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Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements

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Background paper prepared by the Secretariat

I. Introduction

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was the principal legally binding global instrument to combat trafficking in persons. The Conference decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.

2. The first, second, third, fourth, fifth and sixth meetings of the working group were held in Vienna on 14 and 15 April 2009, from 27 to 29 January 2010, on 19 October 2010, from 10 to 12 October 2011, from 6 to 8 November 2013 and from 16 to 18 November 2015, respectively.

3. The present background paper was prepared by the Secretariat to aid in the working group's discussions during its seventh meeting. It contains a set of issues that the Working Group may wish to address in the course of its deliberations, offers a brief background of the topic, including main challenges, good practices and previous work of the Working Group on related matters, and lists specific references, resources and tools that States may use to develop a response.

* CTOC/COP/WG.4/2017/1.



II. Issues for discussion

4. Member States may wish to address the following issues, among others, when discussing effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements.

Identification

- How is exploitation defined in national legislation? Are all forms and all possible victims of trafficking in persons covered?
- What are the current limitations of any specific national identification and referral mechanism? Which actors can identify victims of trafficking in persons?
- What indications are there of unidentified trafficking victims? What barriers exist to identifying trafficking victims?
- Is victim experience analysed to enhance identification efforts?

Provision of immediate protection and support

- What criteria govern access to protection and assistance provided for trafficking victims?
- What feedback is collected from trafficking victims regarding protection and support provided? What is the level of satisfaction with the services provided?

Non-prosecution or detention

- What mechanisms are utilized to ensure that victims of trafficking in persons are not penalized or detained for their irregular migration status or illegal activities conducted as a result of their trafficking experience?

Access to remedies and the provision of legal assistance

- Are all trafficking victims provided with free legal assistance, information and advice on available protection and assistance in a language and form they can understand?

Residence and safe and voluntary return

- When a presumed victim is found to have irregular immigration status, can their status be regularized, for example, through temporary residence?

Obligations for child victims

- What special protection and assistance procedures exist for presumed child trafficking victims? How do these connect to national child protection systems?

Assistance related to gender

- What gender-responsive measures are being successfully applied in national trafficking responses?

Specific measures to respond to mixed migration movements

- What proactive screening measures are currently operational for potential trafficking victims among vulnerable categories of migrants, such as refugees and asylum seekers, including unaccompanied or separated children?

III. Background

5. A comprehensive criminal justice response to trafficking in persons should include measures for protecting and supporting victims of trafficking alongside appropriate measures to prosecute the traffickers. One of the purposes of the Trafficking in Persons Protocol, as stated in its article 2, paragraph (b), is to protect and assist the victims of trafficking, with full respect for their human rights. After almost two decades of experience in the implementation of the Protocol, there is broad agreement not only on the need for victim support to address individuals needs and prevent re-victimization, but also on the need to develop the facets of such protection and assistance, to ensure that victims are able to play an effective role in supporting the investigation and prosecution of trafficking cases.

6. While considerable progress has been made in articulating and enabling different forms of protection and support for victims of trafficking in persons, the rights of victims and corresponding obligations vary considerably between States, as does implementation in practice and the documented experience of individual victims. Furthermore, in response to the evolving understanding of and reaction to trafficking in persons, tailored national responses regarding specific groups and types of victims are developing and, where successful, may lead to an enhanced response for all victims.

7. The Working Group addressed the subject broadly at its first meeting, in 2009, and adopted the following recommendation:

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

(a) Adopt a human rights-based approach to victim protection and assistance that is not contingent on the citizenship and immigration status of the victim;

(b) Develop and apply minimum standards for the protection and assistance of victims of trafficking in persons;

(c) Ensure victims are provided with immediate support and protection, irrespective of their involvement in the criminal justice process. Such support may include the right to stay temporarily or, in appropriate cases, permanently in the territory where they are identified;

(d) Ensure that appropriate procedures are in place to protect the confidentiality and privacy of victims of trafficking;

(e) Develop, disseminate to practitioners and systematically use criteria for the identification of victims;

(f) Ensure that national legislation against trafficking in persons criminalizes the threat or intimidation of victims of such trafficking or of witnesses in related criminal proceedings;

(g) Address the need for a more effective allocation of funds for assisting victims;

(h) Ensure that responses to child trafficking at all levels are always based on the best interest of the child.

