



UNITED NATIONS
Office on Drugs and Crime

UN.GIFT

United Nations Global Initiative to Fight Human Trafficking



HUMAN TRAFFICKING A CRIME THAT SHAMES US ALL

An Introduction to Human Trafficking: Vulnerability, Impact and Action

BACKGROUND PAPER

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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An Introduction to Human Trafficking: Vulnerability, Impact and Action



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For further information regarding the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), please go to its website at www.ungift.org.

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Introduction

The Global Initiative to Fight Human Trafficking

“The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) aims to mobilize state and non-state actors to eradicate human trafficking by: (a) reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; (b) ensuring adequate protection and support to those who fall victim; and (c) supporting the efficient prosecution of the criminals involved while respecting the fundamental human rights of all persons.

“In carrying out its mission, UN.GIFT will increase knowledge and awareness on human trafficking; promote effective rights-based responses; build capacity of state and non-state actors, and foster partnerships for joint action against human trafficking.”

(UN.GIFT mission statement)

Overview

The widespread contemporary exploitation of men, women and children is unacceptable to people of conscience the world over. Traditional approaches to preventing trafficking in human beings, to protect and assist trafficked persons and bring criminals to justice have had some small impact on the global phenomenon, but not enough. That even one young person be denied the benefits of childhood, that one young woman be subjected to the brutal humiliation of sexual exploitation and that one man become the slave of a cruel taskmaster in another country are clear signals that we must renew both our resolve as well as our initiatives to protect those who are vulnerable.

The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) was born out of a renewed commitment by world leaders in the battle against human trafficking to end this crime, one of the most egregious violations of human rights in the world today. Formally launched in March 2007 by the United Nations Office on Drugs and Crime (UNODC), and made possible by a generous grant from the United Arab Emirates, UN.GIFT is a call to action, reminding Governments, civil society actors, the media, the business community and concerned individuals of their common commitments to fight trafficking in persons, and that this battle can not be fought, or won, alone. As at 4 December 2007, 116 nations had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, thereby providing a common framework for international efforts. Only by joining forces, pooling knowledge, expanding the scope and number of stakeholders and cooperating across borders can we hope to eradicate human trafficking. Acknowledging this need at all levels, UNODC continues

to develop UN.GIFT in partnership with the International Labour Organization, the International Organization for Migration, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights and the Organization for Security and Cooperation in Europe.

Why UN.GIFT?

UN.GIFT aims to advance action against trafficking in persons on many fronts, and its objectives include the following:

1. To raise awareness—to tell the world that human trafficking exists and mobilize people to stop it.
2. To strengthen prevention—to inform vulnerable groups and alleviate the factors that make people vulnerable to trafficking.
3. To reduce demand—to attack the problem at its source by lowering incentives to trade and lowering demand for the products and services of exploited people.
4. To support and protect the victims—to ensure housing, counselling, medical, psychological and material assistance, keeping in mind the special needs of women and children and people at risk, such as those in refugee camps and conflict zones.
5. To improve law enforcement effectiveness—to improve information exchange on trafficking routes, trafficker profiles and victim identification in order to dismantle criminal groups and convict more traffickers. For those convicted, to ensure that the punishment fits the crime.
6. To implement international commitments—to ensure that international commitments are turned into national laws and practice by targeting technical and legal assistance to countries in greatest need and improving monitoring of implementation.
7. To enrich the database—to deepen global understanding of the scope and nature of trafficking in persons by more data collection and analysis, better data-sharing, joint research initiatives and creating an evidence-based report on global trafficking trends.
8. To strengthen partnership—to build up regional and thematic networks involving civil society, intergovernmental organizations and the private sector.
9. To ensure resources—to attract and leverage resources for the sustainable funding of projects around the world committed to ending human trafficking.
10. To strengthen Member States' participation—to give Member States a strong sense of ownership in the process and create long-term momentum.

The Vienna Forum to Fight Human Trafficking

The framework of UN.GIFT has allowed for a global conference, the Vienna Forum to Fight Human Trafficking, to be held in the Austrian capital from 13 to 15 February 2008. The Forum is a unique opportunity to bring together representatives from Member States, United Nations entities, non-governmental and international organizations, the business community, academia, the public sector and civil society.

The Vienna Forum is a visible step towards generating consolidated support and political will behind the goals of the Global Initiative. The aims of the Forum are specifically to raise awareness of all forms of trafficking, to facilitate cooperation and partnerships among participants, to take stock of progress made and to set the directions for follow-up measures to prevent and counter human trafficking. The Forum also provides for an assessment of the lessons learned regarding the dimensions of the issue and the current action taken in response to trafficking in persons. It allows for an open environment to enable all the parties involved to take practical steps within their spheres of action to fight human trafficking.

Vulnerability, impact and action

The Vienna Forum is organized around three central themes, which reflect the key issues that need to be addressed in a comprehensive anti-trafficking strategy: Why does human trafficking occur? What are the consequences? What measures might be taken in response? Within each theme, plenary sessions as well as workshops provide participants with the opportunity to explore each theme in greater detail, with the purpose of developing comprehensive intervention strategies and undertaking practical action.

1. Vulnerability: why does human trafficking happen?

Human traffickers prey on people who are poor, isolated and weak. Issues such as disempowerment, social exclusion and economic vulnerability are the result of policies and practices that marginalize entire groups of people and make them particularly vulnerable to being trafficked. Natural disasters, conflict and political turmoil weaken already tenuous social protection measures. Individuals are vulnerable to being trafficked not only because of conditions in their countries of origin, however. The allure of opportunity, the relentless demand for inexpensive goods and services and the expectation of reliable income drive people into potentially dangerous situations where they are at risk of being exploited. The Vienna Forum will examine existing definitions of and practices related to the prevention of trafficking and, by focusing on decreasing vulnerability, will broaden the strategic impact of existing prevention efforts.

2. Impact: the human and social consequences of human trafficking

The human and social consequences of trafficking are compelling. From the physical abuse and torture of victims to the psychological and emotional trauma, to the economic and political implications of unabated crime, the impact on individuals and society is clearly destructive and unacceptable.

The Vienna Forum will explore the impact of human trafficking on the lives of individuals and their communities. Participants will share experiences and focus on the consequences of human trafficking to victims, including the violence they experience, the adverse health effects, the social stigmatization and the risk of revictimization.

3. Action: innovative approaches to solving complex problems

The Trafficking Protocol provides a comprehensive strategic approach to combating trafficking in human beings. Implementation of the measures described in the Protocol, remains uneven however. A lack of clarity related to even basic terms and definitions, national political concerns and uncertainty regarding what measures work and what do not have contributed to a lack of systematic and consistent implementation, and sustainable action. Participants will be able to review major global anti-trafficking strategies and national responses, sharing from their own experiences and identifying elements that constitute best practices.

Background papers

In order to provide participants with a common starting point for debate and dialogue, UNODC commissioned the three following background papers, each addressing one of the major themes of the conference, and drafted by three leading anti-trafficking experts.

The first paper, on vulnerability, challenges current working definitions of prevention and the practical emphasis on public awareness as the primary tool to prevent the occurrence of this crime. The author maintains that an expanded understanding of prevention to include the vulnerability of at-risk individuals and the fostering of an environment where crime cannot prosper will assist in the development of comprehensive prevention strategies.

The second paper, on the impact of trafficking, outlines the many areas where trafficking affects our lives. The author includes discussions of the consequences of trafficking on

the victims of the crime, as well as on our social, political and economic systems, describing both the reach and the complex and interlocking negative impact that human trafficking has at both the national and the global level.

The third paper, on action, provides a detailed summary of government responses to trafficking since the adoption of the Trafficking Protocol in 2000. The author describes state actions in the areas of prevention, protection and assistance, and prosecution and law enforcement, offering a critique of different approaches and a call for an understanding of what constitutes good and best practices.

The full papers—reproduced in English only—are preceded by summaries in all six official languages of the United Nations.

Summaries of the papers

1. Vulnerability

Vulnerability, prevention and human trafficking: the need for a new paradigm

Current practices in the prevention of trafficking in human beings are analysed in this paper in order to understand why human trafficking continues to be identified as a growing phenomenon. Numerous prevention initiatives and considerable funding notwithstanding, a preliminary conclusion is that existing prevention practices do not reflect the comprehensive approach embodied in definitions of the term “crime prevention” in general or in the illustrative definition of “prevention” in article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

“Prevention” as it has been conceptualized in normative frameworks is examined, as also how those frameworks have been narrowly implemented. Vulnerability, in particular the vulnerability of an individual in his or her social context, emerges as the missing link in formulating well-developed policies and practices. Focus is placed on what constitutes vulnerability to trafficking as a prerequisite for the development of valid prevention programmes. New considerations are introduced as regards the development of strategic policies to prevent trafficking that are capable of addressing the real problems of vulnerable populations according to their own needs, in their own contexts.

The author questions what is meant when experts describe human trafficking as a growing phenomenon, since any assessment of an increase in human trafficking is impossible to quantify except in general terms. Reasons for this include differences in national definitions of the crime of trafficking, as well as of who constitutes a victim of trafficking, along with a lack of consistent, reliable and comparable data.

Both crime prevention and reduction of vulnerability are valid approaches to combating human trafficking. Each calls for different dynamics in policy and programme planning. A focus on vulnerability will enhance the human rights component of trafficking prevention policies. Traditional definitions of crime prevention can contribute to the enhancement of anti-trafficking policies by focusing on reducing elements of risk in the environment. Theoretically, prevention should therefore aim to eliminate trafficking before it occurs by reducing the factors that make individuals vulnerable to being trafficked.

Basic principles of crime prevention, such as the inclusion of a broad community of stakeholders, the empowerment of vulnerable persons and the reduction of risk factors, are

intrinsic to the elaboration of what is meant by “prevention” given in article 9 of the Trafficking Protocol. Unfortunately, the implementation of those principles has been limited, with the predominant focus having been on the development of both large and small public awareness campaigns directed towards potential victims of trafficking. Such programmes are developed on the premise that increased awareness of possible harm will help an individual to choose a different path. However, such programmes fall short because they fail to provide potential victims with an alternative course of action. If the emphasis of prevention programmes is placed exclusively on increasing the awareness of potential victims, prevention is limited. By failing to provide alternatives, such interventions place the onus for prevention of exploitation on the individual him- or herself. Potential victims remain equally vulnerable before and after viewing posters, films and television advertisements.

