

5 Trafficking in Women

Trafficking in Women: Causes, Consequences and Responses

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Introduction

Trafficking in human beings has, historically, taken many forms, including slavery and slavery-like practices. The International Labour Organization (2003) suggests that the term 'trafficking' came to be used in its current form – referring to the illicit movement of humans – in the late 20th century. Although there are varying definitions of trafficking, it is acknowledged that it is a complex series of states and events that involves the movement of human beings under coercion or deception which leaves them in vulnerable situations without recourse to their human rights.

Trafficking in women and children has come under increased scrutiny since the early 1990s with perspectives from NGOs and feminists gaining currency with interventionists and donors. According to Williams and Masika (2002), the factors that define the coercive and exploitative practices characterising current trafficking trends include inequality and oppression based on gender, age, caste and poverty. Many analysts have identified the globalisation of economies, with its facilitation of human movement and opening of national borders, on the one hand, and stringent immigration laws of developed countries, on the other, as leading to a climate conducive to the trafficking of women and children. It is within the framework of competing discourses on trafficking and the complex nature of interventions that Jordan (2002) identifies the various reasons for inappropriate or inadequate responses. These include denial of the problem, the objectification of victims and consequent failure to consider their human rights, conflation of trafficking with undocumented migration and an improper or ambiguous 'criminal' definition of trafficking.

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Although most trafficking discourses tend to frame the trafficking of women and children from the standpoint of sexual exploitation and coercion, trafficking can be seen as an outcome of a process through which:

- Individuals are recruited and moved within and across national borders without informed consent and eventually forced to 'work' against their will;
- The trafficked individual then loses control over her/his life (Jana et al, 2002).

From the above definition it is clear that trafficking leads to a denial of human rights of individuals and that the outcomes of being trafficked involve more than just forced sex work. This paper provides a brief background on trafficking, including definitions used and the conceptual distinction between trafficking, migration and people smuggling, and identifies the various outcomes of being trafficked. It then offers a brief summary of the trafficking situation in certain Commonwealth countries. A review of international instruments is covered before turning to policy gaps and best practices, and the paper then raises a number of points about the conceptual categories used in definitions of trafficking to show how these lead to the recommendation of interventions that may or may not benefit trafficked women. The final part of the paper elaborates on a human rights approach to combat trafficking.

Situating Processes and Outcomes, Identifying Actors and Causes

Main features of trafficking

The process of trafficking and its various outcomes have been identified as complex and difficult to delineate. However, certain salient features can be made out:

At the point of origin, these include:

- 1 Coercive or persuasive processes that lead to the movement of people with promises of 'work' that they are often misinformed about;
- 2 The participation of certain actors who could be agents,

recruiters, acquaintances, friends or family members;

- 3 The exchange of money at the initial stage of the journey, which places people under debt, threat and insecurity.

At the point of destination, these include:

- 1 Being met by people who may confiscate the trafficked person's travel documents and/or take them to the workplace or place of residence;
- 2 The trafficked person may realise that the picture is not what it was made out to be and that more debts have been incurred;
- 3 The work engaged in could involve long hours in the construction, agriculture, garment/sweatshop, food processing, domestic work, manufacturing and sex sectors;
- 4 There would be no formal contract, and no regulation over wages, holidays, benefits and access to services;
- 5 There could be undue control exercised over the trafficked persons through threats, violence, reprisals back home and fear of being reported to authorities and facing deportation.

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Trafficking, migration and people smuggling

From the above, trafficking can be defined as the illegal movement of people made under coercion and/or deception, which places the trafficked persons in vulnerable, indebted and insecure positions in work sectors that do not guarantee them safety of personhood and access to rights and benefits. Migration, on the other hand, is the voluntary movement of both skilled and unskilled persons in search of economic and social improvement to situations that are generally not exploitative or oppressive. Migrants can be both documented and undocumented. People smuggling has elements of both migration and trafficking. While people are smuggled using illegal channels akin to trafficking, those smuggled may have volunteered/agreed to being smuggling (much like the choice to move made by migrants).

Although we can make such analytical distinctions, in real-life situations these can become blurred. For example, accord-

ing to Doezema (2000), the differences in the way feminist groups perceive sex trafficking causes current anti-trafficking campaigns to become split along ideological lines defining sex work, which make distinctions between voluntary and forced sex work problematic. The first position, or the abolitionist perspective (Barry, 1995), views trafficking and sex work as a violation of human rights. The second position, or the sex workers' rights movement's perspective (Skrobanek et al, 1997), makes a distinction between voluntary and forced sex work, i.e. they are against trafficking of women for sex work but recognise that choice in sex work exists. These two positions, however, do not consider the range of states between victims and agents where trafficked women's lives can be situated and which would have implications for the way interventions are planned.

Causes of trafficking

It has already been pointed out that complex interacting socio-economic and political structures that marginalise people on the basis of class, caste, gender and ethnicity create the climate for trafficking. Factors on the supply side, such as natural disasters, vulnerabilities arising from personal problems, discriminatory cultural practices and gender-based discrimination, may place women seeking physical and economic security at risk of being trafficked. On the demand side, restrictive immigration laws and policies, the need for cheap labour and the presence of trafficking rings with connection to corrupt public officials facilitate the entry of trafficked women into work sectors that may endanger their health (e.g. exposure to sexually transmitted infections, including HIV/AIDS) and also leave them socially stigmatised.

A Commonwealth Secretariat report (2003) has elaborated on new dimensions of trafficking given the forces of globalisation at play, including liberalisation of services and the spread of information and communications technologies. We know that, increasingly, economic migrants are educated and highly skilled and seek economic opportunities outside their countries. At the same time, we also know that developed countries source for a cheaper labour force to cut costs and still meet demands for products and services. The ILO (2003) asserts

that if sensible migration policies were in place in both origin and destination countries, then there would be a chance of orderly labour migration. However, with the closure or even severe restrictions on migration channels, the climate for trafficking is created. While men may be able to legally migrate to work in, for example, the agriculture and construction sectors, women may be excluded from using legal migration channels and are particularly vulnerable to being trafficked for other kinds of work. Analysts and activists also point out that women tend to be excluded from the migration policies of their countries on the basis of gender, and this type of discrimination may also extend to destination countries.

Trafficking and criminal networks

While considerable attention is paid to the situation in sending countries, it is in countries of destination that most of the human rights violations of trafficked persons take place. Most of these are developed countries and most trafficked persons end up in the unorganised and invisible sectors like domestic services or the sex sector. Attempts to facilitate the realisation of trafficked persons' labour and human rights are fraught with problems, given the involvement of crime syndicates. Bruggeman (2002) from EUROPOL argues that organised criminal networks are increasingly becoming involved in the trafficking of people as huge profits are at stake and there is evidence to show that criminal networks are closely linked to sex trafficking (ICMDP, 1999). Current estimates peg profits from trafficking at US\$12 billion a year as criminal networks are able to hire out the systems and structures that they use for the movement of other contraband, such as drugs and vehicles, for the movement of humans as well (ILO, 2003).

According to the Commonwealth Secretariat (2003), traffickers manipulate legal migration channels in many ways including:

- using legal entry mechanisms such as work visas, student permits and business and transit visas to facilitate unlawful and extended stays for trafficked persons; and
- using stolen or counterfeit travel documents and avoiding border controls in the course of transporting people.

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The report further states that trafficking networks often enjoy political patronage and/or rely on corrupt public officials to facilitate their work. Research in the South Asian context bears this out (D’Cunha, 1991; Shivdas, 2003). Trafficking networks are extensive, with links between points of origin and points of destination. They involve a wide slew of actors, from women and men at village and town levels to those who operate in border areas and agents to recruiters at different areas in destinations, including workplaces and safe houses.

Some outcomes of trafficking

What are the outcomes of trafficking? In addition to women and girls being trafficked into the sex industry, some specific examples often cited include cases of young boys from Bangladesh being trafficked to the Gulf States to become camel jockeys and young girls in India being trafficked for domestic work overseas. Nepali girls are trafficked into the Indian circus industry. Cases of women being trafficked for marriage have been recorded by human rights groups. Two hundred and thirty-eight women from Sri Lanka ended up in a factory in the Middle East and worked for a pittance till the factory closed before their ‘contracts’ expired. Despite being promised full wages and benefits, they received token wages and were deported after being given US\$100 each (GAATW, 1999). The International Organisation for Migration (IOM) has also recorded cases of old women, handicapped persons and children being trafficked for begging.

An ILO report (2003) asserts that people of all ages are trafficked across South Asia and into carpet workshops, garment factories, street hawking, begging, brick kilns, construction projects and tea plantations. The report also suggests that children are trafficked within and across the borders of Central and South America and West and Central Africa for domestic service. In the Middle East and North Africa, Asian men are trafficked for manual and construction work and women find themselves exploited and oppressed in domestic services.

Examining the Trafficking Situation in Various Regions

Africa

In Africa, Sita (2003) identifies two main types of trafficking: trafficking in children mainly for domestic work and farm labour across and within national borders; and trafficking in women and children for sexual exploitation mainly outside the region. Ghana has been identified as a country of origin where 'connection men' or traffickers are sighted frequently at border crossings; a corresponding increase in fake visas has also been noted (IOM, 2001). The immigration services in Ghana estimated that 3,582 women were trafficked between 1998 and 2000, while 535 trafficked women were repatriated to Ghana during 1999–2000. Ghanaian women are trafficked to Belgium, Côte d'Ivoire, Italy, Lebanon, Libya, the Netherlands, Nigeria and the US. Belgium, Côte d'Ivoire, the Netherlands and Spain are also destination points for trafficked Nigerian women. IOM notes that in Central and Western Africa, women are trafficked as domestic workers to Kuwait and Saudi Arabia from Mali. Children from Benin are exploited as workers in plantations, in the sex industry and as domestic helpers in Burkina Faso, Côte d'Ivoire and Nigeria. Young women and girls in Uganda are trafficked by the Lord's Resistance Army to neighbouring Sudan and sold as sex slaves.

Sita (2003) notes that not all of the countries of the Economic Community of West African States (ECOWAS) have specific legislation that criminalises trafficking in women and children, as current penal codes focus on kidnapping and abduction. Significantly, under these provisions parents and guardians are exempt but there is evidence of family collusion in trafficking. Makkai (2003) reports that initiatives to address trafficking include the Western African region's action plan to combat trafficking, a bilateral arrangement between Côte d'Ivoire and Mali for the prevention of trafficking for child labour and an agreement on a Platform for Action by West and Central African States.

