

## Inter-Agency Coordination Group against Trafficking in Persons (ICAT)

### TRAFFICKING IN PERSONS IN THE GCM ZERO DRAFT PLUS

March 14<sup>th</sup>, 2018

The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) welcomes the [zero draft](#) of the Global Compact for Safe, Orderly and Regular Migration, presented by the Co-Facilitators on February 5<sup>th</sup> 2018, and commends their work.

ICAT welcomes the inclusion of many objectives in the zero draft that are relevant to the prevention of trafficking and assistance to victims, including **Objectives 1** (data collection and utilization); **3** (adequate and timely information); **6** (fair and ethical recruitment and safeguarding conditions that ensure decent work); **7** (reducing vulnerabilities); **9** (strengthening the transnational response to smuggling of migrants). ICAT commends the Co-Facilitators for reflecting trafficking in persons in detail under **Objective 10**, which outlines key considerations to protect victims of trafficking and prosecute traffickers. We welcome the reference to the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime ("the Trafficking Protocol")*, and stress the need for states to fully implement, through national legislation and concerted action, the existing international and regional legal frameworks pertaining to trafficking in persons.

ICAT offers a number of suggestions for consideration by Member States in their discussions going forward.

#### **Data collection (Objective 1)**

Under **Objective 1** (data collection), ICAT would propose including additional references on the need for states to improve the reliable and harmonised collection, dissemination and analysis of evidencebased and disaggregated data and information, based on age, gender, and form of exploitation, as well as research and evidence on root causes, trends, and modi operandi of trafficking in persons, at the national, regional and international levels. This could include the GCM encouraging relevant UN entities to gather and analyse such data to inform evidence-based policy responses.

#### **Tools to assist states combat trafficking in persons (Objective 10, Para. 25 (b))**

ICAT appreciates the reference to the Global Plan of Action to Combat Trafficking in Persons and UNODC's Toolkit to Combat Trafficking in Persons in 25(b). However, rather than referencing the Toolkit, Member States may want to consider more recent examples, such as the Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the International Framework for Action to Implement the Trafficking in Persons Protocol, and the Model Law against Trafficking in Persons.

#### **Irregular migration and trafficking (Objective 10, Para.25 (c))**

While we welcome the reference to "monitor[ing] irregular migration routes which may be exploited by human trafficking networks", the commitment should go beyond monitoring and also include adapting migration management policies and practices to ensure that irregular migration journeys and

irregular migration status do not make people more vulnerable to trafficking, including by promoting legal migration channels and regularisation of immigration status.

#### **Vulnerability (Objective 10, Para. 25(e))**

We appreciate the inclusion in Objective 10, para. 25(e) of specific language on vulnerability, prevention, identification, protection and assistance, and would propose to further unpack ‘apply measures’. Similar to what is envisaged under para (c) of **Objective 9** (vis-à-vis smuggling of migrants), it would be beneficial to lay out the need to ‘develop ad-hoc protocols, consistent with international law, that outline step-by-step measures for the identification of victims of trafficking along migration routes/for migrants, thereby contributing to harmonize, systematize and reflect good international and domestic practices’. Additionally, we recommend strengthening the language on the importance of a gender and child-sensitive approach in all measures related to prevention, identification, protection and assistance.

#### **Definitions (Objective 10, Para.25 (e))**

We recommend removing the term ‘modern slavery’ in Objective 10, 25(e) so as to avoid confusion and to stick to the language of the *Trafficking in Persons Protocol*, while we do acknowledge that in practice, in some cases the two crimes may overlap or be connected.

To further avoid confusion and promote the harmonization of legislation globally, we suggest explicitly referencing *the Protocol* in 25(f), for example: ‘Ensure that definitions of trafficking in persons are in compliance with the *Trafficking in Persons Protocol*, so as to harmonize legislation globally, and in order to distinguish between the crimes of trafficking in persons and smuggling of migrants’.

#### **Non-criminalization of victims (Objective 10, Para.25 (g))**

ICAT suggests including a more explicit reference to the non-criminalization of migrant victims of trafficking under Objective 10 25(g), and recommends it call for the non-criminalization of trafficked persons for irregular entry/ immigration status or involvement in unlawful activities, to the extent they are a consequence of their trafficking situation. It is important to use “non-criminalization”, as irregular entry or residence are usually administrative rather than criminal offences.

#### **Legal aid (Objective 10, Para.25 (g) or (h))**

We would also like to see a reference to access to legal aid for victims of trafficking in persons.

#### **Residency and work permits (Objective 10, Para.25 (h))**

ICAT would encourage those Member States who do so to reconsider linking temporary or permanent residency and work permits for victims of trafficking in persons to their involvement in judicial proceedings, as currently articulated in **Objective 10 para. 25(h)** of the zero draft. We consider that the granting of temporary or permanent residency and work permits for victims of trafficking in persons should be independent of their involvement in judicial proceedings. This should apply as a minimum for child victims of trafficking.

The *Trafficking Protocol* ‘provides that each state party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases, and with appropriate consideration being given to humanitarian and compassionate factors’ (see Article 7).<sup>1</sup>

Best practice has shown that when victims of trafficking can freely decide whether and how to cooperate with law enforcement, this creates an environment of trust, in which more victims are encouraged to come forward, ultimately leading to more prosecutions, and facilitates the provision of the protection and rehabilitation services that all trafficking victims are entitled to, regardless of whether a prosecution takes place. Providing residence and work permits based on humanitarian and compassionate factors, is in the interest of victims of trafficking, as well as of Member States.

### **Witnesses (Objective 10, Para. 25(h))**

ICAT would like to see reference to the protection of witnesses included in Objective 10, 25(h). It is recommended that trafficked persons who do not wish to or are not in a position to act as witnesses— or are not required as witnesses because they possess no relevant information, or because the prosecution cannot be conducted in the destination country—require equally adequate protection measures as trafficked persons who are willing and able to testify.

In the case of child victims of trafficking, all actions need to be undertaken with their best interests in mind, and independent of their cooperation with law enforcement, as in line with *Convention on the Rights of the Child*.

### **Examples and Best Practices**

Examples and best practices of the range of options states may consider can be found in the [OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking](#).

ICAT further refers Member States to ICAT’s jointly developed tools and policy guidance which we hope will be of assistance in the political negotiations going forward. These are available on the ICAT website: <http://icat.network/publications>

---

<sup>1</sup> See UNODC, Model Law against Trafficking in Persons, [link](#), emphasis added