

Distr.: General
9 December 2009

Original: English

Working Group on Trafficking in Persons

Vienna, 27-29 January 2010

Item 4 of the provisional agenda*

Good practices and tools in discouraging the demand for exploitative services

Good practices and tools in reducing the demand for exploitative services

Background paper prepared by the Secretariat

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* CTOC/COP/WG.4/2010/1.



I. Introduction

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

2. A first meeting of this Working Group was held in Vienna, Austria from 14 to 15 April 2009. It was decided to hold a second meeting of this Working Group in Vienna, Austria from 27-29 January 2010.

3. The provisional agenda for the meeting was prepared in accordance with decision 4/4 of the Conference of the Parties, entitled “Trafficking in human beings”, which was adopted at the fourth session of the Conference, held in Vienna, Austria, from 8 to 17 October 2008. The present background paper was prepared by the Secretariat to aid in the discussion of provisional agenda item 4.

II. Development of appropriate measures

4. Member States might wish to consider the following points in developing a response to the demand for exploitative services in the context of trafficking in persons:

- Further research on the factors that make certain events, locations, communities, countries, regions more likely to be the destination of trafficking in persons;
- Further research on socio-economic factors and how these factors affect the markets, especially the demand, for trafficking in persons;
- Examination of the standard of knowledge required of a person before they can be prosecuted for having used the services of a trafficked person;
- Examination of the education of employers and consumers to render the use of goods and services provided under exploitative circumstances socially unacceptable, thus involving the employers and consumers in reducing the demand.

III. Overview of issues

5. Trafficking in persons can be responded to from both the demand and supply sides. Article 9 (5) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children [The Trafficking in Persons Protocol] calls upon State Parties to discourage the demand that fosters all forms of exploitation of persons and leads to human trafficking.

6. There is no agreed definition of the term “demand” in the context of trafficking in persons. Demand usually refers to the desire for a particular commodity, labour or service, but in the context of trafficking in persons, the demand is for labour that is exploitative or services that breach the human rights of the person delivering them.

7. Trafficked people are on the supply side of trafficking. Consumers of the results of the work or services of trafficked people are on the demand side. It is important to distinguish between consumer or primary demand and derived demand by exploiters, and recognize that they occur at different points of the trafficking chain.

8. Consumer demand is generated directly by people who actively or passively buy the products or services of trafficked labour, for example the husband who buys flowers picked by a trafficked adolescent or the tourist who buys a cheap T-shirt made by a trafficked youth in a sweatshop. Research suggests that most of this kind of demand is non-determinant because generally it does not directly influence the trafficking — for example, the husband buying flowers does not specially ask traffickers to exploit children to pick them, and the tourist buying a cheap T-shirt does not specially ask traffickers to exploit children either.

9. Derived demand is a very different matter because it is generated by the people who stand to make a profit from the transaction. These might include pimps and brothel owners, the various intermediaries involved in trafficking, corrupt factory owners or farmers who exploit trafficked labour to keep their costs down, prices low and profits flowing.¹

10. In practice, it is often difficult to identify victims of trafficking because it is in some sectors difficult to differentiate between demand for labour and services which are legal and acceptable (and a natural element of productive markets) and those that are not.

11. The employer of labour or the consumer of services may not be aware that the labour or services are being provided by a person who has been trafficked. Analysis of demand for trafficked persons is best undertaken in the context of a wider analysis of certain types of labour or services in which trafficked persons could be exploited.

12. Evidence indicates three levels of personal or institutional demand related to human trafficking:

- Employer demand (inter alia employers, owners, managers or subcontractors);
- Consumer demand (inter alia corporate buyers in manufacturing, clients in the sex industry, household members for domestic work);
- Third parties involved in the process (inter alia recruiters, agents, transporters and others who participate knowingly in the movement of persons for the purposes of exploitation).

¹ ILO, Combating trafficking in children for labour exploitation, pp. 30-31;
<http://www.ilo.org/ipecinfor/product/viewProduct.do?productId=9130>.

13. The “demand side” of trafficking in persons generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as to the social, cultural, political, economic, legal and development factors that foster the demand for cheaper goods and certain services and facilitate the trafficking process.