The author stresses that successfully assisting vulnerable populations to protect themselves from harm is not possible without an understanding of what makes them vulnerable to violence, abuse and exploitation in the first place. Reframing the issue of prevention through a definition of vulnerability to abuse and exploitation will allow for a more consistent approach to preventing trafficking. While the broad concept of prevention exists as part of the normative framework of many countries, viewing prevention models in terms of their relationships to the social, cultural, economic and political vulnerability of certain populations or groups to being trafficked has been largely neglected in practice.

Although used frequently in anti-trafficking discussions, the terms “vulnerable” and “vulnerability” have not been conclusively defined other than in a legal context. This paper includes an analysis of several considerations in understanding vulnerability and provides a definition in which “vulnerability” refers to “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities”.

Based on such considerations, indicators for conditions of vulnerability will need to be developed in the following areas: children; gender; poverty; social and cultural exclusion; limited education; political instability, war and conflict; social, cultural and legal frameworks; movement under duress; and demand.

Because most conditions causing vulnerability are systemic and the result of government-enacted policies, it is the responsibility of States to ensure the protection of vulnerable individuals in their midst.

2. Impact

The impact of trafficking in persons

The impact and cost of human trafficking on individuals as well as on political, economic and social systems is described in the paper. Human trafficking is a crime against

individuals and its consequences are most directly felt by those who are its victims. While human trafficking is a global phenomenon that knows no international borders, it is within individual countries and societies that its far-reaching and pervasive consequences are felt. More than 130 countries are affected by human trafficking. Some of the most notable social, political and economic impacts of human trafficking are identified, as also important policy considerations in each of those areas.

The consequences of trafficking on individuals

Human trafficking has an impact on the individuals it victimizes in all areas of their lives. Every stage of the trafficking process can involve physical, sexual and psychological abuse and violence, deprivation and torture, the forced use of substances, manipulation, economic exploitation and abusive working and living conditions. Unlike most other violent crime, trafficking usually involves prolonged and repeated trauma. Documentation and research describe how men, women and children are abused in specific exploitative conditions and the short- and long-term physical injuries, disabilities and deaths that may result. For a number of specified reasons, trafficked persons are at great risk of HIV infection. The trauma experienced by victims of trafficking includes post-traumatic stress disorder, anxiety, depression, alienation, disorientation, aggression and difficulty concentrating. Studies indicate that trauma worsens during the trafficking process and may persist far beyond the end of any exploitation. While subject to the same harmful treatment as adults, child victims are especially vulnerable to trafficking because of their age, immaturity and lack of experience, to abusive practices that may, for example, stunt their further physical development and to continued victimization as a result of attachment, developmental and social difficulties. The behaviour of trafficking victims can be difficult for third parties to understand, while victims can find it difficult to comprehend what has happened to them, or to discuss it with or explain it to others. Victims may appear to those around them, even support persons, to be uncooperative, irritable, hostile, aggressive or ungrateful. The stigma attached to them as victims has been shown to have a significant and ongoing impact on their lives, including in the trauma experienced by the individual victim as well as the possibility of physical rejection by family and/or community. The long-term consequences of human trafficking for the individual are complex and depend on many factors, with no guarantee of recovery. Revictimization is often a further consequence of the experience.

The political implications of trafficking in persons

Human trafficking is an issue of major international discussion and concern. Because it involves transnational movement of people, one important related area of debate is migration policy. Another concerns human rights aspects. The author describes the complex interrelationship between policy and action as regards trafficking in persons, smuggling of migrants and migration flows. The relevance of increased border control is noted, as is the status attributed to those who do not enter a State legally. An unintended consequence of efforts directed principally at illegal migration can be the non-identification and victimization of trafficked persons. The specific migration issues faced by countries of

origin and destination that can have a direct impact on trafficking in persons are outlined, as also the systemic challenges to be met in the case of the identification in one State of a trafficked person from another State.

The economic impact of trafficking in persons

The difficulties in assessing the impact of human trafficking are most apparent when attempting to quantify its economic costs. However, key economic consequences of trafficking are described. The costs of the crime of trafficking in persons incorporates many elements, including the value of all resources devoted to its prevention, the treatment and support of victims and the apprehension and prosecution of offenders. These costs may be offset in part by the recovery of criminal proceeds and assets of the traffickers. Trafficking in persons also results in loss of human resources and reductions in tax revenue. Further, trafficking in persons redirects the financial benefits of migration from migrants, their families, community and government or other potential legitimate employers to traffickers and their associates. All indications are that the income generated by related organized crime is significant and global. Given the ongoing nature of exploitation, human trafficking generates a stable and regular source of income for criminal networks, with a consequent impact on other forms of criminal activity as well as legitimate business.

Impact on the rule of law

As a criminal act, trafficking violates the rule of law, threatening national jurisdictions and international law. Organized crime is one of the most important mechanisms for unlawful redistribution of national wealth, unduly influencing markets, political power and societal relations. These effects may be acute in countries responding to civil unrest, natural disasters or post-conflict situations. The corresponding challenges faced by Governments are in stark contrast to the opportunities created for human traffickers. The underlying threat posed by trafficking in persons is why the issue is increasingly recognized as one of global security.

As a complex manifestation of the global economy, organized crime and violations of human rights, human trafficking causes extreme hardship to the suspected millions of people worldwide who have become victims of it and also has an impact on the financial markets, the economies and the social structures of countries where it is allowed to exist. As a major component of organized crime, with all its financial power, trafficking in persons has a complex and interlocking negative impact across human, social, political and economic spheres.

The destabilizing and dangerous consequences of human trafficking range from readily recognized violence, direct economic loss and major migration concerns to the less easily quantified, equally serious, but more complex effects of risks and harms to environmental, social, health and safety, and violations of human rights. Trafficking in persons

directly challenges the development of stable, more prosperous societies and legitimate economies, and works strongly against the reconciliation of political interests with humanitarian and human rights obligations. The range of trafficking-related crimes and their broad and interrelated impacts have created a cumulative threat to global peace, security and stability and have shaped political, social and economic responses at both national and global levels.

3. Action

Responses to trafficking in persons: international norms translated into action at the national and regional levels

The principal responses by Governments to trafficking in persons since the adoption in November 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children are described in the paper, as also how some of these responses could be more effective. The main focus of States has been on detecting and prosecuting traffickers, identifying, protecting and assisting people who have already been trafficked and initiating action to prevent people from being trafficked in the first place. The need is stressed for more research and data collection on all forms of trafficking in order to develop tailored and effective anti-trafficking strategies and the subsequent monitoring of such interventions in order to make sure they have the desired impact.

Legislation

Of the 116 States that had ratified the Trafficking Protocol as at 4 December 2007, the majority have adopted new laws or amended existing legislation to translate the Protocol into action, define an offence of trafficking in persons and increase the penalties for traffickers, and have established institutions and procedures to implement the law. Many regional initiatives have also been implemented. However, in the formulation of these normative frameworks, at both the national and the regional level, there is little consistency in the core definition of trafficking in persons and national legislation often falls short of the comprehensive provisions of the Protocol. States may refer to commercial sexual exploitation, or the trafficking of women and girls, while omitting trafficking for forced labour or servitude. In other cases, although the Protocol clearly indicates that in the case of children the various illegal means of trafficking are irrelevant, some legislation does not yet reflect that provision, or defines the age of a child as something other than less than 18 years of age.

Such lack of definitional clarity poses major challenges for international cooperation. All States that have ratified the Trafficking Protocol should make sure that their legislation is in compliance with its provisions.

Working together: coordination and cooperation as essential tools in combating trafficking

Collaboration begins at the national level, but is equally important at the bilateral, regional and international levels. At the national level, the presence of institutional structures such as national referral mechanisms, national rapporteurs and national coordinators/coordinating structures has facilitated concerted action against trafficking.

Prosecution and law enforcement activities

Notwithstanding significant efforts to identify and care for victims and to detect and prosecute traffickers, trafficking in persons is still reported to be one of the most lucrative sectors of transnational organized crime. Confusion between, on the one hand, human trafficking and, on the other, smuggling or other immigration-related offences has impeded progress in law enforcement efforts. The challenges faced in properly identifying a victim of trafficking have highlighted the need for minimum standards concerning the response of criminal justice systems.

A major challenge for immigration and law enforcement officials is how to distinguish trafficking victims from others they may come into contact with. Significant tensions exist between initiatives designed primarily to enforce the law against traffickers and those designed to uphold the human rights of trafficked persons. The two approaches are not mutually exclusive, however, and evidence suggests that the prompt identification and appropriate treatment of victims is crucial to an effective law enforcement response. Some States have begun to adopt “reflection periods” for trafficked persons identified within their borders in order to give them time to recover and reflect on whether they are able and wish to cooperate with law enforcement. A particularly contentious area of debate is whether the granting of temporary residence permits (separate from reflection period entitlements) to victims of trafficking should be conditional upon a trafficked person’s cooperation with the criminal justice system. Little priority has so far been given to awarding compensation or damages to victims of trafficking.

Prevention

Prevention is inadequately addressed in anti-trafficking strategies, perhaps because of uncertainty as to the effectiveness of different preventive techniques. A lack of monitoring and evaluation of prevention programmes has made it difficult to identify those initiatives which have been successful. Numerous complex factors contribute to trafficking in human beings, including a variety of underlying and root causal factors that influence the decisions made by individuals that lead to trafficking and that contribute to a social and economic environment in which trafficking and exploitation can flourish. These factors include economic crisis, social exclusion, gender discrimination and a weak legal or social protection system. The remedies for these shortcomings require a broader set of actions than those designed specifically to stop trafficking.

