**Final Evaluation of Swiss Diplomatic Initiative Against Trafficking in Persons with UNODC**

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# Abbreviations and Acronyms

APOV: abuse of a position of vulnerability

COP: Conference of the Parties to UNTOC

CCPCJ: Commission on Crime Prevention and Criminal Justice

EGM: Expert Group Meeting

GLO.ACT: Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants

HRC: Human Rights Council

HTMSS: Human Trafficking and Migrant Smuggling Section

ICMPD: International Centre for Migration and Policy Development

ILO: International Labour Organisation

IOM: International Organisation for Migration

OHCHR: Office of the High Commissioner for Human Rights

OSCE: Organisation for Security and Cooperation in Europe

SOM: Smuggling of Migrants

TIP: Trafficking in persons

ToR: Terms of Reference

UNHCR: United Nations High Commissioner for Refugees

UNODC: United Nations Office on Drugs and Crime

UNTOC: United Nations Transnational Organised Crime Convention

WG TIP: Working Group on Trafficking in persons

# Executive Summary

## *Background*

The Swiss Diplomatic Initiative against trafficking in persons with the United Nations Office on Drugs and Crime (UNODC) is a long-term project combining Swiss diplomatic efforts in the framework of the UN Transnational Organised Crime Convention (UNTOC) States Parties Conference (COP) with UNODC Human Trafficking and Migrant Smuggling Section (HTMSS) technical expertise. It seeks to achieve clarification of key concepts of the UN Trafficking in Persons Protocol (TIP Protocol) which supplements the UNTOC and trigger changes in the law and policy making of UNTOC States Parties and international organisations. States interpret the definition of trafficking in persons contained in the TIP Protocol differently which affects both the consistent identification of trafficking victims and the prosecution of perpetrators of the crime. The project has run from April 2011 and is currently being finalised. It has been financed by the Swiss Federal Department of Foreign Affairs (FDFA) for a total of 928 139USD over a 9-year period in addition to unquantified in-kind contributions by UNODC and other States.

*Purpose, scope and methodology of the evaluation*

This independent evaluation has as its main objective to assess the Swiss Diplomatic Initiative with UNODC following the main OECD Development Assistance Committee (DAC) criteria, where those criteria are applicable to assessing the technical aspects of the work, and to identify good practices and lessons learned to guide the development of future interventions. The evaluation’s primary users are the Swiss FDFA and UNODC/HTMSS.

The evaluation used a mixed-methods approach, including qualitative and quantitative data and using various research tools and data sources such as interviews, surveys and a desk review. 32 people were consulted of whom 65% were women and 102 documents reviewed.

*Findings and Conclusions*

Design

The design of the initiative is captured in a series of diplomatic documents (non-papers), Swiss credit proposals and funding agreements with UNODC. The aims of the project were to be achieved through an innovative technical and political partnership between UNODC and FDFA with UNODC developing interpretive guidance for criminal justice actors on definitional concepts to be ultimately integrated into standard setting tools, whilst FDFA worked in partnership with States to ensure that these efforts had political support, expressed through resolutions and recommendations of the COP. The short-term funding agreements with UNODC were well designed to achieve the production of issue papers on key concepts in the definition of trafficking in persons, but do not integrate activities aimed at achieving the longer-term objectives under the initiative. Yet, these limitations have allowed the project to evolve over time and to adapt to possibly changing circumstances.

Relevance

The project was evaluated as highly relevant, with its objectives being aligned with the real needs of policy makers and criminal justice actors working on TIP. The development of short practical guidance notes for practitioners on key concepts were seen as most relevant to the work of practitioners rather than more lengthy discussion papers and should be supported in future.

Effectiveness

The diplomatic dimension of the initiative has proven highly effective in ensuring the legitimacy, visibility and sustainability of the technical work of UNODC. It has managed to engage multiple States, beyond like-minded, over a significant period of time at a working level and has fostered solid partnerships. The technical process has been highly regarded in generating quality publications that have contributed to clarifying key concepts in the TIP definition and a shared understanding amongst States. The Expert Group Meetings (EGMs) have also provided effective platforms to validate research findings, strengthen professional networks and ensure a sense of ownership of the process. Less effective has been the dissemination of the papers which has relied mainly on their publication at side events in Vienna and Geneva, ad-hoc dissemination by EGM experts and use by UNODC HQ staff in their technical and policy work. There has been more limited distribution and use by UNODC field staff and more could have been done to promote the results with regional organisations and judicial and academic networks.

Efficiency

The financial contribution to the project is relatively small in view of its duration and scope and represents very good value for money in view of the its achievements. That said, the evaluation could not asses the actual allocation of resources but the analysis of Swiss credit proposals and UNODC funding agreements indicated a progressively increasing role for UNODC in project implementation and a corresponding reduction in resources allocated to external consultants. The rather uneven pace of implementation points to challenges for UNODC in the management of its human resources with staff turnover, time and competing priorities presenting challenges.

Impact

The evaluation found numerous examples of the impact of the technical papers in the development of new law and policy, in informing judicial reasoning and jurisprudence and in the development of training materials by numerous international organisations, particularly in relation to the first paper on Abuse of a Position of Vulnerability (APOV) with its Guidance Note. There is also evidence of better informed discourse on the topics clarified through the papers in relevant diplomatic and political fora.

Sustainability

The initiative’s design with its twin-track approach and long-term engagement was found to be conducive to sustainable outcomes. It has also helped to promote stakeholder ownership and generate a commitment to using and disseminating the papers, further contributing to the sustainability of the initiative.

Recommendations

1. **To improve design**, strengthen UNODC programming and accountability through developing theories of change alongside developing logical frameworks and a measurement system to ensure better monitoring of performance and assessment of impact.
2. **To enhance effectiveness and impact**, develop a systematic and targeted dissemination strategy of outputs.
3. **To enhance effectiveness and impact**, ensure that the issue papers are appropriately used to inform the content of the Model Law against TIP and the Legislative Guide on the implementation of the TIP Protocol and seek to distil more practical and operational guidance with and for criminal justice actors.
4. **To improve efficiency**, ensure that sufficient human resources are allocated to achieve outputs on time and that terms of reference for both consultants and EGM experts are developed to accurately reflect expectations, tasks and timelines and are adhered to.
5. **For future learning**, consider collecting evidence to document whether a more restrictive interpretation of the TIP definition, enhances clarity and leads to better cases or if it is damaging and inhibits the prosecution of cases and the protection of victims, particularly where subtle means of coercion have been used.

 *Best practices and Lessons learned*

Best Practices

1. The methodology used to develop the issue papers was effective with the ‘bottom-up’ approach of engaging States at working level, helping to engage experts, giving them ownership of the process and in turn generating a commitment to using and disseminating the publications.
2. The Swiss diplomatic initiative (political process) ensured sustained support at the multilateral level on TIP over a long period of time alongside long-term funding for the technical work contributing to sustainable results. The twin-track approach proved crucial in providing resonance and legitimacy to the technical work of UNODC, acknowledged by States at the COP and in the WG on TIP. This approach can be replicated in other fora on other thematic areas.

Lessons learned

1. The EGMs contributed to building a learning community of practitioners that has potential to develop over time to continue informing UNODC work and to foster dissemination of good practice, more effective implementation and international cooperation.
2. Cost sharing with concurrent initiatives can contribute to better geographical coverage and balance in representation of legal systems.
3. A focused strategic approach to dissemination of UNODC publications is essential for better impact.
4. Build on the richness of the issue paper on exploitation and on recent developments in jurisprudence to develop more operational guidance better responding to practitioners’ needs.
5. The issue papers provide core knowledge to inform all UNODC HTMSS’s work and a systematic roll-out and training of all staff, particularly new staff, on their use would be very useful.

# Introduction

## Thematic Context

Traffickingin persons is a crime committed for the sole purpose of exploitinga person, involving the deception or coercion of the victim or the use of other means such as the abuse of a position of vulnerability, amongst others.[[1]](#footnote-1) There are an increasing number of trafficking victims detected and reported globally but that number represents a small proportion of the estimated numbers of people trafficked. [[2]](#footnote-2) Trafficking is a highly-gendered phenomenon with 49% of detected victims being women and 23% girls, the vast majority of whom are trafficked for sexual exploitation. At the same time women and girls represent 35% of victims trafficked for forced labour whilst more than half of victims of trafficking for forced labour are men.[[3]](#footnote-3) Although most victims detected globally are trafficked for sexual exploitation, this pattern is not consistent across all regions where trafficking for forced labour is the most commonly detected form.[[4]](#footnote-4)

Although globally the number of convictions for trafficking crimes is increasing, the absolute number of convictions remains very low such that trafficking still represents a very low risk crime with estimated profits at 150 billion USD per year.[[5]](#footnote-5)

The UNTOC and TIP Protocol, adopted in November 2000, provide a framework for responses to trafficking focusing not only on the criminalisation of the phenomena but incorporating important provisions on the protection of victims alongside measures to prevent and cooperate on tackling trafficking.

## Description of the project

The TIP Protocol contains the first internationally agreed definition of trafficking in persons but the key concepts of the definition have not been defined or, as in the case of abuse of a position of vulnerability, do not exist as concepts in criminal law. This can lead to discrepancies in the way States apply the TIP Protocol and can inhibit the identification of victims of trafficking or undermine investigations and prosecutions of perpetrators.

Since September 2010, the Swiss FDFA through its Human Security Division (HSD) has been engaged in a diplomatic initiative in the framework of the UNTOC States Parties Conference and in cooperation with UNODC to achieve clarification of the definition of key concepts of the TIP Protocol and trigger changes in the law and policy making of UNTOC States Parties. It has sought to achieve this through (i) examining and clarifying the key concepts of the definition on the basis of existing national laws, practice and experience and (ii) developing issue papers, guidelines/basic principles with a view to providing guidance to countries on how to apply the TIP Protocol effectively.

The initiative was initially focused on the development of three “issue papers” around three key notions of the definition, namely "abuse of a position of vulnerability" (2012), "consent" (2014) and "exploitation" (2015). For each issue paper, a review and analysis of the practice of 12 countries was conducted which was then subjected to broader consultation and review at expert group meetings (EGMs) before finalisation and publication of the papers. This initial review included UNODC undertaking in-depth and in-country interviews with a range of experts from an overall 30 Member States.

The subsequent phase of the process involved UNODC developing a comprehensive ‘Practical Guide’ with a particular focus on a joint examination of the findings of all three issue papers. In addition, revision of the UNODC Legislative Guide for the Implementation of the TIP Protocol and the UNODC Model Law against TIP were envisaged.

With the support of like-minded states, Switzerland introduced supporting wording in UNTOC Conference of Parties (COP) resolutions; as well as Working Group on Trafficking (WG TIP) materials and recommendations with the purpose of anchoring the initiative in multilateral policy-making. Side events in Vienna, Geneva and Doha were held throughout the process in order to present the results. The Special Rapporteurs on Trafficking in Persons, especially women and children, whose mandate Switzerland supports financially, were also involved, alongside other international organisations such as OHCHR, IOM, OSCE, UNICEF and others.

