

# Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons

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**Keywords:** Trafficking Protocol, Palermo Protocol, human trafficking, human rights, United Nations, Special Rapporteur, Trafficking Rapporteur

Please cite this article as: J N Ezeilo, 'Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons', *Anti-Trafficking Review*, issue 4, 2015, pp. 144–149, [www.antitraffickingreview.org](http://www.antitraffickingreview.org)

The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000 (Trafficking Protocol), is a watershed in galvanising the global movement against human trafficking. Thanks to the Protocol, international and regional bodies, along with civil society groups, have become involved in researching the issue and supporting anti-trafficking efforts; and states have begun to introduce new laws and policies aimed at criminalising trafficking, protecting victims and preventing future trafficking.<sup>1</sup>

My unwavering position on this debate supports the proposition that the Trafficking Protocol has advanced the global movement against human trafficking. My experience in the six years while I carried out my global mandate as the UN Special Rapporteur on trafficking in persons, especially women and children (2008-2014), reinforced this position. Of course, that is not to say that the international community has got it all right in taking appropriate action and measures to eradicate trafficking and ensure accountability in the implementation of the Protocol. There are still noticeable gaps between the obligations of States with regard to trafficking and the extent to which those obligations are met in practice. There are gaps in knowledge about trafficking, and there are gaps in quick and accurate identification, protection and provision of assistance to trafficked persons; in prevention and prosecution of traffickers; and also in policy and legal frameworks. For example, national penal laws sometimes fail to comprehensively define or criminalise all forms of trafficking and fail to extend protection to all victims. States are still grappling with integrating a human-rights-based approach; a child-centred approach; and an approach that pays attention to causes and vulnerability factors, including the creation of opportunities for legal, gainful and non-exploitative migration, which is crucial for preventing future trafficking. There is also a gap in cooperation not only between countries but also in public-private partnerships, which can address trafficking-related exploitation in supply chains.

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<sup>1</sup> J N Ezeilo, 'First decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children', A/HRC/26/37, UN, 2014.

Notwithstanding, I have been impressed by the development engendered by the Trafficking Protocol around the world.

I want to raise a few specific points addressing the Trafficking Protocol's contribution to the global movement against human trafficking and its inherent exploitation.

1. The Protocol provides an international framework that has impelled a global anti-trafficking movement. The enactment of an international legislative framework, universal in nature and comprehensive in scope is a significant achievement. The Protocol's preamble underscores the fact that effective action requires a comprehensive international approach that will target measures to prevent trafficking, to punish traffickers and to protect trafficked persons, including by protecting their internationally recognised human rights.<sup>2</sup> The Trafficking Protocol is a major shift in the international approach to the exploitation of individuals for private profit and has a higher threshold for rights obligations than the narrowly focused 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.
2. The Protocol has prompted strong political commitment, evidenced by the fact that it has been ratified by 166 States Parties. Since the enactment of the Protocol more than two-thirds of UN Member States, including those that are yet to ratify the Protocol<sup>3</sup> have criminalised one or more of the different types of trafficking enumerated in the Article 3 definition of trafficking in persons.<sup>4</sup>
3. The Protocol's definition of trafficking and what amounts to exploitation is now universally accepted as the most comprehensive definition of human trafficking that has informed regional, sub-regional and national counter-trafficking legal frameworks. This has aided prosecutors worldwide, as well as other actors providing assistance and advocating for the rights of trafficked persons. Moreover, trafficking in persons for the purpose of removal of organs would have remained hidden and unknown without specific mention under this Protocol.
4. The Protocol has advanced global action to protect and respect human rights of trafficked persons. While critiqued as a criminal justice response to trafficking, the Protocol is hardly devoid of human rights, and the rights of trafficked persons are a fundamental objective of the agreement. According to its Article 2(b), the Protocol is intended to protect and assist the victims of trafficking, with full respect for their human rights.<sup>5</sup> Article 6 elaborated on assistance to and protection of victims of trafficking, including to protect their privacy and identity as well as the provision of assistance to aid victims' physical, psychological and social recovery with due regard to the age, gender and special needs of victims.<sup>6,7</sup> The saving clause provisions in

<sup>2</sup> Trafficking Protocol, Article 5 on Criminalisation: 'Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.'