Prevention initiatives in areas of origin have primarily taken the form of information/awareness-raising campaigns alerting people of the dangers involved in seeking work abroad, the promotion of income-generating activities, formal and non-formal educational initiatives and initiatives targeted at groups that are known to be at high risk of being trafficked. Some prevention programmes have taken the form of measures to strengthen social protection.

Although the industrialized States to which people are trafficked have invested money principally in prevention in the countries of origin, they have also begun to make efforts within their own countries, primarily in the form of revision and comprehensive implementation of immigration and employment policies. Monitoring working conditions, notably in the informal economic sectors, regulating recruitment agencies in sectors where trafficking occurs, providing facilities to protect migrants from abusive practices and using legislation to address the demand for the labour or services of a trafficked person are some of the tools States have used to address demand. Countries of destination have also implemented large-scale information campaigns to inform the public about the potential for abusive practices in their countries.

Protection and assistance

International guidelines now clarify the rights of trafficked persons under existing international law, in particular their rights to protection and assistance. Intergovernmental agencies and non-governmental organizations have issued a range of good practice guidelines concerning assistance and care so that identified trafficked persons can be transferred to a safe place to receive a variety of services, including physical and psychological care, legal assistance, shelter and protection. Significant efforts have also been made to develop standards for the special care of children.

The treatment of trafficked persons in countries of exploitation varies widely from country to country. Restrictions on the definition of a trafficking person (women trafficked for commercial sexual exploitation, for example) can leave other trafficked persons without any legal recourse. In many places, trafficked persons remain criminalized for their illegal entry into or residence in the countries of transit and destination or for their involvement in illicit activities that were a direct consequence of their being trafficked. The consequence of inadequate identification procedures usually means that a trafficked person will be summarily returned to his or her country of origin without any attention to potential risks at home.

Recovery for trafficked persons is a long and complex process. Lessons learned reveal that the conventional assumption that victims should be repatriated and returned to live with their families is inappropriate and results too easily in victims being returned to a situation where they suffer further harm.

The role of research

Research on trafficking in human beings is vital to ensuring adequate prevention, protection and assistance to trafficked persons and the prosecution of criminals. Ongoing research is necessary in several key areas, notably on the characteristics of trafficked persons and the conditions of vulnerability; on the techniques of the traffickers; on the scope of the problem, including numbers of trafficked persons; and to monitor, evaluate and assess the impact of prevention and rehabilitation efforts in order to ensure that funded programmes are in fact effective.

The author concludes by acknowledging that one of the challenges facing the anti-trafficking community today is the abundance of recommendations made to Governments by international, regional and specialized advocacy agencies and organizations. A concerted effort is needed to help States identify and reach agreement on what constitutes “good practice” in order to ensure that anti-trafficking initiatives become more effective and that funds allocated to stopping trafficking are used more effectively.

Résumé des articles

1. Vulnérabilité

Vulnérabilité, prévention et trafic humain: nécessité d'un nouveau paradigme

Les pratiques actuelles en matière de prévention du trafic d'êtres humains sont analysées dans le présent article afin de comprendre les raisons pour lesquelles le trafic humain continue d'être identifié comme un phénomène en hausse. En dépit de nombreuses initiatives et de financements considérables, la conclusion préliminaire est que les pratiques de prévention actuelles ne reflètent pas la démarche polyvalente incarnée dans les définitions des termes "prévention de la criminalité" en général ou dans la définition illustrative du mot "prévention" à l'article 9 du Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants, un protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée.

Sont examinées la "prévention", telle qu'elle est conçue dans les cadres normatifs, ainsi que la manière dont ces cadres ont été étroitement mis en œuvre. La vulnérabilité, et en particulier la vulnérabilité d'un individu dans son contexte social, émerge comme étant le chaînon manquant dans la formulation et le développement de politiques et de pratiques appropriées. L'attention est centrée sur ce qui constitue la vulnérabilité au trafic en tant que pré-requis permettant le développement de programmes de prévention valables. De nouvelles considérations sont introduites concernant le développement de politiques stratégiques visant à prévenir le trafic et capables de s'attaquer aux vrais problèmes des populations vulnérables en fonction de leurs besoins et de leur propre contexte.

L'auteur pose la question de savoir ce que veulent dire les experts lorsqu'ils décrivent le trafic humain comme étant un phénomène en hausse, dans la mesure où toute évaluation d'une augmentation du trafic humain est impossible à quantifier, sauf en termes généraux. Parmi les raisons pour cela, on notera les différences de définitions au niveau national de ce qui constitue un crime de traite humaine et une victime de la traite, ainsi que le manque de données cohérentes, fiables et comparables.

La prévention de la criminalité et la réduction de la vulnérabilité sont toutes deux des approches valides pour combattre la traite des personnes, chacune faisant appel à des dynamiques différentes en termes de planification de politiques et de programmes. Une focalisation sur la vulnérabilité mettra l'accent sur la composante des droits de l'homme dans les politiques de prévention de la traite. Les définitions traditionnelles de la prévention de la criminalité peuvent contribuer au renforcement des politiques antitraite en se concentrant sur la réduction des éléments de risque dans l'environnement. Théoriquement,

la prévention devrait alors viser à éliminer la traite avant qu'elle n'ait lieu en réduisant les facteurs qui rendent les individus vulnérables à ce trafic.

Les principes de base de prévention de la criminalité, tels que la participation d'une communauté étendue d'intervenants, la capacitation de personnes vulnérables et la réduction des facteurs de risque, font partie intrinsèque de l'élaboration de ce que l'on appelle "prévention" selon l'article 9 du Protocole sur la traite. Malheureusement, la mise en œuvre de ces principes est restée limitée, l'attention s'étant surtout portée sur le développement de grandes et moindres campagnes de prises de conscience par le public, visant les victimes potentielles de la traite. Ces programmes sont développés en vertu de l'idée selon laquelle avertir un individu des possibles dangers qu'il encourt l'aidera à choisir une autre voie. Cependant, ces programmes ne sont pas suffisants car ils ne fournissent pas aux victimes potentielles une possibilité d'action alternative. Si les programmes de prévention se focalisent exclusivement sur une meilleure prise de conscience de la part des victimes potentielles, la prévention sera limitée. En ne fournissant pas d'alternative, ces interventions placent la responsabilité de la prévention de l'exploitation sur la personne elle-même. Les victimes potentielles sont tout aussi vulnérables après qu'avant avoir vu les affiches, les films et les publicités télévisées.

L'auteur insiste sur le fait qu'aider efficacement les populations vulnérables à se protéger des dangers n'est possible que si elles comprennent en premier lieu ce qui les rend vulnérables à la violence, aux abus et à l'exploitation. Recadrer la question de la prévention à travers une définition de la vulnérabilité aux abus et à l'exploitation permettra donc une approche plus cohérente de la prévention de la traite. Alors que le concept de la prévention au sens large existe dans le cadre normatif de nombreux pays, l'idée de considérer les modèles de prévention en termes de leur relation vis-à-vis de la vulnérabilité sociale, culturelle, économique et politique de certaines populations ou groupes à la traite a été essentiellement ignorée dans la pratique.

Bien que souvent utilisés dans les discussions antitraite, les termes "vulnérable" et "vulnérabilité" n'ont pas été définis de manière décisive autrement que dans un contexte juridique. Le présent article comporte une analyse de plusieurs considérations pour comprendre la vulnérabilité et fournit une définition selon laquelle le terme "vulnérabilité" s'applique à une "condition résultant de la manière dont un individu a une expérience négative de l'interaction complexe des facteurs sociaux, culturels, économiques, politiques et environnementaux responsables du contexte de sa communauté".

En fonction de ces considérations, des indicateurs mettant en évidence les conditions de vulnérabilité devront être développés dans les domaines suivants: l'enfance; le genre; la pauvreté; l'exclusion sociale et culturelle; une éducation limitée; l'instabilité politique, la guerre et les conflits; les cadres sociaux, culturels et juridiques; les mouvements forcés; et la demande.

Dans la mesure où la plupart des conditions génératrices de vulnérabilité sont systémiques et résultent de politiques mises en place par les gouvernements, il est de la responsabilité des États d'assurer la protection des individus vulnérables en leur sein.

2. Impact

L'impact du trafic de personnes

Cet article décrit l'impact et le coût du trafic humain sur les personnes ainsi que sur les systèmes politiques, économiques et sociaux. Le trafic humain est un crime envers les personnes dont les conséquences les plus immédiates touchent ses victimes. Bien que le trafic humain soit un phénomène mondial ne connaissant pas de frontières internationales, ces conséquences, à la fois considérables et très étendues, se font particulièrement ressentir dans certains pays et certaines sociétés. Au moins 130 pays sont touchés par le trafic humain. Sont identifiés d'une part les effets les plus notoires du trafic humain sur le plan social, politique et économique, et d'autre part des considérations importantes en termes de politique dans chacun de ces domaines.

Conséquences du trafic de personnes

Le trafic humain affecte tous les aspects de la vie des personnes qu'il victimise. Chaque étape du processus de traite peut impliquer des abus et des violences physiques, sexuels et psychologiques, la privation et la torture, la consommation forcée de substances, la manipulation, l'exploitation économique ainsi que des conditions abusives de travail et de vie. Contrairement à la plupart des autres crimes de violence, la traite est en général associée à des traumatismes répétés et prolongés. Des documents et des travaux de recherches font état des abus que des hommes, des femmes et des enfants subissent dans des conditions spécifiques d'exploitation, ainsi que des blessures physiques, des handicaps, voire de la mort, qui peuvent en résulter à court ou à long terme. Pour un certain nombre de raisons bien définies, les personnes victimes de trafic ont un risque élevé de contracter une infection à VIH. Parmi les traumatismes que vivent les victimes de traite, on notera les troubles de stress post-traumatique, l'anxiété, la dépression, l'aliénation, la désorientation, l'agression et des troubles de la concentration. Des études indiquent que le traumatisme s'aggrave durant le processus de traite et peut persister bien après la fin de toute exploitation. S'ils sont sujets aux mêmes traitements délétères que les adultes, les enfants victimes sont particulièrement vulnérables au trafic, en raison de leur âge, de leur immaturité et de leur manque d'expérience, aux pratiques abusives qui peuvent, notamment, freiner leur développement physique ultérieur et à la persistance de la victimisation en raison de difficultés d'attachement, de développement et de relations sociales. Le comportement des victimes de trafic peut être difficile à comprendre pour des tiers, et les victimes elles-mêmes peuvent éprouver des difficultés à comprendre ce qui leur est arrivé, d'en parler ou de l'expliquer aux autres. Pour ceux qui les entourent, voire même les personnes qui les assistent, les victimes peuvent sembler non coopérantes, irascibles, hostiles, agressives ou peu reconnaissantes. Il a été montré que les stigmates qui leur sont associés en tant que victimes ont un impact significatif et durable sur leur vie, y compris sur le traumatisme vécu par l'individu victime et en terme de rejet physique potentiel par la famille et/ou la communauté. Les conséquences à long terme du trafic humain pour l'individu sont complexes et dépendent de nombreux facteurs, sans aucune garantie de récupération. La revictimisation est souvent une conséquence additionnelle de ce type d'expérience.

