



Global Alliance Against Traffic in Women

Vienna, 13 October 2008

Conference of the Parties to the United Nations Convention against Transnational Organised Crime
Fourth Session, Vienna, 8-17 October 2008

Statement on a monitoring mechanism for the United Nations Convention against Transnational Organized Crime and each of the protocols thereto with specific attention to the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Human Trafficking Protocol)

The undersigned international and national non-government organisations, all of whom are specialists in the field of human trafficking and human rights, urge the States Parties to the United Nations Convention against Transnational Organized Crime and each of the protocols thereto (UNTOC) to adopt a monitoring mechanism to oversee UNTOC's implementation

We call on the Conference of States Parties (CoSP) to the Convention to consider the following proposal during its deliberations at its Fourth Session.

Rationale

We believe that the existing information-gathering and implementation review mechanisms to the Convention are inadequate and as such risk undermining the Convention objectives. In this respect, we refer to Secretariat note CTOC/COP/2008/3 concerning the *Review of the implementation of the United Nations Convention against Transnational Organized Crime* which notes the problems with current reporting mechanisms.

The UNTOC was intended to develop a coherent and coordinated international approach to the problem of transnational organised crime. This international legal framework requires States Parties to develop their national legal frameworks and institutions in line with UNTOC.

With reference to human trafficking, we believe that States' efforts to translate the Human Trafficking Protocol into national law are not only inconsistent but in some cases have negative human rights implications for trafficked persons. Research compiled in the 2007 GAATW report, *Collateral Damage*, shows that many States have not yet implemented their obligations under the Protocol, or in some cases have misinterpreted the provisions to achieve other policy objectives.

Consequently States Parties are failing to achieve the stated purpose of the Human Trafficking Protocol: "(a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives".

It is not adequate for States Parties to proceed with the status quo. It is time for States, and other actors, to develop an active and ongoing review and reflection process to examine the progress we have made to date in light of the Convention.

A review mechanism is essential for all working to combat or affected by trafficking in persons and other international organised crimes. It will ensure that commitments are implemented in the way that was envisaged, providing **consistency, transparency and accountability**. It will also improve coordination and cooperation between all States Parties.

This will finally benefit the victims of transnational organised crime who are most in need of the protections that the UNTOC was intended to provide. Such persons or their representatives are often at the forefront of evidence gathering and legal investigations and consequently bear first-hand, practical experience of UNTOC.

Recent efforts are welcome but not yet sufficient. Whilst we accept the rapid work undertaken by the Secretariat on the interim computer based checklist and welcome the possibility of combining the United Nations Convention against Corruption (UNCAC) and UNTOC reporting processes, we strongly believe that this represents the start rather than the conclusion of this review process.

Review Mechanisms

It is becoming increasingly apparent that effective monitoring mechanisms form a vital part of a treaty's success. The core international human rights treaties all contain provisions for treaty bodies to monitor their implementation.

Two further instructive examples are as follows:

- In the field of trafficking the Council of Europe Convention on Action against Trafficking in Human Beings which entered into force this year established an independent monitoring mechanism described by the Council of Europe as "undoubtedly one of its main strengths". The mechanism consists of the Group of Experts against Trafficking in Human Beings (GRETA), which operates an interactive process with States Parties, including civil society and country visits, prior to making recommendations to the CoSP.
- Recognition of the need for a strengthened review mechanism to UNCAC has led to the Open-ended Intergovernmental Working Group on Review of the Implementation of the UNCAC proposing a proactive review process involving a system of experts working with States Parties and conducting site visits where necessary prior to bringing reports before the CoSP.

Form of Mechanism

Above all this process must be open and transparent otherwise any review mechanism will be fundamentally flawed and effectively meaningless.

The following must also be guiding principles to any mechanism:

- It must be non-punitive, non-adversarial, non-conditional and non-ranking;
- It must demonstrate impartiality, inclusivity and fairness;
- It must be complimentary and collaborative rather than duplicative.

To this end any body tasked with establishing the terms of reference of a review mechanism must ensure that it includes, *inter alia*, the following:

1. **Civil Society Engagement:** Many national and international civil society organisations have expertise in the areas covered by UNTOC and provide valuable knowledge about Convention implementation. Non-government actors should be viewed as essential contributors in any review process.
2. **Review of implementation and the impact of implementation:** The review process should not only consider the extent to which States are implementing UNTOC, but also the extent to which such implementation is meeting the aims of the Convention. In respect to trafficking, this should include the impact implementation is having on the protection of trafficked persons, in accordance with international standards such as the *United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking*.
3. **Country visits:** A rolling programme of country visits agreed by the CoSP must be included in any review mechanism in order to ensure country reports involve a broad range of stakeholders, including non-governmental organisations and national human rights institutions.
4. **Independent experts:** Independent experts nominated and elected by States Parties would assist the reporting process and provide vital assistance to States, many of whom encounter difficulties meeting numerous competing reporting obligations.
5. **Assured funding:** Sustained funding, ideally from the regular UN budget, is required for any monitoring mechanism to succeed.

Inter-governmental Working Group

An inter-governmental working group on this issue should be established before the end of this Fourth Review Conference including the following parameters:

1. **Interim forum:** This would ensure civil society and other party involvement in the process and offer an opportunity to consider the results of the UNCAC review mechanism pilot in the second quarter of 2009.
2. **Opportunity for submissions:** The process must be carried out openly and transparently in order that the maximum number of stakeholders might be involved in establishing the terms of reference of a review mechanism.
3. **Publication of draft documents:** Prior to the Fifth Review Conference of UNTOC in 2010 draft deliberations of this body must be published and distributed to all stakeholders including civil society organisations.

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