

ICAT

Inter-Agency Coordination Group against Trafficking in Persons

*The International Legal Frameworks
concerning Trafficking in Persons*

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Acknowledgements

The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) was set up in 2007 in response to a United Nations Economic and Social Council (ECOSOC) resolution in 2006 (2006/27) requesting intergovernmental agencies to work together to strengthen technical assistance provided to countries in the area of human trafficking. A resolution of the UN General Assembly in March 2007 confirmed the importance of eliminating “gaps and overlaps” in the anti-trafficking efforts of intergovernmental agencies and requested the UN Secretary-General to develop interagency coordination further in order “to enhance cooperation and coordination and facilitate a holistic and comprehensive approach by the international community to the problem of trafficking in persons” (A/RES/61/180). As a policy forum, ICAT aims to facilitate a holistic and comprehensive approach by the international community to preventing and combating trafficking in persons including protection and support of victims of trafficking.

In response to this mandate, ICAT is committed to publish a series of five issue papers over the course of 2012 and 2013. Each issue paper will examine one key issue that has been identified and agreed by ICAT’s member organisations as a critical challenge to address for the international community to succeed in the fight against trafficking in persons in the coming decade. The planned series of ICAT papers provides an opportunity for international organizations to speak with one voice and is intended to serve as a catalyst for the promotion of common strategic priorities and greater policy and programmatic coherence. An overview paper titled, *The next decade: Promoting common priorities and greater coherence in the fight against human trafficking*, covering the summary of the five themes was launched in May 2012 in New York at an event hosted by ICAT and co-sponsored by the Mission of Sweden together with the Association of South East Asian Nations (ASEAN). The overview paper can be accessed at:

http://www.ungift.org/doc/knowledgehub/resource-centre/ICAT/ICAT_overview_paper.pdf.

The first issue paper, titled the *International Legal Frameworks concerning Trafficking in Persons*, is the result of interagency teamwork benefiting much from the extensive experience of the members of the ICAT Working Group, comprising IOM, ILO, OHCHR, UNHCR, UNICEF and UNODC, coming together to contribute in a collegial manner their experiences and institutional expertise in the advancement of a common cause – to enhance coherence in addressing the issue of human trafficking. The following colleagues from each member agency of the Working Group are acknowledged for their contribution: Ariel Riva (UNHCR), Beate Andrees (ILO), Houtan Homayounpour (ILO), Jonathan Martens (IOM), Maria Bances del Rey, (UNHCR), Martin Fowke (UNODC and ICAT Secretariat), Susu Thatun (UNICEF and Chair of Working Group) and Youla Haddadin (OHCHR). Mike Dottridge, independent consultant, assisted in coordinating the work of the team. The paper has not been formally edited. The paper was realized through financial contribution provided by OHCHR.

The International Legal Frameworks concerning Trafficking in Persons

1 Introduction

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter referred to as “Trafficking in Persons Protocol”), is not a stand-alone tool.¹ It supplements the UN Convention against Transnational Organized Crime (2000) and is complemented by an array of international legal instruments, some focusing on the suppression of crime and others on human rights.

However, despite an implicit recognition of the need to rely on a variety of sources of international law to address human trafficking, there is little evidence that this recognition has found practical expression². Accordingly, this paper characterizes key related elements of the anti-trafficking response today, highlights assumed features that still require development and recommends a number of prioritized actions to bring to bear provisions and legal obligations from different bodies of law and legal instruments that are relevant to the task of preventing human trafficking, protecting victims, and prosecuting perpetrators.

2 The current state of affairs

2.1 Perceptions of trafficking in persons as primarily a criminal justice issue

The extremely low number of convictions, globally, for human trafficking crimes reinforces the common perception that, all too often, human trafficking is a crime committed with impunity. The need to improve criminal justice efforts against human trafficking has been identified by many States. One consequence of this is that efforts to prosecute suspected traffickers are often accorded priority without corresponding efforts to increase the protection of trafficking victims or the prevention of trafficking. While a firm commitment to prosecution is a required feature of an effective counter trafficking response, this limited criminal justice approach also carries an inherent disadvantage; notably, that trafficking investigations typically rely on victim testimony, and that victim testimony is less reliable and less likely to be forthcoming in environments where victim protection is not the key priority.

Further, the non-coordinated criminal justice focus has tended to privilege efforts to detect, investigate and prosecute trafficking-related offences with which police are most familiar, including prostitution (where criminalized) and other vice crimes. Violations of labour law, or other workplace offences and human rights violations, especially those involving migrants in an irregular situation and children, may not be as rigorously pursued because of limitations in police capacity or expertise, or because they are the responsibility of another ministry with its own priorities.

2.2 Divergence in reflecting the Trafficking in Persons Protocol in national law

The Trafficking in Persons Protocol provides an internationally-agreed upon definition of “trafficking in persons”³ which is commonly understood to consist of three key elements⁴:

¹ The Trafficking in Persons Protocol refers explicitly to complementary legal regimes in article 14 (“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...”). The same article requires the interpretation and application by States of the measures set out in the Protocol “to be consistent with internationally recognized principles of non-discrimination”. Article 2 also specifies that an objective of the Protocol is to protect and assist victims of trafficking “with full respect of their human rights”.

² For further discussion on this, see the International Framework for Action to Implement the Trafficking in Persons Protocol, Vienna, 2010. http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

³ Article 3, subparagraph a, of the Trafficking in Persons Protocol says: “‘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

- an action (recruitment, transportation, transfer, harbouring or receipt of persons);
- the means used (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);
- the purpose (for exploitation).