The initiative has been implemented by the UNODC HTMSS of the Organized Crime and Trafficking Branch, Division of Treaty Affairs (HTMSS/OCB/DTA).  UNODC has a global mandate under UNTOC and its Protocols to provide technical cooperation to States and through its normative work assists states in the ratification and implementation of the treaties and development of domestic legislation alongside providing secretariat and substantive services to the COP to UNTOC and the WG TIP.

## The evaluation

### *Uses and user of the evaluation*

According to the ToRs and preliminary discussions with key stakeholders, this independent evaluation has as its main objectives to: a) Assess the initiative following the main OECD/ DAC criteria to the extent that such criteria are applicable and relevant to assessing technical aspects of the work but recognizing that they do not lend themselves to an assessment of the political/diplomatic work under the initiative, b) Identify best practices and lessons learned based on solid evidence. The main users of the evaluation as detailed in the ToRs are FDFA/HSD and UNODC/HTMSS.

***The composition of the evaluation team***

The evaluation team is composed of two consultants both with relevant evaluation and thematic experience. Shivaun Scanlan, is a human rights lawyer with 20 years of experience working on human trafficking and migrant rights and Liliana Sorrentino is a specialist on human trafficking and migrant rights with more than 15 years of policy, advocacy, research and training experience with research institutes, NGOs and IOs.

###

### *Data collection*

The evaluation applied a mixed methods approach, including quantitative and qualitative data and using the following research tools and data sources:

**Desk review:** Documentation provided by FDFA/HSD and UNODC/HTMSS was supplemented by relevant literature from a variety of sources to establish a good understanding of the project’s activities as well as the wider context within which it operates (see annex 2 for an overview of documents reviewed).

**On-line surveys:** Brief web surveys were conducted in English through SurveyMonkey. The electronic questionnaires were sent to (i)19 key stakeholders identified as having participated in the initiative through at least one of its activities and (ii) 20 UNODC field staff. The evaluation team received 8 full responses, 4 from key stakeholders and 4 from UNODC field staff, that cannot be considered a statistically representative sample but that has served to complement other sources of information.

**Interviews/small focus group discussions:** The evaluation team conducted semi-structured interviews (1 or 2 people) or small focus group discussions (3 to 5 people) with 24 key informants in total via Skype (15 people) and in person (9 people) selected on the basis of the stakeholder inventory developed with UNODC and HSD. They included UNODC staff, national experts, practitioners and diplomats that have directly participated in or benefited from activities related to the initiative alongside the UN Special Rapporteurs on Trafficking in Persons. Efforts to reach out to international organizations who have contributed to the EGMs over the years were not successful, however the evaluation team managed to interview some individuals who attended the EGMs on behalf of certain IOs such as OSCE and IOM (currently a UNODC staff member) (see annex 3 for a sex-disaggregated overview of people consulted via interviews and surveys).

### *Limitations*

The evaluation has taken place before the initiative has ended. The Legislative Guide for the Implementation of the TIP Protocol and the Model Law against TIP which were to have been part of the evaluation process have not yet been finalised and shared with the evaluation team due to unexpected delays in the drafting process. This has meant that there has been limited scope to assess the impact of these tools on achieving definitional clarity or influencing legislative and policy change. The fact that the project has been conducted over a long period of time with a number of extensions and delays in finalising outputs has meant that many stakeholders have moved on, making it difficult to reach relevant informants for interviews and also possibly contributing to the limited survey response. This is particularly the case in relation to diplomatic informants who were involved in the early stages in the political aspects of the initiative, as well as employees from international organizations who contributed to EGMs. At the same time the long-time frame over which the initiative has been conducted and supported is recognized as one of the project’s strengths (see under sustainability) and has allowed for the assessment of longer-term results flowing from the project.

The funding proposals that frame the technical process of the initiative are short-term and lack a theory of change, logical frameworks, baselines, and other monitoring information at a country or organisational level which has made it difficult to assess the degree of project implementation compared to original plans. On the other hand the political dimension of the initiative is outlined in policy documents and non-papers, since logframes are not used for structuring policy/diplomatic work which by its nature is not linear and cannot be assessed easily in accordance with OECD/DAC criteria. To address these limitations the evaluation team made a contribution analysis of the project progress.

# Evaluation Findings

## Design

**Evaluation questions**

To what extent was the design of the project/process appropriate to achieving and capturing expected results (outputs and outcomes)?

To what extent was the project based on needs assessments/baselines?

**Finding**: *A series of Swiss credit proposals and diplomatic documents (e.g. non-papers) outline the aims and anticipated results of the initiative which involves an innovative twin-track political and technical dimension. The political component of the initiative is led by the Swiss FDFA and the technical component by UNODC. The funding attributed to the project covers only activities connected with the technical process and not the political process.*

The Swiss credit applications (‘kreditantrag’) and non-papers, outline the long-term aims of the project which involves both a ‘technical’ process and a ‘political’ process. The aims of the technical process are

1. to provide interpretation guidance on definitional concepts to assist criminal justice actors in the identification of trafficking victims and prosecution of trafficking crimes; and
2. to generate standards which could be integrated into a Compendium of UN Standards and Norms on Crime Prevention or a similar suitable standard setting tool.

Overall, the technical process should result in providing clear operational guidance for practitioners in the application of the TIP definition and develop recommendations and advisory notes for practitioners.

The political process, to run concurrently with the technical process, was to legitimize the technical process and support the future integration of the papers in best practice tools thereby contributing to more effective implementation of the TIP Protocol. For this purpose, the Swiss FDFA would act in concert with like-minded states and involve the UN SR on TIP in support of the initiative. The rationale behind the political dimension was to ensure that State Parties recognized the need for a consistent application of the TIP Protocol and the need for guidance to support a common understanding of concepts, which in turn would foster international cooperation. Swiss diplomacy in the COP and in its WG TIP, which predates the start of the technical aspects of the project, aimed at securing the political support needed for UNODC’s work by ensuring that the agency was given a clear mandate to develop this work. As guardian of UNTOC and its Protocols, UNODC was seen as best placed to contribute its technical expertise.

Sources consulted indicated that States supporting the diplomatic aspects of the initiative had a number of over-arching aims in mind including advancing criminal justice priorities and supporting criminal justice capacity generally, securing bilateral cooperation with particular countries involved in the initiative and, in terms of what they anticipated of the technical work, to head off what they saw as negative trends in terms of either too broad or too narrow an application of the definition of trafficking. Also of importance to some countries was that participation did not necessarily signify that they wanted or needed to benefit themselves from the process (e.g. some countries like Canada, Switzerland alongside other European countries had already adopted legislation on TIP and were not planning domestic legal reforms) although this did not mean that they could not benefit from the guidance developed in other ways, such as through influencing prosecutorial strategies, as in Switzerland.

**Finding***: A series of short term (between 12-24 months) funding agreements with UNODC entered into between 2011-2018 map an evolution in the goals of the technical work, which focuses initially on the development of issue papers and practical guidance for criminal practitioners on definitional concepts under article 3 of the Protocol and concludes with the revision of UNODC’s key tools for technical assistance work, its Model Law and Legislative Guide. Overall the design of each individual agreement is crafted to achieve the short-term results but elements are missing in the overall design to achieve and capture longer-term outcomes. This design to some extent results from the short-term nature of the funding attributed under each agreement.*

The funding agreements adequately describe the aims of the project, the activities to be implemented and the expected results in terms of outputs. The agreements explain the process to be followed in conducting the research for the issue papers, developing the research products and the role of the EGMs. The research methodology is well designed involving several desk and field research activities that specify the number of countries to be included in country surveys and in case law analysis. The EGMs were relevant to the achievement of project objectives, in the sense that they were conceived as a consultative process to validate research findings and, to a certain extent, to generate a shared understanding of the issues.

The technical work of the initiative was designed progressively, with the initial funding agreement designed to test the feasibility of the approach and subsequent funding proposals dependent on the success of earlier work conducted. As a result, each funding agreement is mainly focused on a specific output (i.e. an issue paper) and missing in the design are specific activities, targets or indicators focused on achieving the longer-term outcomes intended by the project, such as changes in policy and law resulting from a more consistent understanding of the concepts and improved identification of victims or prosecution of perpetrators. Equally no reference is made to data gathering or monitoring tools to monitor desired longer term outcomes or impact.

On the one hand, this approach lacks a clearly articulated long-term strategy, with the absence of targeted activities to foster the dissemination of the issue papers amongst relevant stakeholders representing one of the most important gaps. On the other hand, the absence of an overall planning document has allowed the project to evolve over time and to adapt to possibly changing circumstances that were not identified as risks in the initial funding agreements. This is most notably evidenced by the discontinuance of the development of short practical guidance/advisory notes for practitioners following the first issue paper on APOV, and in its place the elaboration of key issues for consideration for practitioners and later the development of more generic guiding principles on concepts within the TIP definition. The impact of these changes is discussed further under relevance.

**Finding**: *The project was not based on a specific preliminary assessment or baseline but the fact that definitional concepts were problematic in countries was evident through* the *resolutions and recommendations of the COP to UNTOC and its WG TIP, through UNODC’s work in the field and other research.*

At the diplomatic level a number of countries were voicing concerns about these topics. In 2008, delegates to the COP raised the challenge of the absence of a definition of ‘exploitation’ as a critical element leading to a lack of clarity in the implementation of the Protocol.[[6]](#footnote-6) A year later the WG TIP tasked the Secretariat with the preparation of issue papers “*to assist States parties in better understanding and interpreting key concepts of the Trafficking in Persons Protocol, especially legally relevant definitions in order to assist criminal justice officers in penal proceedings*” and required that this work be done in consultation with States Parties.[[7]](#footnote-7) (See more under relevance). These discussions led to encouraging numerous States to take part in the national surveys conducted as part of the technical work.

Literature on TIP also confirms that in many countries practitioners have been struggling with the application of the TIP definition since the entry into force of the Protocol.[[8]](#footnote-8)

## Relevance

**Evaluation questions**

To what extent did the project respond to real needs of stakeholders/beneficiaries including legislative/policy makers/criminal justice actors/victims of trafficking

To what extent is the project suited to priorities and policies of UNODC, target countries, stakeholders and donor.

**Finding**: *All stakeholders consulted agreed that there is (and continues to be) a real need to provide conceptual clarity on the definition of trafficking in persons. The initiative was highly relevant to the needs of stakeholders.*

The evaluation has found evidence that the project’s objectives were aligned with the real needs of policy makers and criminal justice actors working on TIP. Interviews with key informants working at the national and international level indicate that traffickers have been increasingly using subtle means of coercion, such as APOV, to achieve control over victims; that practitioners lacked clarity about the meaning of this concept and that the scope of its application varied significantly from country to country depending on legislation and jurisprudence.[[9]](#footnote-9) Prosecutors also face difficulties with these concepts, in particular around issues of consent and exploitation in determining at what point a situation becomes trafficking and so have valued discussion and guidance on these issues.

