



United Nations Crime Prevention Policy on Trafficking in Persons: The Convention against Transnational Organized Crime and the Trafficking Protocol

**Centre for International Crime Prevention
United Nations Office on Drugs and Crime
Regional Office for Southern Africa**

The problem: transnational organized crime and trafficking in persons

- **Transnational crimes such as trafficking in human beings are a serious and growing problem**
- **Groups are bigger, more transnational and involved in a wider range of criminal activities**
- **Transnational nature of the problem requires a transnational solution**
- **Focus of the UN is on organized crime in its various manifestations**

Trafficking in Human Beings

- 700 000 persons are victims of trafficking worldwide each year
- The new forms of slavery constitute the most colossal violation of human rights in the world today.



Trafficking Process

P r o c e s s

➤ Recruitment

- Personal contacts
- Agencies
- Advertisements / Internet
- Kidnapping / threats or violence

➤ Transportation

- Legal and illegal border crossing

➤ Exploitation and circulation

- Sexual exploitation
- Forced labor
- Illegal adoption
- Marriage arrangements

Lucrative business

**L
u
c
r
a
t
i
v
e**

➤ Traffickers

- ⇒ low investments
- ⇒ limited expertise required
- ⇒ high profits
- ⇒ lenient penalties

➤ Potential victims

- ⇒ economic reasons
- ⇒ high expectations
- ⇒ false promises

New International Instruments adopted* :

- United Nations Convention against Transnational Organized Crime**
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**
- Protocol against the Smuggling of Migrants by Land, Sea and Air**
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition**

*** General Assembly Resolutions 55/25, 15 November 2000 and 55/255, 31 May 2001**

Nature of the Instruments

- **Convention and protocols are binding legal instruments**
- **International law, not domestic law**
- **Convention has general measures against transnational organized crime**
- **Protocols deal with specific crime problems**
- **Protocols supplement the Convention**
- **Must be a party to the Convention to become party to a protocol (Art. 37, Protocols, Art.1)**

What the instruments do:

- **Symbolize recognition of the problem and commitment to take effective measures**
- **Standardize terminology, laws and practices**
- **Combine criminal offences, crime-control, crime-prevention and other measures**
- **Extend scope of extradition, legal assistance and other mechanisms to more subjects and more countries**
- **Foster international cooperation against transnational organized crime**

Status of the Instruments

(as of 2 December 2002)

- Convention: 143 signed and 27 ratified**
- Trafficking: 110 signed and 20 ratified**
- Smuggling: 107 signed and 19 ratified**
- Firearms: 46 signed and 3 ratified**

Status of Convention in Africa

- **Ratified:**
 - **Botswana**
 - **Burkina Faso**
 - **Mali**
 - **Morocco**
 - **Namibia**
 - **Nigeria**

Status of Trafficking Protocol in Africa

- **Ratified**
 - **Botswana**
 - **Burkina Faso**
 - **Mali**
 - **Namibia**
 - **Nigeria**

U. N. Convention against Transnational Organized Crime

Purpose

**“To promote cooperation to
prevent and combat
transnational organized crime
more effectively” (Art. 1)**

Offences established by the Convention

- Convention requires States Parties to have four basic offences:
 - Participation in an organized criminal group (Art. 5)
 - Laundering of proceeds of crime (Art. 6)
 - Corruption (Art. 8)
 - Obstruction of justice (Art. 23)
- Transnationality must not be made an element of these offences in domestic law (Art.34.2)

Jurisdiction (Art.15)

Convention seeks to ensure that every State Party connected to a transnational organized crime offence will have adequate jurisdiction.

Offenders should have no place to hide from investigation and prosecution.

Relationship to the Convention

- To become Party to a protocol, a State must first be a Party to the Convention (Convention Art. 37)
- Protocols interpreted together with the Convention (Convention Art. 37)
- Convention provisions apply to protocols, *mutatis mutandis* (Protocols, Art.1.2)
- Protocol offences regarded as convention offences (Protocols, Art. 1.3)



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

Purposes (Art. 2)

- To prevent and combat trafficking
- To protect and assist victims
- To promote cooperation

Definitions

Trafficking in persons (Art. 3.a)

- the action of: recruitment, transportation, transfer, harbouring, or receipt of persons
- by means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.
- consent of the victim is irrelevant **where illicit means are established, but criminal law defences are preserved** (Protocol, Art.3.b, Convention Art.11.6)

Criminalization (Art.5)

States must criminalize conduct defined by Art.3

- Basic offence of “trafficking in persons”
(may be one or more offences, provided all conduct covered)
- Attempting to commit, participating as an accomplice, and organizing or directing others to commit trafficking
- Victim’s consent irrelevant once improper means such as coercion established
- Means do not apply if victim is a “child” under 18 years

Obligation is to criminalize “trafficking”, not individual elements of the offence

- Protocol neither requires nor prevents criminalisation of individual elements such as prostitution

Assistance and protection of victims

(Art.6-8)

- **Protocol calls for further measures to support physical, psychological and social recovery:**
 - **counselling (legal and other)**
 - **assistance (medical, psychological, material and housing)**
 - **compensation (possibility of obtaining assistance to be created)**
- **age, gender and special needs of victims, especially children to be considered**

Prevention (Art.9)

- **Convention calls for direct and indirect prevention measures:**
 - **research, information and mass-media campaigns**
 - **cooperation with NGOs and elements of civil society**
 - **alleviation of social and economic factors that make victims vulnerable to trafficking**
 - **measures to discourage demand for exploitation which leads to trafficking**

UN CICP Global Programme Against Trafficking in Human Beings

- **Technical Assistance**
- **Collection of best practices**
- **Database of trafficking flows**

Global Programme Against Trafficking in Human Beings

❖ Asia: The Philippines

❖ Eastern Europe:

- The Czech Republic, Poland and the Slovak Republic

❖ Latin America: Brazil

❖ Western Africa:

- Benin, Nigeria and Togo

Global Programme Against Trafficking in Human Beings

❖ A call for a multi-agency approach:

- ❖ International: IOM, UNICEF, ILO, UNDAW, HABITAT, UNDP, Interpol,...**
- ❖ Regional: OSCE, ESCAP, ECOWAS, EUROPOL,...**
- ❖ National and local: Government agencies, NGOs and civil society at large**

Strategy to fight THB

S T R A T E G Y

- To criminalize THB
- To create specialized investigative units
- To foster international cooperation (investigation / data collection)
- To set up witness protection programmes
- To better protect, assist and support victims
- To increase cooperation between law enforcement / judicial authorities / immigrations offices / NGOs
- To trace the assets of the criminals for freezing and confiscation
- To develop awareness-raising campaigns in origin (future victims) and destination (future clients) countries.