Les implications politiques du trafic de personnes

Le trafic humain est un sujet important de discussion et de préoccupation au niveau international. Du fait qu'il implique des mouvements transnationaux de personnes, un important domaine de discussion connexe est celui de la politique migratoire. Un autre débat concerne les aspects liés aux droits de l'homme. L'auteur décrit l'interaction complexe entre politique et action en ce qui concerne le trafic des personnes, le passage de clandestins et les flux migratoires. La pertinence d'un contrôle accru des frontières est soulignée, comme l'est également le statut attribué à ceux entrant dans un État de manière illégale. Une conséquence non intentionnelle des efforts dirigés principalement vers les migrations illégales peut être la non-identification et la victimisation de personnes déjà victimes de trafic. Sont exposés les problèmes spécifiques de migration auxquels doivent faire face les pays d'origine et de destination et pouvant avoir un impact direct sur le trafic des personnes, ainsi que les enjeux systémiques à relever dans le cas où une personne victime de trafic serait identifiée dans un État mais originaire d'un autre État.

L'impact économique du trafic de personnes

Les difficultés rencontrées pour évaluer l'impact du trafic humain sont particulièrement apparentes lorsqu'on tente de quantifier son coût économique. Les conséquences économiques les plus notoires du trafic sont néanmoins décrites. Les coûts du trafic de personnes comprennent de nombreux éléments, y compris la valeur de toutes les ressources dédiées à sa prévention, au traitement et à l'assistance des victimes ainsi que l'arrestation et la mise en accusation des criminels. Ces coûts peuvent être compensés en partie par la récupération des recettes et avoirs criminels des trafiquants. Le trafic de personnes se traduit également par une perte en ressources humaines et une réduction des revenus fiscaux. En outre, le trafic de personnes redirige les bénéfices financiers de la migration des migrants, de leur famille, de leur communauté et de leur gouvernement ou tout autre employeur légitime potentiel vers les trafiquants et leurs associés. Selon les indications disponibles, le revenu généré par le crime organisé dans ce domaine est significatif et d'étendue mondiale. Étant donné la nature actuelle de l'exploitation, le trafic humain génère une source de revenu stable et régulière pour les réseaux criminels, avec un impact considérable sur d'autres types d'activités criminelles ou légitimes.

L'impact sur l'autorité de la loi

En tant qu'acte criminel, le trafic viole l'autorité de la loi, menaçant ainsi les lois nationales et internationales. Le crime organisé est l'un des mécanismes les plus importants de redistribution illégale de richesses nationales, influençant les marchés, le pouvoir politique et les relations sociétales de manière impropre. Ces effets peuvent être aigus dans les pays faisant face à des troubles de l'ordre public, des catastrophes naturelles ou des situations d'après conflit. Les défis correspondants auxquels sont confrontés les gouvernements contrastent violemment avec les opportunités créées par les trafiquants de personnes. La menace sous-jacente posée par les trafiquants de personnes justifie que la question soit de plus en plus reconnue comme un problème de sécurité au niveau mondial.

En tant que manifestation complexe de la globalisation de l'économie, du crime organisé et des violations des droits de l'homme, le trafic humain non seulement provoque d'extrêmes souffrances aux millions de personnes soupçonnées d'en être devenues les victimes à travers le monde, mais a aussi un impact sur les marchés financiers, les économies et les structures sociales des pays où on le laisse se développer. En tant que composante importante du crime organisé, avec toute la puissance financière qui y est associée, le trafic de personnes a un impact négatif complexe et intriqué dans les sphères humaine, sociale, politique et économique.

Les conséquences déstabilisantes et dangereuses du trafic humain vont d'une violence facilement reconnaissable, de la perte économique directe et de préoccupations majeures en matière de migration à des effets complexes moins facilement quantifiables mais tout aussi sévères en terme de risques et de dommages sur le plan environnemental, social, sanitaire et sécuritaire, et en termes de violations des droits de l'homme. Le trafic de personnes menace directement le développement de sociétés stables et plus prospères ainsi que d'économies légitimes et s'attaque à toute réconciliation des intérêts politiques et des obligations humanitaires et de droits de l'homme. L'ensemble des crimes liés au trafic ainsi que leurs conséquences étendues et interconnectées ont créé une menace cumulative pour la paix dans le monde et ont suscité des réponses à la fois politiques, sociales et économiques aux niveaux national et mondial.

3. Action

Mesures contre la traite de personnes: normes internationales traduites sous formes d'action aux niveaux national et régional

Sont décrites dans le présent article les principales mesures gouvernementales en réponse à la traite des personnes depuis l'adoption en novembre 2000 du Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier les femmes et les enfants, ainsi que la manière dont ces mesures pourraient être rendues plus efficaces. L'attention des États s'est portée tout particulièrement sur l'identification et la poursuite en justice des trafiquants, l'identification et la protection des personnes ayant été victimes de trafic et l'assistance à ces personnes, et enfin la mise en œuvre d'actions pour éviter que les personnes ne soient victimes de traite en premier lieu. La nécessité de poursuivre la recherche et de collecter des données sur toutes les formes de traite est soulignée afin de développer des stratégies antitraite spécifiquement adaptées et efficaces ainsi que la surveillance ultérieure de ce type d'interventions pour vérifier qu'elles ont bien l'effet souhaité.

Législation

Sur les 116 États ayant ratifié le Protocole antitraite au 4 décembre 2007, la majorité a adopté de nouvelles lois ou amendé la législation existante afin de traduire le Protocole en actions, définir le crime de traite des personnes et augmenter les pénalités appliquées

aux trafiquants et a créé des institutions et des procédures permettant d'appliquer la loi. De nombreuses initiatives régionales ont également été mises en œuvre. Cependant, dans la formulation de ces cadres normatifs, la définition fondamentale de la traite des personnes manque de cohérence aussi bien au niveau national que régional et la législation nationale est souvent en deçà des provisions polyvalentes du Protocole. Les États se réfèrent parfois à l'exploitation sexuelle à des fins commerciales, ou à la traite de femmes et de jeunes filles, tout en omettant la traite liée au travail forcé et à la servitude. Dans d'autres cas, bien que le Protocole indique clairement que dans le cas des enfants les différents moyens illégaux de traite ne sont pas pertinents, certaines législations ne reflètent pas encore cette provision ou bien définissent l'âge d'un enfant autrement que comme étant inférieur à 18 ans.

Une telle absence de clarté dans les définitions pose un défi majeur en termes de coopération internationale. Tous les États ayant ratifié le Protocole antitraite devraient s'assurer que leur législation est conforme à ces provisions.

Travailler ensemble: la coordination et la coopération constituent des outils essentiels pour combattre la traite

Si la collaboration commence au niveau national, elle est tout aussi importante aux niveaux bilatéral, régional et international. Sur le plan national, la présence de structures institutionnelles telles que les systèmes d'orientations, de rapporteurs et de coordinateurs ainsi que de structures de coordination au niveau national ont facilité les actions concertées contre la traite.

Poursuite judiciaire et activités de répression

En dépit d'efforts significatifs pour identifier et prendre soin des victimes ainsi que pour identifier et poursuivre en justice les trafiquants, la traite des personnes est encore rapportée comme étant l'un des secteurs les plus lucratifs de la criminalité organisée au niveau transnational. La confusion entre, d'un côté, la traite humaine et, de l'autre, le trafic ou autres délits liés à l'immigration a freiné les progrès en matière de répression. Les défis auxquels il faut faire face pour identifier correctement une victime de traite ont souligné la nécessité d'avoir des normes minimales en ce qui concerne la réaction des systèmes de justice criminelle.

Un défi majeur pour les fonctionnaires chargés de l'immigration et de faire appliquer la loi est de faire la distinction entre les victimes de la traite et les autres personnes avec qui elles entreraient en contact. Des tensions manifestes existent entre les initiatives destinées en premier lieu à faire appliquer la loi contre les trafiquants et celles visant à faire valoir les droits de l'homme pour les personnes victimes de traite. Cependant, les deux démarches ne sont pas mutuellement exclusives et certaines données tendent à montrer que l'identification rapide et le traitement approprié des victimes sont primordiaux pour une réaction efficace en termes de répression. Certains États ont adopté des "périodes de

réflexion” pour les personnes victimes de traite identifiées à l’intérieur de leurs frontières afin de leur donner le temps de récupérer et de réfléchir si elles se sentent capables et si elles souhaitent coopérer à la répression. Un sujet de débat particulièrement épineux est de savoir si le fait d’octroyer un permis de résidence temporaire (en dehors du droit à une période de réflexion) aux victimes de traite devrait dépendre de la coopération de la personne victime de traite avec le système de justice criminelle. Il n’a été jusqu’à présent accordé qu’une faible priorité à l’octroi d’une compensation ou de dommages et intérêts aux victimes de traite.