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Asia

In Asia, sub-regional hubs for trafficking have been identified and include India, Japan, Korea and Thailand. These hubs serve as a source, transit and destination for trafficking (Senta, 2003). In South-East Asia, IOM (2001) traces the trafficking of Vietnamese women and children to Cambodia, China, Singapore, Taiwan and Thailand. In 2000, IOM noted that women from Eastern Europe and Latin America were being trafficked into Asia. Many of the countries do not have specific legislation on trafficking offences so official statistics are rare. The UN and its agencies, including UNIFEM, the ILO and the Economic and Social Commission for Asia and the Pacific (ESCAP), are co-ordinating an anti-trafficking initiative in the Mekong region. At the ASEAN¹ level, Australia, Indonesia, Malaysia, New Zealand, Thailand and the Indochinese countries have initiated a regional level research and training programme.

In South Asia, the Middle East and Gulf countries are destinations to which women are trafficked for both sex work and domestic work. India is a major hub for trafficked Bangladeshi and Nepali women. Bangladeshi women are trafficked through India to Pakistan, while Sri Lankan women are trafficked to the Gulf States and Singapore. Nepal and India have anti-trafficking legislation. The 2002 SAARC² Convention on trafficking provides a framework for sub-regional co-operation and action.

Europe

Lehti and Aromaa (2003) assert that member countries of the European Union are destination countries, while Eastern Europe, the Balkans and the Commonwealth of Independent States (CIS) countries are source or transit countries. IOM (2001) information indicates that trafficked Nigerian women can be found in Belgium, Italy, the Netherlands and Spain. Belgium is often a destination country for trafficked Filipina, Nigerian, Thai and Ukrainian women. Brazilian, Chinese and Thai women have been trafficked to the UK and Ukrainian women to the Balkans and Germany. According to data obtained by STV,³ of the 205 women known to have been trafficked into

the Netherlands in 1998, 131 were from Central and Eastern Europe, 35 from Africa, 24 from Latin America and 15 from Asia. EUROPOL and governments of Europe are working on the issue. In 1988 the Dutch government began granting temporary resident permits for trafficked women who choose to testify against traffickers or who would like some time to determine whether to proceed with criminal action against their traffickers.

The Americas and the Caribbean

According to Woodbridge (2003), geographic and economic factors facilitate the sex trafficking of women from Latin American countries. Colombia has been identified as a hub for trafficking in the region and, as pointed out earlier, Latin American women are increasingly being trafficked to different Asian countries.

In the case of North America, particularly the US and Canada, Albanese and Donnelly (2003) suggest that there are no reliable national estimates for the extent of trafficking, although it is known that trafficking occurs for sex work and sweatshop and domestic labour. The available evidence suggests that Canada is both a destination and transit country for the US. According to Albanese and Donnelly, emerging studies have found links across different ethnic groups to improve efficiency and profits from trafficking.

From the above, it can be said that not many countries of the Commonwealth remain untouched by trafficking in women and girls. Governments and NGOs are attempting to address the issue at policy, programmatic and advocacy levels. However, gaps in policy exist and there have been increased calls to consider the rights of trafficked women during policy planning and implementation.

Reviewing International Instruments

Let us now consider the concept of trafficked person's rights – as expounded by CEDAW, the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children and the Beijing Platform for Action (PFA) – in

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order to examine how trafficked women's rights could be protected in the international arena.

Two international instruments, particularly article 6 of the CEDAW Convention and the 1949 UN Convention on Traffic in Persons and Exploitation of the Prostitution of Others, address trafficking mainly in the context of forced sex work. It is only the Optional Protocol that provides the first internationally accepted definition of trafficking and broadens the scope of human trafficking to include exploitative sex work, forced labour or services and the removal of organs.

CEDAW

Article 6 of CEDAW reads: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". The general recommendations to article 6 state clearly that certain practices are incompatible with the equal enjoyment of rights by women and do not respect their rights and dignity. Identified practices that put women at special risk of violence and abuse include sex tourism, the recruitment of female domestic labour from developing countries to work in developed countries and organised marriages between women from developing countries and foreign nationals. Poverty and unemployment are noted as factors that increase opportunities for trafficking in women. In addition, specific protective and punitive measures are recommended for wars, armed conflicts and the occupation of territories as they are seen to increase prostitution, trafficking in women and sexual assault of women.

The main mechanism for getting States to comply with CEDAW's recommendations on trafficking is through the CEDAW Committee's assessments of national reports. While the Committee can urge governments to enact appropriate legislation, there is no means through which governments can be forced to make legislative changes. However, the Concluding Comments released by the Committee for each reporting country often serve to bring to the public domain certain key concerns that may not have been addressed by governments. For example, in the case of Singapore's initial and second periodic report presented in 2001, the Committee noted with

some concern that trafficking of women had not been addressed and therefore urged the Government to include trafficking in its next report. Women's groups in Singapore could use the Concluding Comments of the CEDAW Committee as the basis for their advocacy work. In addition, trafficked women who have been unsuccessful in claiming justice could use the Optional Protocol to CEDAW if their countries have signed it. However, given the cross-border nature of trafficking, the use of this Protocol may become complicated.

Optional Protocol on Trafficking

The 1949 UN Convention on Traffic in Persons and Exploitation of the Prostitution of Others classified all cases of recruitment into prostitution as "traffic in persons" and thereby ignored other kinds of trafficking in related areas such as entertainment (Dottridge, 1999). It also criminalised even cases where consent for sex work exists (Wijers and Lap-Chew, 1997). However, the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (2000) attempts to go beyond the 1949 Convention to outline the definition of trafficking as:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal of organs.

Doezema (2002) has shown that differences at the Vienna deliberation that finalised the Protocol about the notion of 'consent' to define trafficking in women posed problems for activists as they also lobbied for the inclusion of protective human rights mechanisms for migrant sex workers. Jordan (2002) asserts that an opportunity for including a human rights approach was lost as governments perceived the Protocol as only a law enforcement instrument and not an outline of pro-

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protective human rights measures. They held that national legislation served that purpose. Jordan, however, maintains that activists and international institutions still have an opportunity to influence national efforts to create anti-trafficking laws as many governments have signed the new Protocol and are obliged to adopt domestic laws that are in keeping with its provisions.

Other instruments

The 1995 Beijing PFA, Strategic Objective D.3, calls on governments to protect the rights of trafficked women and girls through strengthening existing legislation. Further, the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementary to the UN Convention against Transnational Organised Crime, entered into force on 28 January 2004 and offers the scope to lobby for changes in laws. Under this Protocol, governments have agreed to make migrant smuggling a criminal offence under national laws, adopt special measures to crack down on migrant smuggling by sea, boost international co-operation to prevent migrant smuggling and seek out and prosecute offenders. States parties to the Protocol have also agreed to adopt domestic laws to prevent and suppress activities related to the smuggling of migrants. Commonwealth governments that have signed the Protocol include Botswana, Canada, The Gambia, Jamaica, Namibia, New Zealand and Nigeria.

Despite assurances and commitments by governments, it is acknowledged that trafficked women often lose their rights to justice because of entrenched gender and moral biases in laws and policies and the discriminatory perceptions and attitudes of state agents in institutions such as the judiciary and the police force. There is also often a tendency towards criminalisation of all categories of trafficked workers. Rehabilitation and reintegration mechanisms seeking to improve trafficked women's situations are often inadequate and seem to draw attention to women's social stigma if they have been engaged in sex work.

Discussing Policy Gaps

The critical element about trafficked women's rights is not the process through which they were trafficked or the work sector they ended up in but that they are in positions of 'no-return' or without recourse to securing their rights. Policy approaches should therefore focus on this area of 'protection'. The two other levels of intervention are 'prevention' and 'reintegration'. Jana et al (2002) assert that not many attempts have been made by governments and NGOs engaged in addressing trafficking to either plan and implement standard human rights codes of practices or involve trafficked women in devising strategies for prevention and reintegration.

Protection

Given the global and transborder nature of trafficking, international instruments and bilateral and regional agreements represent policy response at the different levels. Therefore CEDAW, the Beijing PFA, the various Conventions and regional agreements, such as the SAARC Convention on trafficking and bilateral arrangements like the 1994 accord between Belgium and the Philippines, convey governments' recognition of the problem and their intentions to protect trafficked women's rights. However, Toepfer and Wells (1997) assert that international instruments on trafficking in women often lack legal force as they are qualified by reservations that limit their binding effects.

At the regional level, limitations to an agreement can be demonstrated through examining the SAARC Convention on trafficking. This has been criticised for restricting the scope of trafficking to sex work when women in the region are also trafficked, for example, for domestic work and the circus industry and boys and men are trafficked for other types of work (ILO, 2003). Sanghera and Kapur (2000) argue that the notion of 'consent' is not acknowledged and is considered irrelevant to the issue of sex trafficking; more importantly, State parties are directed to use criminal law, which may not heed women's rights. For example, the Convention requires 'victims' to be repatriated to their country of origin irrespective of individual choices made to remain in sex work in a foreign country (ADB, 2002). IOM (2002) points out that the Convention

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does not have provisions to secure the rights of trafficked women when they are detained or imprisoned.

In addition, activists working on trafficking in countries of origin (Bangladesh, Nepal and Sri Lanka) have pointed out that the Convention does not address the accountability and responsibilities of destination countries (India and Pakistan). Trafficked women's testimonies are also not considered in the investigation procedures set out in the Convention. Given that state agents in the different countries would be mainly interested in the mechanisms of working out procedures for repatriation, they are not likely to consider individual trafficked women's needs to stay on in a foreign country due to fears about reintegration and social stigma. Activists assert that because of such flaws in addressing accountability, the legal framework of the Convention is also flawed and therefore would not provide trafficked persons with sufficient social and legal redress (Mo, 2001).

Current mechanisms/strategies for the protection of trafficked women in sex work are mainly about 'rescue' and not focused on protecting the women from pimps, traffickers or brothel owners who violate their rights. In other words, trafficked women are taken out of exploitative environments, but the dominant and oppressive structures and persons remain largely unaddressed. A Kvinnoforum study (2003) of European good practice on trafficking approaches found that there were no good practices for witness protection in destination countries and no protection whatsoever in countries of origin.

