

Advocacy Update



Global Alliance Against Traffic in Women

Number 1. 2009

IMPORTANT INFORMATION FOR MEMBERS

2009-10 will be very important years for the development of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (UNTOC) which is why we would like to ensure our position is coherent, clear and collaborative. We see this Advocacy Update as the first major step in that process.

In order to discuss the UNTOC review mechanism process we are calling for the creation of an ADVOCACY WORKING GROUP, gathering members and the IS in Geneva in MARCH 2009. We would love for those of you who are interested in developing a position with us to attend and be part of this process.

In addition to the establishment of this Working Group, a crucial part of this consultation to GAATW-IS is the question of the Trafficking in Persons Protocol and we are therefore initiating this discussion with the following questions:

1. *Is there scope for improvement in states implementation of the Trafficking in Persons Protocol through an improved monitoring mechanism?*
2. *Should we be engaging in discussions around a monitoring mechanism when it could end up leading to further criminalisation measures being implemented with little attention to protection measures?*
3. *If we do engage which specific aspect of the Trafficking in Persons Protocol would we like to see states implementing more effectively?*
4. *If we do not engage should we begin to lobby for an alternative to the Trafficking in Persons Protocol which is perhaps more grounded in international human rights law?*

Please let us know if you have responses, thoughts, questions or comments arising from this text at caroline@gaatw.org

INTRODUCTION TO THE ISSUE

The 4th Conference of Parties (CoPs) to the United Nations Transnational Organised Crime Convention and the protocols thereto (UNTOC), Vienna, October 2008.

As you may remember, at the UNTOC CoPs in 2008 GAATW-IS and alliance members, Sociedade de Defesa dos Direitos Sexuais na Amazônia (Soderitos), Legal Services for Children and Women (LSCW) and the Buhay Foundation for Women and the Girl Child collaborated with Anti-Slavery International and LSI to call for a monitoring mechanism to the Trafficking in Persons Protocol.

This issue was discussed both in plenary session and during our side meeting on the issue. On the closing day of CoPs two resolutions were agreed by States Parties.

The two resolutions at UNTOC CoPS

1. Called for an inter-governmental open ended working group to look at how CoPs can uphold the principles enshrined in the Trafficking in Persons Protocol through assistance to States Parties and the United Nations Office on Drugs and Crime (UNODC) which houses the secretariat of UNTOC. This working group is due to meet once before it convenes at the 5th session of the CoPs (2010) and the progress of the working group will be evaluated at the 6th

session of the CoPs (2012). Importantly this resolution also required the UNODC to report on activities undertaken to promote and support implementation of the Trafficking in Persons Protocol. This resolution combined two proposals put forward by the EU and Egypt but is not owned by any one party.

2. Called for further discussions on establishing a formal review mechanism to UNTOC and its protocols to take place before September 2009 and for a report on possibilities in this regard to be presented at the 5th Session of the CoPs in 2010. This resolution was submitted by Argentina and Norway who will now jointly take it forward.

IMMINENT DEVELOPMENTS IN THIS AREA

The Eighteenth session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), Vienna, 16-24 April 2009.

GAATW-IS has now learnt that the Trafficking in Persons Protocol will be considered at the 18th Session of the CCPCJ in April 2009.

Background to the CCPCJ

Whilst the CCPCJ functions as part of the UN Economic and Social Council (ECOSOC) its decisions and resolutions provide guidance to the Member States and UNODC. The CCPCJ chooses themes on which to focus each year based on its priority areas which include international action to combat national and transnational crime, including organized crime.

The CCPCJ also acts as the governing body of the United Nations Crime Prevention and Criminal Fund, which provides resources for promoting technical assistance in the field of crime prevention and criminal justice carried out by the UNODC.

Thematic focus on a review mechanism

The first of the two resolutions submitted to the CoPs looked at the role of the UNODC in ensuring accurate interpretation of the Trafficking in Persons Protocol by States Parties to UNTOC.

The request for a report by the UNODC in this regard and the issue of implementation of the Protocol will be considered by the CCPCJ at its 18th Session. As we understand it at this stage the CCPCJ will prepare a background paper on this issue which will facilitate discussion during the Commission session. There may also be space for NGO parallel events.