Exploitation is not defined in the Trafficking in Persons Protocol; it is only described, allowing States to elaborate on other forms of exploitation when defining “trafficking in persons” in national legislation.⁵

States have reflected the definition of trafficking in persons in the Trafficking in Persons Protocol in varying ways in national legislation, with some focusing exclusively on victims who are brought into the country from abroad, some additionally or alternatively focusing on particular categories of victim (eg. women and children), some focusing on trafficking for particular purposes (such as sexual exploitation), and some covering the exploitation of victims as well as the five actions specified in the Trafficking in Persons Protocol at the expense of any mention of the means by which the actions are facilitated. Some States have chosen to maintain a clear distinction between legislation prohibiting trafficking in persons and laws on particular forms of exploitation mentioned in the Trafficking in Persons Protocol, resulting in some victims of internal trafficking not being recognized and thus not provided with the protection or assistance encouraged by the Trafficking in Persons Protocol or by other international instruments.

In 2009 the ILO noted that “There has been...considerable debate as to whether trafficking must involve some movement of the trafficked person, either within or across national borders, together with the process of recruitment, or whether the focus should be only on the exploitation that occurs at the end”.⁶ Other experts have noted that trafficking in persons often involves moving the victims, either away from home in their own country or to a different country, into a situation where they have less access to services that might protect them.⁷ At the operational level, therefore, the way the definition of trafficking in persons is interpreted has significant influence on the types of protection and assistance made available to people who are exploited but not moved from one place to another (such as individuals subjected to inherited forms of slavery or debt bondage).

Furthermore, although the Trafficking in Persons Protocol is clear in not requiring the abusive means mentioned in the Trafficking in Persons Protocol’s definition of trafficking to be used when children are recruited, transported, transferred, harboured or received for the purpose of exploitation, some States have chosen not to reflect this provision in their legislation. In contrast, in some States where the validity of this provision is recognized, at the operational level it has resulted in law enforcement officials responsible for stopping trafficking in persons intercepting adolescent children who are in the process of moving from one place in their country to another to seek work, even when there is no evidence of their being under the control of an intermediary.⁸

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”.

⁴ Article 3, subparagraph c, of the Trafficking in Persons Protocol specifies that, “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”. Subparagraph d states that “‘Child’ shall mean any person under eighteen years of age”.

⁵ See section 2.3 below.

⁶ ILO, *The cost of coercion*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, Geneva, 2009, paragraph 32.

⁷ For example, the UN High Commissioner for Refugees (UNHCR) noted that “Once initial control is secured, victims are generally moved to a place where there is a market for their services, often where they lack language skills and other basic knowledge that would enable them to seek help” (UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, UNHCR document HCR/GIP/06/07 (7 April 2006), paragraph 10, accessed at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=443679fa4&page=search>).

⁸ Projet régional commun d’étude sur les mobilités des enfants et des jeunes en Afrique de l’Ouest et du centre, *Quelle protection pour les enfants concernés par la mobilité en Afrique de l’Ouest ? Nos positions et recommandations*, Plateforme Régionale sur la Mobilité des Enfants (African Movement of Working Children and Youth, ENDA Youth Action, ILO, IOM, PLAN WARO, Save the Children

Although widely regarded as an important step forward, the Trafficking in Persons Protocol has not been without interpretive controversy. Since its adoption, experts have debated, arguably unnecessarily, whether it is intended to combat the full range of related, coercive and exploitative practices condemned by international law, or a narrower, cross border process, organized by criminal groups to facilitate exploitation⁹. For States, the question is whether, by enacting legislation that directly reflects the provisions of the Trafficking in Persons Protocol, they have in place all of the components necessary for an effective and comprehensive response to human trafficking, especially where the Trafficking in Persons Protocol provides little explicit detail.

A specific situation has arisen in States which have distinct legislation, policies and structures to address different practices which all constitute trafficking in persons as defined by the Trafficking in Persons Protocol. In some cases, legislation adopted prior to 2000 to address country-specific patterns of exploitation remains unchanged, while new legislation has been adopted since 2000 to enable the State to meet its obligations under the Trafficking in Persons Protocol, without ensuring overall coherence at the level of the various laws and policies for protecting people who are all regarded as victims of trafficking by the Trafficking in Persons Protocol. In such circumstances the authorities struggle to resolve the inconsistencies implicit in the law.

2.3 A range of international legal instruments for combating trafficking in persons

In addition to the Trafficking in Persons Protocol, international law includes a number of international legal instruments that identify, define and describe different forms of exploitation, including all of those explicitly mentioned by the Trafficking in Persons Protocol with the exception of one – the removal of organs.¹⁰ The Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. The exploitation of the prostitution of others is also the subject of the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). Forced labour or services are the subject of the International Labour Organization's (ILO) Forced Labour Convention (Convention No. 29 of 1930), which defines forced or compulsory labour, and also by the ILO Abolition of Forced Labour Convention (Convention No. 105 of 1957). The Slavery Convention (1926) defines slavery, and its Supplementary Convention helpfully describes 'practices similar to slavery', including debt bondage, and institutions and practices that discriminate against women in the context of marriage.¹¹

(Sweden), Terre des Hommes Foundation and UNICEF WCARO), Dakar, 2011, accessed at http://www.unicef.org/wcaro/french/Rapport_FR-web.pdf.

⁹ With reference to article 34, paragraph 2 of the parent Convention, however, the *Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2004) clearly states that, "...in domestic law, the offences established in accordance with... the Protocol offences of trafficking in persons... must apply equally, regardless of whether the case involves transnational elements or is purely domestic... The same principle applies to the involvement of organized criminal groups. Authorities will need to establish such involvement to the satisfaction of another State party in order to invoke the obligations for international assistance and extradition, but should not have to prove the involvement of an organized criminal group as an element of a domestic prosecution." (paragraphs 18-19).