Prevention

Other examples of gaps in policy arise when the fines or penalties for trafficking are not enough of a deterrent to override the substantial profits that can be made through trafficking (Bertone, 2000). Some countries have addressed this issue. Canada, for example, increased fines for convicted traffickers from Can\$10,000.00 to Can\$100,000.00 in 1993, and passed a law in 1997 stipulating that women who seek entry into the country as 'entertainers' have to show proof of their profession in order to prevent them from being trafficked. However, businesses in Canada have criticised this law as it restricts their procedures and business plans (ibid).

In Nigeria, the July 2003 law that imposes a life sentence on anyone caught trafficking in humans, and which also prescribes a fine of 100,000 Naira (about US\$1,000) for any Nigerian convicted of human trafficking, has been welcomed by activists. Until recently, laws on human trafficking and sex work in Nigeria had been found in various criminal codes, and punishments for offenders were largely not enforced.

However, an example of a well-intentioned law to address prevention of trafficking that has had negative consequences for women's rights to movement and livelihoods is found in Bangladesh, where single women are prevented from travelling across borders (Jana et al, 2002). CARE⁴ (2001) has noted that the State, in collaboration with certain NGOs, has set up booths in border areas where women are questioned about their identity and intentions before being allowed to proceed or not.

Reintegration

At the level of reintegration, rescued trafficked women are usually kept under police custody and/or under the supervision of social services or welfare departments in remand homes or shelters. D'Cunha (1991) and Shivdas (2003) have suggested that government remand homes in Mumbai, India, are not without problems and that police officials – particularly beat constables in red light areas – have informal financial arrangements with brothel keepers to ignore the presence of trafficked women in brothels. Repatriation measures are complex and often take time to be worked out as investigations and lengthy court procedures get underway in destination countries, and NGOs and governments in countries of origin grapple with preparing families and communities to accept trafficked women returnees. A crucial aspect of repatriation is the shame and stigma that surround returnee women's lives when they attempt to reintegrate. If the women are HIV positive their return is further complicated and they may not find appropriate health services in the country of origin.

The transborder nature of trafficking necessitates co-operation between governments of countries of origin and countries of destination so that laws in different countries work in tandem to not only prosecute traffickers but also protect trafficked women victims.

Best Practices

Given all of the above, and other gaps in policy highlighted by analysts and academics (Sanghera and Kapur, 2000; Makkai, 2003; Skrobanek et al, 1997), this section outlines some innovative practices that consider trafficked women's rights and needs during interventions.

The transborder nature of trafficking necessitates co-operation between governments of countries of origin and countries of destination so that laws in different countries work in tandem not only to prosecute traffickers but also to protect trafficked women victims. An example of such co-operation can be found in the collaboration between US, EU and Eastern European officials and represents a policy approach that brings together countries of origin and countries of destination to determine appropriate common and compatible measures that are in keeping with national laws.

To accord trafficked women their rights to protection at the time of prosecution of their traffickers, the governments of Belgium, Italy and the Netherlands issue temporary resident permits to trafficked women victims to enable them to give evidence against traffickers. The US government is to issue T visas for victims of trafficking who assist authorities with the investigation of trafficking cases, and the EU is considering the introduction of short-term residence permits for trafficked victims (ILO, 2002). While the policy of granting temporary resident permits to trafficked victims is gaining ground, the crucial area of witness protection still remains unexplored.

At the level of international organisations, agencies and NGOs, there are a number of examples of appropriate interventions. The ILO initiative on trafficking, called the Special Action Programme to Combat Forced Labour, works in different regions and collaborates with other UN agencies and NGOs to conduct research, devise programmes and work with governments to address the causes and consequences of trafficked labour.

Because trafficking often involves the movement of women from different cultures and ethnicity to richer countries, an NGO like TAMPEP (Transnational AIDS/STD Prevention among Migrant Prostitutes in Europe) works towards empowering migrant and trafficked sex workers in Europe by using

information that is culturally appropriate (Brussa, 1999).

SAGE, a human rights NGO based in the US, works to raise awareness about the impact of sex trafficking and exploitation on the lives of women and girls through its programmes for male clients (Commonwealth Secretariat, 2003). The Durbar Mahila Samanwaya Committee in Sonagachi, Kolkata, India also works with clients to raise awareness about HIV/AIDS issues and violations of trafficked women's rights. In addition, this committee has instituted self-regulatory boards that address trafficked female sex workers' rights in the context of the exploitation and oppression prevalent in brothels. The boards comprise sex workers, locally elected officials, legal experts, state representatives and medical doctors. Board members counsel the women and devise supportive and informal repatriation for them in collaboration with sex workers' groups and NGOs in their countries of origin. Jana et al (2002) argue that collectivisation of sex workers and the establishment of self-regulatory boards may be a way forward. These boards are well placed not only to monitor the exploitation and oppression in the trade but also to address the issues of trafficked minors in brothels. They build on trafficked women's agency, both individual and collective, and attest to their capacity to know about their rights and act on them.

Significant Points for Consideration

A number of conceptual points on trafficking and sex trafficking that have a bearing on the planning and implementation of interventions need to be considered. First, there is a tendency to conflate the situation of girls and women in the literature on sex trafficking that may lead to some confusion about rights. In some cases the rights of children could be subsumed under the rights of adults, with the result that particular rights of trafficked children are not given special attention and treatment. For example, during the 1996 brothel raids by police in Mumbai, India, trafficked children engaged in sex work were not treated any differently from adults (Fernandes et al, 2002). At another level, the agency of adults tends to get ignored, resulting in the infantilisation of women in both policy approaches and treatment of trafficked women. A case in point

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is the construction and policy treatment of trafficked women outlined in Nepal's anti-trafficking laws (Sanghera and Kapur, 2000; Shivdas, 2003).

Second, it is known that men and boys are also trafficked and engage in sex work. For example, the work of Ebron (1997) and Brown (1992) highlight the case of Gambian men. Third, Wijers and Lap-Chew (1997) found from their study of responses of organisations working with trafficked victims that a majority of the cases of trafficking involved women who knew they were going to work in the sex industry but were duped about the conditions of their work. In a related issue, my research findings in Nepal and Mumbai, India, revealed that family collusion in trafficking of women and girls is often ignored in both state and NGO discourses, with the result that policy interventions at the community and household levels may be ineffective (Shivdas, 2003).

Truong (2003) has shown that as trafficked women often rely on information put out by networks of their ethnic affiliations, they are subjected to informal control by traffickers. For example, it has been reported that trafficked Nigerian women are often subjected to voodoo to silence them into oaths of secrecy (EUROPOL, 2000). Through fear instilled in them about destruction of their families, they are effectively prevented from informing the authorities. Further, the lack of legislative mechanisms to ensure the safety of victims also deters these women from coming forward with complaints. In addition, as Truong (2003) asserts in the European context, there is the crucial fact that programmes tend to strengthen institutional capacities to deal with monitoring and control of trafficking rather than empowering trafficked women.

Turning to trafficking statistics, Wijers and Lap-Chew (1997) noted, after their one and a half years of investigations into the extent of international trafficking for the UN Special Rapporteur on violence against women, that it was impossible to get reliable statistics. They contend that when statistics on trafficked women are available, they usually refer to the number of migrant or domestic sex workers rather than cases of trafficking. Makkai (2003) has also suggested that statistics on trafficking tend to be imprecise, with significant disparities between estimates and actual cases. Makkai contends that statistics are often culled from media reports and case studies without any

explanation about how estimates were made. The IOM, however, attempted in 2001 to put together some figures on a global scale by gathering statistics from 120 of its field offices.

The Human Rights Framework and What it Means for Policy Intervention

Divisions in the perceptions and political positions of organisations that attempt to intervene in trafficked women's lives have been discussed extensively by activists and academics (Bertone, 2000; D'Cunha, 1998 and 1997; Pickup, 1998). On the one hand, the main lines of schism concern the two inter-related issues of migration and trafficking and the consequent notion of 'voluntary'/'forced' sex work. These distinctions become ambiguous and complicate the protection of trafficked women's rights to movement and livelihoods given that interventions are often about prosecution and repatriation. On the other hand, the concept of human rights is enshrined in various international instruments and commitments. But these instruments are also problematic as the concepts on which they are premised are often limiting and flawed and their implementation is reportedly weak.

Elaborating a gender-responsive human rights framework to trafficking

What is a human rights-based response to trafficking? Human rights standards for the treatment of trafficked persons has been outlined by GAATW (1999). Eight obligations are set out for States and include:

- 1 Principle of non-discrimination evident in procedural law, policy and practice;
- 2 Protection of trafficked persons and their rights, any irregular immigration status notwithstanding;
- 3 Access to justice assured to trafficked persons;
- 4 Enable trafficked persons to seek reparations from traffickers;
- 5 Provision of temporary residence visas, including the right to work during the time of legal actions;

- 6 Health and social services for trafficked persons during temporary residence;
- 7 Appropriate repatriation and reintegration of trafficked persons;
- 8 Co-operation to ensure full implementation of the above standards.

GAATW (1999) also asserts that empowering strategies adopted by governments and NGOs should necessarily be gender sensitive and should recognise and protect trafficked women's rights to control their bodies and lives, to be free from violence and abuse, to migrate and to engage in work including sex work.

Jordan (2002) argues that adopting a human rights framework would shift the focus from seeing trafficked persons as objects to understanding their situations and according them human rights. She further maintains that a human rights approach overcomes anti-immigrant bias, misogyny and moral condemnation of trafficked women who choose to be sex workers. The human rights approach may mitigate the current trafficking scenario which, according to Morrison (2000), is facilitated by xenophobic, tightly controlled immigration laws in destination countries. More importantly, a human rights policy approach to trafficking could ensure that women are perceived as adults and therefore treated appropriately. The Commonwealth Secretariat (2003) stresses the need for strategies to combat trafficking that are gender sensitive and enhance women's rights, particularly given the restrictive and controlling tenor of current protective measures.

Conclusion

In the light of the discussion on the current trends and patterns in trafficking, differences in concepts, gaps in policy consideration and statistics and the outline of a gender-responsive human rights approach to trafficking offered here, it is useful to conclude with thoughts for policy consideration. Makkai's (2003) summation of key areas that require immediate policy attention includes:

- The lack of victim protection from deportation and witness protection in their country of origin, which make it difficult for both trafficked women and governments to prosecute traffickers;
- The need for increased international co-operation to address a global problem, particularly to track the profits of trafficking;
- The need to address factors on the demand side of trafficking as well as the supply side.