**Finding**: *There exists a tension with respect to how UNODC should assist in providing conceptual clarity on the TIP definition and whether needs are best met by producing short practical guidance on the interpretation of the TIP definition or by more diffuse presentations of issues and approaches to key concepts within the definition.*

While there is an expressed need for a common approach to concepts within the TIP definition, and increasing realization of the value of sharing experiences and identifying good practice, it was reported that certain countries might resist the soft-law developments of the UN and would not welcome what might be seen as the imposition of new standards, when interpretations of the TIP Protocol are seen as a domestic matter. At the same time, UNODC’s mandate does not include an interpretive function on the meaning of the TIP Protocol, although through its work it can contribute to the formulation of ideas and concepts that may later emerge in soft standards through resolutions of the COP and recommendations of the WG on TIP.

**Finding:**  *Following the first issue paper on APOV, UNODC revised its approach to guidance, and has not developed separate short practical guidance or advisory notes, originally envisaged under the funding agreements and credit proposals. Many stakeholders consulted appreciated more this form of guidance on definitional concepts which better met their needs than more lengthy discussion papers.*

All papers have been appreciated by those consulted to different degrees but the APOV paper has been highlighted by the majority as particularly important due both to the nature of the topic and because of the shorter practical guidance that was developed with it. It is also notable that it is the only paper that has been referenced in court cases in Argentina, Colombia, South Africa and UK.

Many stakeholders consulted believed that all papers would have benefited from more synthesised guidance that could have been more practically implementable and relevant to their needs. At the same time, it was also recognised that there were difficulties distilling such guidance in view of the different legal regimes and approaches to topics and with many questions remaining fundamentally political, such as when prostitution becomes exploitation or if forced sexual exploitation is forced labour.

Some respondents indicated that the nature of the topics of consent and exploitation did not lend themselves to guidance in view of the diversity of domestic legal regimes and approaches. Other stakeholders disagreed with this view and argued that it should be possible to go beyond underlying values underpinning the approaches to consent and exploitation and provide practical guidance. Some further argued that in the case of exploitation there is a growing body of experience and case law worldwide that can be used to provide more operational guidance. Others noted that the issue papers remained relevant and useful even without practical guidance because of their insights into other countries’ approaches and practices, and that they were relevant also for the purpose of international cooperation.

 For the field offices of UNODC the Model law against TIP and the Legislative Guide   for the Implementation of the TIP Protocol are the most important tools for use in their technical assistance to States, so the revision of these tools is most relevant to their needs.

## Effectiveness

**Evaluation questions**

To what extent were objectives/results achieved? How well were outputs achieved? (mapping of outputs, quality, scope and outreach)

What were major factors influencing the achievement/non-achievement of objectives?

What follows is a chronological overview of key activities and outputs developed under the project including the key resolutions and recommendations adopted by COP and the WG TIP in support of the process (highlighted in blue) according to UNODC annual reports and other information sources available.

**Table 1. Activity Mapping - Chronology**

|  |  |  |
| --- | --- | --- |
| **Date** | **Activity** | **Comments and attendees** |
| **14-15 April 2009** | **First Session, Vienna****CTOC/COP/WG.4/2009/2** | *‘The Secretariat should prepare in consultation with States parties, issue papers to assist States parties in better understanding and interpreting key concepts of the TIP Protocol, especially legally relevant definitions in order to assist criminal justice officers in penal proceedings.’* |
| **27 - 29 Jan 2010** | **Second session, Vienna (CTOC/COP/WG.4/2010/6)** | ‘*The Secretariat should prepare in consultation with States parties, issue papers to assist criminal justice officers in penal proceedings, on subjects such as consent, harbouring, receipt and transport, abuse of a position of vulnerability, exploitation and transnationality. In addition the Secretariat should ensure that any new concepts were integrated into existing tools and materials*.’ |
| **10-12 October 2011** | **Fourth session, Vienna (CTOC/COP/WG.4/2011/8)** | ‘*States parties should continue to support the work of UNODC to combat trafficking in persons by providing information to UNODC identifying examples of abuse of power or of a position of vulnerability and how those concepts are addressed and applied in domestic law or jurisprudence, recognising that those concepts may vary from country to country according to their legislation and jurisprudence*.’ |
| **28-29 June 2012** | **EGM** Vienna on 1st issue paper on APOV  | 20 experts, including experts from 10 countries surveyed, and from OSCE, ILO and IOM |
| **17 October 2012** | **Side event at 6th session of COP to** **launch 1st issue paper and Guidance Note on APOV** | Organised by Switzerland in collaboration with UNODCDiscussion with speakers from Egypt, UN Special Rapporteur on TIP, UNODC, and lead consultant from paper. Swiss representation: Permanent representative of Switzerland, HE Mr Greminger |
|  | **Sixth session, Vienna,** **COP Resolution 6/1****CTOC/COP/2012/15**  | ‘…*welcomes the UNODC issue paper on abuse of a position of vulnerability and other means within the definition of trafficking in persons and requests the Secretariat to continue its work on the analysis of key concepts …by preparing similar technical papers*.’  |
| **27 May 2013** | **Side event during the 23rd Session of the HRC** | Organised by Switzerland and Egypt in collaboration with UNODC and OHCHR. Discussion with speakers from Switzerland, Egypt, UNODC, and UN Special Rapporteur on TIPSwiss representation: Special Representative of Switzerland to the HRC, HE Mr Schmid |
| **6 November 2013** | **Plenary event** and **side event** on key concepts of TIP Protocol during Interim Working Group on TIP | To provide states with information on process of preparing the issue papers and update them on the development of the consent paper, invite them to participate in that process and distribute APOV paper. Plenary discussion with speakers from Australia, Finland and Thailand and side event with UN Special Rapporteur on TIP, UNODC, ILO and lead consultant from paper. |
| **6-8 November 2013** | **Fifth session, Vienna** | ‘*State parties should consider reviewing their legislation ...paying attention in particular to issues such as the irrelevance of victims consent.. State parties are encouraged to consider good practices in relation to consent identified by some States…States parties* ***should consider taking into account the issue paper prepared by UNODC in order to clarify the key concept of abuse of a position of vulnerability and abuse of power****, which are closely linked with the issue of consent*’ |
| **17-18 Feb 201**4 | **EGM**, Vienna on 2nd issue paper on consent  | 30 participants including 21 national experts from 12 countries, the UN Special Rapporteur on TIP, and 8 experts from OHCHR, ILO, IOM, UNICEF, EU Anti-Trafficking Coordinator, and Australia-Asia Programme to combat TIP. |
| **8 October 2014** | **Side event** : **Clarifying the Definition of trafficking in persons: Consent’** in margins of 7th session of COP and **launch of 2nd issue paper on consent**  | Organised by Switzerland in collaboration with UNODC. Discussion with speakers from, UNODC, Switzerland, Thailand, Israel and UN Special Rapporteur on TIP Swiss representation: Speaker, Mr Rolf Stalder, Alternate Permanent Representative of Switzerland to UN |
| **13-14 October 2014** | **EGM**, Vienna on 3rd issue paper on exploitation  | 23 participants including 13 national experts from 11 countries, nine of which were from countries interviewed for the paper, 10 individual and international organisations’ experts (IOM, UNHCR, OHCHR, OSCE, and Australia-Asia Programme to combat TIP) |
| **12-19th April 2015** | **Ancillary meeting**: ‘**Clarifying the definition of Trafficking in Persons’** to take stock of findings of all three issue papers at 13th UN Congress on Crime Prevention and Criminal Justice, Doha and **launch of 3rd issue paper on exploitation**  | Organised by Switzerland in collaboration with UNODC. Plenary discussion with speakers from UNODC,and UN Special Rapporteur on TIP and lead consultant Swiss representation: Host Mr Bernardo Stadelmann, Deputy head of Federal Office of Justice, Head of Swiss Delegation to the 13th UN Congress on Crime Prevention and Criminal Justice, |
| **17 June 2015** | **Side event** ‘**Understanding the Trafficking in persons Protocol : The UNODC issue papers on abuse of a position of vulnerability, consent and exploitation**’ at 29th session of HRC – Geneva. | Organised by Switzerland in collaboration with UNODC. Plenary discussion with speakers from UNODC, Switzerland, Brazil, Argentina and UN Special Rapporteur on TIP.Swiss participation host: Ambassador Alexander Fasel, Permanent Representative of Switzerland to UN |
| **16-18 November 2015** | **Sixth session, Vienna** | **‘*Key concepts of the Trafficking in Persons Protocol, with a focus on the UNODC issue papers on abuse of a position of vulnerability, consent and exploitation*** *: States are encouraged to clearly define key concepts to establish the parameters of what constitutes the crime of trafficking in persons in their national legislation…in order to facilitate a common understanding and consistent implementation of such key concepts including …abuse of a position of vulnerability, consent and exploitation*.’ |
| **10-11 November 2016** | **EGM,** Vienna on 4th issue paper on international legal definition | 25 participants including 12 experts from 11 countries, 6 national/international experts, the UN SR on TIP, and 6 experts from UNODC headquarters |
| **26th May 2017** | **Side event** ‘**UNODC’s new tools against human trafficking and migrant smuggling’** and **launch of 4th paper on international legal definition** at 26th session of CCPCJ, Vienna |  |
| **3-5 December 2018** | **EGM on model law and legislative guide** | 27 experts including 11 National Project Officers from UNODC field offices (GLO.ACT staff members) and 13 from UNODC headquarters, and 3 national/international experts |
| **7-8 January 2019** | **EGM on model law** | 7 national/international experts and 5 experts from UNODC headquarters  |
| **11-13 February 2019** | **EGM on model law and legislative guide** | 32 participants including 14 experts from 11 countries, the UN SR on TIP, experts from ILO, UNHCR, , ICMPD and IOM, OSCE ,plus 8 experts from UNODC headquarters  |

The following table provides additional quantitative information about the main activities/outputs:

**Table 2 Quantitative information on activities**

|  |
| --- |
| **Overall objective:** **analysis and clarification of the definition of key concepts of the TIP definition** |
| **Activities** | **Achievement as per data from UNODC donor reports** |
| Review the concepts of APOV, consent and exploitation in different jurisdictions | * N. of countries surveyed: 42 (which aimed to represent a range of legal systems, civil, common law and mixed)
* N. of experts surveyed, including EGM experts: 205
* N. of countries for which there was a review of jurisprudence: at least 12
* Countries surveyed more than once:
 |
| Develop draft issue paper | * 4 papers developed
 |
| Global consultations in the form of EGMs for the issue papers | * N. of meetings: 4
* N of participants excluding UNODC staff: 92
 |
| Develop recommendations and advisory notes | * N. of advisory notes: 1 on APOV
 |
| Translation of the issue papers | * IP APOV: EN, PT, SP, FR
* IP Consent: EN, FR, PT, SP
* IP Exploitation: EN, AR [[10]](#footnote-10)
 |
| Publish and disseminate the issue papers | * N. of launching events: 7 events
 |
| Global consultations in the form of EGMs for the Model Law and the Legislative Guide  | * N. of meetings: 3
* N of participants excluding UNODC from HQ: 45
 |

**Quality**

**Finding**: *The diplomatic process achieved the legitimacy, visibility and sustainability intended for the technical process. It has fostered partnerships with and engagement of numerous countries and has secured formal acknowledgement of UNODC’s work in this regard. This in turn has strengthened UNODC’s mandate to support implementation of UNTOC and the TIP Protocol.*

Throughout project implementation the Swiss FDFA has been committed to ensuring that the COP and/or its WG TIP acknowledge and welcome the issue papers and implicitly recognize the interpretative guidance provided. This has been achieved through a series of activities including bilateral and other meetings with States Parties, letters to permanent delegations, keynote addresses, the hosting of events alongside the usual communications with delegations to the UN and has resulted in the series of supportive recommendations and resolutions adopted, essentially the key outputs of the political process, listed in table 1 above. The diplomatic process has also supported the technical process in other important ways; stakeholders underlined the importance of State Parties being consulted from the outset on the initiative and encouraged to contribute their country experience by facilitating the field research and meetings of the research consultants or through identifying and ensuring the participation of national experts for EGMs. The commitment of numerous States to the process is also evidenced by the active engagement of a number of states (e.g. Egypt and Thailand) in side events organised by Switzerland and UNODC to raise awareness of the initiative and its results at the HRC, in the margins of the COP and at the ancillary meeting at the XII UN Crime Congress in Doha.