¹⁰ These were summarized in a publication by the Office of the High Commissioner for Human Rights (OHCHR): D. Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, UN, New York and Geneva, 2002. Most of the purposes of trafficking in persons listed in article 3 of the Trafficking in Persons Protocol are the subject of specific instruments. In addition, article 7(2)(c) of the Rome Statute of the International Criminal Court (1998) characterizes "enslavement" as a crime against humanity falling within the jurisdiction of the Court, saying that "'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children". The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) defines four institutions and practices similar to slavery: serfdom, debt bondage (also known as 'bonded labour': the practice of requiring someone to work to pay off a loan when the value of their work greatly exceeds the value of the loan), servile marriage and the transfer of children for exploitation by third parties. The World Health Assembly adopted guidelines in 1991 establishing international standards in relation to organ transplants and the possibility of commercial trafficking. The guidelines prohibit trafficking in human organs for commercial gain.

¹¹ Article 1(c), for example, prohibits "Any institution or practice whereby: (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) a woman on the death of her husband is liable to be inherited by another person..."

The Convention on the Rights of the Child, and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000), prohibits trafficking in children for any purpose, including for exploitive and forced labour. Additionally, the International Labour Organization's (ILO) Worst Forms of Child Labour Convention (Convention No. 182 of 1999), prohibits for all children under 18 years of age, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, as well as the use, procuring or offering of all children for the purpose of prostitution. Several other human rights treaties prohibit certain practices linked to experiences common to trafficked persons, including ethnic, racial and gender-based discrimination¹². The various treaty-monitoring bodies have further developed the jurisprudence on the different forms of exploitation.¹³

The UN has also expounded upon the general entitlement of all victims of gross violations of international human rights law, which includes trafficked persons.¹⁴ The forms of protection to which trafficked persons are entitled are consequently not limited to those mentioned in the Trafficking in Persons Protocol and are found in a range of other instruments. In the case of children, in particular, these go considerably beyond those mentioned in the Trafficking in Persons Protocol.

The Trafficking in Persons Protocol's reluctance to define exploitation, which is intended to allow States to specify additional forms of exploitation that they regard as for the purposes of trafficking in persons,¹⁵ could also mean that a criminal recognized by one State as a trafficker may not be regarded as such by another State. In practice, the area where national legislation varies most concerns children, with some States opting to include, as forms of exploitation, for the purposes of trafficking in persons, some or all of the 'worst forms of child labour' mentioned in the ILO Worst Forms of Child Labour Convention, ILO Convention No. 182. A report by the ILO¹⁶ indicates that the element of exploitation may include children whose employment violates a different ILO Convention (the ILO Minimum Age for Employment Convention, 1973), which requires States Parties to stipulate by law the minimum age for admission to employment.¹⁷

2.4 The *ad hoc* way that other international legal instruments are used

With so many relevant international legal instruments, it is perhaps understandable that States have not paid equal attention to all the treaties to which they are party when developing national legislation to combat human trafficking. However, this has meant that some States have given inadequate attention to their obligations in taking action against particular forms of exploitation or to adequately protecting victims of trafficking. On the latter in particular, the Trafficking in Persons Protocol is not particularly strong, generally offering useful suggestions in support of victim protection without obligating States to enact these measures in national legislation. However, given that international human rights law does provide trafficked persons with a strong protection framework, the process of national legislative reform in some cases has revealed a lack of awareness about States' obligations under international instruments ratified many decades earlier.

¹² Most importantly, the prohibition on discrimination has been explicitly spelled out in the aforementioned treaties as well as in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of Persons with disabilities; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; and in the International Convention on the Elimination of all forms of Racial Discrimination.

¹³ CEDAW, General Comment number 19

¹⁴ In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, UN document A/RES/60/147 (21 March 2006).

¹⁵ I.e. Article 3, subparagraph a, of the Trafficking in Persons Protocol, which lists the forms of exploitation that are the purposes of trafficking "at a minimum". It thereby allows for the possibility that States may include additional forms of exploitation when defining the purposes of trafficking in persons in their legislation. The Model Law against Trafficking in Persons published by the UN Office on Drugs and Crime (UNODC) cites eight additional forms of exploitation which could also be mentioned in legislation and four forms of exploitation specifically affecting children, which could also be mentioned (UNODC, *Model Law against Trafficking in Persons*, UN, Vienna, 2009, pages 35 and 36).

¹⁶ ILO (International Programme on the Elimination of Child Labour), *Child trafficking – Essentials*, ILO, Geneva, 2010.

¹⁷ The ILO Minimum Age Convention (Convention No. 138 of 1973) states that the age stipulated should not be less than 15 years of age, or, on a temporary basis, 14 years in States "whose economy and educational facilities are insufficiently developed".

2.5 Lack of awareness of relevant obligations regarding victim protection and remedies

Various international legal instruments specify the forms of protection which must be granted to victims (of trafficking in persons). However, at times, these are not taken into account as much as they should be by States when designing systems to protect victims.

The purpose of the Trafficking in Persons Protocol is specified in Article 2, which includes reference to protecting and assisting victims of trafficking, with full respect for their human rights. Article 6 of the Trafficking in Persons Protocol requests State Parties to provide assistance to victims of trafficking, although the specific measures are often qualified by language which weakens the impact. States are asked, for example, to ‘endeavour to provide’ (physical safety) and ‘consider’ (appropriate housing; counselling; medical, psychological, and material assistance; employment, educational and training opportunities), ‘in appropriate cases’ (privacy and confidentiality), although Article 14 ensures that none of the Trafficking in Persons Protocol’s stipulated criminal justice requirements can be used to undermine the human rights obligations found in other international legal instruments.

Taken in isolation, the Trafficking in Persons Protocol is not a particularly strong protection tool. However, it does not stand alone but alongside other international legal instruments that offer stronger protection to victims of trafficking based on rights that are “derive[d] from the inherent dignity of the human person”.¹⁸ As is highlighted by Principle 2 of the the High Commissioner for Human Rights’ Recommended Principles and Guidelines on Human Rights and Human Trafficking: “States have a responsibility under international law to act with due diligence to...assist and protect trafficked persons”.