To these I would add one more specific area for policy consideration: the need to bring in an integrated approach to trafficking along the lines of the Commonwealth Secretariat's approach to combating gender-based violence. An integrated policy approach to the trafficking of women and girls would consider a systematic evaluation of the policy environment, including assessing the capacities and capabilities of organisations and institutions, before working with stakeholders to come up with solutions. In conclusion, this paper calls for a gender-responsive human rights approach that also involves trafficked women in the planning and implementation of anti-trafficking strategies because, more than anyone else, women who have been trafficked and survived know what is best for them.

Notes

- 1 Association of South-East Asian Nations.
- 2 South Asian Association for Regional Co-operation.
- 3 Stichting tegen Vrouwenhandel (Foundation Against Trafficking), the Netherlands.
- 4 An international NGO engaged in anti-trafficking initiatives.

[There is a] need to bring in an integrated approach to trafficking along the lines of the Commonwealth Secretariat's approach to combating gender-based violence ... [that] would consider a systematic evaluation of the policy environment, including assessing the capacities and capabilities of organisations and institutions, before working with stakeholders to come up with solutions.

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Using CEDAW to Address Trafficking in Women¹

Shanthi Dairiam

... the strength of CEDAW lies in its framework of discrimination. Taken holistically, the Convention provides many answers through different articles when the problem [of trafficking in women] is framed as discrimination.

Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the sole international legal instrument specifically designed to protect women from continuing discrimination and human rights violations, has been ratified by 177 countries. Consisting of a total of 30 articles, CEDAW identifies specific areas of life where women do not yet enjoy full equality with men and requires State parties to eliminate such discrimination *de facto* as well as *de jure*.² Hence, the question arises: How can CEDAW be used to address the problem of trafficking in women?

From a glance at the individual provisions of CEDAW, the answer may seem obvious. Recognising the specific vulnerability of women to exploitation, article 6 of the Convention requires State parties to suppress trafficking in and exploitation of prostitution of women. However, the strength of CEDAW lies in its framework of discrimination. Taken holistically, the Convention provides many answers through different articles when the problem is framed as discrimination. The CEDAW Committee, through its jurisprudence, has clarified the links between CEDAW and trafficking against women in General Recommendation 19 and in its review of State party reports. The individual complaint mechanisms recently introduced through the adoption of the Optional Protocol to CEDAW also present survivors and advocates with an effective tool to address the wider issue of discrimination.

A Closer Look at the Convention

Objectives

CEDAW aims at guaranteeing full protection of women's human rights. It is the starting point for eliminating discrimi-

nation against women in all spheres of life: in the family, in the community and in the workplace. It ensures equal participation in political and public life and aims at lifting the cultural and traditional burdens placed on women. By emphasising the position of women both in public and private life, the Convention reflects the recognition that women encounter discrimination in law and in fact in all aspects of life. As such, it is the first human rights treaty to go beyond imposing state obligation in the field of public life to require State parties to undertake a series of measures to ensure equality in private life. CEDAW thus provides State parties with an agenda for action at the national level, making it more than simply an international bill of rights for women. Rather, CEDAW is a unique tool to ensure full and equal participation and enjoyment of rights of women in all spheres of life, thus reducing their vulnerability to abuse and exploitation.

Key provisions

The Convention highlights measures to be undertaken by State parties to end discrimination in 16 substantive articles covering civil and political rights and the legal status of women, reproductive rights and non-discrimination on the basis of culture and tradition. A substantial amount of these are relevant to combating trafficking if this struggle is placed within the framework of discrimination.

First of all, the Convention explains the concept of discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (article 1)

Any act of restriction, exclusion or distinction, whether intentional or unintentional, that impedes the recognition of women’s human rights or denies women the exercise of any such right is discrimination. This definition is applicable to all provisions of CEDAW.

Article 6 states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traf-

Breaking down the trafficking cycle into separate human rights violations reveals, for example, which rights are infringed when women are deceived or lured into leaving their home out of economic despair or because they simply have no other option, or when their passports are seized and they are forced to perform a job they never wanted or which is subject to conditions they never agreed to.

fic in women and exploitation of prostitution of women”. State obligation also extends to other areas such as law enforcement, as well as underlying issues, such as social and economic factors, that render women vulnerable to exploitation.

Using the framework of non-discrimination

To guarantee a multi-faceted approach to combating trafficking, however, it is recommended not to make use of one particular CEDAW provision alone, but to use CEDAW as a whole, and to place the problem of trafficking in women within the wider context of discrimination against women.

As a first step, this requires showing that trafficking against women is indeed a form of discrimination. Consequently, we have to establish which rights of women are denied or infringed when they are trafficked. Breaking down the trafficking cycle into separate human rights violations reveals, for example, which rights are infringed when women are deceived or lured into leaving their home out of economic despair or because they simply have no other option, or when their passports are seized and they are forced to perform a job they never wanted or which is subject to conditions they never agreed to. This, in turn, allows us to seek a wide range of remedies. The comprehensiveness of CEDAW becomes an appropriate instrument to address the wide-ranging issues that need to be tackled when dealing with trafficking.

General Recommendation 19

In establishing which rights are violated during the course of the trafficking process, it is useful to turn to General Recommendation 19, adopted by the CEDAW Committee in 1992. This covers the issue of gender-based violence – a human rights violation not explicitly included in the Convention. Paragraphs 6 and 7 clarify, however, that all forms of gender-based violence are discrimination and spell out the rights denied to women when they experience gender-based violence:

6 The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportion-

ately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of the person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

During the process of trafficking women, most, if not all of the above rights are violated. As a result, the definition of gender-based violence applies to trafficking in women. As such, trafficking constitutes discrimination against women. Consequently, many articles of the Convention are applicable in relation to the rights violated.

A denial-of-rights approach

In order to identify which articles are relevant, it is mandatory to look at the different levels of discrimination that constitute trafficking and closely analyse the circumstances surrounding and contributing to it. For this we have to distinguish three stages (before, during and after) in the trafficking cycle during which women experience discrimination:

- 1 Immediate as well as deep-rooted causes of trafficking (before);
- 2 Manifestations of abuse that women face while they are trafficked (during);
- 3 Inadequate remedies for victims and survivors (after).

The denial-of-rights approach compels us to not only provide services for the relief and rehabilitation of trafficked women, but also to take additional punitive action against those responsible for the denial of rights ...

Discrimination is evident in all these aspects and they have to be addressed in a comprehensive manner. This approach prevents us from reducing the actions to combat trafficking to the immediate issues of rescue, repatriation and rehabilitation, and helps us look at the social context that facilitates trafficking. It helps us further to look at the long-term issues of discrimination, resulting in the denial of life chances to women, that perpetuates the vulnerability of women to trafficking.

The denial-of-rights approach compels us to not only provide services for the relief and rehabilitation of trafficked women, but also to take additional punitive action against those responsible for the denial of rights and draw on the accountability of those obligated to be duty holders to prevent trafficking, to punish traffickers and to provide other forms of remedies for survivors of trafficking. This approach is crucial for the deterrence of trafficking. If programmes to combat trafficking stop at rescue and rehabilitation initiatives, then nothing is being done about the nexus of collusion between law enforcers, traffickers, state officials and receivers of trafficked persons acting with impunity. The fact that nothing is done about them gives them the power to continue their criminal activity. Secondly, as a long-term measure, it is also imperative to engage in advocacy that will focus on the larger issue of the disadvantaged position of women, such as their unmet needs for economic independence and their devaluation that puts them at risk of being trafficked.

Hence not only do we have to view trafficking in itself as discrimination but we also have to consider the discrimination that women face because they are women which intensifies their vulnerability to trafficking. CEDAW has great relevance when this approach is taken.

Obligations for State Parties Arising under CEDAW

As noted above, article 1 of CEDAW and the definition of discrimination is central to the analysis of trafficking in women. More importantly, the prohibition of discrimination under CEDAW is not restricted to action by or on behalf of the State. Rather, the State has to ensure there is no discrimination by any person, organisation or enterprise – thereby extending state

obligation into the private sphere of life. Furthermore, State parties are also responsible for modifying or abolishing existing customs or practices that constitute discrimination against women (article 2e and f). Consequently, the responsibility to take action against all acts of abuse perpetrated by recruiting agents and unscrupulous employers falls on the State.

Secondly, articles 3 and 4 require State parties to CEDAW to take all appropriate measure including changes in law and policy to ensure the full advancement of women, as well as temporary special measures to accelerate women's *de facto* equality.

In the context of combating trafficking, such measures cover public information campaigns on the risks of trafficking and other preventive measures and extend to providing adequate support services for rehabilitation of victims and survivors of trafficking, halfway houses and other refuges.

Thirdly, article 5 obligates State parties to strive to eliminate traditional attitudes that see women as inferior to men. This reflects the recognition that even if women's legal status is equal to that of men's, there is another level of discrimination that has to be eliminated: discrimination in the private sphere through adherence to cultural stereotypes and social patterns of behaviour.

Finally, several other substantive articles apply. These are the obligation to ensure equality of women in the field of employment (article 11), the right to equality in access to health facilities (article 12), the responsibility of State parties to ensure equal development for rural women (article 14), and the right to equality before the law (article 15) and equality in the family (article 16).

In addition, sections of General Recommendation 19 have great relevance and applicability in establishing measures to be taken in combating trafficking. Reference to the General Recommendation is important because it identifies a range of specific actions that need to be taken by the State to fulfil its obligation to respect, protect and fulfil women's rights. Its provisions complement the statement of rights and obligations contained in CEDAW. For example:

- 1 The definition of discrimination, and the importance of CEDAW articles 2 e-f, 3, 4 and 5 is reinforced in paragraphs 7, 9, 10 and 11.

- 2 Poverty and unemployment are identified as contributing factors to trafficking.
- 3 The prevalence of new forms of exploitation, recruitment for domestic labour and sex tourism is emphasised as incompatible with the concept of equal rights.
- 4 Factors leading to trafficking, such as armed conflict and living in occupied territories, are identified in paragraph 16 as warranting specific protection and punitive measures.
- 5 Duties of the State have been identified as the adoption of appropriate legislation – both preventive and punitive; provision of protection and support services for victims; and gender sensitive training of judicial and law enforcement officers and other public officials (para. 24).
- 6 Paragraph 24 also requires the compilation of data and research on the extent, causes and effects of violence and on the effectiveness of measures to prevent and deal with the problem, as well as public education and information campaigns to overcome prejudices against women.
- 7 Finally, State parties are obligated to monitor their actions (para. 24).