**Finding:** *The quality, thoroughness and complexity of the four issue papers has been widely regarded.*

All stakeholders interviewed considered that the four issue papers developed under the initiative were well written, clearly structured and succeeded in presenting complex and nuanced issues in a balanced way. They contributed to promoting a shared understanding of key concepts of the TIP definition providing an overview and analysis of the international legal and policy framework around each key concept, the results of national surveys and insights into countries approaches, case law and practitioners’ views.

Overall, interviewees praised in particular the issue paper on APOV because of its innovative contribution to shaping the understanding of this new concept in international criminal law, and for providing practical and useful guidance. The consent paper was also widely appreciated and on the issue of whether consent is always nullified where means are used, the fact that the paper presented different viewpoints was considered balanced. The exploitation paper was seen as rich in the analysis and insights into national practice and approaches, but more limited in drawing conclusions and providing practical guidance based on available case law. It was also considered dated by some due to the developments on this issue in national and European Court of Human Rights case law.[[11]](#footnote-11) The topic of labour exploitation was most frequently cited as still needing conceptual clarification. In terms of restricting the definition to more serious forms of trafficking, a topic debated in the papers, stakeholders felt it was important to avoid prescription in particular because there was no evidence to indicate that a more restrictive definition led to better quality cases or vice versa. The final paper on the international legal definition, although originally described in funding agreements as intended to provide practical guidance on the linkages between all three concepts, was seen by some to have fallen short in having provided limited practical guidance. For example an interviewee noted that the paper could have offered a more systematic and interconnected interpretation of the key concepts such as how more clarity on APOV can prove helpful in determining the irrelevance of the means, or how more clarity on the notion of exploitation and its severity can prove helpful in determining the irrelevance of consent. The 4th paper was least referred to by informants and not all those consulted were familiar with it.

**Finding:** *Four Expert Group Meetings (EGMs) were organized for the validation of the issue papers and involved a total of 92 independent, national and regional experts, and representatives from international and regional organizations.* *EGMs provided an effective platform for informing the issue papers, validating the research findings, allowing for an exchange of professional experience and led to the strengthening of professional networks.*

Several stakeholders found that the EGMs provided valuable opportunities for the exchange of information, perspectives and expertise from a range of countries, and were effective in improving and fine-tuning key findings of the research and provided a sense of ownership of the process. Views differed as to whether EGMS could provide an effective space for drawing conclusions and distilling practical guidance although such outcomes were also seen to be a function of the management and goals of the meeting and the quality of the expertise available. Generally, EGMs were considered well-organised although some would have appreciated more time between travel and participation and the timely sharing of documentation for review. Some stakeholders found that the meetings should have brought more criminal justice practitioners to the table, for whom the topics were particularly relevant, and that they should have played a more central role in chairing the meetings rather than academics or UNODC staff. Some stakeholders felt that the net for participation should have been spread more widely to allow for fresher perspectives, particularly beyond the circle of anglophone experts.

**Scope and outreach**

**Finding:** *Countries selected for the field research and representation at EGMs represented a variety of civil, common law and mixed systems but were geographically limited. To offset this imbalance, electronic surveys with 11 further countries were conducted in preparing for the 4th issue paper and EGM.*

Research for the first three papers involved field research and inputs from a total of 30 countries across multiple regions of the world, representing a variety of civil, common law and mixed systems. Australia, Brazil, Canada, Egypt, Thailand, UK and the US were used for two studies (i.e. 17% of countries consulted). No single country was used for all three studies. The logic of using some of the same countries for more than one study was due to the fact that these countries had more case examples and provided continuity for the papers. One disadvantage of this approach included that the findings were dominated by practices in these countries and so were not sufficiently representative of other regions. The selection of countries for inclusion in the field research was made through a combination of efforts involving both diplomatic efforts in Vienna, recommendations of the WG TIP to participate in the process alongside UNODC efforts and the consultants own selection. Language and budget constraints however were determining factors in the selection of field research countries, impacting on both the geographical balance and the representation of different legal systems in the issue paperswith African, Asian and francophone countries in particular being under-represented.

Some experts participated in one or more or all four of the EGMs (for example at least 8 experts attended 2 or 3 consultations). Experts who contributed most frequently tended to be from Western countries. African and Asian countries again were underrepresented in terms of experts participating in EGMs (particularly from Africa).

In 2016, UNODC sought to mitigate these factors by conducting an electronic survey with 11 additional countries, the findings from which contributed to the 4th issue paper. Similarly, at the 4th EGM in 2016, UNODC reached out to more experts from Africa and francophone countries than before.

**Table 3. Geographical coverage of the initiative: countries consulted through field research and electronic surveys**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Western Europe, Central and South Eastern Europe | Eastern Europe and Central Asia | Asia and the Pacific | Americas | Africa and the Middle East |
| Belgium | Armenia | Australia | Argentina | Djibouti |
| Bulgaria | Belarus | China | Brazil | Egypt |
| Finland | Moldova | India | Canada | Israel |
| France | Russian Federation | Indonesia | Colombia | Kenya |
| The Netherlands |  | Malaysia | Mexico | Mali |
| Norway |  | The Philippines | United States | Niger |
| Romania |  | Singapore |  | Nigeria |
| Serbia |  | Thailand |  | Qatar |
| Spain |  | Tonga |  | Senegal |
| Switzerland |  |  |  | Tunisia |
| United Kingdom |  |  |  | UAE |
|  |  |  |  | Uganda |

**Finding:** *Seven public side events were organised to launch and discuss the findings in the issue papers.**Besides these events,**the evaluation could not find evidence of a systematic approach to the dissemination of the products developed, nor is there an effective system in place to monitor requests of the publications or downloads on the UNODC website.*

For each issue paper, there was at least one public launch at a side event (see table 1). Side events were an important means of disseminating findings of the issue papers as well as galvanising support, including amongst international organisations who were invited to numerous events. Limitations of side events were that they focused mainly on Vienna (COP) (four of the six events) with two in Geneva (Human Rights Council) and one during the 13th UN Crime Congress in Doha. It is not clear to what extent those attending the events were representative of a wide range of countries or were best placed to make use of the new publications. It is widely acknowledged that COP typically attracts few government delegations from African and Middle Eastern countries. Besides these events, the approach to dissemination relied on UN permanent delegations in Vienna to choose the most appropriate channel of communication with their capital. While this is a routine approach, it is also not inconceivable that delegations are not always aware of the key actors in their countries to make best use of the project outputs and would not necessarily engage in targeted dissemination.

**Finding***: There are examples of positive distribution of the papers by actors involved in EGMs.*

Overall it was anticipated that experts participating in the EGMs would be champions in disseminating and promoting the products, but this was not specifically requested or arranged for and there were mixed responses from national actors involved in EGMs as to whether papers were made use of on return to their countries. At the same time some felt that the papers had come too late for their country, as trafficking laws were already adopted and the courts would look to their own case-law and practice in developing further their understanding of the relevant concepts (such as in Switzerland, Belgium and Nigeria), and in such cases they deemed there was little point in dissemination. Still there were examples of widespread distribution and use (such as in Argentina and through the Ibero-American network of specialized prosecutors on TIP and SOM and where the papers have been translated into both Portuguese and Spanish) or in the UK where the APOV paper was used by the EGM experts to protect victims’ rights in court and provide guidance for judges and juries, particularly in cases of forced labour where the victims typically did not self-identify as victims. In this regard, peer-to-peer engagement has been effective in disseminating the tools.

**Finding**: *There has been wide use of the issue papers by UNODC staff in HQ to develop training materials and as a basis of discussion with their staff and criminal justice actors in the field. However, there has been no systematic roll-out of these products in regional or country offices. More could have been done to promote them with regional organisations or networks of authorities and amongst key actors including judiciary and academia.* *There is evidence of some use by international organisations.*

Stakeholders indicated that the issue papers were integrated and streamlined into the various aspects of UNODC HTMSS technical assistance and policy work. More specifically, it was reported that they are used in training for judges, prosecutors and other legal professionals, for example in the MENA region, in South Africa, in Zimbabwe and in South America. They have also been reportedly used in technical assistance work for the development of legislation in some countries such as Pakistan, Zimbabwe and Mozambique.

The turnover of field staff at UNODC presents challenges in ensuring that all field staff are up to speed on the relevant tools and materials available for their use from HQ but some field staff were familiar with the papers and, dependent on their own initiatives, put them to good use. Examples were given of trainings of prosecutors in South Africa, by field staff, on issues raised in the papers. This was seen to have contributed to the fact that reference was made to the APOV paper in a South African trafficking case prosecuted by one of the trained prosecutors. Also in 2017 UNODC’s Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (GLO.ACT) organized a training session for its project staff which included a focus on the issue papers. It is notable that 3 out of 4 UNODC field staff who responded to the survey were based in offices in Latin America, a reflection possibly of the fact that the papers have been translated into both Spanish and Portuguese and were widely distributed through the Ibero-American prosecutors’ network through the efforts of active EGM participants. These survey respondents all indicated their complete agreement that the issue papers were important in their work:

 *‘For our criminal justice practitioners, all the material had been useful, but according to our context in the country the abuse of a position of vulnerability and the concept of exploitation has been the most controversial issues in the justice’ UNODC field staff in LA, survey response*

In recognition of the importance of a systematic approach to dissemination, the GLO.ACT second phase in Asia and the Middle East is using the papers to inform its country legislative reviews and assessments.