8. The need for progress in the development, provision and ongoing review of victim assistance and support has been highlighted by the increasing attention given to global migration and mixed migratory flows, especially related to conflict and other forms of crisis.

9. Trafficking in persons occurs in abundance in migratory settings. According to the *2016 Global Report on Trafficking in Persons*,¹ identified trafficking in persons is largely, but not solely, an international phenomenon whereby cross-border

¹ United Nations publication (Sales No. E.16.IV.6).

trafficking flows often follow overall migratory flows. As reported by the 156 Member States that contributed to the report, the majority of trafficking victims detected globally (about 60 per cent) were foreigners in the country where they were identified, most being migrants but of varying status. As a result of the lack of sufficient legal and safe avenues for migration, mixed migration populations² often resort to the services of smugglers to cross borders, which puts them at risk of abuse and exploitation, including trafficking in persons.

10. The issue was given prominent attention by the Secretary-General in his report to the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants (A/70/59), held on 19 September 2016, in which he noted that, although exact figures were difficult to obtain, the risk of trafficking significantly increased in large movements of refugees and migrants. The outcome of that high-level plenary meeting, the New York Declaration for Refugees and Migrants (General Assembly resolution 71/1), paved the way for two new United Nations global compacts to address the issues. In the Declaration, Member States made a commitment to combating human trafficking with a view to its elimination, including through targeted measures to identify victims of trafficking or those at risk of trafficking, as well as to preventing trafficking among those affected by displacement.

Identification

11. An essential feature of approaches seeking to enhance the identification of trafficking victims is that, at first contact with law enforcement or non-governmental actors, potentially trafficked persons are “presumed” and treated as victims of trafficking, regardless of whether or not such status has been officially granted yet and regardless of their immigration status. The potential victim is then immediately provided with information on the nature of the protection and assistance they are entitled to and the possibilities of assistance and support by non-governmental organizations and other agencies, as well as information on any legal proceedings related to them. It is important that such information is delivered in a language the person understands and that States pre-empt such a situation by preparing material in the most common languages of the migrant populations entering their country.

12. As with all trafficking, the difficulty with addressing assistance and protection needs of trafficking victims in mixed migration flows starts with their identification. There are a number of reasons why migrants may not seek recognition as a trafficking victim. Many people have limited knowledge of local language and procedures, which inhibits them from asserting their rights, with most people on the move having at least one planned onward destination. Many people are simply reluctant to report their situation owing to fear of retaliation, or being detained by national authorities for their irregular migration or labour status or for illegal activities conducted as a result of trafficking. Many migrants simply do not self-identify as potential victims of trafficking, especially those escaping persecution and conflict — they may be severely traumatized and willing to get to their final destination at any cost. The likelihood of identification of any individual may be subject to numerous variables, including a lack of sufficient and adequate capacity and/or knowledge within law enforcement and other first responders, complicated by factors such as different applications of the definition of the crime of trafficking across countries and among practitioners within the same jurisdiction, as well as the broad range of forms of exploitation that individuals are subjected to, some of which may entail illegal activities.

² Mixed migration has been defined by the Office of the United Nations High Commissioner for Refugees as people travelling in an irregular manner along similar routes, using similar means of travel, but for different reasons, and by the International Organization for Migration as “consisting of complex population movements including refugees, asylum seekers, economic migrants and other migrants”.

Provision of immediate protection and support

13. Referral to assistance agencies for immediate protection and support should take place at the earliest possible moment. Such assistance might include safe and appropriate accommodation; health care and necessary medical treatment, including free confidential testing for HIV and other sexually transmitted diseases; and counselling and psychological assistance, on a confidential basis and with full respect for the privacy of the person concerned, in a language that he or she understands.

14. At its 2011 meeting, the Working Group recommended that States parties should consider providing a sufficient period of time during which victims may receive appropriate assistance, to decide about their possible cooperation with law enforcement and their participation in a judicial process. That reflects two better practices in the provision of victim assistance: (a) the availability of a “reflection” or recovery period during which a victim may solely focus on recuperation, and not be subject, for example, to any return procedure; and (b) not making the provision of assistance and support conditional upon cooperation with criminal justice actors and/or participation in criminal proceedings.