Implementing and Monitoring CEDAW

In line with monitoring systems of other international human rights treaties, article 17 of CEDAW establishes the Committee on the Elimination of Discrimination against Women (CEDAW Committee), which monitors the progress individual State parties have made in implementing their obligations arising under the Convention. This takes place primarily by examining reports that these States have submitted to the Committee.

The CEDAW Committee meets for a period of two weeks each year to discuss reports submitted by State parties, based on which it will suggest and recommend further action to be taken. In addition to state reports, the Committee may also consider reports by UN specialised agencies, as well as information from NGOs. Through the Economic and Social Council, the Committee reports once a year to the UN General

Assembly as well as the Commission on the Status of Women.

Officially, the parties in the review process are the State party concerned and the CEDAW Committee. However, NGOs participate unofficially and provide valuable information to the Committee, which helps to evaluate States' performance in fulfilling their obligations under the Convention. By stating problems and issues addressed by the State in question in direct relation to the article concerned, NGO reports, called shadow reports, can be extremely useful in assessing the factual situation of women in a particular country.³

All State parties to CEDAW are obliged to submit a report to the CEDAW Committee one year after ratification of or accession to the treaty. Thereafter, they are required to report on measures taken to implement the Convention every four years. Resource and time constraints, however, as well as lack of capacity present difficult challenges for States' compliance with this obligation. To overcome these challenges, State parties can ensure effortless collection of information from various ministries and government agencies by designating a reporting agency and ensuring effective collaboration of all agencies involved. It is further suggested that NGOs should be included in this process, as they may be able to share a wide range of resources.

To improve the timeliness and adequacy of reports submitted by State parties, the UN Division for the Advancement of Women organises training courses for government officials.⁴ In addition, the UN Centre for Human Rights conducts training on reporting obligations under all major international human rights treaties, one of which is CEDAW.

In order to review periodic reports in a timely manner, the Committee established a pre-session working group, which drafts questions based on the first reading of the State party's written report. These questions are sent to the reporting state six months in advance. At the face-to-face review, the State party concerned is expected to present an oral report based on its written report combined with the answers to the questions of the pre-session working group. The review process is similar to an exchange of information and ideas resulting in a set of written conclusions and recommendations to the State Party concerned. These are called Concluding Comments.

All State parties to CEDAW are obligated to submit a report to the CEDAW Committee one year after ratification of or accession to the treaty. Thereafter, they are required to report on measures taken to implement the Convention every four years.

Identifying elements of the problem of trafficking and relating them to a particular article of the Convention is essential in combating trafficking in women through the use of CEDAW.

Two Country Examples

This section looks briefly at the reviews of two countries' periodic reports – China as a country of origin of trafficked women and the Netherlands as a receiving country.⁵ These countries have been chosen as examples because it is vital to look at issues to be addressed at both ends and to hold both sets of States accountable in addressing the problem of trafficking in women.

China

During the Committee session in January 1999, the CEDAW Committee reviewed the third and fourth periodic reports of China. In addition to the steps taken to implement CEDAW set out in the state reports, NGOs raised several issues with regard to trafficking in women in their shadow report⁶

In its review of progress in China, the Committee expressed concern regarding the levels of poverty experienced by women, unemployment among women and the adverse effect of economic reform on women. The Committee was also concerned regarding the effect of economic reform on social services. Further concerns were illiteracy among women, the education of girls and the lack of women in leadership positions. In particular, the Committee raised issues around the adequacy of legal remedies to protect the personal rights of women and in particular the rights of rural women, as well as to protect women in the context of crime committed against them including trafficking and prostitution.

In its Concluding Comments, the Committee suggested that social services for survivors of trafficking be provided by the Government. It urged decriminalisation of prostitution and measures for the rehabilitation and reintegration of prostitutes, including provision of health services. It also urged the Government to take action in connection with allegations of officials colluding in trafficking in women.

Applicable articles

Identifying elements of the problem of trafficking and relating them to a particular article of the Convention is essential in combating trafficking in women through the use of CEDAW.

When specific issues have been established as areas mandating action, it becomes clear which articles are applicable in this context. For example, where collusion between traffickers and state officials exists, article 2(d) must be used to challenge this collusion. This article reads: “[States parties undertake] to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”.

The Netherlands

In July 2001, the CEDAW Committee reviewed the second and third periodic report submitted by the Kingdom of the Netherlands. Like the reports submitted by China, NGO shadow reports⁷ provided useful information in addition to the measures presented by the government representatives.

They also illuminated several incongruities. Whereas national law allows for the prosecution of traffickers, victims of trafficking are not enabled to report in practice; or whereas in theory it is possible to seek asylum, women end up in hopeless asylum-seeking situations because legal and other organisations are ill-informed about the protection available. The fact that they are survivors of trafficking is ignored or not recognised, and consequently they do not receive full protection. In addition, although temporary residence permits may be granted to survivors, no assistance to build a future through providing skills training, housing or work permits is given.

Applicable articles

These examples elucidate the importance of the review process in identifying areas in the field of anti-trafficking measures that require improvement. Here, the broad provisions of article 3, which require State parties to take appropriate measures in all fields to ensure women’s full development and enjoyment of human rights⁸ and article 4, which provides for temporary special measures, need to be used to challenge the gaps in state action.

Summing up

Engaging different actors in the process of providing information on the implementation of CEDAW in the field of elimi-

... the issues to be addressed in sending countries differ greatly from those in receiving countries.

nating discrimination as a root cause of trafficking enhances the accuracy of information. At the same time, analysing the dialogue between the Committee and the State party that ensues during the review process serves to pinpoint areas of concern that mandate targeted measures to be taken by State parties in order to fulfil their CEDAW obligations.

On a different note, an analysis of the state reports review of China and the Netherlands reveals that the issues to be addressed in sending countries differ greatly from those in receiving countries. In the former, it is not only matters directly related to trafficking against women that need to be addressed. It is also issues that refer to the broader concern of discrimination against women, matters pertaining to the empowerment of women and those aspects of culture that differentiate between women and men in stereotypical ways that lead to the subordination of women. These aspects make women vulnerable to trafficking. In receiving countries, however, the issues to be tackled revolve around laws and programmes relating to the criminalisation of trafficking and slave-like conditions of work, cross-border crime control, the sensitivity of authorities to legal and illegal immigrant women and their problems, issues of asylum law and issues concerning the provision of security measures for women seeking to free themselves from traffickers.

The Optional Protocol to CEDAW

In October 1999, the UN General Assembly adopted the Optional Protocol to CEDAW.⁹ A year later, ten States had ratified the Optional Protocol, allowing it to enter into force on 22 December 2000 in accordance with article 15.

Objectives

The Optional Protocol provides a course of action to prevent or remedy violations of women's full enjoyment of human rights and fundamental freedoms. It is closely modelled on other UN human rights complaints procedures and incorporates a range of practices of other treaty bodies. Mainly, it establishes a communication procedure that allows individuals

and groups of women to complain about violations of CEDAW provisions, as well as an inquiry procedure that permits the Committee to conduct inquiries into grave or systematic abuses of women's human rights in countries that are State parties.

Key provisions

Article 1 establishes the competence of the CEDAW Committee to receive and consider communications under the protocol. Article 2 sets up the communications procedure, followed by articles 3 to 7, which lay out the rules governing this procedure. In detail, these provisions stipulate that individuals or groups of individuals are enabled to submit a complaint to the Committee once all available domestic remedies have been exhausted. This admissibility criterion may be waived if these remedies are unlikely to be effective in the pursuit of relief of a violation of the Convention. A complaint may also be submitted on behalf of an individual if the person concerned has consented or if it is explained why that consent was not received.

If the facts of the complaint brought before the Committee mandate interim measures to avoid irreparable damage to the victim of the alleged violation, article 5 permits the Committee to present such measures for urgent consideration to the State party concerned. Unless the complainant consents to the disclosure of their identity to the State party in question, article 6 stipulates that the Committee shall bring the communication to the attention of the State party in a confidential manner. A timeframe of six months is provided for the State party to submit written explanations or statements regarding the alleged violation of the Convention and/or remedies taken.

As an additional procedure, article 8 establishes the inquiry procedure, which allows the Committee to embark on a confidential investigation into grave or systematic violations of the Convention – if necessary and consented to by the State party concerned – even by way of a visit to its territory. For those States wishing to ratify the Optional Protocol but unable to recognise the competence of the Committee to conduct inquiries, article 10 provides an opt-out clause. However, no other modifications are possible as article 17 prohibits all reservations to this protocol. Thus, States that ratify the Optional Protocol are bound by the entirety of its provisions.

The communications procedure ... allows women who are nationals of a State party to the Optional Protocol and have been rescued from being trafficked to lodge a complaint at the international level if the national judicial system has failed to provide relief.

Relationship with the Convention

The Optional Protocol serves as a supplement to CEDAW and provides a new avenue for implementation and enforcement of the CEDAW provisions. As such, only State parties to CEDAW are eligible to ratify it. Similarly, only those complaints concerning alleged violations of CEDAW by a State party to both CEDAW and the Optional Protocol may be brought before the Committee.

Using the Optional Protocol

The Optional Protocol provides the framework for effective enforcement of CEDAW provisions by endowing an independent body of international experts with the competence of receiving complaints about individual violations and investigating systematic violations.

The communications procedure, as an individual complaints procedure, may prove useful in remedying violations of those CEDAW provisions that have occurred during the process of trafficking. It allows women who are nationals of a State party to the Optional Protocol and have been rescued from being trafficked to lodge a complaint at the international level if the national judicial system has failed to provide relief, thereby expanding the avenues of redress significantly. This route guarantees individual remedies for specific violations and places the survivor at the centre of the proceedings, providing her with full ownership of judicial redress.

In a similar vein, the inquiry procedure provides a useful tool to investigate systematic violations of women's human rights, which may lie at the heart of women's vulnerability to trafficking. These systematic violations may relate, for example, to economic rights, property rights, the right to education or systematic discrimination in connection with women's social status.

The Optional Protocol offers an effective remedy and can prove vital in combating trafficking. It is hoped that the current level of global interest in combating trafficking and awareness of the problem will create the momentum for wider ratification.

Conclusion

This paper has pointed out the relevance of CEDAW to combating trafficking in women and has attempted to provide a methodology for its application. By using the definition of discrimination in article 1 of CEDAW, it is possible to identify a wide range of women's rights violated during the process of trafficking. To remedy these violations, it is suggested that not only article 6 of the Convention, which expressly requires State parties to suppress trafficking in women, should be invoked, but also that use various relevant articles of the Convention as well as General Recommendation 19.