Two UN Special Rapporteurs on Trafficking, who were involved in the initiative through their attendance at EGMs and roles in side events (Joy Ngozi Ezeliou and Maria-Grazia Giammarinaro) acknowledged having made use of the information in the papers, particularly the one on APOV, to raise awareness of the topics under discussion and provide guidance to policy makers and criminal justice practitioners during country visits. IOM had also used the APOV paper in training of judges in Israel and in other countries in South Eastern Europe, Eastern Europe and Central Asia. ICMPD used all three papers in training for judges and prosecutors in Bosnia and Herzegovina. ILO reported making partial use of the papers without specifying which were of particular significance to its work.

**Finding:** *Language was a limiting factor in outreach: Issue papers are available only in a minority of languages*

A factor influencing the dissemination of the issue papers has been the availability of the documents essentially in English and few other languages (see table 2 above). [[12]](#footnote-12) The extensive length and complexity of the documents makes them difficult for readers with little proficiency in English, which meant that for some the short guidance available with the APOV paper was again of particular importance.

## Efficiency

**Evaluation questions**

To what extent were resources adequately allocated to achieve objectives?

To what extent management and coordination arrangements ensured the efficient implementation of initiative?

The following table sets out the financial contributions provided by the Swiss FDFA to UNODC for the implementation of the project. It does not represent a full costing of the project as in-kind contributions have been made by UNODC and some participation at EGMs has been funded by other sources. These additional unquantified contributions have not been shared with the evaluators for examination in this report and so are not reflected in the report.

**Table 4: Financial contributions under the project**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Contract  | Period | Duration in months |  Total amount USD  | Main output |
| N.1 Funding Agreement, 7 October 2011  | 1-4-2011 -31-3-2012 | 12 | $129 385 | Issue paper on APOV |
| N.2Funding Agreement, 8 April 2013 | 1-1-2013-30-06-2014 | 18 | $300 918 | Issue papers on consent and exploitation  |
| N.3 Addendum to Funding Agreement, 20 October 2014 | 1-1-2013-30.9.2015 | 33 | $43 000 | Translation in FR of Issue paper APOV and Doha Ancillary Meeting on Issue paper on exploitation |
| N.4 Funding Agreement, 17 December 2014 | 1-8-2015-31-12-2016 | 17 | $73 500 | Translation in FR of Issue papers on consent and exploitation |
| N.5 Funding Agreement, 30 September 2015 | 1-5-2015 - 30-4-2017 | 24 | $281 336 | Consolidated practical guidance/Issue Paper on TIP Definition, Model Law against TIP, Legislative Guide on the TIP Protocol |
| N.6 Addendum 1 to Funding Agreement, 19 October 2016 | 1-5-2015 - 30-4-2018 | 36 | $0 | No cost extension |
| N.7 Addendum 2 to Funding Agreement, 19 October 2016 | 1-5-2015-31-8-2019 | 52 | $100 000 | Note: A detailed budget was not provided |
| TOTAL |  |  |  **$928 139.00**  |  |

**Finding**: *In view of the duration of the project and the long-term goals envisaged, the financial contribution of Switzerland to the initiative is very small compared for instance to its allocations to development assistance projects.* *It has not been possible to evaluate how Swiss funding has been allocated in practice, but amounts allocated in the relevant budget proposals indicate a four-fold increase in funding for UNODC HQ staff and a doubling of costs for EGMs over the implementation period, whilst allocations for external consultants are significantly reduced over the period.*

The total Swiss funding for the project has amounted to 928,139 USD as reflected in contracts (Kreditanträge). The resources have essentially been distributed over three key funding agreements, the first of 130,000USD relating to the development of a single issue paper; the second amounting to approximately 416,000USD relating to the development of two issue papers, and translation into French of all three papers and the third amounting to approximately 381 000USD relating to the development of the consolidated ‘practical guidance’ linking the three issue papers and the revision of the Model law and Legislative guide.

Financial reports for actual expenditure were not provided to the evaluators so it is not possible to comment on how the funding has been allocated in practice. It is noteworthy however that according to the funding proposals a significant proportion of funding is increasingly allocated to headquarters staff, which represents 10% of the total costs under the first funding agreement, rises to 22% under the second agreement and increases further to 47% under the final agreement (before the addendum and 100,000USD top-up for which no adjusted budget has been provided). The significant portion allocated to HQ was attributed to the fact that UNODC staff positions are mainly funded through project funding and few have permanent positions. The reason for the shift in budget for HQ staff from the first agreement to the third was not conclusively addressed by the evaluation and could not be answered .

Other significant allocations are for consultants’ fees which represent 32% and 34% of the total costs under the first and second funding agreements but only 7% under the final agreement, possibly because more of the work would be conducted in-house. Costs allocated to EGMs are also significant, with the budget allocated to such meetings doubling between the first and the third funding agreement, although the number of participants remains relatively consistent. These costs amount to 19%, 16% and 33% of the total costs respectively over the three agreements.

**Finding:** *The pace of implementation has slowed over the period with delays in implementation and three project extensions. However, both donor and recipient did not consider these delays particularly problematic.*

The activities proceeded rapidly and within the terms of the first 12-month funding agreement for the production of the first paper, launched in October 2012. The pace then slowed under the second 18-month funding agreement necessitating a 15-month project extension to allow for the finalisation of the second paper, launched in October 2014 and the third paper, finalized and launched 6 months after that in May 2015. The most significant delays have been incurred under the latest funding agreement, relating to the production of the 4th paper and the revision of the Model Law and Legislative guide. The original agreement of 24 months has been extended to 52 months with the publication of the 4th paper in May 2017 and the final products due originally in 2017, not yet finalised. Although HQ staff are funded through the project it was reported that there is insufficient capacity to develop technical work such as this in a timely manner, with UNODC staff juggling competing priorities and facing staff turnover. At the same time the process of internal review, with multiple staff members consulted, seen as important to ensuring the quality and ownership of UNODC research products, was particularly time-consuming. The slow pace of implementation however was also seen to have benefits, giving States more time to take the conceptual developments expressed in the papers on board.

**Finding**: *Coordination and communication between UNODC and Swiss FDFA has been excellent.*

Stakeholders were very positive about the dialogue and cooperation between the donor and recipient. UNODC were grateful for Switzerland’s continued support to the initiative through their political support and financial contributions to its technical work.

**Finding:** *The management of consultants generally has progressed smoothly but has also presented challenges which could be averted through better planning, more efficient coordination amongst HQ staff, clearer instructions for consultants and EGM experts, and the adoption of complaint mechanisms to deal with workplace complaints promptly and fairly.*

Four consultants have been involved overall in developing the issue papers and updating and revising the Model law and Legislative Guide. Overall the instructions and support provided to consultants in conducting their research and writing has been satisfactory but delays once work is delivered to UNODC for review and feedback has been frustrating. The late payment of consultants for work performed has also caused some anxiety. There have been a series of difficulties encountered in the management of the work relating to the revision of the Model Law, which has compounded the delays in its finalisation. These have included reportedly changing instructions as to the nature, scope and presentation of the work with little clear consultation with the consultant, shortcomings in the provision of human resource support from headquarters and a reluctance to address unpleasant dynamics arising between experts at EGMs, leading to complaints by the consultant of bullying.

**Finding:** *The expectations of and from EGM experts**differed and their role was not always clearly prescribed*

The project depended on numerous external experts for the EGMs. Some stakeholders expressed concern with regards the transparency of the EGMs process, there being no terms of references for the experts convened and that expectations about their role varied. Experts contributed on a voluntary basis and received reimbursement for travel and accommodation expenses only. Some expected the experts to be actively engaged in the EGMs for the validation and refining of key findings, others expected follow up contributions beyond the meetings. Following the EGMs, the issue papers were revised to incorporate the comments and inputs provided by the experts and a subsequent draft of a paper was circulated among the experts. Some of the interviewed stakeholders indicated that their inputs were well received and integrated into the text, others expressed the opposite view and raised concerns, particularly with regard to the Model Law and the Legislative Guide, which are being finalised.

## Impact

**Evaluation questions**

To what extent has it contributed to influencing laws, policies and practice on TIP? At country level? Internationally?

To what extent has it contributed to other positive change?

**Finding**: *There are examples of the papers, most particularly the APOV paper, having been used to influence the development of new laws, policies and judicial practice on TIP where they have been translated for instance into Spanish or the English versions have been used in English-speaking countries. Such achievements have been driven by national stakeholders who have been involved in the research process or EGMs. There are also numerous references made to the papers by academia. Some international organisations have also drawn on the papers to some extent in developing their own training materials or in other publications.*

The evaluation approached the assessment of impact seeking to find evidence of the contribution of the papers in influencing legislative reforms, national jurisprudence, criminal justice practices, political and academic discourse. Through desk research and interviews with stakeholders the evaluation was able to identify a number of positive examples of the use and impact of the technical papers developed through the initiative.

*Influencing the development of legislation (UK, Pakistan, Australia, Zimbabwe, Mozambique)*

The text of the Modern Slavery Act in the UK has reportedly been influenced by the conceptual clarifications presented in the issue papers, particularly the one on APOV and also by the findings of the national survey conducted in the UK for the consent issue paper.

In Pakistan, a survey respondent, who had participated in the EGMs on the revision of the Model law and Legislative Guide, explained how these technical papers were used to influence the development of new legislation on TIP and SOM in the country :

*‘At the time Pakistan lacked (and still does) the technical skills and research resources which were required in order to first prepare the groundwork and then draft and pass the actual laws on migrant smuggling and human trafficking. I was able to use these UNODC activities and materials, including the papers, to first clarify my own concepts and then employ the understanding thus gained to enlighten my colleagues and influence our members of Parliament as well as the Federal Cabinet and the Prime Minister of Pakistan. This learning enabled me to assist the Government of Pakistan in enactment of laws on human trafficking and migrant smuggling.’* Survey respondent

In Australia, another survey respondent who had been involved in the EGM on the consent issue paper reported:

‘*Following my participation at the EGM on the issue of consent in 2014, I prepared a law reform proposal for Government to remove the need to prove lack of consent of a party to a forced marriage, where the party is a child under the age of 16, in the existing Australian forced marriage offence. This proposal is consistent with the Article 3 of the Trafficking in Persons protocol and with many of the concepts and issues discussed at the UNODC EGM on the role of consent. This reform was accepted by Government and this amendment became part of Australia's Federal criminal law in September 2019*.’

Another stakeholder who participated in several EGMs indicated that the three issue papers have been very useful in the technical assistance work in Zimbabwe and Mozambique for reforming legislation on TIP, which is ongoing.

Although not representative, most survey respondents agreed that the initiative had contributed to shaping the policy of their country or organisation on trafficking and influenced the development of new or revised legislation or the interpretation of statutes.

*Influencing and informing jurisprudence*

Several stakeholders provided evidence of the use of the technical paper on APOV and its accompanying guidance note in a number of trafficking-related judicial decisions adopted by courts, including high courts in Argentina, Colombia, UK and South Africa (see Table 5 below). In other instances, criminal justice practitioners (e.g. in Switzerland) reported that although their national legislation has not been influenced by the issue papers, their knowledge of the definitional concepts in the TIP definition is informed by the technical papers, and is used to interpret existing legal provisions and to present arguments to court in a way that is consistent with this learning and to some extent therefore influences the interpretation of the law where the judge follows the line of reasoning presented.

