. States shall establish a National Task Force on Trafficking in Persons that will bring together relevant Ministries and Agencies in developing policy and taking action against traffick-

ing in persons, and calling on Inter-Governmental Organizations, Non-Governmental Organizations, and other representatives of civil society, as necessary.

Input: National Government, Inter-Governmental Organizations, Non-Governmental Organizations and other representatives of civil society
 Success indicator: National Task Force designated and operating
 To be completed by: June 2002

12. The National Task Force designated by each State shall develop recommendations for a national plan of action against trafficking in persons. The National Task Force should also monitor and report through their government to the ECOWAS Secretariat on the progress of the implementation of this Initial Plan of Action.

Input: National Government, IGOs, NGOs and other groups
 Success indicator: National Task Force completes preliminary draft of the national plan of action in 2002 and reports regularly to ECOWAS
 To be completed by: December 2002 / ongoing

13. A Unit for the coordination of the efforts to combat trafficking in persons shall be established within the ECOWAS Secretariat. Pending the establishment of this Unit, the Legal Department of ECOWAS Executive Secretariat shall co-ordinate and monitor the implementation of this Plan of Action and follow-up on other related developments in Member States in the fight against trafficking in persons.

Input: ECOWAS Secretariat and ECOWAS Member States
 Success indicator: Office staffed, equipped and funded
 To be completed by: Unit to be operational by December 2002

Protection and Support of Victims of Trafficking in Persons

1. States, in cooperation with NGOs and other representatives of civil society as appropriate, shall take measures to create or develop the capacity of the reception centres where victims of trafficking in persons can be sheltered. These centres shall provide physical security, basic material assistance, medical care, and counseling and information to victims of trafficking, particularly on legal assistance, and reporting and filing complaints, taking into account the special needs and legal status of children.

Input: National Government (Ministries of Justice /Social Affairs), and local NGOs; IGOs and NGOs for material support and expertise, as required.
 Success indicator: Reception centres open and receiving clients
 To be completed by: At least one centre open in each country by June 2003

2. States shall encourage victims of trafficking to testify in the investigation and prosecution of cases of trafficking in persons, by giving due consideration to the safety and security of victims and witnesses at all stages of legal proceedings, permitting them to remain in their territory.

Input: National Government (Ministries of Justice /Social Affairs), NGOs, and other civil society groups
 Success indicator: Relevant codes amended, Victim/witness protection available
 To be completed by: Victim/witness support program operational by June 2003

3. ECOWAS shall establish a fund for victims of trafficking. The fund shall be used in particular to provide support to States for the repatriation of victims of trafficking.

Input: ECOWAS Secretariat and National Government
 Success indicator: ECOWAS fund for victims of trafficking established and minimum funding provided
 To be completed by: December 2003

Prevention and Awareness Raising

1. States, in partnership with NGOs, other civil society groups, and public and private media, shall develop and disseminate public awareness materials focusing on (a) raising public understanding that trafficking in persons is a crime, and (b) discouraging the demand that leads to trafficking, particularly by addressing those who might exploit victims of trafficking, for example as child domestics or farm labourers.

Input: Government social service agencies; Government media and public education agencies, media outlets, local NGOs, international NGOs and IGOs, particularly IOM, ILO and UNICEF.
 Success indicator: Various types of awareness raising undertaken, including radio spots, broadcasts, newspaper advertisements. Material support and expertise provided
 To be completed by: December 2002

2. States, in partnership with NGOs, other civil society groups, and public and private media, shall develop and implement public awareness campaigns aimed at potential victims of trafficking, using both traditional channels of information as well as the mass media. Such materials and activities should aim to raise the awareness of potential victims to the types of enticements and recruitment methods used by traffickers. Awareness campaigns should reflect local cultures and traditions and offer information in local languages. Initially, such campaigns should target vulnerable groups, particularly children likely to be trafficked within the sub-region for labour exploitation, and women and children likely to be trafficked for sexual exploitation internationally.

Input: Government social service agencies; Government media and public education agencies; Government and private education systems, media outlets, NGOs and IGOs, particularly IOM, ILO and UNICEF
 Success indicator: Radio spots broadcast, leaflets distributed in majority of schools, as well as information campaigns addressing local communities and community leaders undertaken. Material support and expertise provided.
 To be completed by: December 2003

3. States, NGOs and other civil society groups, in consultation with the ECOWAS, shall prepare information materials concerning the practice and risks of trafficking in persons. Such materials shall, where appropriate, be disseminated to visa applicants, and distributed to any other part of the travelling public at international borders and on public transportation and carriers.

Input: Government diplomatic services, other relevant Government agencies, media and public education agencies, Government and private education systems, NGOs, IGOs particularly IOM, ILO and UNICEF.
 Success indicator: Materials available at embassies and consulates for distribution to visa applicants and others. Materials available for distribution at ports of entry and on carriers
 To be completed by: December 2002

Collection, Exchange and Analysis of Information

1. States shall establish direct channels of communication between their border control agencies. They shall initiate or expand efforts to gather and analyze data on trafficking in persons, including on the means and methods used, on the situation, magnitude, nature, and economics of trafficking in persons, particularly of women and children. States shall share such information, as appropriate, within ECOWAS, and with law enforcement agencies and other agencies of countries of origin, transit and destination, as well as with the United Nations Centre for International Crime Prevention and other relevant international organizations.

Input: National Government (Passport Offices and Immigration Agencies, Law Enforcement Agencies, Border Control Agencies, Social Service Agencies, National Statistical Offices), ODCCP/CICP, Interpol, and other relevant IGOs.