As a first step, it is of utmost importance to analyse the circumstances surrounding the problem of trafficking and, as a second step, to work out the applicability of CEDAW. Advocates and stakeholders in search of identifying factors that contribute to trafficking in a particular country are advised to turn to the periodic reports submitted to the CEDAW Committee by the State party in question. An analysis of the information presented both by the government and, if applicable, by NGO shadow reports, can offer valuable insights into areas of the *de jure* and *de facto* situation of women. Thus, violations of the Convention and issues deserving of improvement may be easily identified.

The CEDAW review is a very useful process that provides guidance to State Parties on how to implement their obligations under the Convention, as the constructive dialogue with the Committee facilitates a more rigorous approach to the implementation of the Concluding Comments. State Parties are encouraged to report regularly to the CEDAW Committee to benefit from this guidance. What is also needed is a monitoring and follow-up of the CEDAW review in which all parties concerned, State representatives as well as NGOs, come together.

Advocates and stakeholders in search of identifying factors that contribute to trafficking in a particular country are advised to turn to the periodic reports submitted to the CEDAW Committee by the State party in question.

Notes

- 1 Adapted from a paper written for ESCAP, 2002.
- 2 *De jure* refers to the situation in law, whereas *de facto* describes the situation in fact.
- 3 NGOs wishing to submit a shadow report may write to the CEDAW Committee, care of the Division for the Advancement of Women, Room CD2-1220, P.O. Box 20, United Nations, New York, NY 10017, USA. Representatives of accredited NGOs may attend the Committee Sessions as observers.
- 4 United Nations Division for the Advancement of Women, 2 UN Plaza, DC2-12th Floor, New York, New York 10017, U.S.A., Fax:(1 212) 963 3463, www.un.org/womenwatch/daw
- 5 It is not intended to establish that women are trafficked from China to the Netherlands. These countries have been selected merely as examples of the possible issues arising in both sending and receiving countries.
- 6 Prepared by Human Rights in China, December 1998.
- 7 Prepared by a consortium of 23 NGOs.
- 8 The provisions of article 3 is interpreted by the CEDAW Committee to include enabling conditions or further programmatic measures that need to be taken to enable women to benefit from law, policy or existing programmes.
- 9 Resolution A/54/4, 6 October, 1999, opened for signature on 10 December 1999.

Trafficking as a Human Rights Issue: Thoughts on How to Address it in the Commonwealth

Lin Lean Lim

Because of the very nature of trafficking, there are no precise data available. However, available evidence, though piecemeal, reveals an alarming increase in its incidence, severity and global reach, the highly systematic and sophisticated mechanisms involved, the links with organised crime and official corruption, the varied purposes for which people are trafficked and the exploitative and abusive effects of trafficking.

Trafficking is but one component in the complex and shifting continuum of population mobility and migration. It is critical to distinguish between regular and irregular migration, people smuggling and trafficking. Trafficking is defined by the coercive, non-consensual and exploitative or servile nature of the purpose of movement and involves a number of serious human rights violations.

This distinction is made in the trafficking and smuggling protocols to the UN Convention on Transnational Organised Crime, 2000. This states that while smuggling is consensual, trafficking is distinguishable by the presence of force, coercion and/or deception throughout or at some stage of the process, such coercion being for the purpose of exploitation.

It is crucial not to conflate trafficking with various manifestations of migration and mobility on the one hand, and with prostitution and sex work on the other. The dangers are:

- 1 Equating trafficking with migration can lead to simplistic and unrealistic solutions. In order to prevent trafficking, there are both conscious and inadvertent moves to stop those who are deemed vulnerable to migrating. This results in reinforcing the gender bias that women and girls need

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constant male or state protection from harm and therefore must not be allowed to exercise their right to movement or right to earn a living in a manner they choose.

- 2 Curbing migration through, for example, restrictive migration policies and tighter border controls – especially if they are biased against women – does not stop trafficking, it only drives it further underground. In the face of strong push and pull factors such curbs may, on the one hand, make irregular channels the only alternative for migrants and, on the other hand, present lucrative opportunities for unscrupulous traffickers who make a profitable business (estimated to be the fastest growing aspect of organised crime and third in terms of profits only after drugs and guns) out of circumventing these restrictions.
- 3 Conflating trafficking with sex work leads to anti-trafficking measures being invariably anti-prostitution measures. Trafficking is not only about prostitution and sexual exploitation but involves many other forms of forced labour, debt bondage, peonage in domestic service, agriculture, sweat shop manufacturing, etc, as well as sale of organs, etc.

If there is one thing the Commonwealth Secretariat can help to do in terms of raising awareness, it should be to place trafficking in the appropriate perspective *vis-à-vis* migration: “Over-emphasising trafficking and taking it out of context in relation to migration is strategically counter-productive in the fight for human rights because: (a) trafficking puts migration in a crime control, crime prevention context, rather than talking about migrants’ human rights; and (b) trafficking is being used by governments as a vehicle to develop more restrictive approaches to migration in general” (Asian Migration Centre, 2000: 18).

What are the Human Rights Dimensions of the Problem?

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking

measures should not adversely affect the human rights and dignity of persons.

Traffickers use threats, intimidation, deception and violence to subject victims to involuntary servitude, peonage, debt bondage and forced or phoney marriages, to engage in forced prostitution or to labour under conditions comparable to slavery for the trafficker's financial gain. The ILO Forced Labour Convention, 1930 (No. 29) defines forced or compulsory labour as "All work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily".

A rights-based concern is necessarily also a gender-inclusive concern. Gender is a determining factor in trafficking, both on the supply and demand sides. Women and girls are much more likely than men and boys to be the victims of trafficking. Trafficking is a serious manifestation of the feminisation of poverty and the broader challenges facing women and girls – in a world still characterised by gender discrimination both within and outside the labour market.

It is important to emphasise that although trafficking is now high on national and international agendas, legal provisions and policy interventions are inadequate, failing to reflect the gravity of the offences involved. According to the ILO:

- 1 "Most countries do not have legislation that would allow the perpetrators to be prosecuted directly for the crime of trafficking. This leads to a situation whereby even the most obvious cases of trafficking are prosecuted under laws that apply to lesser offences – such as laws on prostitution or on pimping. The limited scope of these laws allows traffickers to receive a relatively light penalty that does not reflect the serious and brutal nature of trafficking;
- 2 Even when trafficking is defined as a crime in law, it is sometimes confined to trafficking for the purpose of sexual exploitation and does not cover other forms of forced labour, slavery or servitude. Such an approach of conflating trafficking with prostitution not only means that traffickers often escape deserved punishment; it can also lead to further discrimination against female victims of trafficking because of prejudicial attitudes of law enforcers and society at large towards prostitutes;

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- 3 On the other hand, the victims of trafficking are often punished more harshly than the traffickers themselves; they are prosecuted and deported, rather than protected. The authorities tend to treat trafficked persons as criminals rather than as victims, because of their irregular residence and employment status in the destination country, or because they work in prostitution. These actions lead victims to mistrust authorities and to refuse to co-operate with investigations, thereby decreasing the chance that traffickers will be successfully prosecuted;
- 4 The government approach is to combat ‘illegal migration’, organised crime and (illegal) prostitution, whereas the need for prevention programmes and victims’ rights protection does not receive adequate attention. This narrow approach deprives trafficked persons of their basic human rights, and may create or exacerbate existing situations that cause or contribute to trafficking;
- 5 Law enforcement agencies may simply move trafficked persons from one system of control to another – from being controlled by traffickers to being controlled by law enforcement officials. They tend to prioritise the needs of law enforcement over the rights of trafficked persons, who are seen primarily as witnesses, as tools of law enforcement. The right of victims to have access to justice is often denied, and prosecutions tend to fail because trafficked persons will not be willing to testify;
- 6 Law enforcement is often hampered by official indifference, corruption, collusion with traffickers, lax or under-funded regulatory mechanisms, such as the police, border guards, labour inspection services and the judiciary, and the failure of governments to prosecute public officials involved in trafficking” (ILO, 2003).

How Can We Address the Trafficking Problem?

- 1 Recognising multifaceted causes, manifestations and consequences, the response framework must be comprehensive, multi-pronged and multi-level.

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- 2 The framework should be guided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 and the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking 2002. Other international instruments are also important, including CEDAW, the new UN Convention on Migrant Workers that has just come into force, the ILO Migration for Employment Convention (Revised), 1949 (No. 97); the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, and related core Conventions.
 - 3 Policies must cover the three 'Ps': prevention, protection and prosecution. Prevention of trafficking means addressing the root causes of the supply and demand for trafficked persons (with implications for action by both sending and receiving countries and also transit countries). The protection of trafficked persons involves gender-sensitive assistance and support to victims both in the destination country (including temporary residence permits to allow victims to take up cases against traffickers) and repatriation and reintegration to their home countries and local communities. Prosecution of traffickers should be directly for the crime of trafficking and not for lesser crimes.
 - 4 In addressing the root causes of trafficking, it is extremely important that attention be given to poverty, particularly the feminisation of poverty, and all forms of discrimination. It cannot be over-emphasised that unless gender inequality in all spheres – such as education, access to information and other resources (land and credit) and occupation segregation in the labour market – is effectively addressed, women and girls will always be vulnerable to being trafficked. But it is not just gender discrimination that must be dealt with. Women from indigenous groups and ethnic minorities are more vulnerable, and race also determines the treatment trafficked women receive in countries of destination.
 - 5 It is important to avoid what is known as the 'push-down, pop-up' phenomenon. One lesson learned from the Asia Pacific region is that while successful interventions to stop trafficking may be made in one community or country, the

It cannot be over-emphasised that unless gender inequality in all spheres – such as education, access to information and other resources (land, credit) and occupation segregation in the labour market – is effectively addressed, women and girls will always be vulnerable to being trafficked.

What is needed is to address labour market and employment policies in both origin and destination countries The aim should be to work towards regulated, orderly and humane labour migration systems.

lack of reduction on the supply side merely results in a shift of the supply pool to the next vulnerable community or country. Attention needs to be paid to regional co-operation involving sending, transit and receiving countries.