3 What hasn’t happened but should have?

3.1 Acknowledgment of the relevance of other international legal instruments

The Trafficking in Persons Protocol makes reference to other relevant international legal instruments and calls for a comprehensive approach;¹⁹ in reality, however, this has not yet been wholly realized. Limited interpretations of the Trafficking in Persons Protocol have either monopolized or heavily influenced national laws and policies on trafficking in persons without sufficiently taking into account the provisions of other international instruments dealing with human rights law, humanitarian law, refugee law and labour law.

In June 2012 the recurrent discussion on fundamental principles and rights at work at the 101st session of the International Labour Conference requested the ILO to conduct a detailed analysis to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need to complement ILO’s forced labour Conventions No. 29 (1930) and No. 105 (1957) and to address human trafficking for labour exploitation. A thorough analysis is underway to assess the scope for standard setting to include provisions on prevention, remedies and victim protection. Thus, the item is proposed for standard setting on the agenda of 2014 International Labour Conference.

3.2 A mapping of relevant bodies and law

All key anti-trafficking actors should be made aware of all the relevant international legal instruments and obligations concerning trafficking in persons, and the protection to which victims are entitled. At the national level governments have a responsibility to check legislation for consistency with relevant international and

¹⁸ See, for example, the preambles to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

¹⁹ The preamble of the Trafficking in Persons Protocol declares that action to prevent and combat trafficking in persons requires a comprehensive approach, which includes protecting the internationally recognized human rights of the victims of trafficking. Article 8 refers to other applicable bilateral or multilateral agreements or arrangements and article 11 to applicable international conventions. Article 14 states that “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 includes explicit references to the Convention relating to the Status of Refugees (1951) and its 1967 Protocol as well as the principle of non-refoulement.

regional instruments ratified by the State concerned, as well as other relevant national law. But consistency is often a lesser issue in countries where the national trafficking law fails to explicitly incorporate protections guaranteed by earlier treaties. Instead, the challenge then becomes one of ensuring that the government officials responsible for implementation of the trafficking law are equally conversant with the rights and privileges that are guaranteed by other international treaties but which may lack clear implementation guidelines. It is preferable, then, for international treaty-monitoring bodies or international organizations to draw the attention of States to the full spectrum of relevant international instruments, emphasizing the importance of enacting comprehensive national anti-trafficking legislation which explicitly acknowledges or incorporates the protection obligations that States assumed prior to the Trafficking in Persons Protocol.

Similarly, the cataloguing and sharing of information of all relevant anti-trafficking actors, especially at the national level, is essential if there is to be better development of policy and effective coordination of anti-trafficking responses.

3.3 The collection and analytical comparison of case law

At present, there is only limited awareness of how courts at national and regional levels are interpreting State obligations under the Trafficking in Persons Protocol. Even more remote is analyses of how courts are interpreting State obligations created by other international instruments in individual trafficking cases.²⁰ For example, a judgment by the European Court of Human Rights²¹ has contributed to establishing the parameters of the State obligation to exercise due diligence in investigating reports of possible cases of trafficking in persons²² and a national court judgment in a trafficking in persons case has included a specific reference to slavery and a discussion of the applicability of legislation based on the Slavery Convention concerning how “powers of ownership” should be interpreted in the 21st Century.²³

Jurisprudence concerning the non-punishment or non-criminalization provision is an example of case law that is in the process of being developed and could be of wide interest to practitioners of both States and other international actors.

To date, efforts to collect and consolidate relevant case law have been limited²⁴, and comparative analysis even more so. However, a more consistent monitoring of case law trends would significantly enhance national legislative development, and encourage harmonization and the identification of good practice.

3.4 Exploring of the complementarity of different international and national legal instruments

A wide range of laws have been found to be useful in disrupting trafficking operations, prosecuting traffickers and preventing trafficking in persons, but the dissemination and further development of such promising practices has been limited. These include use of laws relating to money-laundering and a variety of specific criminal actions committed by traffickers against their victims (such as assault, rape, confiscation of personal identity documents, withholding wages, etc.). In the context of prevention, they include an even wider array

²⁰ The UNODC Human Trafficking Case Law Database currently contains information on more than 700 key cases from more than 70 jurisdictions (see <http://www.unodc.org/cld/index.jsp> or, for a textual description of the database, <http://www.unodc.org/unodc/en/frontpage/2011/October/unodc-launches-first-global-database-of-human-trafficking-cases.html>). The UNHCR maintains a webpage containing cross references to national case law (see ‘Trafficking in Human Beings’ at <http://www.unhcr.org/refworld/thb.html>).

²¹ Established by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedom (1950).

²² See European Court of Human Rights, *Rantsev v Cyprus and Russia* (judgment of 7 January 2010, application no. 25965/04). The Court noted that “The failure to investigate the recruitment aspect of alleged trafficking would allow an important part of the trafficking chain to act with impunity” (paragraph 307) and concluded that the authorities in the State of origin of a woman who had been trafficked to another country (where she died) had an obligation to investigate the possibility that individuals or networks operating in their jurisdiction were involved in trafficking her abroad.

²³ See *Regina versus Tang* (Australia), August 2008, when the High Court of Australia upheld the conviction of Melbourne brothel owner, Wei Tang, for slavery (University of Queensland, Human Trafficking Working Group, *Case Report*, accessed on 28 August 2012 at http://www.law.uq.edu.au/documents/humantraffic/case-reports/wei_tang.pdf).