15. Where a victim decides to cooperate with the judicial process, national authorities should take all appropriate measures to ensure that a victim or witness of trafficking in persons, and his or her family, is provided adequate protection if his or her safety is at risk, including measures to protect him or her from intimidation and retaliation by traffickers and their associates. A victim should, generally, be given the opportunity to participate in the criminal justice process, without prejudice to the rights of the defence. While States have varied practices regarding confidentiality and the protection of victims, any information provided by a victim or witness during the course of the proceedings should remain confidential and be stored appropriately so as not to endanger the life and safety of the victim and his or her relatives or lead to stigmatization or social exclusion.

Non-prosecution or detention

16. The Working Group has previously considered the issue of non-prosecution and non-punishment of victims of trafficking in persons, as trafficked persons are, in some cases, never recognized as victims or, even where they are identified, still be treated as criminals rather than as victims of crime, whether in States of destination, transit or origin. In States of destination, they are at times prosecuted and detained because of their irregular migration or labour status. Alternatively, immigration authorities may simply deport individuals to the State of origin if their immigration status is irregular.

17. While neither the Organized Crime Convention nor the Trafficking in Persons Protocol include an explicit obligation for States parties to refrain from criminalizing victims of trafficking, the Working Group, in line with a number of non-binding guidelines, action plans, declarations and resolutions, adopted the following recommendations at its first and second meetings, respectively:

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

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

(ii) 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;

(b) States parties should ensure that provisions for the non-punishment and non-prosecution of trafficked persons contained in domestic legislation, guidelines, regulations, preambles or other instruments were clearly stated. In doing so, States

parties are encouraged to make use of technical assistance tools such as the Model Law against Trafficking in Persons and principles and guidelines such as the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights, as well as any other regional standards and guidelines.

Access to remedies and the provision of legal assistance

18. At its fourth meeting, the Working Group considered the subject of compensation of trafficking victims and adopted a series of recommendations, with particular reference to article 6 of the Protocol. The scope of possible remedies and, in particular, the common obstacles trafficking victims face in effectively accessing remedies are, however, broader. Victims who are exploited while working without authorization, for example, may be unable to recover unpaid wages or access other remedies because their employment “contract” is deemed void as a result of being illegal. Access to justice is a common trafficking issue that impacts on different types of victims in varying ways. The right to a remedy remains out of reach of most victims of trafficking, sometimes because national laws provide inadequate remedies but often also because victims lack information about the processes and procedures for accessing them.

19. Victims are unlikely to have a full understanding of the rights available to them, or to have the means to actively pursue them without the provision of competent, independent, free and confidential legal assistance. Such assistance may be pivotal for accessing all other forms of assistance and support, such as that concerning the provision of protection and safeguarding of confidentiality, status and ability to remain in the country, non-liability for illegal acts committed while a trafficking victim, the pursuit of remedies and information on and participation in relevant criminal justice and administrative proceedings.

20. For individuals caught in mixed migration flows, the availability of such legal assistance could be the crucial factor in ensuring a trafficking victim is not otherwise categorized by State authorities and has the possibility to receive and follow due process and access justice.

Residence and safe and voluntary return

21. At its first meeting, the Working Group recommended that immediate support to victims might include the right to stay temporarily or, in appropriate cases, permanently in the territory where they were identified. While there is no obligation to permit trafficked persons to stay in a country, forced repatriation can have serious consequences for a victim of trafficking in persons, including punishment for unauthorized departure or other offences, stigmatization from families and communities, intimidation or retribution from traffickers, all of which, in turn, can contribute to the risk of re-trafficking. Under article 8 of the Protocol, States parties have an obligation to assess and ensure victims’ safety upon return.