14. Demand related to trafficking in persons can also be categorized by the form of exploitative purpose:

A. Demand for forced labour

15. The exploitation of trafficked persons most often takes place within economic activity that is either illegal or informal, or poorly regulated or unregulated, or in economic sectors in which it is difficult to enforce regulatory controls and profit margins are extremely low. Additionally, services are provided by small scale enterprises that would be unable to transport goods or establish parts of their production in regions where labour costs are very low, as large companies are able to do, and therefore depend on documented or undocumented migrant labour. Finally, exploited persons usually perform labour associated with jobs at the lowest end of the employment hierarchy in any given sector, which is to say, they generally carry out work that is considered to be low status, and that is extremely low paid. In other words, human trafficking is closely associated with what is sometimes termed “poor work”.

16. There is much evidence to suggest that the demand for exploitable labour is historically variable and contingent upon a range of political and institutional factors.

17. The current economic crisis and recession have led to an increase in unemployment, underemployment and economic instability, thereby aggravating conditions that render people and communities vulnerable to trafficking in persons. With businesses closing down, employers requesting fewer foreign workers and governments halting the recruitment of new foreign labour, many people will take greater risks to migrate. In destination countries, an increased demand for cheaper goods and services is putting pressure on the protection environment, leading to greater vulnerability of both regular and irregular migrants to exploitation.

B. Demand for sexual services

18. Demand for sexual services is an issue which varies in different parts of the world. Existing research suggests that the general demand for sexual services is overwhelmingly, though not exclusively, from men. Survey research also reveals variation between countries and regions in terms of the percentage of men who admit to having ever paid for sex. In some countries it appears that men who buy sexual services are very much in a minority, whilst in others, well over a third of men are estimated to have paid for sexual services at some point in their lives. In many countries, research further suggests that some occupational groups are more prone to using sexual services than others, and that those who travel either for business or leisure are also more likely to use sexual services.

19. Research on clients has mostly been conducted in affluent, economically developed countries. Without conducting comparable research in developing countries, it is not possible to say whether the findings of such studies can be generalized to the global population users of sexual services. One of the most common conclusions drawn by those who have attempted to theorize the demand for sexual services is that there is a link between the way in which “masculine” identity is socially constructed and the desire to buy sex.

20. The issue of prostitution is at the core of the debate on how to reduce the demand for trafficking for sexual exploitation. The Trafficking Protocol is neutral on the issue of prostitution, which remains within the domain of domestic law. Some countries criminalize the sale and purchase of sexual services, others only criminalize one or the other and others criminalize none. Different approaches are supported by different arguments. Some countries promote an approach based on the idea that sexual services should not be sold and/or should not be purchased, thus making the supply and/or the demand disappear, and decreasing the number of trafficking victims by making the market disappear. Other countries promote an approach based on the idea that by not criminalizing the sale nor the purchase, the market can be regulated and thus better identify trafficking victims and decrease their number.

C. Demand for sex with children

21. Children are defined in the United Nations Convention on the Rights of the Child as persons under the age of 18. Research shows that children are present in the sex trade of virtually every country of the world. Because all the relevant international conventions and protocols state that a person under the age of 18 cannot give meaningful consent to exploitation, any child who has been recruited, transported, transferred, harboured or received, within or across national borders and entered the sex trade is a victim of trafficking in persons.

22. In this context it is important to stress that trafficking in persons can occur within a country, without any borders being crossed. The research evidence on those who pay for sex with children is limited, but nonetheless points to the conclusion that people’s motivations for sexually exploiting children vary.

IV. Guidance for response

23. Examples of measures to address the demand side include measures to broaden awareness, attention and research into all forms of exploitation, and the factors that underpin the demand; to raise public awareness on products and services that are produced by exploitative and forced labour; to regulate, register and license private recruitment agencies; to sensitize employers not to employ victims of human trafficking in their supply chain, whether through subcontracting or directly in their production; to enforce labour standards through labour inspections and other relevant means; to support the organization of workers; to increase the protection of the rights of migrant workers; and/or to criminalize the use of services of victims of human trafficking.