**Table 5 Case law referencing the Guidance Note on APOV**

|  |  |
| --- | --- |
| Country | Reference |
| Argentina | * CFCP, Sala II, “Montoya Pedro y otras s/ recurso de casación”, (SHEIK – ALIKA) Proveniente de Tierra del Fuego, Registro: 249/18.  TRATA SEXUAL LEY 26.364. 12/04/2018. Del voto de la Dra. Figueroa
* Cámara Federal de Casación Penal - ORELLANA CONDO, Olga y otros s/recurso de casación - SALA IV – ORÍGEN: CAPITAL FEDERAL - Revoca Sobreseimiento Laboral - CFP 2613/2012/31/CFC1 - Reg. Nro. 1308/15.4 – 07/07/2015. Extensive refence and quote
* Cámara Nacional de Casación Penal, Sala IV, “PHR s/rec casación”, rta. 13/11/12 (caso Palacio de Córdoba). Confirmó la condena.
* Cámara Federal de Casación Penal, Sala IV, LEZCANO, Claudio Marcelo y MUÑOZ, María de los Ángeles s/recurso de casación
* SALA 4 CFP 13345/2012/7/CFC2 - Registro nº 285/18.4 - “Salazar, José Luis Mingo y otros s/ recurso de casación” – 09/04/2018 FALABELLA – Revoca Sobreseímiento
 |
| Colombia | * [R v Carapana](https://www.unodc.org/unodc/en/frontpage/2019/January/first-conviction-in-colombia-for-trafficking-in-persons-for-domestic-servitude.html)
 |
| UK | * [HD and Secretary of State for the Home Department](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKUT/IAC/2016/454.html&query=(trafficking)+AND+(in)+AND+(persons)+AND+(%22issue+paper%22))
* [L., H.V.N., T.H.N., and T. v R [2013] EWCA Crim 991](https://sherloc.unodc.org/cld/case-law-doc/drugcrimetype/gbr/2013/l._h.v.n._t.h.n._and_t._v_r_2013_ewca_crim_991.html)
 |
| South Africa | * [The State and Makhosini Mathews Fakudze](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2017/the_state_and_makhosini_mathews_fakudze.html?lng=en&tmpl=sherloc)
 |

*Influencing national practice (Argentina, Brazil, Peru, UK)*

The technical papers were translated into Spanish and Portuguese and the evaluation found evidence of their dissemination and use by criminal justice practitioners in South America. For example, the Guidance Note on APOV and the issue paper on exploitation are used to inform practice in Argentina and for the training of prosecutors. The Guidance Note on APOV is also disseminated in Brazil via the Virtual Library of the Secretariat for Justice and Citizenship of the State of São Paulo[[13]](#footnote-13). The Guidance Note on APOV is referred in a resolution of the Ministry of Security of Peru concerning protection and assistance to victims and witnesses of TIP.[[14]](#footnote-14)

The technical papers were also instrumental in informing guidance for prosecutors in the UK with the EGM national expert using her experience directly in providing guidance to advocates ahead of their appearance in court. Policy developments in the UK have also drawn on and been informed by the discussions of the concepts developed in the papers.

*Use in the development of training materials*

In addition to being used by UNODC in their training activities, the issue papers have also been used by other international organizations in the development of training materials on TIP or in the implementation of training activities. References to the issue papers can also be found in training and capacity building tools of international organizations, such as UNHCR, the Council of Europe and the Academy of European Law, which is indicative of the significance and the value of these tools in explaining and clarifying the TIP definition for various professionals working on TIP issues.[[15]](#footnote-15)

*Influencing policy papers and other publications by international organizations and academia*

The issue papers have also influenced the understanding of the TIP definition by other international organizations (e.g. IOM, UNOHCHR, OSCE).[[16]](#footnote-16) Furthermore, some of the issue briefs developed by ICAT acknowledge the issue papers on key concepts in the definition of trafficking in persons and include references to the papers in footnotes.[[17]](#footnote-17) Finally, there are also numerous examples of references to the papers in academic research.[[18]](#footnote-18)

**Finding**: *The political discourse on trafficking is better informed as a result of the papers with evidence of terminology being consistently used and better understood, particularly around concepts such as consent and exploitation, during the discussions of the WG on TIP.*

Besides evidence of improved understanding of concepts amongst WG TIP members, it is reported that a similar approach is taken to key definitions reflected by the language used in the New York Declaration and Global Compact on Migration. Reference, particularly to the concept of APOV, can be found also in the Principles and Guidelines on Human Rights Protection of Migrants in Vulnerable Situations. [[19]](#footnote-19)

**Finding**: *Other positive changes resulting from the initiative have included the widening of professional networks alongside the personal gains in knowledge and skills resulting from involvement particularly in EGMs.*

The majority of survey respondents agreed that their participation in activities related to the initiative had increased their technical abilities and knowledge about tackling trafficking, had increased their professional networks and contacts, that they had been able to use their newly acquired knowledge in their work and teach some of it to their colleagues. The particular value of EGMs for respondents was highlighted as follows by a survey respondent:

 ‘*EGM meetings I attended at UNODC in 2014 and 2016 had a positive flow on effect for years afterwards. The connections made with other lawyers, police and Government representatives from other States continued as regular email contact where our experiences, issues and ideas in dealing with human trafficking were shared, including knowledge sharing in perfecting legal submissions for the admission of evidence, suggestions for law reform to better reflect the Protocol and ways in which victims of trafficking can be better supported in our respective jurisdictions*.’

## Sustainability

**Evaluation questions**

To what extent have stakeholders taken ownership of results?

To what extent will benefits continue after donor-funding is withdrawn?

**Finding**: *A number of elements in the project design and implementation have ensured a certain durability of its results.*

The twin-track approach to the initiative, the long-term engagement and commitment of all parties, the sustained funding provided by Switzerland have enhanced the project’s overall sustainability by ensuring that it was anchored in COP resolutions and embedded in UNODC core tools for technical assistance in law and policy making. The last two outputs of the project i.e. the revision of the Legislative Guide and of the Model Law are indeed meant to integrate the knowledge and learning acquired through the development of the papers and so ensure that the guidance produced there will be made use of for years to come.

The Swiss diplomatic work in engaging States at the project’s outset and throughout for national surveys and EGMs contributed to the sustainability of the initiative as it enabled the engagement of practitioners/stakeholders from various jurisdictions and fostered their ownership of the process and its outcomes.

# CONCLUSIONS

**Design**: No single planning document was developed to cover the entire period of project implementation but a series of shorter-term agreements were entered into, reflecting the short-term nature of the funding that set out the goals of each individual funding proposal. At the same time a series of credit proposals and diplomatic documents (non-papers) framed the long-term objectives. Overall the project aimed to achieve definitional clarity of undefined concepts in the definition of trafficking and lead to a consistent application of the TIP Protocol by States through changes in law and policy. This was to be achieved through an innovative technical and political partnership between UNODC and FDFA with UNODC developing interpretive guidance for criminal justice actors to be ultimately integrated into standard setting tools, whilst FDFA worked in partnership with States to ensure that these efforts had political support, expressed through resolutions and recommendations of the COP. The design of the technical part of the initiative was crafted to deliver the short-term outputs, specifically the production of issue papers, but did not adequately plan for achieving the longer-term outcomes, specifically the changes in law and policy to ensure a consistent application of the TIP Protocol. No provision was made either within the technical process for a monitoring framework to capture change and measure impact.

**Relevance**: The projects objectives were aligned with the real needs of policy makers and criminal justice actors working on TIP who continue to need conceptual clarity on the definition of TIP. But there were different views and constraints determining how that clarification could best be packaged. The short practical guidance developed with the APOV paper was found most relevant to stakeholders needs, but generally the mandate of UNODC was considered not to cover the provision of interpretive guidance on the TIP Protocol. Following the development of the first issue paper, UNODC revised its approach and did not develop separate short practical guidance or advisory notes for the following three papers, opting for a more diffuse presentation of the key issues, which undermined to some extent the relevance of the project for stakeholders.

**Effectiveness**: The diplomatic process led to a series of resolutions and recommendations acknowledging the importance of UNODC’s technical work; engaging numerous States in the process and fostering partnerships. The issue papers developed under the project were highly regarded for their quality and complexity, whilst the EGMs provided an effective platform for validating the research findings, allowing for the exchange of experience and solidifying professional networks. Some limitations encountered in geographical coverage (and legal systems) of the first three papers were somewhat mitigated by extending the research, albeit by electronic surveys only, to more francophone, Asian and African countries for the 4th Issue paper. Dissemination of the issue papers relied mainly on side events organised to launch and discuss the findings and the efforts of EGM participants who distributed them and used them in their countries, in some cases even taking responsibility for their translation; this signals the effectiveness of peer-to-peer engagement. There was also use of the tools by UNODC headquarters in their technical and policy work but no strategy pursued to systematically disseminate to wider audiences (such as UNODC field staff, judiciary, academia or regional organisations). The UN Special Rapporteurs on TIP made use of the works in their country visits.

**Efficiency**: Overall the Swiss financial contribution to this project has been comparatively small in view of the duration of the project and its objectives. Over the implementation period, UNODC has progressively increased its role, as evidenced by a four-fold increase in funding for UNODC HQ staff and a reduction of funding for consultants. However, delays in the pace of implementation signal challenges for UNODC in dedicating sufficient human resources to such a project, in the face of staff turnover and the juggling of competing priorities. At the same time, more attention needs to be paid to the management and coordination of consultants and EGM experts. These conclusions are based on the documentation made available to the evaluators, which does not include additional unquantified contributions that have not been shared with the evaluators for examination in this report.

**Impact**: There are various examples of the outputs, most particularly the APOV paper, having been used to successfully influence the development of new laws, policies and judicial practice on TIP, particularly where they have been available in the local language. These results have often been driven by national stakeholders who have been involved in the research process or EGMs. There is also evidence of better informed discussions, particularly around the concepts of consent and exploitation, in the WG on TIP. International organisations have also found value in the papers and have made use of them in their work, particularly in developing training materials. Similarly, there are references to the papers in academic research.

**Sustainability**: The long-term engagement of all parties to the initiative, its ‘bottom-up’ approach, as reflected in the FDFA’s engagement of numerous State Parties (beyond like-mindedness) at the outset and throughout the implementation period, and UNODC’s technical approach to research and guidance, building on practitioners’ practice and views, have all proven effective in implementing the initiative and ensuring its durability. It has also helped to promote stakeholder ownership and generate a commitment to using and disseminating the tools, further contributing to the sustainability of the initiative. The revision of the Model law and Legislative Guide, which should integrate the learning from the issue papers, should ensure that the guidance will be made use of for years to come.