Obligations for child victims

22. Particular attention should be paid to specific procedures for providing protection and assistance to child victims of trafficking. Noting the particular physical, psychological and psychosocial harm that trafficked children may suffer, this is particularly relevant when dealing with mixed migration flows and vulnerable groups such as refugees and asylum seekers and unaccompanied or separated children. In many cases, for example, victims may not wish to disclose their real age out of fear of the possible response of State actors and it may be quite difficult to otherwise identify the age of the child. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she should be presumed to be a child and should be treated as such, pending verification of his or her age.

Assistance related to gender

23. While the largest number of identified victims globally continue to be female, States contributing to the United Nations Office on Drugs and Crime (UNODC) *Global Report on Trafficking in Persons 2016* reported an increasing diversity of forms of trafficking in persons and varied profiles of victims regarding age and gender. Gender-responsive elements of trafficking assistance measures are aimed at addressing specific issues including, for example, a practical recognition that many victims are trafficked because of their gender. In conflict situations, for example, women and girls may be specially targeted by armed groups for sexual slavery, domestic work and forced and child marriages. Men are highly susceptible to certain forms of trafficking for labour exploitation, for example, in the fishing industry. Generic assistance measures may not respond to the specific profile of individual victims — how can one facility, for example, provide adequate assistance for all victims? Further, gender-responsive assistance may directly address gender-specific issues in common State responses to unidentified trafficking victims, such as discriminatory or inappropriate investigative responses, including in interviewing and examination, of women trafficked for sexual exploitation, the arbitrary detention of such victims or the failure to facilitate access for different types of victims to appropriate medical, psychological and psychosocial support.

IV. Guidance for response

A. Organized Crime Convention and Trafficking in Persons Protocol

24. Under article 25, paragraph 1, of the Organized Crime Convention, States Parties are required to “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”.

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

26. In article 2, paragraph (b), of the Protocol, it states that one of its purposes is to “protect and assist the victims of such trafficking, with full respect for their human rights”.

27. Articles 6, 7 and 8 of the Protocol group the requirements for assistance and support into two categories: (a) mandatory procedural requirements and basic safeguards; and (b) discretionary requirements that provide assistance and support for victims. These articles should be read and implemented in conjunction with articles 24 and 25 of the Organized Crime Convention, related to victims and witnesses of crime: article 24 of the Convention covers victims to the extent that they are also witnesses, while article 25 covers all victims.

28. Article 6, paragraph 1, of the Protocol stipulates that, in appropriate cases and to the extent possible under its domestic law, each State party should protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to such trafficking confidential.

29. Article 6, paragraph 2, of the Protocol requires each State party to 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.

30. Article 6, paragraph 3, stipulates that each State party should 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;

(d) Employment, educational and training opportunities.

31. In article 6, paragraph 4, it is stressed that States parties should take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children.

32. Article 6, paragraph 5, states that each State party should endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

33. In article 6, paragraph 6, it is emphasized that each State party should ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

34. Articles 7 and 8 cover the status of victims of trafficking in persons in receiving States, and the repatriation of victims of trafficking in persons, respectively.

B. Additional international guidance

35. In the United Nations Global Plan of Action to Combat Trafficking in Persons (General Assembly resolution 64/293, annex), Member States resolved to adopt an action plan to:

(a) Stress the need to promote and protect the rights of victims of trafficking in persons and to reintegrate victims into the community by taking into account the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights ([E/2002/68/Add.1](#)) and the Guidelines on the Protection of Child Victims of Trafficking developed by the United Nations Children's Fund;

(b) Ensure that victims of trafficking in persons are treated as victims of crime and that national legislation effectively criminalizes all forms of trafficking;

(c) Review existing national services available to victims of trafficking in persons, consistent with the Organized Crime Convention and the Trafficking in Persons Protocol, strengthen those services where needed, and support the establishment or strengthening of appropriate referral mechanisms;

(d) Strengthen or continue to strengthen the capacity of relevant officials likely to encounter and identify possible victims of trafficking in persons, such as law enforcement personnel, border control officers, labour inspectors, consular or embassy officials, judges and prosecutors and peacekeepers, and ensure the availability of needed resources to the relevant sectors and institutions, including those of civil society;

(e) Urge Governments to take all appropriate measures to ensure that identified victims of trafficking in persons are not penalized for having been

trafficked and that they do not suffer from victimization as a result of actions taken by government authorities;