<sup>3</sup> As at 9 January 2015, 166 countries are Parties to this Protocol. In fact, nineteen countries ratified between 2012 and 2014. In 2014 seven countries became States Parties to the Protocol. Retrieved 10 January 2015, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

<sup>4</sup> It was reported in 2012 to be 134 countries, see UNODC, 'Global Report on Trafficking in Persons 2012', UN publication, 2012.

<sup>5</sup> Article 4 on scope of application also reinforced the protection of victims of trafficking in persons offences. Also Article 9 (1) (b) on the need to protect victims of trafficking in persons from revictimisation.

<sup>6</sup> These rehabilitative and reintegrative assistance include: appropriate housing; counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; medical; psychological and material assistance; employment; educational and training opportunities. See Article 6 (3), States Parties are expected to provide these assistance to victims in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.

<sup>7</sup> J N Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children', A/HRC/17/35, UN, 2011 and A/66/283, UN, 2011.

Article 14 firmly incorporates all existing international human rights standards,<sup>8</sup> reiterating States' obligations and the rights of individuals thereto, including non-discrimination on the ground that they are victims of trafficking in persons.

5. Cooperation is imperative in advancing the global fight against human exploitation, and the Trafficking Protocol placed a high priority on cooperation amongst governments and between government and intergovernmental organisations including civil society organisations. This has proved successful in mobilising the much-needed global support.<sup>9</sup> Cooperation in the form of technical assistance towards capacity development for law enforcement, immigration and other relevant officials has enhanced knowledge and skills for victim identification, protection and assistance as well as prosecution of traffickers. States Parties have the responsibility to address the root causes of trafficking and are to do so through bilateral and multilateral cooperation as well as legislative and other measures, which can be educational, social or cultural.<sup>10</sup> International cooperation is also imperative in border controls to detect and prevent trafficking.<sup>11</sup>

Although the 2000 Protocol was preceded by several other anti-trafficking instruments, none covers the topic in as much depth.<sup>12</sup> It is the first universal instrument that addresses all forms of trafficking in persons and all victims. It is now widely accepted that women, men and children are trafficked and that forms of trafficking are as varied as the potential for profit or other personal gain.<sup>13</sup>

By stating its purpose, the Protocol stands out as an international law intended to advance the global movement through collective action to end human exploitation. Consequently, it is a reflection of the political will of governments to fight human trafficking, evidenced by widespread ratification as a first step in the expression of that commitment. My work as Special Rapporteur would have made little impact in the absence of the Protocol. It was the springboard that enabled me to legally and otherwise anchor, explain and guide States towards good practices. A comprehensive approach to trafficking requires action geared towards addressing all forms of trafficking and all victims. It includes the adoption of a human-rights-based and child-centred approach, and an emphasis on causes, vulnerability factors and measures to prevent trafficking in persons.<sup>14</sup> My final take is that the global movement is intrinsically empowered by the Protocol. The movement and the Protocol do not simply run in parallel; rather they are fused, mutually reinforcing each other for effective and sustainable action to end human exploitation inherent in human trafficking.

<sup>8</sup> This extends to the application of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

<sup>9</sup> See Articles 6 (3), 9 (3) and 10 (2) of the Trafficking Protocol.

<sup>10</sup> Ibid. Article 9 (5).

<sup>11</sup> Ibid. Article 11.

<sup>12</sup> The first international agreement on trafficking in persons since the adoption by the General Assembly in 1949 of the narrowly focused Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.

<sup>13</sup> See A/HRC/26/37 *op.cit.*, paragraph 35.

<sup>14</sup> J N Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children', A/HRC/10/16, submitted to the fourth session of the Human Rights Council in 2009. Also 'Mandate of the Special Rapporteur on trafficking in persons, especially women and children', submitted to the 10th Session (HRC) in 2009, pp. 25-26.

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