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Working Group on Trafficking in Persons

Vienna, 27-29 January 2010

Draft Report

Addendum

Agenda item 3: Analysis of key concepts of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided that the chairperson of the working group should submit a report on the activities of the working group to the Conference at its fifth session, in 2010 and would review and take a decision on the effectiveness and future of the working group at its sixth session, in 2012.
2. On 27 January, the Working Group considered agenda item 3, on consideration of key concepts of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
3. The Chairperson presented the Background paper drafted by the Secretariat. For its consideration of agenda item 3, the Working Group had before it a background paper presenting an analysis of key concepts of the Trafficking in Persons Protocol, in particular the concepts of “exploitation” and “exploitation of the prostitution of others”.¹
4. The Chairperson highlighted that the lack of definition for various terms contained in the Protocol remains a key challenge for its implementation, as does the lack of criminal justice capacity and expertise to implement the Protocol. The Chairperson invited States parties to comment on some of the particular challenges they have encountered in addressing these issues and the measures that they have put in place to address them.

¹ Background paper prepared by the Secretariat: “Analysis of key concepts of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” (CTOC/COP/WG.4/2010/2).



5. The Chairperson welcomed to the panel the following esteemed panellists; Ms Venla Roth of Finland, Ms Nicole Zuendorf-Hinte of Germany, Mr. Wael Abou-El-Magd of Egypt and Mr. Olivier Weber of France and invited Ms Roth to take the floor.
6. Ms Venla Roth, Finland's National Rapporteur discussed Finland's challenges in combating trafficking in persons. Particularly she raised the challenge posed by different understandings of concepts such as prostitution, sexual exploitation and trafficking in persons. Ms Roth also noted that Finland's National Rapporteur to combat trafficking was appointed in June 2008 with the revision of the country's National Action Plan against trafficking. The National Rapporteur functions as an independent monitoring mechanism and also coordinates counter-trafficking measures to ensure a coordinated response and reduce duplication. Part of its mandate is to address the definitional challenges which can undermine a coordinated response to trafficking in persons.
7. The Chairperson introduced Ms Nicole Zuendorf-Hinte of Germany who discussed the purpose and scope of the Trafficking in Persons Protocol and key provisions therein that are crucial for criminalization, protection and assistance of victims of trafficking, prevention and cooperation. Ms Zuendorf-Hinte stressed that the Trafficking in Persons Protocol has to be read in light of the United Nations Transnational Organized Crime Convention. The various provisions of the Trafficking in Persons Protocol must be interpreted in this context.
8. The Chairperson introduced Mr. Wael Abou El Magd of Egypt who shared the challenges that Egypt has faced in domesticating the Trafficking in Persons Protocol into Egyptian domestic law. He stressed the fact that the Trafficking in Persons Protocol has to be implemented in the context of domestic circumstances. Mr. El Magd also highlighted the fact that the Trafficking in Persons Protocol should be viewed as offering a minimum standard that can and should be exceeded by domestic legislation.
9. The Chairperson introduced Mr. Olivier Weber of France who noted the achievements of the Trafficking in Persons Protocol in achieving a universal understanding of trafficking in persons. Mr. Weber stressed that tools created by UNODC and others should be relied on in having holistic anti-trafficking approaches which are victim-centred.
10. The Chairperson thanked the panellists for their presentations and opened the floor for discussion.
11. Under agenda item 3 of the agenda, the Working Group heard statements from the following States and organizations: Norway, Colombia, United States, Nigeria, Israel, Belarus, Switzerland, Canada, Mexico, Poland, Belgium, Italy, China, Brazil, Namibia, Thailand, Argentina, Russian Federation, Spain, France, League of Arab States.
12. Speakers discussed the following issues: the need to implement law according to domestic circumstances to achieve the purpose of the Protocol and increase the rate of convictions; the fact that transportation is only one of the acts which can comprise the elements of trafficking in persons; the application of the Trafficking in Persons Protocol even in the absence of any element of transnationality; the relativity of the concept of exploitation; conceptual challenges of differentiating

between trafficking in persons and smuggling of migrants; the issue of consent; the relationship between the Trafficking in Persons Protocol and the Transnational Organized Crime Convention; the need to support the involvement of victims as witnesses in criminal justice processes.

Recommendations: Agenda item 3

1. The Working Group on Trafficking in Persons, established pursuant to decision 4/4 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, adopted the recommendations below, on agenda item 2, for consideration of the Conference at its fifth session.

Implementation of the Trafficking Protocol

2. With regard to the interpretation of different concepts that require clarification:

(a) The Conference of the Parties to the UNTOC Convention should provide guidance to States parties on these concepts;

(b) Further to recommendation 7 of the previous report of this Working Group, the Secretariat should prepare, in consultation with States parties, issue papers in order to assist criminal justice officers in penal proceedings, including on consent; harbouring, receipt and transport; abuse of a position of vulnerability; exploitation; and transnationality.

3. States parties should ensure that, at a minimum, national legislation criminalizes those forms of exploitation listed in the Protocol and consider the inclusion of additional forms of exploitation.

4. States parties should ensure that all forms of exploitation included in domestic legislation are also clearly defined in legislation or by case law and are supported by operational guidelines for criminal justice practitioners.

5. In applying the definition of trafficking in persons under the Protocol, States parties should ensure that:

(a) Where deception, coercion or other means under the Protocol are present, the consent of the victim is irrelevant to establishing trafficking in persons;

(b) Trafficking in persons may be established before an act of exploitation has occurred.

6. With regard to the implementation of the Trafficking Protocol, States parties should interpret the Protocol in the context of the UNTOC Convention.

7. Noting that the Protocol does not provide model legislative provisions, States parties should draft national legislation in line with their domestic circumstances.

8. The Conference of the Parties to the UNTOC should consider the advisability of requesting UNODC to prepare, in consultation with States parties, legal commentaries to UNTOC and the Protocols.

9. States parties should acknowledge the importance of victim/witness testimony in securing convictions of traffickers through the adoption of measures to assist and support victims, regardless of their cooperation with criminal justice authorities.

10. States parties might use the authority suggested by articles 26 (2) and (3) of the UNTOC Convention in order to secure testimony of members of criminal organizations in trafficking investigations and prosecutions for the purpose of prosecuting other members of the trafficking organization.

11. States parties should pay close attention to the first element of the trafficking offence and recognize that it can be satisfied through harbouring or receipt of victims even in the absence of transit or transportation.