UNODC Database launch

Simultaneously the UNODC is launching its database of government action on trafficking on February 12th 2009 which will document global action taken in relation to the Trafficking in Persons Protocol.

THE TRAFFICKING IN PERSONS PROTOCOL

As you know from your work and as was highlighted in the findings of Collateral Damage, States ratification of the Trafficking in Persons Protocol does not necessarily have a positive impact on the lives of the trafficked persons.

In light of the observed negative impact of the Trafficking in Persons Protocol we would like to hear from you what your views on our engagement in the monitoring mechanism debate are. In particular we are currently seeking responses to the following questions:

1. *Is there scope for improvement in states implementation of the Protocol through such a mechanism?*
2. *Should we be supporting a mechanism when it could end up leading to further criminalisation measures being implemented with little attention to protection measures?*
3. *If we do support a mechanism which specific aspect of the Protocol would we like to see states implementing more effectively?*
4. *If we do not support the review mechanism should we begin to lobby for an alternative to the Palermo Protocol which is perhaps more grounded in international human rights law?*

The emphasis States Parties have placed on legislating as a means of combating trafficking has led to

the criminalisation of trafficking but as we have seen this does not necessarily prevent trafficking and often leads to more dire consequences for the trafficked person. This emphasis has in part been driven by the CoPs itself which as a review body to UNTOC and under the secretariat of the UNODC has called for criminal justice measures to be put in place without due consideration for the human rights impacts of such measures.

There are particular clauses in the Protocol which were successfully lobbied for when it was drawn up which we believe are not being adhered to or at least which are being overlooked:

Article 2: Statement of purpose

The purposes of this Protocol are: [...]

(b) To protect and assist the victims of such trafficking, with full respect for their human rights

and

Article 14: Saving clause

- 1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.*
- 2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.*

The full text of UNTOC can be found on the UNODC website:

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

BACKGROUND TO THE CURRENT SITUATION AT UNTOC

CoPs as a primary review body

Article 32 in UNTOC first established the CoPs with primary responsibility to “improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention [UNTOC]”

A subsequent decision taken at the first session of CoPs called upon the Secretariat (the UNODC) to develop a checklist/questionnaire for review of the Convention. Three such questionnaires were developed, one on the convention as a whole and one on each of the Protocols in force - the Trafficking in Persons Protocol and the Protocol against the Smuggling of Migrants by Land Sea and Air. This round of questionnaires was entitled the ‘first cycle’ and at the second session of the CoPs a second questionnaire was developed and entitled the ‘second cycle’ of review of implementation.

Reporting fatigue

At the third CoPs it was reported that 49% of states had responded to the first cycle of questionnaires and just 33% to the second cycle. The Secretariat attributed this low reporting to reporting fatigue suffered by States Parties, difficulties with interagency cooperation and a lack of capacity to report shown by some States. Based on these findings an interim computer based checklist was developed which it was hoped would combine the questionnaires and make States reporting obligations less time consuming and ultimately simpler to fulfil.

At the Plenary session which took place during this years CoPs the question of adequate monitoring of Convention implementation was again raised as a concern and discussions which followed ultimately led to the two resolutions outlined above.

GAATW’s stance to date

In light of this discussion GAATW called for the following factors to be considered in any discussions on a monitoring tool:

1. Civil Society Engagement
2. Review of implementation and the impact of implementation
3. A programme of country visits
4. Independent experts
5. Sustained funding

ANNEX 1 -Additional information on Monitoring mechanisms.