Prévention

La prévention n’est pas gérée de manière adéquate dans les stratégies antitraite, vraisemblablement à cause des doutes concernant l’efficacité des diverses méthodes de prévention. Le manque de surveillance et d’évaluation des programmes de prévention a rendu difficile l’identification des initiatives qui se sont avérées efficaces. De nombreux facteurs complexes contribuent à la traite d’êtres humains, y compris un certain nombre de facteurs sous-jacents et de cause première influençant les décisions que prennent les individus, menant à la traite et contribuant à produire un environnement social et économique dans lequel la traite et l’exploitation peuvent se développer activement. Parmi ces facteurs, on retrouve les crises économiques, l’exclusion sociale, la discrimination de genre et la faiblesse des systèmes de protection légale et sociale. Remédier à ce genre de faille demande un ensemble d’actions de plus grande envergure que celles destinées spécifiquement à enrayer la traite.

Les initiatives de prévention dans les régions d’origine ont surtout pris la forme de campagnes d’information et de prise de conscience alertant les personnes des dangers associés à la recherche de travail à l’étranger, à la promotion d’activités génératrices de revenus, aux initiatives éducatives formelles et informelles ainsi qu’aux initiatives ciblant des groupes connus pour encourir un risque élevé de traite. Certains programmes de prévention ont pris la forme de mesures visant à renforcer la protection sociale.

Bien que les États industrialisés vers lesquels la traite des personnes est organisée aient investi des fonds principalement à des fins de prévention dans les pays d’origine, ils ont également commencé à déployer des efforts à l’intérieur de leur propre pays, tout d’abord en révisant et en appliquant plus largement leurs politiques d’immigration et d’emploi. La surveillance des conditions de travail, notamment dans les secteurs de l’économie informelle, la régulation des agences de recrutement dans les secteurs où la traite sévit, la mise à disposition de structures pour protéger les migrants de pratiques abusives et le recours à la législation pour répondre à la demande de travail ou de services par des personnes victimes de traite sont quelques-uns des outils que les États ont utilisé pour répondre à la demande. Les pays de destination ont également mis en œuvre des campagnes d’information de grande envergure afin d’informer le public des possibilités de pratiques abusives dans leur propre pays.

Protection et assistance

Les directives internationales clarifient aujourd'hui les droits des personnes victimes de traite selon la loi internationale en vigueur, en particulier leurs droits à la protection et à l'assistance. Des agences intergouvernementales et des organisations non gouvernementales ont élaboré une série de directives de bonnes pratiques concernant l'assistance et les soins de manière que les personnes identifiées comme étant victimes de traite puisse être transférées dans un endroit sûr et recevoir divers services, y compris des soins physiques et psychologiques, une assistance juridique, hébergement et protection. Des efforts significatifs ont aussi été faits pour développer les normes concernant les soins particuliers prodigués aux enfants.

Le traitement de personnes victimes de traite dans les pays où elles sont exploitées varie énormément d'un pays à l'autre. Les restrictions quant à la définition d'une personne victime de traite (femmes sujettes à la traite pour être exploitées sexuellement à des fins commerciales, par exemple) peuvent laisser d'autres victimes de la traite sans recours juridique. Dans de nombreux pays, les victimes de la traite sont encore criminalisées pour être entrées ou résider illégalement dans les pays de transit et de destination ou pour leur implication dans des activités illicites directement liées à la traite qu'elles ont subie. La conséquence de procédures d'identification inadéquates signifie généralement qu'une victime de la traite sera sommairement renvoyée dans son pays d'origine sans que l'on se préoccupe des risques qu'elle encourt potentiellement chez elle.

La récupération pour une victime de traite est un processus long et complexe. Les leçons que l'on a pu tirer révèlent que la présomption commune que les victimes doivent être rapatriées et renvoyées dans leur famille est inappropriée et fait que les victimes sont trop facilement renvoyées à une situation dans laquelle elles subiront encore d'autres atteintes.

Le rôle de la recherche

La recherche sur la traite des personnes est vitale pour la mise en place de prévention appropriée, de protection et d'assistance aux personnes victimes de traite et pour la poursuite en justice des criminels. Une recherche active est nécessaire dans plusieurs domaines clés – notamment concernant les caractéristiques des victimes de traite et les conditions de vulnérabilité; les techniques des trafiquants; l'ampleur du problème, y compris le nombre de personnes victimes de traite. Elle est également nécessaire pour surveiller, évaluer et mesurer l'impact des efforts de prévention et de réhabilitation, et assurer ainsi que les programmes financés sont réellement efficaces.

L'auteur conclut en reconnaissant que l'un des défis auxquels doit faire face la communauté antitraite aujourd'hui est l'abondance des recommandations faites aux gouvernements par les agences et les organisations de soutien internationales, régionales et spécialisées. Un effort concerté est nécessaire pour aider les États à identifier et à se mettre d'accord sur ce qui constitue une "bonne pratique" afin d'assurer que les initiatives antitraite soient plus efficaces et que les fonds alloués pour juguler la traite soient utilisés de manière plus judicieuse.

Resúmenes de los documentos

I. Vulnerabilidad

Vulnerabilidad, prevención y trata de seres humanos: la necesidad de un nuevo paradigma

En el presente documento se analizan las actuales prácticas de prevención de la trata de seres humanos para comprender la razón por la cual este fenómeno sigue cobrando amplitud. Pese a las numerosas iniciativas de prevención y a la considerable financiación dedicada, una primera conclusión es que en las actuales prácticas de prevención no aparece reflejado el enfoque integral recogido en las definiciones de la expresión “prevención del delito” en general, o en la definición ilustrativa de “prevención” que figura en el artículo 9 del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional.

Se analiza la “prevención” como ha sido conceptualizada en los marcos normativos, así como también la forma en que esos marcos han sido aplicados con un criterio restrictivo. La vulnerabilidad, y en particular la vulnerabilidad de un individuo en su contexto social, aparece como el eslabón perdido en la formulación de políticas y prácticas sólidas. Se hace hincapié en lo que es la vulnerabilidad ante la trata como condición previa para elaborar programas de prevención válidos. Se introducen nuevos conceptos con respecto a la elaboración de políticas estratégicas para prevenir la trata, que permitan encarar los problemas reales de las poblaciones vulnerables en función de sus propias necesidades y en sus correspondientes contextos.

El autor cuestiona lo que significa para los expertos el hecho de que la trata de seres humanos sea un fenómeno de creciente amplitud ya que es imposible cuantificar cualquier evaluación de un aumento de la trata de personas, salvo en términos generales. Ello se explica, entre otras cosas, por las diferencias que existen entre las definiciones nacionales del delito de la trata, así como entre las definiciones de víctima de la trata, además de la falta de datos coherentes, fiables y comparables.

Tanto la prevención del delito como la reducción de la vulnerabilidad, constituyen enfoques válidos para combatir la trata de seres humanos. Cada uno de ellos supone una dinámica particular en cuanto a la planificación de las políticas y los programas. Poner de relieve la vulnerabilidad mejorará el componente de derechos humanos de las políticas de prevención de la trata. Las definiciones tradicionales de prevención del delito pueden contribuir a mejorar las políticas de lucha contra la trata, centrándose en reducir los elementos de riesgo del entorno. De ahí que, en teoría, la prevención debería

apuntar a eliminar la trata antes de que ocurra, limitando los factores que exponen a los individuos al riesgo de ser objeto de dicha trata.

Los principios básicos de la prevención del delito, como la inclusión de una gran diversidad de partes interesadas, el empoderamiento de las personas vulnerables y la reducción de los factores de riesgo, son intrínsecos al desarrollo del sentido de “prevención” conforme al artículo 9 del Protocolo contra la trata de personas. Lamentablemente, la aplicación de esos principios ha sido limitada, insistiéndose principalmente en la organización de campañas de sensibilización pública a escala tanto amplia como pequeña dirigidas a las víctimas potenciales de la trata. Esos programas se preparan partiendo de la base de que cuanto más conciencia tenga un individuo del daño que lo acecha más fácil le resultará escoger un camino que lo aparte del mismo. No obstante, esos programas son insuficientes porque no ofrecen a las víctimas potenciales la posibilidad de actuar de otra forma. Si el énfasis de los programas de prevención apunta exclusivamente a sensibilizar a las víctimas potenciales sobre los posibles riesgos, la prevención es limitada. Al no proporcionar otras alternativas, en esas intervenciones la responsabilidad primordial de la prevención de la explotación recae en el propio individuo. Las víctimas potenciales seguirán siendo tan vulnerables antes como después de ver las advertencias en los carteles, las películas y la televisión.

El autor recalca que es imposible ayudar a las poblaciones vulnerables a protegerse eficazmente del peligro si éstas no comprenden la razón por la cual están expuestas a la violencia, el abuso y la explotación. Reformular la cuestión de la prevención a través de una definición de la vulnerabilidad ante el abuso y la explotación permitirá adoptar un enfoque más sólido para prevenir la trata. Si bien el concepto más amplio de prevención forma parte del marco normativo de numerosos países, en la práctica se han desatendido en gran medida los modelos de prevención desde el punto de vista de sus relaciones con la vulnerabilidad social, cultural, económica y política de algunas poblaciones o grupos ante la trata.

Aunque los términos “vulnerable” y “vulnerabilidad”, se utilizan frecuentemente en las deliberaciones sobre la lucha contra la trata, no han sido definidos de manera convincente, con excepción del contexto jurídico. El documento incluye un análisis de diversos criterios para comprender la vulnerabilidad y proporciona una definición conforme a la cual la “vulnerabilidad” remite a una “condición que resulta de la forma en que los individuos experimentan negativamente la compleja interacción de los factores sociales, culturales, económicos, políticos y ambientales que conforman el contexto de sus respectivas comunidades”.

Teniendo en cuenta los elementos mencionados, será preciso elaborar indicadores de las condiciones de la vulnerabilidad en relación con los temas siguientes: los niños, el género, la pobreza, la exclusión social y cultural, la educación limitada, la inestabilidad política, la guerra y los conflictos, los marcos sociales, culturales y jurídicos, el desplazamiento impuesto por coacción, y la demanda.

Como la mayoría de las condiciones causantes de la vulnerabilidad son sistémicas y resultan de las políticas adoptadas por los Gobiernos, incumbirá a los Estados asegurar la protección de los individuos vulnerables dentro de su jurisdicción.