²⁴ See, for example, the UNODC Human Trafficking Case Law Database, noted above; or, at the national level, the case reporting and analysis of Argentina, <http://www.mpf.gov.ar/index.asp?page=Accesos/Ufase/ufase7.asp>.

of measures, including regulation of labour suppliers²⁵ and the enforcement of occupational safety and health regulations, labour laws and immigration regimes, and the strengthening of national child protection systems including its allied systems such as health, education, amongst others. Only a few of these are referred to explicitly in the UN Trafficking in Persons Protocol (such as the reference to “Border measures” in Article 11 of the Protocol).

The past decade has allowed law enforcement officials in different States to learn lessons about what is effective and what is not when collecting evidence and prosecuting suspected traffickers – unfortunately these lessons have not become common practice across jurisdictions. Some of the most important lessons relate to the way that victims of trafficking (who are potential witnesses) are treated. These lessons suggest that, in the course of a criminal investigation and prosecution,²⁶ not only is the protection of victims right in principle but also right in practice as it is not effective to prosecute traffickers without placing the protection and assistance of victims at the heart of the intervention.

3.5 Utilization of the protection provisions of other international instruments

A number of international legal instruments relevant to trafficking in persons create obligations to protect particular categories of people, including victims of trafficking. A recent OHCHR publication underlines that all victims of trafficking “*irrespective of their involvement in any legal process*, have an enforceable right to immediate support and protection”.²⁷ Such rights, however, are not regularly recognised nor enforced.

International human rights law, as it relates to women and children specifically, is particularly relevant. For example, international legal instruments concerned with the rights of children create an obligation to provide exploited children with various forms of assistance. The Convention on the Rights of the Child (1989) requires States parties to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse...” (Article 39). This Convention also requires States to recognize the right of every child (including those who have been trafficked) “to facilities for the treatment of illness and rehabilitation of health” (Article 24) and to education (Article 28). The Optional Protocol to the Convention on the Sale of Children specifies particular forms of protection and assistance to be made available to child victims.²⁸ Although the operational paragraphs of the Optional Protocol on the Sale of Children do not make specific mention of trafficking in children, the preambular paragraphs make it clear that the Optional Protocol addresses trafficking in children as well as additional offences.²⁹ This means that, for States that have ratified both the Trafficking in Persons Protocol

²⁵ See ICAT paper series, Issue 2, *Prevention by Discouraging Demand*.

²⁶ For example, a set of guidelines adopted in South East Asia for criminal justice responses to trafficking in persons emphasizes the care needed in managing victims as potential witnesses. See *Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines*, endorsed by the 7th Association of Southeast Asian Nations (ASEAN) Senior Officials Meeting on Transnational Crime, Vientiane, Lao People’s Democratic Republic, 27 June 2007.

²⁷ See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, *op. cit.*, page 127.

²⁸ Article 8, paragraph 1 of the Protocol to the CRC on the Sale of Children specifies that “States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

²⁹ See articles 2 and 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

and the Optional Protocol on the Sale of children, child victims of trafficking are entitled to all the forms of protection it contains. These are specified in the Optional Protocol in greater detail than the protection and assistance provided for in Article 8 of the Trafficking in Persons Protocol and, unlike the provisions on assistance of the Trafficking in Persons Protocol, are mandatory. Similarly, ILO Convention No. 182 requires States to take effective and time-bound measures to provide for the rehabilitation and social integration of former victims of the worst forms of child labour, including victims of trafficking, as well as to ensure their access to free basic education, and, wherever possible and appropriate, vocational training (Article 7(2)(b) and (c)).

International refugee law provides through a number of international instruments³⁰ for the protection of asylum-seekers, refugees & others in need of international protection such as stateless persons.

The United Nations High Commissioner for Refugees (UNHCR) has pointed out that some people believed to have been trafficked or at risk of being trafficked may have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and “may therefore be entitled to international refugee protection”³¹ under the Convention relating to the Status of Refugees (1951) and its 1967 Protocol. Guidelines issued by the UNHCR in 2006 are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary (as well as UNHCR staff). These list the forms of abuse and severe exploitation which, the UNHCR asserts, “will generally amount to persecution” and entitle a victim of trafficking in persons or a person at risk of being trafficked to protection as a refugee. Refugees are protected, under international law, from return to the country in which they fear persecution (i.e., may not be subjected to *refoulement*). In addition, State parties to the UN Convention against Torture (1984) may not expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, whether at the hands of traffickers or others.

3.6 ‘Non-punishment’ for status-related offences

The Trafficking in Persons Protocol does not contain any provision stipulating that victims of trafficking who have committed offences while under the control of a trafficker should not be prosecuted or punished. However, reviewing the relevant human rights framework, the Recommended Principles and Guidelines on Human Rights and Human Trafficking indicate that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities *to the extent that such involvement is a direct consequence of their situation as trafficked persons*” (emphasis added).³² In 2008, the UN General Assembly adopted a resolution urging that “victims should be protected from re-victimization, including protection from prosecution for illegal migration, labour law violations or other acts...”³³ and the following year, the Working Group on Trafficking in Persons established by the Conference of the Parties to the UN Convention on Transnational Organized Crime called on State parties to “consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts.”³⁴ The Working Group recognized an explicit link between identifying suspected victims and this non-prosecution or non-punishment provision (i.e., that without appropriate procedures to identify victims, they were likely to be prosecuted, as well as being unable to exercise their other rights) and stressed the importance of establishing appropriate

³⁰ See, the *Convention relating to the Status of Refugees*, 1951 (1951 Convention), as amended by the *Protocol relating to the Status of Refugees*, 1967; the *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969 (OAU Convention); and Conclusion No. 3, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 1984 (1984 Cartagena Declaration).

³¹ UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, UNHCR document HCR/GIP/06/07 (7 April 2006), paragraph 12.

³² Principle 7, UN High Commissioner for Human Rights, *Recommended Principles and Guidelines*, *op. cit.*

³³ *Trafficking in women and girls: Report of the Secretary-General*, 4 August 2008, UN General Assembly document A/63/215, paragraph 62.