Success indicator: Standardized formats for collection of information agreed and data collection procedures in place. Material support and data available.

To be completed by: December 2002

2. States with shared borders shall establish joint border patrols trained in the prevention of trafficking in persons. The ECOWAS Unit for the coordination of the efforts to combat trafficking in persons should facilitate, upon request, such coordination efforts.

Input: ECOWAS Secretariat, Government immigration and border control agencies.

Success indicator: Joint border control established and staff trained

To be completed by: December 2002

Specialization and Training

1. States shall create special units, within existing law enforcement structures, with a specific mandate to develop and effectively target operational activities to combat trafficking of persons. States shall also consider the establishment of joint investigation units.

Input: Government law enforcement agencies; Government personnel and training agencies, ODCCP/CICP, Interpol and other law enforcement agencies to provide material support and expertise.

Success indicator: Specialized units created and operational

To be completed by: December 2003

2. States shall provide and strengthen training for law enforcement personnel, customs and immigration officials, prosecutors and judges, and other relevant officials, on the prevention of trafficking in persons. The training should focus on the methods used in preventing such trafficking, prosecuting the traffickers, and protecting the rights of victims, including protecting the victims from the traffickers. This training should also take into account the need to consider human rights and child- and gender-sensitive issues, and it should encourage cooperation with non-governmental organizations and other elements of civil society

Input: Relevant government agencies, including their training centers; including ODCCP/CICP, relevant IGOs, Interpol, bilateral support and relevant NGOs.

Success indicator: Training curricula formulated, training materials prepared and training sessions held

To be completed by: December 2003.

3. States shall prepare training materials concerning trafficking in persons for embassy and consulate staff who deal with immigration and visa services. Materials will be developed in consultation with the ECOWAS Unit for the coordination of the efforts to combat trafficking in persons.

Input: Government diplomatic services and other relevant Government agencies
 Success indicator: Training materials completed and training sessions underway
 To be completed by: June 2002

Travel and Identity Documents

1. States shall establish procedures to verify whether a person who is the victim of trafficking in persons is a national or has the right of permanent residence in the State of origin, and to provide such travel documents or other authorization as may be necessary to enable a victim of trafficking in persons who is without proper documentation to travel to and re-enter its territory, on the request of a receiving State.

Input: National Government Passport Offices and Immigration Agencies
 Success indicator: Immigration regulations and code amended, procedures in place
 To be completed by: December 2002

2. States, at the request of another State, when presented with suspected cases of trafficking in persons, shall verify, within a reasonable time, the validity of travel and identity documents issued or purported to have been issued in their name and suspected of being used for trafficking of persons.

Input: National Government (Passport Offices and Immigration Agencies)
 Success indicator: Immigration codes and regulations amended, procedures in place
 To be completed by: December 2002

3. States shall take such measures as may be necessary, within available means: (a) to ensure that the birth certificates, and travel and identity documents, they issue are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated, or issued; and (b) to ensure the integrity and security of travel or identity documents they issue, and to prevent their unlawful creation, issuance, and use. In this regard, States shall implement Decision C/DEC.1 /5/2000 signed in Abuja on 29th May 2000 relating to the Adoption of an ECOWAS Passport.

Input: Government immigration services and document services, consular services, health services, law enforcement agencies, the agencies and services of other States, IGOs, ODCCP/CICP, particularly Interpol and law enforcement and other relevant agencies of third countries.
 Success indicator: ECOWAS sub-regional meeting with relevant officials and experts held on ways to improve integrity and security of identity and travel documents.
 To be completed by: December 2002

4. States shall encourage commercial carriers to take precautions against their means of transport being used in the trafficking of persons, and require, where appropriate and without prejudice to applicable international conventions, such carriers to ascertain that all passengers are in possession of travel documents required for entry into the receiving State. States shall further adopt provisions requiring that all documents for minors travelling alone be held for them by the carrier until they have reached their destination.

Input: Government transport regulation agencies, immigration services, border control agencies, law enforcement agencies, international IGOs, particularly Interpol and ODCCP/ CICP; other law enforcement agencies to provide material support and expertise.

Success indicator: Amendment of relevant transport regulations

To be completed by: December 2002

Monitoring and Evaluation of the Initial Plan of Action

1. States, through their Task Force on Trafficking in Persons, shall coordinate and monitor the ongoing implementation of this Initial Plan of Action at the national level and report, on a bi-annual basis, to the ECOWAS Secretariat.

Input: Government agencies, reporting to the Government Task Force

Success indicator: Progress reports on the Initial Plan of Action provided to relevant Ministries, and to ECOWAS every six months

To be completed by: Every six months (June and December 2002 and 2003)

2. The ECOWAS Secretariat shall coordinate and monitor the implementation of this Initial Plan of Action and report on the progress achieved every six months to the Ministerial Meeting of the Mediation and Security Council.

Input: Government Task Force reporting through their State to the ECOWAS Unit for the coordination of the efforts to combat trafficking in persons

Success indicator: Annual reports prepared by Ministerial Meeting of the Mediation and Security Council and submitted to the ECOWAS Authority of Heads of State and Government

To be completed by: Every six months (June and December 2002 and 2003)

3. The ECOWAS Secretariat shall organize an Expert Group Meeting for 2003 that shall evaluate the implementation of this Initial Action Plan, and make recommendations for further actions to be taken against trafficking in persons.

Every six months (June and December 2002 and 2003)

Input: ECOWAS Secretariat and the ECOWAS Member States

Success indicator: Expert Group Meeting held in 2003

To be completed by: 3rd quarter, 2003



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