AN OVERVIEW OF OTHER RELEVANT MONITORING MECHANISMS

1. Core international human rights treaty bodies

There are eight human rights treaty bodies that monitor implementation of the core international human rights treaties (plus treaty on enforced disappearance not yet in force):

Human Rights Committee (CCPR)

Committee on Economic, Social and Cultural Rights (CESCR)

Committee on the Elimination of Racial Discrimination (CERD)

Committee on the Elimination of Discrimination Against Women (CEDAW)

Committee Against Torture (CAT) & Optional Protocol to the Convention against Torture (OPCAT) - Subcommittee on Prevention of Torture

Committee on the Rights of the Child (CRC)

Committee on Migrant Workers (CMW)

Committee on the Rights of Persons with Disabilities (CRPD)

Common features to the core human rights treaty bodies:

- **Concluding observations:**
A country rapporteur appointed by each treaty body is in charge of drafting concluding observations. Including acknowledging positive steps taken by States Parties to meet its obligations; identification of problematic areas that require further action by States in order to fulfil obligations under the treaty; and practical steps that the country can take in order to improve its implementation of human rights standards.
- **Pre-sessional preparation:**
Carried out with the aim of drafting a list of issues and questions for the next session and to enable consideration of individual communications. These are usually private except for CESCR.
- **List of issues and questions:**
Ensures that state reports are followed up with qualitative data where necessary.
- **Country rapporteurs:**
One or two for each report. Examine the report and draft the issues and questions for the States Parties.
- **Range of information sources:**
NGOs and others can submit information to the treaty bodies and in addition the secretariat puts together all information from within the UN system plus information submitted from UN specialised agencies.
- **NGO participation:**
NGOs are generally allowed to attend all treaty body sessions as observers (if accredited) and then may make oral interventions either before or after the session with the States Party. NGO shadow reports often incorporated into list of issues and questions to states. In addition NGOs are offered pre-session briefings with the Office of the High Commissioner for Human Rights (OHCHR) or the relevant treaty body.
- **Some of the key problems faced in this process are:**
Ensuring States report at the specified time (usually immediately after ratifying the Convention and set periods thereafter) and the fulfilment of recommendations by states parties.

Spotlight on Monitoring the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

Mechanism: The Committee on the Elimination of all forms of Discrimination Against Women is comprised of 23 independent experts on women's rights elected by secret ballot from a list of nominees put forward by states parties and elected for a term of four years. The members and committee functions are funded by the United Nations who also provides secretariat services.

Action: States Parties to the Convention submit reports to the Committee based on guidelines produced by the Committee including mandatory involvement of NGOs in report preparation. A selection of 8 states present their reports at each 3 week session of the committee, a Country Rapporteur for each state is designated from the committee members who facilitates the committee report consideration process. The Committee engages in what is known as a *constructive dialogue* with states on the contents of their reports and its associated research. The Committee also invites reports and some oral interventions by national NGOs, National Human Rights Institutions and other civil society actors.

Results: Following the *constructive dialogue* concluding comments and general recommendations to states are made by the Committee including steps required for compliance.

OECD Anti-Bribery Convention [OECD Convention]

This is considered to be one of the most vigorous review processes.

Mechanism: *The Working Group on Bribery in International Business Transactions* which is composed of government experts from the 37 states parties to the convention. It meets 5 times a year to review 37 countries over 2 years [all parties to the convention are party to the review mechanism].

Action: Monitors states' compliance with the convention through a system of peer review, involving self-evaluation and mutual-evaluation, in two stages:

1. legislative: involves an assessment by means of a questionnaire of the compliance of countries legal framework with the Convention, the Working Group examines the consistency of national legislation with the Convention and Recommendation standards pointing out deficiencies and making recommendations for new legislation required. There is some CS participation in this phase.
2. Enforcement: involves a more detailed questionnaire and country visit including meetings with government, legal and civil society actors looking at whether structures are in place to prevent and prosecute foreign bribery. There is then discussion in plenary at which the gvt concerned can bring observations forward and members of the WG can respond.

Results: Detailed reports are published following the plenary discussion and upon agreement of the WG. There is a process for follow up on reports for countries performing inadequately.

Staff: 10 persons per year

Estimated annual costs: \$2,000,000

The Inter-American Convention against Corruption

Mechanism: *The Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC)*. This is comprised of the Conference of States Parties (CoSP) and the Committee of Experts with the former holding overall responsibility and authority over the Mechanism. The Committee of Experts is comprised of members designated by each of the 33 States Parties to the Convention.