- 6 Migration in abusive conditions, exploitation and trafficking occur in contexts of serious deficits related to decent work – in terms of the absence of rights at work, lack of freely-chosen, productive and remunerative jobs, inadequate social protection and lack of representation and voice. However, in most countries, migration policy is the purview of the ministries/agencies responsible for national security and law enforcement and does not involve the ministries of labour, sectoral ministries or the national machineries for women. But trafficking cannot be effectively tackled without addressing the reasons behind labour market failures. Rising unemployment and underemployment and poor working conditions, persistent occupational segregation and the disadvantaged position of women relative to men in the labour market, and flexibilisation and casualisation of productions and employment relationships are increasing the demand for undocumented migration workers. What is needed is to address labour market and employment policies in both origin and destination countries, and enhance measures for extending labour regulations to cover domestic service (which in many countries absorbs the bulk of female migrant workers but is not covered by labour legislation), strengthen labour market institutions, including inspection and also employment services, to better inform job-seekers of their options. The aim should be to work towards regulated, orderly and humane labour migration systems.

One last word about the protection of trafficking victims. One of the main problems in identifying trafficked persons and treating them as such is that often they do not see themselves as victims. Wrong expectations of how a victim should behave often leads to misinterpretations by both the authorities and service providers, which may often shift blame on to the trafficked persons. Many trafficked persons do not feel that they have been 'rescued' from their situation, but that they have been 'captured' by the authorities. However, this should not affect their ability to exercise their basic rights. And gender-

sensitive assistance and support should be provided to trafficked persons, e.g. to take up cases against traffickers.

In both countries of destination and origin, trafficked women are often treated as criminals rather than as victims. Unfortunately, neither the UN Trafficking Protocol nor the Crime Convention place an explicit obligation of the State to refrain from criminalising trafficked persons.

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Response Framework for Trafficking of Women and Girls¹

From ILO Booklet 6: Trafficking of Women and Girls

Response mechanisms to address the multifaceted causes, manifestations and consequences of the discrimination, exploitation and abuse of trafficked women and girls should be comprehensive, multi-pronged and multi-level. They should:

- 1 Treat trafficking as a distinct crime and address all stages of the trafficking cycle and all victims;
- 2 Address the root causes of both the supply of and demand for trafficked persons;
- 3 Promote human rights, including labour rights and migrant rights;
- 4 Promote a standards-based approach to combat trafficking, together with protecting the basic rights of all migrants;
- 5 Promote decent work for all workers;
- 6 Work towards informed and transparent labour migration systems;
- 7 Take action at all levels: community, national, regional and global;
- 8 Establish institutional mechanisms to involve all social actors;
- 9 Gather and share information;
- 10 Ensure adequate and harmonised legal frameworks and effective law enforcement;
- 11 Ensure that legislation, policies and programmes are gender-sensitive; and
- 12 Promote the principle of non-discrimination and fight racism and xenophobia.

1 Treat Trafficking as a Distinct Crime and Address All Stages of the Trafficking Cycle and All Victims

A response framework will be co-ordinated and effective only if all parties – government officials, law enforcers, workers' and employers' organisations and NGOs – are focusing on the same crime and identifying the same set of victims and the same set of perpetrators. Trafficking should be treated as a distinct crime and should not be conflated with smuggling or prostitution. Trafficking is not just for sexual exploitation; it encompasses all forms of forced labour, slavery and servitude in any sector of the economy. Trafficking also does not just affect women and girls. Men and boys are also victims, in some areas even more so than females.

Since trafficking is a multi-phased problem, all countries of origin, transit and destination in the trafficking cycle should be involved in a comprehensive response that aims to:

- 1 **Prevent trafficking** – not only by effective legal frameworks, strong law enforcement mechanisms and co-operation between States, but also by addressing both the supply and demand factors and tackling the underlying root causes of trafficking, including poverty, unemployment, inequality and all forms of discrimination and prejudice;
- 2 **Extend appropriate protection and support to all trafficked persons** without discrimination, and respect the rights and needs of those who have been trafficked;
- 3 **Investigate, prosecute and adequately penalise traffickers and their collaborators**, paying full attention to due process rights and without compromising the rights of the victims;
- 4 **Provide trafficked persons, as victims of human rights violations, with access to adequate and appropriate remedies**, including access to justice, the right to be free from reprisals, rights to recovery, rights to legal redress, and ability to sustain themselves and their families.

A response framework will be co-ordinated and effective only if all parties – government officials, law enforcers, workers' and employers' organisations and NGOs – are focusing on the same crime and identifying the same set of victims and the same set of perpetrators.

It is ... necessary to address the root causes on both the supply and demand sides – with implications for action by both source and destination countries.

2 Address the Root Causes of Both the Supply of and Demand for Trafficked Persons

The United Nations Recommended Principles on Human Rights and Human Trafficking emphasise that strategies aimed at preventing trafficking should address demand as a root cause of trafficking; and States and inter-governmental organisations should ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination. It is thus necessary to address the root causes on both the supply and demand sides – with implications for action by both source and destination countries.

Supply-side causes include:

- 1 Feminisation of poverty;
- 2 Chronic unemployment and lack of economic opportunities;
- 3 Growing materialism and desire for a better life;
- 4 Dysfunctional family situations;
- 5 Gender inequality in access to education and training;
- 6 Lack of access to information;
- 7 Discrimination on the basis of gender and/or ethnicity;
- 8 Cultural contexts and community attitudes and practices that tolerate violence against women;
- 9 Sex-selective migration policies;
- 10 Ineffective legal and regulatory frameworks;
- 11 Displacement and disruption due to natural and human-created catastrophes.

Demand-side causes include:

- 1 Employer demand for cheap and exploitable labour;
- 2 Consumer demand for services sometimes provided by trafficked persons;
- 3 Gender discrimination;
- 4 Increasing casualisation and informalisation in the labour market;
- 5 Growth of sex and entertainment industries;
- 6 Low-risk, high-profit nature of trafficking;
- 7 Absence of effective regulatory framework and lack of enforcement;
- 8 Lack of organisation and bargaining power of workers;
- 9 Discriminatory socio-cultural practices relating, for example, to marriage;

10 Lack of respect for/violations of human rights.

Although admittedly not easy, and although measures would need to be over the long term, these root causes must be dealt with if efforts to address trafficking are to be effective and sustainable.

On both supply and demand sides, there is one uniting and pervasive factor: “the multi-layered discrimination and inequality which serve to prevent women and girls from exercising power over their lives” (UN Economic and Social Council, 1999:7). In the context of globalisation, while trade and capital flows have been liberalised, deregulated and integrated globally, people flows have not. Restrictive immigration laws and policies are obstacles to the demand for cheap, unskilled labour in destination countries and a large supply of human resources from source countries. This generates a lucrative market for traffickers.

It is necessary to avoid what has been described as the ‘push down–pop up’ phenomenon. The lesson learned from the Asia Pacific region is: While successful interventions may be made in one community or country, the lack of reduction on the demand side results in a shift of the supply pool to the next vulnerable community or country. Successful community-based protection strategies will have limited impact and only result in transferring the problem until more attention is paid to regional co-operation and tackling the demand side.

3 Promote Human Rights, Including Labour Rights and Migrant Rights

Trafficking is a grave human rights abuse and, in responding to this problem, States should prioritise the protection of the human rights of trafficked persons, taking the steps necessary to prevent abuses and provide remedies where abuses occur. “Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organised crime and illegal migration. Human trafficking is first and foremost a violation of human rights” (UNICEF, UNOHCHR and OSCE-ODIHR, 2002:xiii).

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The following principles are key in applying a human rights framework. Human rights are:

- 1 Universal: they apply everywhere;
- 2 Indivisible: political and civil rights cannot be separated from social and cultural rights;
- 3 Inalienable: they cannot be denied to any human being;
- 4 Interdependent: all rights are equally important.

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, which was unanimously adopted by the member States in 1998, reaffirms the right to freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation for all workers, nationals and non-nationals. The Preamble of the Declaration makes specific reference to the protection of migrant workers:

4 Promote a Standards-based Approach to Combat Trafficking, Together with Protecting the Basic Rights of All Migrants

A response framework must have its foundation in the rule of law. It is critical to establish legal rights and policy standards so as to ensure social legitimacy and accountability. Therefore, the aim should be to promote the adoption and implementation of the key UN and ILO Conventions:

- 1 United Nations Convention Against Transnational Organised Crime, 2000;
- 2 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000;
- 3 Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000;
- 4 International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;

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- 5 ILO Migration for Employment Convention (Revised), 1949 (No. 97);
 - 6 ILO Migrant Workers (Supplementary Provisions) Convention, 1975, (No. 143); and
 - 7 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, and the related core Conventions.

... a comprehensive response to the problem of trafficking must be based on the promotion of decent work.

5 Promote Decent Work for All Workers

Migration today is about work. Addressing migration means promoting opportunities for women and men, national and migrant, to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Migration in abusive conditions and the exploitation and trafficking of migrant workers occur in contexts of serious decent work deficits – in terms of the absence of rights at work, lack of productive and remunerative jobs, inadequate social protection and lack of representation and voice – in source, transit and destination countries.

Therefore, a comprehensive response to the problem of trafficking must be based on the promotion of decent work. The ILO views decent work as comprising four main pillars: the promotion of fundamental principles and rights at work for all workers, national and non-national; the creation of productive and remunerative employment; the extension of social protection, especially to marginalised and vulnerable groups; and the organisation and representation of workers and employers in social dialogue institutions and processes.

It is crucial to address the labour market and employment situation, labour standards and working conditions in origin and destination countries. Trafficking cannot be effectively tackled without addressing the reasons behind labour market failures (rising unemployment and under-employment and poor working conditions); persistent occupational segregation and the disadvantaged position of women relative to men in the labour market; and why and how informalisation, flexibilisation and casualisation of production and employment relationships is increasing the demand for unregulated migrant workers. The aim is to focus not only on migration policies or

on crime control but also, and very importantly, to include: labour market and employment policies in both origin and destination countries; measures for strengthening labour institutions, including labour inspection and monitoring; and employment services to inform job seekers of their options.

It is also necessary to enforce national minimum standards for the employment and working conditions of all workers, national and migrant. ILO Conventions provide international norms and guidelines for such national legislation. The aim should also be to establish monitoring and inspection systems to cover unregulated work in the informal economy – in particular domestic work, the sex industry and sweatshop subcontracting work – to detect and stop exploitation and forced labour and to uphold minimum decent work conditions.

6 Work Towards Informed and Transparent Labour Migration Systems

Informed and transparent labour migration systems would be a most effective way to fight trafficking. Countries of origin should adopt clear migration policies that reconcile inherent conflicts among policy goals, so that, for instance, the goal of the State to protect women migrant workers from exploitation and abuse does not lead to restrictive emigration policies that infringe on women's basic human rights to free movement and in fact make them more vulnerable to traffickers.