# Best practices

1. The methodology used to develop the issue papers was effective and seen as good practice by several stakeholders due to: the engagement of State parties in the activity at the outset; the combination of initial in depth desk research with field research; consultations with targeted criminal justice practitioners and finally the validation exercise of the findings at EGMs. This bottom up approach helped in engaging experts, giving them ownership of the process and in turn generated a certain commitment to using and disseminating the tools.
2. The Swiss diplomatic initiative (political process) ensured sustained support at the multilateral level on TIP over a long period of time and was combined with financial support for the technical work. This two-track approach was deemed good practice and proved crucial in providing resonance and legitimacy to the technical work of UNODC, acknowledged by States at the COP and in the WG on TIP. This approach can be replicated in other fora on other thematic areas, as evidenced by parallel work on migrant smuggling, and has proved successful in the use of multilateral policy-making (UN resolutions) in the development of soft standards, informed by practice. Trafficking in persons was also a ‘bridge-building’ topic, making it possible to engage numerous states, beyond the like-minded, and generate other beneficial relationships beyond this initiative.

# Lessons learnt

1. The EGMs provided a unique setting contributing to building a learning community of practitioners that has potential to develop over time to continue informing UNODC work. It can also be better used as a vehicle for dissemination of good practice and promotion of more effective implementation and international cooperation. Many experts at the EGMs used the knowledge acquired in their professional work, including for the purpose of law making and of training prosecutors, judges, lawyers and other legal professionals. This requires inter alia clearer terms of reference for the experts and follow up work after meetings.
2. Better geographical coverage and balance in representation of legal systems can be enhanced through cost sharing with other concurrent initiatives/projects by UNODC or by other States to enable wider participation of experts from Africa and the MENA
3. A focused strategic approach to dissemination of UNODC publications is an essential component to better achieving the intended objectives, and it needs to go beyond the traditional countries for UNODC technical assistance and reach out in strategic ways to western countries too.
4. A need for further clarity and operational guidance for practitioners continues to exist, particularly with regards the concept of exploitation. The issue paper provides a rich analysis of case law and practice that, combined with more recent developments in the jurisprudence of regional and national courts, can be used to develop more operational guidance for practitioners.
5. The issue papers can provide core knowledge to inform all UNODC HTMSS work and it would be very useful to ensure a systematic roll-out and training of all staff, particularly new staff and staff at field level on these products and on how to use them (e.g. through an induction course).

# Recommendations

1. **To improve design**, strengthen UNODC programming and accountability through developing theories of change which unpack some of the implicit assumptions in the technical aspects of the project (such as whether developing guidance will lead to change in itself or if the best actors have been targeted to effect that change etc) alongside developing logical frameworks and a measurement system to ensure better monitoring of performance and assessment of impact. More specifically:
* Develop SMART indicators for monitoring progress and specify a baseline of reference to track impact (at a country or organisational level)
* Ensure budgetary allocations for translation in all UN languages of outputs, and for designing the knowledge products to make them more user friendly
* Improve the research methodology by seeking to ensure adequate budgetary resources for interpretation and face to face interviews with criminal justice professionals for field research
1. **To enhance effectiveness and impact**, develop a dissemination strategy of outputs, which combines diplomatic efforts by Switzerland and technical efforts by UNODC and is articulated at international, regional and national level including:

*At International level*

* Diplomatic process: Continue ensuring sustained commitment and leadership in multilateral fora on TIP to capitalise on the opportunity of the 2020 anniversary of UNTOC, to build consensus on language in resolutions of the Crime Commission acknowledging and welcoming the issue papers and (to be finalised) revised tools. This political work could further be developed towards achieving supportive language in ECOSOC resolutions and then in turn in the UN General Assembly.
* Technical process: Strengthen dissemination of the issue papers and tools via ICAT and seek synergies with ICAT members to influence political processes towards ECOSOC and UN GA in NY.

*At regional and national level*

* Diplomatic process: Seek and secure support from States engaged in the initiative for regional actions (e.g. Thailand for ASEAN, Niger for ECOWAS, US for OSCE, Switzerland for the CoE etc.) and continue involving UN Special rapporteurs on TIP.
* Technical process: Reach out to regional prosecutorial and judicial authorities and their professional networks, and to regional networks of anti-trafficking coordinators. Also arrange consultations and launch events at the regional level to promote the issue papers among criminal justice actors. In doing so, seek advice from and engage EGM experts on the best way to target and build the capacity of relevant professionals in their region/country on these topics
* Ensure that UNODC HTMSS staff in headquarters and in the field are systematically trained on the TIP definition and on how to use the issue papers, the Legislative Guide and Model Law in their technical assistance work. Further, engage them in systematic dissemination and monitoring of the use of the tools
* Ensure that external consultants working with UNODC HTMSS are systematically informed and requested to use such UNODC tools
* Capitalise and build on the learning community, that has emerged through the EGMs, to build a Reference Group that can contribute in a sustained manner to informing UNODC work, and disseminating its tools.
1. **To enhance effectiveness and impact**, ensure that the issue papers are appropriately used to inform the content of the Model Law against TIP and the Legislative Guide on the implementation of the TIP Protocol and continue to update and build on the rich analysis and findings of the issue papers and the growing experience and case law of State Parties and distil more practical and operational guidance with and for criminal justice actors.
2. **To improve efficiency**, ensure that sufficient human resources are allocated to achieve outputs on time and that terms of reference for both consultants and EGM experts are developed to accurately reflect expectations, tasks and timelines and are adhered to. Ensure that complaint mechanisms are available and accessible to address workplace issues that might arise for consultants or EGM experts in the context of their work with UNODC. Improve the coordination and management of HTMSS staff in the review of technical assistance products and set and keep to realistic deadlines, in view of other work responsibilities.
3. **For future learning**, consider collecting evidence to document whether a more restrictive interpretation of the TIP definition, enhances clarity and leads to better cases or if it is damaging and inhibits the prosecution of cases and the protection of victims, particularly where subtle means of coercion have been used.

# Annex 1 – Terms of Reference for the Evaluation

*K.221.201 \_07.03.2019*

**Terms of Reference**

**Evaluation UNODC/ Diplomatic Initiative Human Trafficking**

1. **Background**
	1. Since September 2011 the Swiss Federal Department of Foreign Affairs through its Human Security Division (HSD) has been engaging in a diplomatic initiative with the United Nations on Drugs and Crime (UNODC).
	2. Fifteen years since the United Nations [Trafficking in Persons Protocol](https://www.ohchr.org/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf) came into force, the Protocol is moving rapidly towards universal ratification. In its Article 3, the Protocol contains the first internationally agreed upon and universally recognised definition of trafficking in human beings. However, the key concepts of Article 3 are not defined in the Trafficking in Persons Protocol. The initiative therefore aimed at (i) examining and clarifying the key concepts on the basis of existing national laws, practice and experience and (ii) the subsequent development of issue papers, guidelines/basic principles with a view to provide guidance for countries on how to apply the Trafficking in Persons Protocol effectively.
	3. During the first phase of the process, three technical “issue papers” were designed around three key notions of the definition, namely "abuse of a position of vulnerability" (2012), "consent" (2014) and "exploitation" (2015). For each issue paper, a review and analysis of the practice of 12 countries (selection criteria: interest to collaborate; geographical balance; equal representation of legal Systems) was used as a basis for initial analysis which was then subjected to broader consultation. This initial review included the UNODC secretariat undertaking in-depth and in-country interviews with a range of experts from an overall total of 30 Member States.
	4. In the second phase of the process and based on inputs received from expert group meetings (EGM), UNODC developed a comprehensive Practical Guide with a particular focus on a joint examination of the findings of all three issue papers. In addition, a long-term revision of the UNODC Legislative Guide to the Protocol and the UNODC trafficking in persons model law were undertaken.
	5. With the support of like-minded states, Switzerland introduced supporting wording in UNTOC COP resolutions; as well as working group materials and recommendations with the purpose to anchor the initiative in agreed multilateral policy and priority-setting.
	6. Several Side Events in Vienna and Geneva were held throughout the process in order to present the results.
	7. The Special Rapporteur on Trafficking in Persons, especially women and children, whose mandate Switzerland supports financially, was involved actively, alongside specialised international organisations such as OHCHR; IOM, OSCE, UNICEF and others.
	8. The initiative was implemented by the UNODC Human Trafficking and Migrant Smuggling Section (HTMSS), of the Organized Crime and Trafficking Branch, Division of Treaty Affairs (HTMSS/OCB/DTA).
	9. Since the initiative is scheduled to be concluded in June 2019, HSD-management decided to proceed to a comprehensive external evaluation.
2. **Objective, rationale and scope**
	1. **Objective**

The objective of this evaluation is to assess the results of the initiative with a particular focus on answering the questions

1. whether the intended results were achieved (i.e. achieve clarification of the definition of the key concepts of the TIP Protocol, trigger changes in the jurisdiction and the policy making of UNTOC states parties and international organisations, achieve involvement of a broad diversity of countries beyond like-mindedness)
2. which lessons can be learned for future similar HSD initiatives and processes at the interface between topical (in this case TIP) and multilateral policy making.
	1. **Rationale**
* The diplomatic initiative extended over a consequent time period (i.e. 7 years) and involved the investment of significant financial and human resources on behalf of HSD. As the project is coming to an end (July 2019), its impact and results shall be assessed in order to learn for future programming.
* A selection of findings are to be included into reporting at HSD level.
	1. **Scope**

The scope of the evaluation comprises the complete activities undertaken within the diplomatic initiative and its results.

1. **Methodology and expected result**
	1. **Methodology**
* Externally led, interactive evaluation process drawing on input from UNODC, HSD and other key stakeholders involved in and/or targeted by the initiative and its outcomes with regard to both content and processes.
* The external partner is expected to further elaborate on the proposed method, process and tools.
	1. **Expected Result**
* The expected result is an executive level documentation with an executive summary of around 20 pages (without annexes) of the findings in English language.
* The findings should (i) answer the questions under chapters 2.1. and 4.1. and (ii) provide recommendations to HSD and UNODC with regard to the design, implementation and reporting of future similar initiatives and projects.
1. **Questions for the review**
	1. The review should, inter alia, address the following:
2. Analysis
	* + Mapping of activities, outputs and outcomes of the process
		+ Assessment of challenges, strengths and weaknesses of the activity in terms of content and process design and implementation
		+ Identifications of main achievements (e.g. influence of policy making and legal writing; jurisdiction and standard setting on national and international levels) and shortcomings of the initiative.
		+ How was project implementation and the use of resources managed by UNODC?
3. Outlook
	* + Identification of best practices
		+ Identification of lessons learned
		+ Recommendations for future programming for the HSD and UNODC at the interface between topical and multilateral policy making
4. **Team requirements**

The following competences and skills are required for the evaluation:

1. Hold an independent position, and in particular not having been in recent times an employee of the Swiss Federal Administration or having worked with UNODC on tasks related to this evaluation.
2. Proven skills and longstanding experience as evaluators in external and project review/evaluation processes
3. Familiarity with the Palermo Convention and the United Nations Convention against Transnational Organized Crime and its Protocols (COP)
4. Knowledge of international or criminal law
5. Language capacities: English, passive German (document review) would be an asset.
6. **Schedule**

We expect the process to be accomplished ideally between August and October 2019.