2. Impacto

El impacto de la trata de personas

El documento describe el impacto y el costo de la trata de seres humanos que supone para los individuos, así como para los sistemas político, económico y social. La trata de personas es un delito cometido contra individuos y sus víctimas son quienes experimentan más directamente sus consecuencias. Si bien la trata de seres humanos es un fenómeno mundial que trasciende las fronteras, sus consecuencias profundas y de gran alcance se sienten en los distintos países y sociedades. La trata de personas afecta a más de 130 países. Se identifican algunos de los principales efectos sociales, políticos y económicos de la trata de personas, junto con importantes elementos relativos a las políticas en cada una de esas esferas.

Las consecuencias de la trata en los individuos

La trata de seres humanos afecta a los individuos que son sus víctimas en todos los aspectos de la vida. Cada una de las etapas del proceso de la trata puede conllevar el maltrato y la violencia física, sexual y psicológica, privaciones y tortura, el consumo obligado de sustancias, la manipulación, explotación económica y abusos en las condiciones de trabajo y de vida. Contrariamente a la mayoría de los demás delitos violentos, la trata suele entrañar un traumatismo prolongado y repetido. La documentación y las investigaciones describen situaciones específicas de abuso de hombres, mujeres y niños en condiciones de explotación particulares, las lesiones físicas a corto y largo plazo, las discapacidades y los fallecimientos que sobrevienen. Por una serie de motivos especificados, las personas víctimas de la trata corren un alto riesgo de infección por el VIH. Los traumatismos que experimentan las víctimas de la trata incluyen el trastorno postraumático del estrés, la ansiedad, depresión, alienación, desorientación, agresión y dificultades de concentración. Los estudios muestran que los traumas y traumatismos se agudizan durante el proceso del tráfico y pueden subsistir durante largo tiempo después de haber cesado la explotación. Sujetos al mismo tratamiento perjudicial que los adultos, los niños víctimas de la trata son especialmente vulnerables a la misma, en razón de su edad, inmadurez y falta de experiencia; a prácticas abusivas que pueden, por ejemplo, impedir su desarrollo físico; y a una victimización constante en razón de los vínculos afectivos y de dificultades de desarrollo y de orden social. Puede resultar difícil a terceras personas comprender el comportamiento de las víctimas de la trata, debido a la dificultad para estas últimas de captar cabalmente lo que les ha ocurrido o de explicarlo y discutirlo con otras personas. El entorno puede percibir a las víctimas como poco cooperativas, irritables, hostiles, agresivas, o

ingratas, incluso con quienes las ayudan. Se ha observado que el estigma propio de su condición de víctimas, las afectan de manera permanente y marcada en su vida, inclusive en el trauma experimentado por cada víctima, y la posibilidad del rechazo físico por la familia y/o la comunidad. Las consecuencias a largo plazo de la trata de personas en los individuos son complejas y dependen de numerosos factores, sin que pueda garantizarse la recuperación. Otra posible consecuencia de la experiencia es que las víctimas vuelven a ser el objeto de victimización.

Consecuencias políticas de la trata de personas

La trata de personas es un tema de discusión, además de objeto de preocupaciones internacionales importantes. Como incluye el desplazamiento transnacional de personas, una importante esfera de debate es la política de migración. Otra esfera se relaciona con los derechos humanos. El autor describe la compleja interrelación entre las políticas y las medidas relativas a la trata de personas, el tráfico de los migrantes y las corrientes migratorias. Se señala la importancia que reviste un control fronterizo más eficaz, así como la condición atribuida a las personas que no ingresan legalmente al territorio de un país. Una consecuencia involuntaria de los esfuerzos destinados principalmente a controlar la migración ilícita puede ser la no identificación y la victimización de las víctimas de la trata. Se exponen asimismo los problemas concretos de migración a que se ven confrontados los países de origen y de destino, que pueden tener un efecto directo en la trata de personas, así como los retos sistémicos que es preciso resolver cuando se identifica en un Estado a una víctima originaria de otro Estado.

Impacto económico de la trata de personas

Las dificultades que se plantean para evaluar el impacto de la trata de personas son más patentes cuando se procura cuantificar sus costos económicos. Pese a ello, en el documento se describen las consecuencias económicas esenciales de la trata. Los costos del delito de la trata de personas engloban numerosos elementos, como el valor de todos los recursos dedicados a la prevención, el tratamiento y el apoyo de las víctimas, y la captura y enjuiciamiento de los autores del delito. Estos costos pueden compensarse parcialmente recuperando las ganancias ilícitas y los bienes de los tratantes. La trata de personas también redundaría en una pérdida de recursos humanos y una disminución de los ingresos fiscales. Además, la trata canaliza hacia los tratantes y sus cómplices los beneficios financieros de la migración, en detrimento de los migrantes, sus familias, la comunidad, el Gobierno o los posibles empleadores legítimos. Todo indica que los ingresos generados por la delincuencia organizada conexas son voluminosos y de alcance planetario. Debido a que la explotación se caracteriza por ser permanente, la trata de personas constituye una fuente estable y regular de ingresos de las redes de delincuentes, con las consiguientes repercusiones en otras formas de actividades delictivas, así como en las actividades comerciales y productivas lícitas.

Impacto en el Estado de derecho

En tanto que delito la trata vulnera el Estado de derecho y representa una amenaza para las jurisdicciones nacionales y el derecho internacional. El delito organizado es uno de los principales mecanismos de redistribución ilícita de la riqueza nacional que influye indebidamente en los mercados, en los poderes políticos y en las relaciones de la sociedad. Esos efectos pueden ser pronunciados en los países que se movilizan para hacer frente a disturbios sociales o catástrofes naturales o situaciones consecutivas a conflictos. Los ingentes problemas que plantean a los Gobiernos contrastan radicalmente con las oportunidades que ofrecen a los tratantes de seres humanos. La amenaza subyacente que plantea la trata de personas explica por qué se considera cada vez más el problema como parte integrante de la seguridad mundial.

Por ser una manifestación compleja de la economía mundial, el delito organizado y las violaciones de los derechos humanos, la trata de seres causa situaciones de dificultad extrema a los millones de posibles víctimas a escala mundial y repercute en los mercados financieros, las economías y las estructuras sociales de los países en que se produce. Como importante componente de la delincuencia organizada, con todo el poder financiero que conlleva, la trata de personas tiene complejos efectos negativos e interrelacionados en el ámbito humano, social, político y económico.

Las consecuencias desestabilizadoras y peligrosas de la trata de personas abarcan desde la violencia patente, las pérdidas económicas directas y graves preocupaciones en materia de migración, hasta los efectos más complejos, pero más difícilmente cuantificables e igualmente graves, que suponen los riesgos y los perjuicios ambientales, sociales, sanitarios y de seguridad, así como en materia de violación de los derechos humanos. La trata de personas obstaculiza directamente el desarrollo de sociedades estables y más prósperas y de economías lícitas, y entorpece notablemente la conciliación de los intereses políticos con las obligaciones humanitarias y relativas a los derechos humanos. La diversidad de delitos relacionados con la trata y sus repercusiones amplias y relacionadas entre sí, han generado una acumulación de amenazas a la paz, la seguridad y la estabilidad mundiales, y han configurado respuestas políticas, sociales y económicas en los planos nacional y mundial.

3. Medidas

Respuestas a la trata de personas: normas internacionales traducidas en medidas a nivel nacional y regional.

En el documento se exponen las principales respuestas aportadas por los Gobiernos a la trata de personas desde la aprobación en noviembre de 2000 del Protocolo para prevenir,

reprimir y sancionar la trata de personas, especialmente mujeres y niños, y se explica la forma en que algunas de esas respuestas pueden tener mayor eficacia. Los Estados han concentrado su atención principalmente en identificar y enjuiciar a los tratantes, así como en identificar, proteger y ayudar a las personas que ya han sido víctimas de la trata y en tomar medidas para impedir ante todo que haya víctimas de esa trata. Se destaca la necesidad de realizar más investigaciones y acopiar más datos sobre todas las formas de trata para elaborar estrategias de lucha adaptadas a situaciones concretas, y realizar el consiguiente seguimiento de esas intervenciones con objeto de cerciorarse de la obtención del efecto deseado.

Legislación

De los 116 Estados que ratificaron el Protocolo contra la trata de personas al 4 de diciembre de 2007, la mayoría han promulgado nuevas leyes o modificado la legislación existente para poder aplicar el Protocolo, tipificar el delito de la trata de personas y aumentar las penas impuestas a los tratantes, y han establecido instituciones y procedimientos destinados a aplicar la legislación correspondiente. También se han llevado a la práctica numerosas iniciativas regionales. No obstante, la formulación de estos marcos normativos, en el plano tanto nacional como regional, es poco coherente por lo que se refiere a la definición básica de la trata de personas, y la legislación nacional frecuentemente no basta para asegurar el cumplimiento de las extensas disposiciones del Protocolo. Los Estados a veces se refieren a la explotación sexual comercial o a la trata de mujeres y niñas, pero omiten mencionar la trata para proporcionar trabajo forzoso o en condiciones de servidumbre. En otros casos, si bien el Protocolo contra la trata de personas indica claramente que tratándose de niños no es pertinente referirse a los diversos medios ilegales de realizar la trata, algunas leyes todavía no reflejan esa disposición, o bien no definen la edad de un niño por su condición de menor de 18 años.

Esa falta de claridad de las definiciones plantea graves problemas en materia de cooperación internacional. Todos los Estados que ratificaron el Protocolo deberían cerciorarse de que su legislación cumpla lo previsto en las disposiciones del mismo.

Colaborar: la coordinación y la cooperación son instrumentos fundamentales para combatir la trata

La colaboración empieza a nivel nacional pero también es importante en los niveles bilateral, regional e internacional. A nivel nacional, la presencia de estructuras institucionales como los mecanismos nacionales de derivación, los relatores nacionales y los coordinadores y estructuras de coordinación nacionales, han facilitado la adopción de medidas concertadas contra la trata.