However, measures to protect vulnerable migrant workers and prevent trafficking cannot focus only on the supply of such workers and the factors in the source countries. The aim should be to 'manage' or promote orderly migration by admitting labour migrants into a destination country based on a systematic and realistic assessment of the labour market situation and "respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must be based in labour ministries, and rely on regular labour market assessments conducted in consultation with social partners to identify and respond to current and emerging needs for workers, high and low skilled" (Taran and Geronimi, 2002). The aim should be to establish legal labour migration channels that will contribute to reducing exploitation, trafficking and smuggling of migrant workers.

7 Take Action at All Levels: Community, National, Regional and Global

It is important to work at the grassroots, community level so as to reach vulnerable women and girls directly. In source communities, programmes and practical interventions have focused mainly on raising the awareness of vulnerable women and girls and their families to the dangers of trafficking and on the provision of livelihood alternatives, since unemployment and poverty are major root causes. In transit and destination communities, efforts have focused on shelter, health and counselling services for the victims of trafficking.

All such micro-level efforts are important, but inadequate unless combined with a range of complementary interventions and supported by socio-economic development policies at the macro level that address the root causes of the supply of and demand for trafficked women and girls. Alternative livelihood schemes in communities where women and girls are vulnerable to being trafficked should be supplemented by employment-intensive development policies and social protection schemes at national level. There should also be a review of policies at regional and international/global levels: including regional or bilateral agreements for the temporary or permanent movement of persons across borders; and trade policies to cover the temporary movement of service providers (highly skilled, semi-skilled and unskilled). Regional action programmes and global initiatives have also been developed to combat trafficking.²

Socio-economic development policies should also be complemented by law reform and law enforcement, so as to eliminate deep-rooted gender discrimination and to ensure proper working conditions and labour standards in all sectors of the economy and for all workers. Trafficking is still not widely recognised as related to the global macroeconomic environment and to specific macro policies in both countries of origin and destination.

Socio-economic development policies should also be complemented by law reform and law enforcement, so as to eliminate deep-rooted gender discrimination and to ensure proper working conditions and labour standards in all sectors of the economy and for all workers.

8 Establish Institutional Mechanisms to Involve All Social Actors

Since the current approach to trafficking is very much from a criminal law enforcement and crime prevention perspective,

the responsible government agencies are normally the Ministries of Interior, Immigration, Police and Judiciary. Hardly ever are Ministries of Labour involved. Yet, as emphasised above, migration today is about work and if the aim is to achieve informed and transparent orderly labour migration systems based on realistic assessments of labour market needs, Ministries of Labour and the social partners – workers' and employers' organisations – need to be closely involved. The role of the Ministries of Labour in countries of origin and destination is also in providing employment services and labour inspection.

The role of NGOs in the fight against trafficking is important and normally highlighted – the majority of them are concerned with trafficking for sexual exploitation. But, unfortunately, the (potential) role of employers' organisations and trade unions is often forgotten or ignored. Yet they are best placed to help realistically determine the labour market needs for migrant labour and to promote the use of proper contracts and observance of basic labour standards for migrant labour. Employers' organisations are often an important lobby group in destination countries for the orderly admission of migrant workers. The protection of migrant workers is part of the larger trade union fight against racism, racial discrimination, xenophobia and related intolerance. The International Confederation of Free Trade Unions (ICFTU) *No to Racism and Xenophobia! Plan of Action for Trade Unions* has a section specifically devoted to migrant workers.³ In the United States, the American Federation of Labour-Congress of Industrial Organizations (AFL-CIO) announced: "All workers – immigrant, native-born, documented or undocumented – should have the full protection of our system of workplace rights and freedoms".⁴

The role of the media is also very important, especially in terms of responsible, ethical reporting and raising public awareness of the pros and cons of labour migration and the dangers of trafficking. Rescued victims of trafficking could also voluntarily play an important role in advocacy. The role of religious institutions in responding to the needs of the most vulnerable at community level should also be recognised, encouraged and supported. In several countries, religious groups have long played a role in assisting trafficking victims.

Various networks of organisations and co-operation frameworks at local, national or regional levels have been established to combat trafficking.⁵ A major challenge is to find mechanisms that ensure that the many and diverse networks that have developed to combat trafficking do not work as 'closed circles', but that they come together in as many ways as possible to share information and exchange experiences. Where networks have different experiences, they can be potentially important points at which evaluation of impacts, drawing together of lessons and realistic assessment of progress can be made and then shared.

An important lesson learned by a working group looking at effective models of co-operation was the importance of not 'over-co-operating', but decide what levels of co-operation are necessary in order to maximise relative strengths but not waste scarce resources on co-operation mechanisms that add nothing to the impact or efficiency of programming. Sometimes co-operation needs to be no more than just sharing information with others working in the same area, whereas in other circumstances, it might need regular meetings and consultation (often having budgetary implications) and also closely co-ordinated planning and policy formulation.⁶

9 Gather and Share Information

Realistic, relevant and effective anti-trafficking strategies must be based on current and reliable information. However, the nature of the phenomenon means that it is very difficult to conduct research or gather quantitative or qualitative information; for example, respondents may be too scared or ashamed to speak out. The quality of information presently available makes it extremely difficult to determine the real dimensions of the trafficking phenomenon and to prepare appropriately targeted responses at either national or community level.

At community level, many women and children in difficult circumstances remain invisible or highly mobile and engaged in occupations and activities that are not regularly monitored by any government body or NGO. Methodologies for obtaining more reliable information on such women and children need improvement, particularly a community-based mecha-

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nism where data and information are collected, analysed and acted upon by people at that level. For example, communities could use a Table of Risks to assess and monitor departure from the community.

The Trafficking Protocol also calls for information exchange between countries, so as to more effectively co-ordinate efforts to address trafficking.

10 Ensure Adequate and Harmonised Legal Frameworks and Effective Law Enforcement

The importance of good laws, strong enforcement and co-operation among States cannot be over-emphasised in the fight against trafficking. Legislation must protect, promote and give practical effect to the rights of trafficked persons. The United Nations has, therefore, developed specific principles and guidelines. It is worth re-emphasising that, to be effective, there should be specific legislation setting out a criminal offence that covers trafficking for all purposes – not just sexual exploitation but all forms of forced labour. Examples of laws that adopt a comprehensive coverage of the crime of trafficking are:

- 1 United States Victims of Trafficking and Violence Protection Act of 2000;
- 2 Canadian Immigration and Refugee Protection Act of 2002.

The need for legislative harmonisation should also be highlighted. The lack of legislative harmonisation has been identified as a major obstacle towards effective prosecution and protection efforts, impeding any efforts of trans-border co-operation between the respective national authorities in the States of origin, transit and destination. Such harmonisation should, however, not be restricted to the sole approximation of existing laws, but should take place in the light of international and regional human rights standards.

In addition, legal literacy should be promoted, especially among vulnerable women and girls and their families so that they understand the law and are able to claim and defend their rights under the law. Access to affordable legal assistance in a language victims of trafficking can understand is also impor-

tant. Setting up telephone hotlines and effective information networking systems could encourage trafficking victims to seek legal advice and redress. Effective law enforcement would also require sensitisation of all officials, so that they are able to identify if someone might have been trafficked and can inform that person of her/his rights. Enforcement would also require clean and transparent authorities. Often enforcement is hindered by official indifference, corruption and collusion with traffickers, and lax or under-funded regulatory mechanisms.

To be effective, there should be specific legislation setting out a criminal offence that covers trafficking for all purposes – not just sexual exploitation but all forms of forced labour.

11 Ensure that Legislation, Policies and Programmes are Gender-sensitive

To realise human rights equitably for women and men, it is essential to mainstream gender concerns in the formulation, implementation, monitoring and evaluation of legislation, policies and programmes. Adopting a gender perspective means addressing the similarities and differences in the trafficking experience of women and men (girls and boys) in relation to vulnerabilities, violations and consequences; addressing the different impacts of policies on women and men; and – importantly – tackling trafficking by tackling the social constructs that stereotype, marginalise and disadvantage women relative to men. The focus should be not only on providing equal treatment but also on ensuring equal outcomes for women and men.

12 Promote the Principle of Non-discrimination and Fight Racism and Xenophobia

There should be measures to address direct and indirect discrimination – based on nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or other status – both within and outside the workplace. It is important to deal with the fact that trafficking is not only rooted in gender discrimination but also in ethnic/racial discrimination. Women and girls from socially marginalised ethnic minorities

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and indigenous groups are much more likely to be trafficked, and therefore require specifically targeted interventions.

There should also be measures to promote social cohesion and fight xenophobia. Xenophobia describes attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity. Racism generally implies distinction based on difference in physical characteristics, such as skin colour, hair type, facial features, etc. An important reason behind increasingly restrictive immigration policies is the increasing manifestations of hostility and violence against non-nationals – migrant workers, refugees and asylum seekers, immigrants, sometimes even students and tourists. There is increasing vilification of migrants and foreigners in the media, political discourse and public sentiments. Migrants and the migration phenomena are associated – especially through usage of terminology of ‘illegal migrants’ and ‘combating illegal migration’ – with criminality and more recently with international terrorism. In this context, the increased occurrence of discrimination and outright violence against migrants reported in a growing number of countries is clearly more than mere coincidence.

The Durban Declaration and Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001 has no less than 40 paragraphs on the treatment of migrant workers. The text specifically urges States to address discrimination and xenophobia and to ensure full equality for all before the law, including labour law.⁷

Notes

- 1 Adapted from ILO (2003). Booklet 6: Trafficking of Women and Girls. In *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An Information Guide*. Geneva: ILO.
- 2 See, for example, the summary of regional initiatives given in Table 1 of UNICEF, UNOHCHR and OSCE-ODIHR, 2002: 169–81.
- 3 See www.icftu.org
- 4 See www.aficio.org
- 5 See, for example, Anti Slavery International website: www.anti-slavery.org; the Global Alliance against Traffic in Women (GAATW) website: www.inet.co.th/org/gaatw; the La Strada Foundation website: www.soros.org/women.html/info_trafficking.htm; and the Asian Migrant Centre website: asian-migrants.org. See also description of networks and co-operation frameworks in ILO, 2002: 38–44.
- 6 ILO, 2002: 43.
- 7 See Office of the High Commissioner for Human Rights Commission and Sub-Commission Team and Anti-Discrimination Unit, 'List of Paragraphs in the Durban Declaration and Programme of Action which include provisions relating to Migrants and Refugees', 3 May 2002.

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