³⁴ *Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009*, UN document CTOC/COP/WG.4/2010/6 (21 April 2009), paragraph 12.

procedures for identifying victims. The Global Plan of Action to Combat Trafficking in Persons adopted by the General Assembly urged Governments to go beyond just “considering” non-punishment measures and “to take all appropriate measures to ensure that identified victims of trafficking in persons are not penalized for having been trafficked...”³⁵

Several UN resolutions and treaty-monitoring bodies have recognized the non-criminalization principle for status-related offences, as have several regional bodies.³⁶ Nevertheless, at the national level, investigators, prosecutors and courts face a practical challenge in transforming the principles of either non-prosecution or non-punishment into reality. While many national legal systems regard the coercion applied to some defendants as a mitigating circumstance, without explicit legislative direction, it is more challenging for law enforcement officials to agree on a general ban on the prosecution of possible victims of trafficking who are also suspected of committing an offence, particularly before the conclusion of an alleged case of trafficking in persons. Some States have begun developing procedures on this,³⁷ but the process is still at a relatively early stage.

4 Steps recommended to have a positive impact

To bring about a more integrated and holistic approach to trafficking in persons requires anti-trafficking actors to recognize, first of all, that there is more than one international instrument to deal with the challenges of trafficking in persons, all of which require full implementation. This has to be supplemented in practice by a comprehensive and human rights-based approach to trafficking in persons that gives equal attention to prevention, protection, and prosecution.

At the national level, States should pursue comprehensive legislation and urge a multidisciplinary approach which is underpinned by standards espoused in a number of international instruments, involving policy makers and practitioners from different ministries or sectors with specific expertise on crime, labour issues, migration, child protection and human rights, amongst other topics. This in turn requires coordination between the various government ministries and agencies involved and close cooperation with a range of service providers, including non-governmental organization, that have a role to play in identifying and/or protecting and assisting victims.³⁸

4.1 Ensuring adequate legislation is in place to combat *all* coercive and exploitative practices related to trafficking in persons

A continuing lack of clarity about who is a victim of trafficking hampers efforts to identify, protect and assist trafficked persons, and some general resolution is required to improve cooperation among States, international organizations, and other actors in this area. This means resolving outstanding definitional debates, including clarification about the distinction, if any, between a victim of trafficking and persons subjected to slavery or forced labour, or sexual violence and exploitation as well as the question of whether the movement of a person is required for the person to be categorized as a victim of trafficking.

In addition, clarification is required on whether children who are recruited to work, but who are not subjected to any of the forms of exploitation mentioned explicitly in the Trafficking in Persons Protocol, should be regarded as trafficking victims (and those responsible prosecuted accordingly).

³⁵ UN General Assembly resolution 64/293, *United Nations Global Plan of Action to Combat Trafficking in Persons*, UN document A/RES/64/293 (12 August 2010), paragraph 20.

³⁶ See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary, op. cit.*, page 132.

³⁷ In particular, States which have ratified the Council of Europe Convention on Action against Trafficking in Human Beings (2005). Article 26 requires States parties to “provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.

³⁸ This approach is described in a publication by the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, Warsaw, 2004.

While new anti-trafficking legislation has generally focused on reflecting the provisions of the Trafficking in Persons Protocol, there has been a call for legislation to go further, to establish all the component acts of trafficking in persons, along with related conduct, as criminal offences.³⁹ The implication of both the Trafficking in Persons Protocol and the Recommended Principles and Guidelines as well as others,⁴⁰ is that comprehensive national legislation should cover (i) all forms of exploitation which a State wants to criminalize or is obliged to do so by its ratification of all international instruments, and (ii) also forms of forced labour and exploitation that have been categorized as criminal for the first time as a result of the definition in Article 3 of the Trafficking in Persons Protocol.⁴¹ States may wish to consider whether to prohibit specific forms of exploitation and punish those responsible for using them and, if so, whether appropriate legislation is in place to do so.

4.2 Actors at national and international levels interacting cooperatively beyond their specific mandates and areas of expertise

At both the international and national levels, for multiple reasons including structural necessities, the application of a holistic approach to trafficking in persons will remain challenging. Given their specialised nature, many international organizations, for example, have pursued the aspects of the issue that are specifically relevant to their own mandates, focusing, for example, on particular victims who are trafficked (such as children or women) or on particular methods on which they have expertise (e.g., the criminal justice system or systems of labour inspection and implementation of labour law). At the national level, ministries and departments also have specific mandates and face challenges similar to those of international organisations. These challenges are in some ways reinforced when those ministries, for example, working closely with a specific international legal regime or cooperating with a particular international organization, while benefiting from that international organization's expertise, are also limited by the mandate-specific expertise of the organization. This in turn sometimes results in a fragmented approach by different government ministries and departments. Furthermore, limited resources also have a part to play as a contributing factor. In any case, the end result is that organizations remain in their own silos, unaware of or unable to take in the obligations of States outside their own mandates, which in turn impacts on the development of meaningful cooperation with others, and the consequent failure to adequately impact the multiple and inter-related dimensions of human trafficking.

The need for greater cooperative action, utilising all relevant legal frameworks, is clear. At the national level, the coordination of both governmental and non-governmental organizations including that of locally active international organizations can be undertaken more effectively by creating a mechanism for an independent national coordinator whose office is separate from ministries that are tasked with various elements of anti-trafficking work. The independence of such an office would greatly support the implementation of a truly comprehensive response, being more attuned to realizing synergies in the work of diverse anti-trafficking actors, assisting with the sharing of information and the brokering of cooperation discussions, by helping to identify and build common or shared priorities and through offering independent monitoring and evaluation of all related activities.