Action: 10 countries are reviewed each year. Countries carry out a self-assessment based on a questionnaire and indicators on the basis of which civil society may also submit written responses. The Committee of Experts carries out technical analysis of convention implementation involving meetings with governments and civil society and the exchange of information and best-practices between states. The Secretariat then prepares a preliminary report to submit to sub-groups (these are selected based on methodology to ensure that there is at least one state present with the same legal tradition as the state under review) for review by government experts who assess States' performance then present their findings to the plenary of the committee of experts where the

country reports are approved.

Results: No sanctions are levied and the publication of reports by the Committee of Experts is subject to state agreement.

Staff: 6 persons

Estimated annual costs: \$350,000

The Council of Europe Anti-Corruption instruments [the Criminal Law Convention on Corruption and the 20 guiding principles for the Fight against Corruption]

Mechanism: *The Group of States against Corruption (GRECO)* which monitors states' compliance with CoE anti-corruption standards. All full members participate in, and submit themselves without restriction to, the mutual evaluation and compliance procedures. Currently, GRECO comprises 46 member States [45 European States and the United States of America - full membership of GRECO is reserved to those who participated fully in the mutual evaluation process and accept to be evaluated].

Action: GRECO monitors the observance of the CoE anti-corruption instruments issuing recommendations to its members aimed at improving legislation and practice, then assesses the implementation of these recommendations. Each member State appoints up to two representatives who participate in GRECO plenary meetings with a right to vote; each member also provides GRECO with a list of experts available for taking part in GRECO's evaluations. Other Council of Europe bodies may also appoint representatives (e.g. the Parliamentary Assembly of the Council of Europe). GRECO has granted observer status to the Organisation for Economic Cooperation and Development (OECD) and the United Nations - represented by the UNODC. GRECO members are evaluated involving the collection of information through questionnaires which evaluation teams then use in their discussions with states, through country visits, to draw up reports which contain formal recommendations (related to legislative and practical reforms) to the evaluated country's government. The reports resulting from this are then submitted to peer review during GRECO plenaries. All members are evaluated in one single evaluation round lasting 3 years. It has become standard practice for CS to be invited to participate in GRECO but is not required under its rules of procedure.

Results: Based on the reports a compliance procedure designed to assess the measures taken by GRECO members to implement its recommendations is undertaken within a fixed amount of time. A situation report is prepared which looks at whether a recommendation has been implemented satisfactorily, partly or has not been implemented.

Staff: 10 posts (part of the Directorate General of Human Rights and Legal Affairs)

Annual operating budget: (Staff: €836,100) + (Other costs: €983,500) = Total: €1,819,600
[\$2,348,911]

The Council of Europe Convention on Action against Trafficking in Human Beings

Mechanism: The monitoring mechanism consists of two strands: *The Group of Experts against Trafficking in Human Beings (GRETA)* made up of between 10 and 15 experts in this field from varied geographical and professional backgrounds but to be taken only from those countries who are party to the convention; and the Committee of the Parties comprised of Ministers representing states parties to the Convention and non-members of the Council of Europe.

Action: GRETA will evaluate (its first meeting will take place in February 2009) each states parties' measures to implement the Convention, including country visits where required, and produce a report relating to each state's performance which the Committee of the Parties may use in making recommendations. GRETA may also propose amendments to the Convention which the Committee of the Parties must agree by consensus before adopting.

Other corruption mechanisms include:

- The Steering Group and Secretariat both reviewing the ADB/OECD Anti-Corruption plan for Asia and the Pacific
- The Advisory Board and the Executive Council of the African Union Convention on Preventing and Combating Corruption
- The New Partnership for Africa's Development (NEPAD) African Peer Review Panel (APRP) and African Peer Review Forum (APRF) together the African Peer Review Mechanism (APRM).

- The United Nations Convention against Corruption review mechanism which is currently under discussion and development.

Shared features of human rights and corruption convention review mechanisms:

Common:

- Self-assessment checklist/report as first step.
- Review, whether peer, secretariat or expert WG led
- Dialogue between stage 2 body and states parties.

Less common but still shared:

- Mechanism for other information source contribution
- Country visits (where all countries under review are visited it is considered to be the most effective means of review and yet also the most costly, time consuming and disliked by states!)
- Follow up and technical assistance identification
- Technical assistance delivery