1. **Working Days**

Maximum 20 working days (10 per person).

# Annex 2 – Desk Review

**Swiss Federal Department of Foreign Affairs**

1. Credit proposals (6 documents)
2. Non-papers and diplomatic statements (8 documents )
3. UNODC Swiss FDFA and UNODC agendas for side events/launching events (6 documents)

**UNODC documents**

1. UNODC Funding proposals (11 documents)
2. UNODC Donor reports, including interim reports and financial reports (9 documents)
3. UNODC Annual reports (7 documents)
4. UNODC Agendas and lists of participants for EGMs (9 documents)
5. UNODC presentations for side events ( 6 documents)
6. UNODC Reports of the COP to UNTOC ( 5 documents)
7. UNODC Issue Paper [Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf), (2012).
8. UNODC Guidance Note on Abuse of a Position of Vulnerability, (2012)
9. UNODC Issue Paper, [The Role of Consent in the Trafficking in Persons Protocol](https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf), (2014).
10. UNODC Issue Paper, [The Concept of Exploitation in the Trafficking in Persons Protoco](https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf)l, (2015).
11. UNODC, [Case Digest Evidential Issues in Trafficking in Persons Cases](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf), (2017).
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13. UNODC Global Report on Trafficking in Persons, 2018
14. UNODC Global Report on Trafficking in Persons, 2016
15. UNODC, [Model Law against Trafficking in Persons](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf), (2009)
16. UNODC, [Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto](https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html), (2004)

**Other literature**

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2. Chuang, J., [Exploitation Creep and the Unmaking of Human Trafficking Law](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CD65E835D1884BF4207FB467BD0D1FB6/S0002930000001664a.pdf/exploitation_creep_and_the_unmaking_of_human_trafficking_law.pdf). American Journal of International Law, 108(4), 2014.

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2. C. Rijken, ‘The interpretation and implementation of labour exploitation in Dutch Case Law’, in C. Rijken (ed), ‘Combating Human Trafficking for Labour Exploitation’, 2011.
3. Dutch National Rapporteur on THB, *Trafficking in Human Beings – Seventh Report of the Dutch National Rapporteur,* (2009)*,* The Hague: Bureau NRM.
4. ECtHR - Chowdury and Others v Greece, Application No. 21884/15, 30 March 2017.
5. ICAT, [Draft Submission to CEDAW’s General Recommendation on Trafficking in Women and Girls in the Context of Global Migration](https://icat.network/sites/default/files/publications/documents/ICAT%20submission%20to%20CEDAW.pdf), undated.
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7. ICAT, [The International Legal Frameworks concerning Trafficking in Persons](https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_1_The_International_Legal_Instruments.pdf), ICAT paper series – Issue 1, 2012.

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2. UNHCR, Self-study Module on Trafficking and Smuggling, 2019 (forthcoming)
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# Annex 3 – Persons contacted during evaluation (in person, via skype or survey)

|  |  |  |  |
| --- | --- | --- | --- |
| *Number of interviewees* | *Type of stakeholder* | *Sex disaggregated data* | *Country* |
| 9 | UNODC HTMSS  | Male: 4Female: 5 | Austria |
| 4 | UNODC staff from regional and country offices | Male: 1Female: 3 | Several |
| 2 | Donor (Swiss FDFA) | Male: 1Female: 1 | Switzerland |
| 7 | Government actor (National) | Male: 3Female: 4 | Several |
| 3 | Criminal justice actor | Male: 2Female: 1 | Several |
| 3 | Research consultants | Female: 3 | Several |
| 4 | International organisations | Female: 4 |  |
| Total: 32 |  | Male: 11Female: 21 |  |

1. See Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) for a full definition of trafficking in persons [↑](#footnote-ref-1)
2. See UNODC Global Report on Trafficking, 2018 for data on trafficking victims detected and reported and estimates provided in ‘Global Estimates of Modern Slavery, Forced Labour and Forced Marriage’ – ILO, Geneva 2017 [↑](#footnote-ref-2)
3. UNODC Global Report on Trafficking in Persons 2018 [↑](#footnote-ref-3)
4. For example in sub-Saharan Africa and the Middle East trafficking for forced labour is reported as the most common form, *ibid*. [↑](#footnote-ref-4)
5. #  ILO, Profits and Poverty: the Economics of Forced Labour, 2014.

 [↑](#footnote-ref-5)
6. Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8 to 17 October 2008, para 121. [↑](#footnote-ref-6)
7. CTOC/COP/WG.4/2009/2, para 7. [↑](#footnote-ref-7)
8. See for example, UNODC, Global Report on TIP, 2018, p. 15; UNODC, Evidential Issues in TIP Cases, 2017; HRC, report of the UN Special Rapporteur on trafficking, 2019, A/74/189 para 18; Council of Europe, GRETA 4th General report on GRETA’s Activities GRETA(2015)1; GRETA 7th General report on GRETA’s Activities GRETA(2018)1; OSCE, [Combating Trafficking and Exploitation: Human Rights, Social Justice and the Rule of Law](https://www.osce.org/secretariat/109731), 2013; OSCE, An Agenda for Prevention, 2011. [↑](#footnote-ref-8)
9. See for example: GRETA 7th General report on GRETA’s Activities GRETA(2018)1; EU, Study on case-law on trafficking for the purpose of labour exploitation, 2015; Trafficking in Human Beings, Seventh Report of the Dutch National Rapporteur ; ‘The interpretation and implementation of labour exploitation in Dutch Case Law’, in C. Rijken (ed), ‘Combating Human Trafficking for Labour Exploitation’, 2011. [↑](#footnote-ref-9)
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11. Reference being made for example to ECtHR - Chowdury and Others v Greece, Application No. 21884/15, 30 March 2017. [↑](#footnote-ref-11)
12. UNODC, [Catalogue of Materials. Global Programme against Trafficking in Persons & Global Programme against Smuggling of Migrants](https://www.unodc.org/documents/human-trafficking/2019/UNODC_Catalogue_of_Materials_May_2019.pdf), 2019 [↑](#footnote-ref-12)
13. A government agency that maintains institutional relations with the judiciary, the Public Prosecutor's Office, the Public Defender's Office, the Brazilian Bar Association etc. [↑](#footnote-ref-13)
14. [Resolution of the Ministry of Security of Peru N.0430 2016](https://www.mininter.gob.pe/sites/default/files/RM-Nro-0430-2016-IN.pdf) [↑](#footnote-ref-14)
15. For example, the Council of Europe, [HELP course on combating trafficking in human beings and protecting its victims](http://help.elearning.ext.coe.int/course/view.php?id=1943#section-0), 2017 (a free on-line course for legal professionals includes a module on the TIP definition and legal concepts, which includes references to the issue papers on APOV and on consent.

The UNHCR, Self-study Module on Trafficking and Smuggling, 2019 (forthcoming) is an online self-learning tool for UNHCR staff and partners, and contains extensive references to the UNODC issue papers It is part of a joint UNHCR -UNODC project on human trafficking and smuggling of refugees and migrants.

The Academy of European Law (ERA) offers training to legal professionals and practitioners and lists the UNODC issue paper on exploitation among background reference documents. See for example the seminar [Countering Trafficking in Human Beings, Protecting Victims and Enhancing Financial Investigations](https://www.era-comm.eu/THB/THB_sub/kiosk/pdf/318DT69/318DT69_docu_EN.pdf), Trier, 13-14 December 2018. [↑](#footnote-ref-15)
16. For example, the [IOM Handbook. Protection and assistance for migrants vulnerable to violence, exploitation and abuse](https://www.unodc.org/documents/human-trafficking/GLO-ACT/IOM_Handbook_on_Protection_ADV_COPY_1.PDF), 2018 includes a specific footnote reference to the issue paper on exploitation and echoes the paper on APOV in the discussion on vulnerability. APOV is also referenced in the discussion on vulnerability of migrant workers in the - Report of the UN High Commissioner for Human Rights, [Promotion and protection of the human rights of migrants in the context of large movements](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/67), A/HRC/33/67, 2016. APOV is also referenced in the OSCE, [Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking](https://www.osce.org/secretariat/101002?download=true), 2013. [↑](#footnote-ref-16)
17. For example, three issue papers are referenced in: ICAT, [Providing Effective Remedies for Victims of Trafficking in Persons. Issue Paper,](https://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf) 2016. The issue paper on APOV is referenced in: ICAT, [The International Legal Frameworks concerning Trafficking in Persons](https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_1_The_International_Legal_Instruments.pdf), ICAT paper series – Issue 1, 2012. The recent ICAT [Draft Submission to CEDAW’s General Recommendation on Trafficking in Women and Girls in the Context of Global Migration](https://icat.network/sites/default/files/publications/documents/ICAT%20submission%20to%20CEDAW.pdf) refers to the issue paper on exploitation. [↑](#footnote-ref-17)
18. For example see: Chuang, J., [Exploitation Creep and the Unmaking of Human Trafficking Law](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CD65E835D1884BF4207FB467BD0D1FB6/S0002930000001664a.pdf/exploitation_creep_and_the_unmaking_of_human_trafficking_law.pdf). American Journal of International Law, 108(4), 2014. This publication refers to all issue paper Williams J. (undated) [The Problem of Consent in Distinguishing between Victims of Sex Trafficking and Sex Workers](http://un-act.org/wp-content/uploads/2017/07/The-Problem-of-Consent-in-Distinguishing-between-Victims-of-Sex-Trafficking.pdf)  The paper cites UNODC. Consent UK Anti-Slavery Commissioner ‘[Vulnerability’ to Human Trafficking: A Study of Viet Nam, Albania, Nigeria and the UK](https://www.antislaverycommissioner.co.uk/media/1263/vulnerability-to-human-trafficking-albania.pdf), 2018 . the report cites the issue paper on APOV; Scarpa S., [Contemporary Forms of Slavery](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU%282018%29603470_EN.pdf), European Parliament, 2018. It refers to all the issue papers ; Bryson Clark J., Poucki S. (ed by), [The SAGE Handbook of Human Trafficking and Modern Day Slavery](file:///Users/lilianasorrentino/Downloads/The%20SAGE%20Handbook%20of%20Human%20Trafficking%20and%20Modern%20Day%20Slavery%2C), 2018 It refers to all the issue papers; Ricard Guay A., [Trafficking in domestic work. Looking at the Demand Side](https://pdfs.semanticscholar.org/8dd3/d84f1fb1c7f362edbb4bf762132ba8b8d701.pd) , ICMPD 2016. It contains a reference to the issue paper on APOV. [↑](#footnote-ref-18)
19. UNOHCR, [The Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations](https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf), UNOHCR GMG, 2016: It contains a reference to the issue paper on exploitation and it also refers to personal and situational vulnerability thus echoing the approach of the Issue paper on APOV. [↑](#footnote-ref-19)