³⁹ See Principle 12, UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, *op. cit.* Guideline 4.1 calls for “All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized”. The OHCHR Commentary on the Recommended Principles and Guidelines recognizes that, by advocating the criminalization of related conduct, Principle 12 and Guideline 4 go beyond the strict requirements of the Trafficking in Persons Protocol (OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary, op. cit.*, page 188). The Commentary suggests that “The definitive list [of related conduct] would include not just the cited ‘sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude’ but also debt bondage, the worst forms of child labour and forced marriage”.

⁴⁰ For example, the ILO has recommended that “States should legislate against trafficking in the broadest sense, giving full attention to all aspects of forced labour, in addition to sexual exploitation, and making provision for identifying and prosecuting the offence of forced labour as defined in the ILO Conventions” (*The cost of coercion, op. cit.*, paragraph 37).

⁴¹ For example, concerning offences committed when the means used involve “the abuse of power or of a position of vulnerability”, a concept which had not appeared in previous international legal instruments. For further discussion, see the UNODC issue paper, *Abuse Of A Position Of Vulnerability And Other “Means” Within The Definition Of Trafficking In Persons*, (UNODC, October 2012).

4.3 Non-criminalization of ‘status-related offences’

Although not mentioned by the Protocol, it is apparent that a new norm on non-criminalization of victims of trafficking for offences committed in the course of the trafficking experience has been developing since 2000. States need to be aware of this when developing anti-trafficking legislation, and it would be helpful for treaty monitoring bodies and international organizations providing related normative assistance to disseminate information about how this principle, which increasingly finds expression in both intergovernmental fora and expert technical advice, is being observed in law and practice.

4.4 Protection of trafficked persons: the complementarity of regimes stipulated by different international instruments

As the protection provisions of the Trafficking in Persons Protocol, alone, are not as strong as those stipulated in other international legal instruments, States should be made aware of their wider obligations implied by other international conventions, notably obligations under refugee law, labour and human rights law, including that which is specific to children, all of which are mentioned in section 3.5 above⁴². As many States are selective about which individuals (who are deemed victims of human trafficking under the terms of the Trafficking in Persons Protocol) are provided with protection and assistance, especially those who are migrants and in an irregular situation, they should be urged to review their laws and policies concerning such protection and assistance, with a view to providing appropriate protection and assistance to all victims of exploitation who are entitled to protection or assistance under the terms of international legal instruments. These may include victims of forced labour such as bonded labourers, victims of ‘slave labour’ or ‘practices similar to slavery’, and victims of commercial sexual exploitation who have not been subject to human trafficking as defined in the Trafficking in Persons Protocol.

4.5 Provisions to provide temporary residence status or to repatriate foreign victims of trafficking

The Trafficking in Persons Protocol mentions possible measures for permitting foreign victims of trafficking in persons who have no legal entitlement to be on a State’s territory to remain there temporarily or permanently (Article 7) and the possible repatriation of victims of trafficking (Article 8). It indicates further that return “shall preferably be voluntary” (Article 8, subparagraph 2) and stipulates one main safeguard, that returns shall be carried out “with due regard for the safety” of the person involved.⁴³ The Recommended Principles and Guidelines on Human Rights and Human Trafficking confirmed the provision of temporary residence and the safe return of victims.⁴⁴

Once again, a variety of other international legal instruments are pertinent when considering whether to issue a victim of trafficking with temporary residence status and also whether to repatriate an adult or child victim of trafficking and how to assess the possible risks involved.

*Temporary residence status*⁴⁵

There are various ways in which victims of trafficking can be granted temporary residence status, such as being granted what one regional anti-trafficking convention calls “a recovery and reflection period”⁴⁶ (when there are reasonable grounds to believe that the person concerned is a victim of trafficking), or issuing

⁴² While these are not currently consolidated into a regularly updated single reference text, relevant obligations are best noted in the International Framework for Action to Implement the Trafficking in Persons Protocol, Vienna, 2010. http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

⁴³ Article 8, subparagraph 2, also stipulates that return shall be with due regard “for the status of any legal proceedings related to the fact that the person is a victim of trafficking”. See also UNODC, *Legislative Guide, op. cit.*, paragraph 61 on ‘Repatriation of Victims’.

⁴⁴ Principle 9 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking

⁴⁵ For a comparative analysis of various national approaches to temporary residence for victims of trafficking, see S. Craggs and R. Martens, *International Migration Law No.24 – Rights, Residence, Rehabilitation: A Comparative Study Assessing Residence Options for Trafficked Persons*, (2010), Geneva, IOM.

⁴⁶ Council of Europe Convention on Action against Trafficking in Human Beings (2005), article 13.

temporary residence permits to victims on condition that they agree to provide evidence for a criminal investigation (and potentially a trial).⁴⁷ With respect to child victims, UNICEF has called on States to “grant to child victims of trafficking a reflection period to recover and escape the influence of traffickers and/or to make an informed decision on cooperating with the competent authorities. No deportation shall be carried out during this period”.⁴⁸ Victims’ entitlement to an effective remedy by the competent national tribunals, for acts violating a person’s fundamental rights (under the terms of Article 7 of the Universal Declaration of Human Rights⁴⁹), potentially means that States should enable victims to remain on their territory in other circumstances (for example, to seek compensation).

Some States that allow foreign victims of trafficking to remain on their territory detain them mandatorily in shelters. The UN Special Rapporteur on trafficking in persons, especially women and children, has pointed out that “The routine detention of women and of children in shelter facilities...is clearly discriminatory and therefore unlawful”.⁵⁰ Elsewhere, not only the legal grounds for allowing foreign victims to remain in a State vary, but the periods of time considered appropriate to allow them to recover also vary substantially.