(f) Protect the privacy and identity and ensure the safety of victims of trafficking in persons before, during and after criminal proceedings and protect immediate family members and witnesses, as appropriate, from retaliation by traffickers by ensuring their safety in accordance with articles 24 and 25 of the Convention;

(g) Provide assistance and services for the physical, psychological and social recovery and rehabilitation of trafficked persons, in cooperation with non-governmental organizations and other relevant organizations and sectors of civil society;

(h) Urge States parties to 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, consistent with the Convention and the Trafficking Protocol;

(i) Ensure that countries of origin accept back their nationals who are victims of trafficking in persons and guarantee that such return is conducted with due regard for safety and is preferably voluntary, consistent with the Convention and the Trafficking in Persons Protocol;

(j) Adopt labour laws in countries of origin, transit and destination which provide legal rights and protections for workers that would limit their risk of being trafficked;

(k) Provide specialized services to identified victims of trafficking in persons, consistent with the Convention and the Trafficking in Persons Protocol and other relevant instruments, including access to health services, such as access to prevention, treatment, care and support services for HIV and AIDS and other blood-borne and communicable diseases for those victims of trafficking in persons who have been sexually exploited, taking into account the fact that trafficking for the purposes of sexual exploitation has serious, immediate and long-term implications for health, including sexual and reproductive health;

(l) Provide appropriate assistance and protection in the best interest of the child to child victims of trafficking in persons or to those at risk of being trafficked, including through appropriate services and measures for the physical and psychological well-being of child victims of trafficking in persons and for their education, rehabilitation and reintegration, in coordination with existing child protection systems;

(m) Adopt measures to ensure that victims of trafficking in persons can seek compensation for the damage suffered, consistent with the Convention and the Trafficking in Persons Protocol;

(n) Acknowledge the important role of civil society organizations in providing assistance and empowerment to victims of trafficking in persons, helping them to seek redress and facilitating the care of and provision of appropriate services to victims, including close cooperation and coordination with law enforcement officials;

(o) Ensure that domestic legal or administrative systems include measures to provide information to victims of trafficking in persons, in a language they understand, regarding their legal rights and the relevant court and administrative proceedings and facilitate their access to assistance in order to enable their views and concerns to be presented and considered at appropriate stages of such proceedings against offenders in a manner not prejudicial to the rights of the defence, consistent with the Convention and the Trafficking in Persons Protocol;

(p) Provide victims of trafficking in persons with an adequate period of time to recover and the opportunity to consult with appropriate advisers to assist in

decision-making regarding cooperation with law enforcement and their participation in judicial proceedings.

36. In the commentary introducing article 18 of the *Model Law against Trafficking in Persons*, it is emphasized that:

(a) The timely and proper identification of victims is of paramount importance to ensuring that victims receive the assistance they are entitled to, as well as for the effective prosecution of the crime. A person should be considered and treated as a victim of trafficking in persons, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of victim;

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

37. Concerning the provision of information on judicial proceedings and the legal rights of victims, the commentary introducing article 19, contains the following option:

From their first contact with the justice process and throughout that process the [competent authority] shall inform the victim about:

(a) The degree and nature of the available benefits and services, the possibilities of assistance by non-governmental organizations and other victim agencies, and the way such assistance can be obtained;

(b) The different stages and the role and position of the victim in court and administrative proceedings;

(c) The possibilities of access to [free and/or low-cost] legal services;

(d) The availability of protection for victims and witnesses [and their families] faced with threats or intimidation;

(e) The right to privacy and confidentiality;

(f) The right to be kept informed about the status and progress of the criminal proceedings;

(g) The legal remedies available, including restitution and compensation in civil and criminal proceedings;

(h) The possibilities of temporary and/or permanent residence status, including the possibilities to apply for asylum or residence on humanitarian and compassionate grounds.

38. With regard to provision of basic services to victims of trafficking in persons, the commentary introducing article 20, states that:

Many countries already have laws, policies, regulations and guidelines in place to ensure victims of (serious) crimes the listed rights, benefits and services. If this is the case, it should be ensured that these rights, benefits and services also apply to victims of trafficking in persons. If this is not the case, it is advisable to extend the listed rights to all victims of (serious) crimes, including victims of trafficking in persons, in order to avoid creating a hierarchy of victims of certain crimes.