Actuación penal y cumplimiento de la ley

Pese a los importantes esfuerzos destinados a identificar y atender a las víctimas así como a ubicar y enjuiciar a los tratantes, la trata de personas sigue siendo uno de los sectores más lucrativos de la delincuencia organizada internacional. La confusión entre la trata de

personas, por un lado, y el tráfico o contrabando u otros delitos relacionados con la inmigración, por otro, ha entorpecido los progresos en materia de cumplimiento de la ley. Los problemas que supone la identificación apropiada de una víctima de la trata han puesto de relieve la necesidad de disponer de normas mínimas relativas a la respuesta de los sistemas de justicia penal.

Un importante reto que se plantea a los funcionarios de inmigración y encargados de hacer cumplir la ley consiste en cómo distinguir las víctimas de la trata de otras víctimas con las que puedan entrar en contacto. Están en conflicto las iniciativas destinadas ante todo a aplicar la ley para castigar a los tratantes, con las iniciativas cuyo objeto es defender los derechos humanos de las víctimas de la trata. Sin embargo, no son dos enfoques mutuamente excluyentes y los hechos observados muestran que es esencial rápidamente identificar y prodigar un trato adecuado a las víctimas para conseguir que los servicios encargados del cumplimiento de la ley aporten una respuesta eficaz. Algunos Estados han comenzado a adoptar la práctica de prever "períodos de reflexión" para las víctimas de la trata identificadas dentro de sus fronteras, que les permitan recuperarse y reflexionar para poder determinar si son capaces y están dispuestas a cooperar con los servicios policiales y judiciales competentes. Una cuestión particularmente controvertida consiste en determinar si la concesión de permisos de residencia temporales (independientemente del derecho a disponer de períodos de reflexión) a las víctimas de la trata, debe supeditarse a su cooperación con la justicia penal. Hasta la fecha se ha dado poca prioridad a otorgar una indemnización a las víctimas de la trata por los daños sufridos.

Prevención

En las estrategias de lucha contra la trata no se aborda debidamente la prevención, quizás porque no se conoce con certeza la eficacia de las distintas técnicas en la materia. La falta de programas de seguimiento y evaluación de la prevención ha hecho difícil identificar las iniciativas que han tenido éxito. Numerosos factores complejos contribuyen a la trata de seres humanos, incluidos diversos factores subyacentes y profundamente arraigados que ejercen una influencia en las decisiones adoptadas por individuos y que conducen a la trata, y que además contribuyen a crear un entorno social y económico propicio a la trata y la explotación. Entre esos factores figuran la crisis económica, la exclusión social, la discriminación por motivos de género y un sistema jurídico o de protección social endeble. Para resolver las carencias que representan esos factores se necesita un conjunto de medidas más amplio que el de las destinadas especialmente a impedir la trata.

Las iniciativas de prevención en las zonas de origen de las víctimas han consistido principalmente en campañas de información y sensibilización que alertan a las personas del peligro que entraña la búsqueda de trabajo en el extranjero, la promoción de actividades generadoras de ingresos, iniciativas de educación oficial y extraoficial, e iniciativas destinadas a los grupos que se sabe más expuestos a la trata. Algunos programas de prevención han consistido en medidas para reforzar la protección social.

Si bien los Estados industrializados de destino de las víctimas de la trata han invertido dinero sobre todo para la prevención en los países de origen, también han comenzado a

actuar en sus propios países, sobre todo procediendo a la revisión y una amplia aplicación de políticas de inmigración y empleo. Algunos de los instrumentos que han utilizado los Estados para abordar el problema de la demanda han sido la supervisión de las condiciones de trabajo, sobre todo en los sectores de la economía informal, la reglamentación de las actividades de las agencias de contratación en los sectores en que se produce la trata, la propuesta de servicios para proteger a los inmigrantes de las prácticas abusivas y la utilización de instrumentos legislativos para encarar la demanda del trabajo o los servicios proporcionados por las víctimas de la trata. Los países de destino también han llevado adelante campañas de divulgación a gran escala para informar al público acerca de las posibles prácticas abusivas en su territorio nacional.

Protección y asistencia

Las directrices internacionales aclaran actualmente los derechos de las personas objeto de la trata en virtud del derecho internacional en vigor, sobre todo su derecho a la protección y la asistencia. Los organismos intergubernamentales y las organizaciones no gubernamentales han elaborado toda una serie de directrices de buenas prácticas sobre la asistencia y la atención, que permiten transferir a las víctimas identificadas a un lugar seguro para recibir diversos servicios, incluida la atención física y psicológica, asistencia jurídica, albergue y protección. También se ha realizado una importante labor normativa destinada a prodigar una atención especial a los niños.

El trato concedido a las víctimas de la trata en los lugares donde se produce la explotación difiere considerablemente de un país a otro. La definición restringida de víctima de la trata (por ejemplo, la trata de mujeres para la explotación sexual comercial) puede privar a otras víctimas de la trata de todo recurso jurídico. En muchas partes, las víctimas son consideradas culpables por su entrada o residencia ilícitas en los países de tránsito y de destino o por su participación en actividades ilegales que son una consecuencia directa de su condición. Los procedimientos de identificación inapropiados de la víctima de la trata suelen conducir a su devolución sin más trámite a su país de origen, no teniendo en cuenta los riesgos a que se la expone de esa forma.

La recuperación de las víctimas de la trata es un proceso prolongado y complejo. Las enseñanzas adquiridas muestran que la tradicional hipótesis según la cual es preciso reparar a las víctimas y reintegrarlas a su vida familiar no es adecuada, ya que generalmente las vuelve a colocar en una situación vulnerable, expuestas a daños adicionales.

La función de la investigación

Las investigaciones sobre la trata de seres humanos son fundamentales para garantizar la prevención, protección y asistencia apropiadas a las víctimas de la trata, así como el procesamiento de los autores del delito. Las investigaciones en curso son necesarias en varias esferas clave, sobre todo las relacionadas con las características propias de las

víctimas y las condiciones de su vulnerabilidad; las técnicas de los traficantes; la amplitud del fenómeno, incluido el número de las víctimas, y las investigaciones destinadas a supervisar, evaluar y calibrar el impacto de la labor de prevención y rehabilitación, para asegurarse de que los programas financiados sean realmente eficaces.

Como conclusión, el autor reconoce que uno de los retos planteados a la comunidad que lucha hoy día contra la trata es la profusión de recomendaciones formuladas a los Gobiernos, por los organismos y organizaciones especializados de promoción, tanto internacionales como regionales. Es necesaria una labor concertada para ayudar a los Estados a identificar y definir de común acuerdo lo que constituye “la buena práctica”, a fin de reforzar la eficacia de las iniciativas para combatir la trata así como de los fondos destinados a poner fin a la misma.

文件摘要

一. 脆弱性

脆弱性、预防和贩运人口：需要新的范例

本文件分析了预防人口贩运的现有措施，目的是了解人口贩运现象为什么会愈演愈烈。提出了多项预防倡议，也提供了大量资金，但初步结论认为，现有的预防措施没有反映出“犯罪预防”的一般性定义以及《联合国打击跨国有组织犯罪公约关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》第 9 条关于“预防”的解释性定义所包含的全面措施。

本文件分析了“预防”一词在规范框架中的概念以及这些框架执行范围狭窄的情况。在制订完善的政策和措施的过程中忽视了脆弱性，特别是个体在社会背景下的脆弱性。重点是研究人口贩运问题上的脆弱性，以此作为制订有效预防方案的先决条件。在根据弱势群体的需要及其所处环境，制订能够切实解决弱势群体问题的预防贩运战略政策方面，增加了新的考虑因素。

作者质疑专家认为人口贩运现象愈演愈烈的意义何在，因为对人口贩运增长情况的任何评估都不可能做到量化，只能粗略估算。不能量化的原因包括：各国对于贩运人口罪和受害者的定义不同，而且缺乏统一、可靠和可以对比的数据。

预防犯罪和降低脆弱性都是打击人口贩运的有效方法。这两项措施都要求制订政策和规划方案时具有不同的侧重点。重视脆弱性问题，将强化预防贩运政策中的从权容。关于预防犯罪的传统定义侧重于降低环境风险因素，从而有助于加强打击贩运的政策。从理论上讲，预防措施应着力于减少个人易于沦为贩运受害者的各种因素，从而在贩运现象出现之前予以根除。

在阐述《贩运议定书》第 9 条中“预防”一词的含义时，往往会涉及犯罪预防的基本原则，例如广泛的利益攸关者的参与、增强弱势群体的能力以及减少风险因素。遗憾的是，这些原则的执行工作不足，主要重点往往是针对潜在的贩运受害者制订各种大型及小型的公共宣传运动。制订此类方案的前提是，加深对潜在危害的了解，有助于个人做出不同的选择。但此类方案存在缺陷，无法为潜在的受害者提供替代行动方案。假如预防方案的重点仅限于提高潜在受害者的认识，预防工作就是不全面的。此类干预措施没有提供替代办法，将预防遭受剥削的责任交给了个人。潜在的受害者无论是否看到过海报、电影和电视广告，都同样容易受到伤害。

作者强调，如果不首先了解弱势群体为什么容易遭受暴力、虐待和剥削，就不可能成功援助他们，保护他们免受伤害。界定个体在虐待和剥削问题上的脆弱性，重新解读预防问题，让我们能够运用更加协调的方法预防贩运。许多国家的规范框架中都包含

广义的预防概念，但在实际工作中，在分析预防模式时，人们在很大程度忽略了预防模式与被贩运人口或群体的社会、文化、经济和政治脆弱性之间的相互关系。

在讨论打击贩运问题时会频繁地使用“脆弱”和“脆弱性”等词，但除了在法律背景下之外，没有对这些词做出最后界定。本文件分析了理解脆弱性的多项考虑因素，并给出了“脆弱性”的定义——“因个人在构成其群体环境的社会、文化、经济、政治和环境因素综合互动中的消极经历所导致的情况”。