States may wish to consider what provisions on temporary residence status have proved effective, both from the point of view of the victims and the criminal justice systems involved. However, as foreign victims have a variety of different rights to remain in a State other than their own, there is a clear existing need to draw up guidance that reflects the provisions of the various relevant international legal instruments affecting the rights of victims to recover while remaining in the State where they have been trafficked. This should discourage practices that are discriminatory or unlawful and also contribute to enabling victims to recover more effectively and thereby to make informed decisions on whether to provide evidence or otherwise participate in legal proceedings intended to bring about the conviction of their trafficker(s).

Returns⁵¹

A person’s right to return to his or her country of origin is affirmed by the International Covenant on Civil and Political Rights, and so applies to victims of trafficking who are not residents of the country in which they are identified.⁵² Article 8 of the Trafficking in Persons Protocol further clarifies that the return of victims of trafficking must be safe and, preferably, voluntary. Of particular relevance are the non-refoulement provisions of the Convention Relating to the Status of Refugees and its 1967 Protocol and the Convention against Torture are explicitly acknowledged by Article 14 of the Trafficking in Persons Protocol⁵³. The Committee on the Rights of the Child has pointed out the obligations of State parties to the Convention on the Rights of the Child in a General Comment about the treatment of any unaccompanied and separated children outside their country of origin, emphasizing that all decisions about possible return must make the best interests of the child concerned a primary consideration, stressing the need for the possible return of an individual child to be

⁴⁷ The UN Special Rapporteur on trafficking in persons, especially women and children has pointed out that these two procedures have very different implications, the first promoting the victims’ recovery, while the second “defeats the very purpose of a reflection and recovery period”, as it is “often tied to the willingness of trafficked persons to cooperate with law enforcement and testify against traffickers” (*Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, UN document A/HRC/17/35 [13 April 2011], paragraph 50).

⁴⁸ UNICEF, *Guidelines for the Protection of Child Victims of Trafficking, UNICEF technical notes*, 2006, page 21.

⁴⁹ Guaranteed by article 2 (3) of the International Covenant on Civil and Political Rights (1966).

⁵⁰ *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, UN document A/HRC/17/35 (13 April 2011), paragraph 43. The Special Rapporteur also observed that the detention of victims “discourages and diminishes the quality of victim cooperation with authorities” (*ibid.*, paragraph 44).

⁵¹ For example, see *Report of the Working Group on Contemporary Forms of Slavery on its twenty-ninth session*, UN document E/CN.4/Sub.2/2004/36 (20 July 2004), paragraph 29, which “calls upon all States to ensure that the protection and support of the victims are at the centre of any anti-trafficking policy, and specifically to ensure that: (a) No victim of trafficking is removed from the host country if there is a reasonable likelihood that she will be re-trafficked or subjected to other forms of serious harm, irrespective of whether she decides to cooperate in a prosecution”.

⁵² See UDHR, article 13(2) and ICCPR, article 3(2).

⁵³ See also the discussion in section 3.5 above

preceded by a risk assessment.⁵⁴ The danger that a victim of trafficking who is returned in an inappropriate way might be re-victimized has been pointed out by various international treaty-bodies, and in the Recommended Principles and Guidelines on Human rights and Human Trafficking.⁵⁵ A variety of other rights in the Universal Declaration of Human Rights are also relevant, such as a person's right to an effective remedy (Article 7, mentioned above) and their right not to be subjected to discrimination (Article 2),⁵⁶ for example, following their return. The Trafficking in Persons Protocol requirement that returns shall be carried out "with due regard for the safety" of the person involved implies that the State where a victim is located should carry out an individual risk assessment before reaching a decision about a possible return (though the victim is entitled to leave the State voluntarily even prior to such an assessment), but this is not specified in the Legislative Guide.⁵⁷ The Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) convened a group of experts in March 2012 to discuss the contents of possible guidance for the OSCE's participating States on safe returns of trafficked persons. The group included representatives of international organizations, specialist non-governmental organizations and others. Such guidance, whether in the form of a set of principles or a more general guide, would almost certainly be relevant for more than just the OSCE's 56 participating States and could potentially help promote greater policy coherence on the issue of returns for the international community as a whole.

4.6 Conclusion

One of the lessons that has been learnt in the past decade in responding to trafficking in persons is that an exclusive reliance on a narrow interpretation of the obligations created (and sometimes not fully detailed or defined) by the Trafficking in Persons Protocol is not sufficient to ensure a comprehensive and effective response to human trafficking. Instead, efforts must be made to ensure better understanding of the coherence between human rights law, refugee law, labour law and other relevant bodies of law, and the need to bring diverse but complementary instruments to bear on the trafficking challenge, not only as reference tools but as an international framework that needs to be implemented on the ground.

Each of the steps proposed is intended to strengthen and make more effective measures for combating trafficking in persons, and to improve the protection to which victims of trafficking are entitled under available but often neglected branches of international law. These steps are not exclusive. Once they are taken, they will themselves require monitoring and evaluating in order to learn further about what legal provisions and policies are most effective and which ones turn out to be less helpful in the evolving field of anti-trafficking.

⁵⁴ Committee on the Rights of the Child, General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, UN document CRC/GC/2005/6 (1 September 2005), notably paragraphs 27 and 84.

⁵⁵ Principle 11 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking

⁵⁶ Rights guaranteed respectively by articles 12 and 2 of the International Covenant on Civil and Political Rights.

⁵⁷ See UNODC, *Legislative Guide*, *op. cit.*, paragraph 61.

Members of ICAT Working Group:

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International Organization for Migration (IOM)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Office of the United Nations High Commissioner for Refugees (UNHCR)
United Nations Children's Fund (UNICEF)
United Nations Office on Drugs and Crime (UNODC)

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International Labour Organization (ILO)
International Organization for Migration (IOM)
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Office of the United Nations High Commissioner for Human Rights (OHCHR)
Office of the United Nations High Commissioner for Refugees (UNHCR)
United Nations Children's Fund (UNICEF)
United Nations Development Programme (UNDP)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
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