Some of these rights will need to be included in the law, while others may be more suitably implemented through regulations, policies or guidelines, for example, guidelines for the investigation and prosecution of trafficking in persons and the treatment of victims.

39. In subparagraph 5 (e) of annex I to the New York Declaration for Refugees and Migrants it is emphasized that, where possible, the registration process should be used to identify specific assistance needs and protection arrangements, including for victims of human trafficking.

C. Regional guidance

40. Paragraphs 1 and 2 of article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings read as follows:

Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

- (a) Standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- (b) Access to emergency medical treatment;
- (c) Translation and interpretation services, when appropriate;
- (d) Counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- (e) Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- (f) Access to education for children.

Each Party shall take due account of the victim's safety and protection needs.

41. In addition, paragraph 4 of article 12 of the same Convention outlines assistance that should be granted to victims lawfully resident within a State's territory, such as access to the labour market, to vocational training and education. In paragraph 6 it is specified that assistance should not be made conditional upon the victim's willingness to act as a witness. In paragraph 7 it is stipulated that each party should ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

42. Also in the same Convention, article 13, paragraph 1, establishes a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim, and paragraph 2 requires that, during the recovery and reflection period, the persons referred to in paragraph 1 are entitled to the measures contained in article 12, paragraphs 1 and 2.

43. Article 14, paragraph 1, of the same Convention states that:

Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- (a) The competent authority considers that their stay is necessary owing to their personal situation;
- (b) The competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

44. Paragraph 2 states that "the residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions".

45. Articles 10, 15 and 16 of the Council of Europe Convention deal with identification of victims, compensation and legal redress, and repatriation and return of victims, respectively.

46. Article 14, paragraphs 1 and 2 of the Association of Southeast Asian Nations Convention Against Trafficking in Persons, Especially Women and Children, state that:

Each party shall establish national guidelines or procedures for the proper identification of victims of trafficking in persons, and where appropriate may collaborate with relevant non-governmental victim assistance organisations.

In a case where the trafficking takes places in more than one country, each Party shall respect and recognise the identification of victims of trafficking in persons made by the competent authorities of the receiving Party.

47. Paragraph 4 states that “each 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. Each Party shall give appropriate consideration to humanitarian and compassionate factors to this end”.

48. Paragraph 10 outlines the type of support and assistance to be provided, as follows:

Each Party shall, where applicable, provide care and support to victims of trafficking in persons, including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following:

- (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.

V. Key tools and recommended resources

Model Law against Trafficking in Persons

49. The *Model Law against Trafficking in Persons*³ is aimed at assisting States in implementing the provisions contained in the Trafficking in Persons Protocol. It is aimed at facilitating the review and amendment of existing legislation as well as the adoption of new legislation. Each provision of the *Model Law* is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. Of relevance is chapter VII, on victim and witness protection, assistance and compensation.

Trafficking in Persons Toolkit

50. The *Toolkit to Combat Trafficking in Persons*⁴ seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society. Specifically, the *Toolkit* is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Chapter VI of the *Toolkit* addresses the issue of victim identification and provides reference tools, sets of checklists, indicators, and training material on identification, including screening and interview

³ United Nations publication, Sales No. E.09.V.11.

⁴ United Nations, Inter-Agency Coordination Group against Trafficking in Persons, *Toolkit to Combat Trafficking in Persons* (Vienna, United Nations Office on Drugs and Crime, 2012).

techniques tips, and forms, for different practitioners. Chapter VII deals with the immigration status of victims and their return and reintegration, and chapter VIII with victim assistance.

Anti-Human Trafficking Manual for Criminal Justice Practitioners

51. The UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners* is the result of a global cooperative process in which expert representatives from academia, non-governmental organizations, international organizations, law enforcement officers, prosecutors and judges from all over the world contributed their expertise and experiences. In line with the Trafficking in Persons Protocol, the purpose of the *Manual* is to support criminal justice practitioners in the prevention of trafficking in persons, the protection of its victims, the prosecution of its culprits and the international cooperation needed to achieve these goals. Module 2 of the *Manual* deals with the identification of victims of trafficking in persons, while modules 11, 12 and 13 deal with victims' needs in criminal justice proceedings, protection and assistance to victims-witnesses and compensation for victims, respectively.

Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking

52. The *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* provides comprehensive guidance for assessing the criminal justice response to trafficking in persons in a given State. The *Toolkit* consists of a set of tools designed to enable experts from international organizations, non-governmental organizations, national development agencies, other governmental entities and competent institutions to conduct a comprehensive assessment of selected aspects of a country's criminal justice response to trafficking in persons. This includes: (a) identifying gaps in the existing criminal justice response to trafficking in persons; (b) facilitating the formulation and development of technical assistance projects that adequately respond to the gaps and needs identified; and (c) facilitating the development of indicators for evaluating the impact of technical assistance projects. Acknowledging the complexity of the crime of trafficking in persons, the *Toolkit* broadens the scope of traditional criminal justice responses by including all relevant actors and measures involved in prosecuting the perpetrators and adequately assisting the victims of trafficking in persons. Of particular relevance are chapters IV and VI.

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

53. In October 2011, UNODC launched a global online human trafficking case law database (www.unodc.org/cld). The Database is aimed at enabling judges, prosecutors, policymakers, the media, researchers and other interested parties to broaden their knowledge of how different States use their respective laws to combat trafficking in persons, with the ultimate goal of contributing to enhancing the global criminal justice response. The Database serves as an essential tool for increasing the visibility of successful prosecutions, identifying global patterns and promoting awareness of the realities of this crime. The Database currently consists of over 1,400 human trafficking cases from over 98 jurisdictions. In October 2016, UNODC launched a new publication, *Case Digest on Evidential Issues in Trafficking in Persons Cases*, which is aimed at assisting criminal justice practitioners worldwide in addressing recurring evidential issues that are typical to trafficking in persons cases. It has analysed 135 cases from 31 jurisdictions and provides the reader, based on these real cases, with a range of options and possibilities for dealing with particular evidential challenges. Most cases in the *Case Digest* are drawn from the Human Trafficking Case Law Database.

“Providing effective remedies for victims of trafficking in persons”

54. The issue paper entitled “Providing effective remedies for victims of trafficking in persons” is the third in a series of issue papers developed jointly by the member agencies of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) and reflects the expertise and experience of the six international organizations and entities forming the ICAT Working Group, namely the International Labour Organization, the International Organization for Migration, the United Nations Office of the High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the United Nations Children’s Fund and UNODC. The paper is based on a desk-based literature review of the international law and jurisprudence that sets out what States are required to do — and what States should do — to provide victims of trafficking in persons with effective remedies. It also identifies opportunities and obstacles to implementing those international standards at the national level and identifies some common challenges that victims of trafficking face in accessing remedies.

Report of the Secretary-General on the implementation of measures to counter trafficking in persons

55. The report of the Secretary-General on the implementation of measures to counter trafficking in persons ([S/2016/949](#)) contains an analysis of trafficking in persons as it occurs in and beyond conflict zones, and contains a discussion on the consequences for people compelled to move because of conflict, such as migrants compelled to move out of necessity who were found to be at greater risk of trafficking in persons throughout their migratory experience. The report provides a number of recommendations to Member States and the United Nations system.

Report of the Special Rapporteur on trafficking in persons, especially women and children

56. The report of the Special Rapporteur on trafficking in persons, especially women and children, presented to the General Assembly at its seventy-first session ([A/71/303](#)) considered the forms and nature of trafficking in persons as an increasingly common feature of modern conflict. The report offers recommendations to address trafficking in conflict and post-conflict situations in collaboration with States, the United Nations, civil society and the international community in relation to: (a) trafficking in persons in conflict areas or trafficking in persons fleeing conflict; (b) protecting children from trafficking; (c) strengthening responses to address trafficking in women and girls for purposes of sexual exploitation in conflict and post-conflict situations; (d) prevention of trafficking in persons for labour exploitation in conflict and post-conflict areas; and (e) anti-trafficking activities in peacekeeping operations.