A. International guidance

24. An international consensus is considered to be in place regarding the strong need to combat demand for trafficking in persons. Importantly, Article 9 (5) of the Trafficking in Persons Protocol states that:

“States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

25. United Nations General Assembly resolution 61/144 on trafficking in women and girls similarly calls upon governments “to eliminate the demand for trafficked women and girls for all forms of exploitation”. Article 19 of the Council of Europe Convention on Action against Trafficking in Human Beings stipulates that “each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4, paragraph (a) of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”

26. The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking state that “strategies aimed at preventing trafficking shall address demand as a root cause of trafficking,” suggest that States should analyze “the factors that generate demand for exploitative commercial sexual services and exploitative labour” and take “strong legislative, policy and other measures to address these issues”.

B. Domestic guidance

27. At the domestic level, the legislative response to the issue of demand differs. Some countries have addressed the issue of demand by criminalizing the use of services from persons with the knowledge that they are victims of human trafficking. Some examples of domestic legislation are shown below.

28. Punishing the use of services of victims of trafficking by imprisonment:

Greece, Penal Code, Article 323A

“Those who with full cognizance accept the work of [a victim of trafficking] are punished with imprisonment of six months minimum.”

Philippines, Anti-Trafficking in Persons Act (RA 9208) of 2003, Section 11

“Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

(a) First offense — six (6) months of community service as may be determined by the court and a fine of Fifty thousand pesos (P50,000.00); and

(b) Second and subsequent offenses — imprisonment of one (1) year and a fine of One hundred thousand pesos (P100,000.00).”

Annex

Key tools and recommended resources

ILO Demand Side of Human Trafficking in Asia: Empirical Findings

The ILO-IPEC publication is based on a series of empirical studies to probe the demand side of trafficking, which covers the attitudes and policies that help enable the crime and which includes demand — the specific desires and preferences of employees, consumers and third parties for certain types of persons or particular services.²

Combating Trafficking in Persons: A Handbook for Parliamentarians

The Inter-Parliamentary Union (IPU) and UNODC, in the framework of the Global Initiative to Fight Human Trafficking (UN.GIFT), http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf launched the publication *Combating Trafficking in Persons: A Handbook for Parliamentarians*. As public awareness of human trafficking grows, people are demanding that action be taken to end it. Parliamentarians — as elected representatives — have responsibility and power to ensure that laws and other measures are put in place and implemented to that end. The Handbook is intended to inspire them to enact sound laws and adopt good practices that will strengthen national responses to human trafficking. See more specifically point 5.6. on Demand for trafficked persons, pp. 70-72.³

http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

UNODC Trafficking in Persons Toolkit

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC Toolkit to Combat Trafficking in Persons seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Tool 9.12 addresses the concept of demand.

Demand is a complicated process which must also be addressed to reduce the corresponding supply of trafficked persons. The complexities of demand are discussed in Tool 9.12 and the specific demand created by sex tourism is addressed in Tool 9.13.

Efforts which can discourage those who service demand are considered in Tool 9.14. Tool 9.15 discusses the use and importance of standardized data collection instruments in targeting prevention responses, and the special role and responsibility that the media have with respect to proactively preventing and not inadvertently

² http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_73_en.pdf.

³ http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf.

facilitating trafficking is discussed in Tool 9.16. Socio-economic information should ideally include an analysis of how these factors affect trafficking markets. For instance, the intelligence would include features that have an impact on the demand side of the trafficking cycle, such as the demand for females of certain ethnic backgrounds, appearance or age.⁴

UNODC/UN.GIFT Model Law against Trafficking in Persons

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing that Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different state authorities and NGOs. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. See more specifically the commentary of the optional provision of Article 9 (5) of the Trafficking Protocol, p. 43 and the commentary of Article 9, p. 83.

http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

International Framework for Action to Implement the Trafficking in Persons Protocol

The International Framework for Action is a technical assistance tool that supports United Nations Member States in the effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). The International Framework for Action consists of a narrative part and a set of tables. The narrative describes key challenges in the implementation of the United Nations Trafficking Protocol and proposes general measures that can be taken in order to more effectively address these challenges. The set of tables details these measures further, through five pillars containing practical actions to support the implementation of the United Nations Trafficking Protocol. See more specifically the development of the provisions of Article 9 in Table 3 – Prevention, pp. 41-42.

http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

⁴ <http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html>.