基于以上因素，应在以下领域制订脆弱性条件指标：儿童；两性；贫困；设施和文化排斥；教育不足；政治不稳定、战争和冲突；社会、文化和法律框架；强迫迁移；以及需求。

造成脆弱性的大多数情况都是因系统所致，是政府颁布政策的结果，因此各国有责任确保人口中的弱势者受到保护。

二. 影响

贩运人口的影响

本文件述及贩运人口给个人以及政治、经济和社会系统造成的影响和成本。贩运人口是针对人的犯罪，贩运受害者对由此造成的种种后果有着最切身的感受。贩运人口是遍及世界各国的全球现象，但只有相关国家和社会才能感受到其深远而普遍的影响。有 130 多个国家受到贩运人口的影响，造成某些最突出的社会、政治和经济影响，这同时也是这些地区在制订政策时需要认真考虑的因素。

贩运人口对个人的影响

贩运人口给受害者生活的各个方面产生影响。贩运过程的每个阶段都可能出现针对身体、性和心理的虐待及暴力行为、剥夺权利和折磨、强迫使用药物、控制、经济剥削以及恶劣的工作和生活条件。同其他大多数暴力犯罪不同，贩运通常会反复造成长时间的心理创伤。相关文献和研究记述了男子、妇女和儿童如何在特定情况下遭到虐待以及由此所致的短期和长期的身体伤害、残疾和死亡。由于某些特定原因，被贩运者感染艾滋病毒的风险很高。贩运受害者经受的心理创伤包括：创伤后精神压力障碍、焦虑、抑郁、疏远、混乱、侵略和注意力不集中。研究表明，心理创伤在贩运过程中加重，有可能在受害者逃离剥削很久之后依然不能痊愈。儿童和成人遭受同等的对待，但由于年龄小、不成熟和缺乏经验，儿童被贩运和被虐待的风险更高，这有可能妨碍儿童今后的正常身体发育，由于依附、发展困难和社会困境等原因而长期受害。贩运受害者的行为让第三方困惑不已，受害者很难理解自己的行为举止，也没有办法同其他人讨论或做出解释。在旁观者、甚至是支持者看来，受害者显得不合时宜、愤怒、心怀敌意、有侵略性、不知感激。受害者蒙受的耻辱给他们的生活持续造成严重影响，包括个别受害者的心理创伤以及可能来自家庭和/或社区的排斥。贩运人口给个

人造成的长期影响是复杂的，取决于多重因素，而且谁也不能保证这些受害者一定能复原如初。被贩运的经历使得这些人有可能再次沦为受害者。

贩运人口的政治影响

贩运人口是国际社会普遍讨论并关注的一个重大问题。由于贩运造成跨国人口转移，讨论中的一个重要相关领域便是移民政策。另一个关切领域是人权。作者阐述了关于贩运人口、移民偷渡和移民流的政策和行动之间复杂的相互关系。作者指出，针对非法入境者，应加强边境管制。主要针对非法移民的工作可能在无意中造成对被贩运者不加识别，并使其受害。作者概述了原籍国和目的地国面临的、可能对贩运产生直接影响的特定移民问题，以及在识别来自外国的被贩运者的过程中需要解决的一系列问题。

贩运人口的经济影响

要评估贩运人口的影响，最大的困难在于如何量化贩运人口的经济成本。作者阐述了贩运造成的主要经济后果。贩运人口罪行的成本涉及很多方面，其中包括用于预防贩运的所有资源的价值、受害者的待遇和支持以及拘押和起诉犯罪者。没收犯罪所得和贩运者的资产，可以抵消其中部分成本。贩运人口还会造成人力资源损失和**收入**减少，剥夺了移民及其家庭、社区、政府或其他潜在的合法雇主本应享有的移民带来的资金收益，转而让贩运者及其同案犯受益。所有迹象都表明，相关有组织犯罪产生巨额收益，而且遍及全球。鉴于当前的剥削性质，贩运人口为犯罪团伙提供了稳固的收入来源，这给其他犯罪活动及合法经营都造成了影响。

对法治的影响

贩运人口作为一种犯罪行为，违反了法治，同时也威胁到国家管辖权和国际法。有组织犯罪是非法重新分配国家财富的最重要机制之一，对市场、政治权力和社会关系均造成不良影响。假如国家发生内乱、自然灾害或冲突后局势，这些影响有可能十分严重。各国政府面对艰巨的挑战，而人口贩运者获得良机，两者形成鲜明的对照。贩运人口可能造成严重的潜在威胁，因此越来越多的人认识到这个问题关系到全球全。

贩运人口是全球经济的一种复杂表现形式，属于侵犯人权的有组织犯罪，给世界各地数百万疑似受害者造成极大的困境，同时也影响到滋生这种现象的国家的金融市场、经济和社会结构。贩运人口是有组织犯罪的重要组成部分，犯罪收益巨大，在人类、社会、政治和经济等领域产生了错综复杂的负面影响。

贩运人口造成了多种不稳定的危险后果，例如已经能够确定的暴力行为、直接经济损失和重大移民问题，此外还有一些不易量化、但同等严重、甚至更加复杂的影响，例如对环境、社会、健康、安全的危害以及侵犯人权。贩运人口直接威胁到稳定、繁荣

的社会与合法经济的发展，不利于协调政治利益和人道主义及人权义务。与贩运有关的各种犯罪及其广泛的相互影响，给全球和平、安全与稳定造成日益严重的威胁，在国家和全球层面促成了政治、社会和经济对策。

三. 行动

针对贩运人口问题的对策：在国家和区域层面上将国际规范转化为具体行动

本文分析了 2000 年 11 月通过《关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》以来，各国政府针对贩运人口问题的主要对策，以及如何提高某些政策的成效。各国主要侧重于查处和起诉贩运者，查明、保护和援助被贩运者，以及以预防为第一要务，着手防止有人遭到贩运。强调需要针对各种形式的贩运开展更多的研究和数据收集工作，目的是制订实用、有效的打击贩运战略，并在随后监测这些干预措施，确保其能够产生预期作用。

立法

截至 2007 年 12 月 4 日，共有 116 个国家批准了《关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》，其中大多数国家制订新的法律或是修订现行法律，将《议定书》的规定转化为实际行动，界定了贩运人口罪，加大了对贩运者的惩处力度，并确立了执法机构和程序。此外还采取了多项区域行动。但在制订这些规范框架的过程中，各国和各区域在贩运人口的核心定义上没能保持协调一致，而且《议定书》的全面规定相比，国家立法往往显得不足。各国可能会注意到商业性剥削和贩运妇女及女童问题，但忽略了以强迫劳动或奴役为目的的贩运。《议定书》明确指出，在涉及儿童问题时，不能以各种非法贩运手段作为判断标准，但某些立法没有反映出这项规定，或是抛开凡年龄在 18 岁以下者为儿童的规定，对儿童年龄做出其他规定。

定义上的含混不清给国际合作造成严重障碍。批准《关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》的所有国家都应保证本国立法符合《议定书》的规定。

协作：协调与合作是打击贩运的必要手段

协调工作始于国家层面，但在双边、区域和国际层面同样重要。在国内，作为国家移案机制、国家报告员和国家协调员/协调机制的组织机构推动多方采取一致行动，共同打击贩运。

起诉和执法活动

已经下大力气查明和照顾受害者，努力查处并起诉贩运者，但据报道，贩运人口依然是回报最高的跨国有组织犯罪形式。贩运人口和走私或其他移民相关犯罪之间的混淆，阻碍了执法工作的进展。鉴于很难准确地确定贩运受害者，这就要求为刑事司法系统的相关对策制订最低标准。

移民官员和执法官员面临的一个重大挑战是如何区分贩运受害者和他们周围的人。有些行动的目的是加强打击贩运者的执法力度，而有些行动是为了保护被贩运者的权利，这二者之间产生了强烈的矛盾冲突。但这两种方法并非水火不容，有证据表明，迅速确定受害者并给予适当待遇，对于有效的执法工作至关重要。一些国家采取新做法，对于在本国境内确定的被贩运者给予“反思期”，让这些人有时间恢复健康，同时考虑自己是否能够或希望同执法机构合作。一个特别引发争议的问题是，向贩运受害者颁发临时居留证（除反思期之外），是否应以此人同刑事司法系统合作作为条件。贩运受害者的赔偿或损失问题目前尚未引起重视。

预防

打击贩运战略中关于预防的内容不足，这或许是由于还不能确定各种预防方法的有效性。对于预防方案没有进行监测和评估，使得人们很难确定哪些行动取得了成功。贩运人口问题涉及到诸多复杂因素，其中包括一系列深层次的根源问题，造成个人决定参与贩运，同时也促成了滋生贩运和剥削的社会经济环境。这些因素包括经济危机、社会排斥、性别歧视以及法律或社会保障系统薄弱。要弥补这些不足，就需要在打击贩运的专项行动之外开展更为广泛的行动。

在原籍地区开展预防行动，通常是提供信息/开展宣传，提醒人们外出闯荡存在风险，推广创收活动，开展正式和非正式教育，以及针对可能被贩运的高风险群体开展工作。某些预防方案旨在采取措施，加强社会保障。

工业化国家作为贩运的目的地国，主要投资在原籍国开展预防工作，同时也开始在国内行动起来，主要是修订并综合执行移民政策和就业政策。各国采用多种方法来解决这个问题，例如：监督工作条件，特别是非正规经济部门的工作条件；在出现贩运问题的部门规范职业中介机构；提供机制，保护移民不受虐待；通过法律手段来满足劳工需求或是向被贩运者提供服务。此外，目的地国还开展了大规模的宣传运动，让公众了解国内可能存在的虐待暴行。

保护和援助

国际指导方针已经明确了被贩运者根据现行国际法享有的各项权利，特别是这些人有权得到保护和援助。政府间组织和非政府组织发布了一系列援助和护理良好做法

南，目的是让已经确认的被贩运者能够被转移到安全地点，接受各种服务，其中包括身心护理、法律援助、庇护所和保护。此外还下大力气制订了儿童特殊护理标准。

不同国家对于受到剥削的被贩运者的待遇各不相同。被贩运者的定义狭窄（例如，服务于商业性剥削目的的被贩运妇女），会让其他的被贩运者得不到任何法律救助。在很多地区，被贩运者由于非法进入或居住在过境国和目的地国，或是由于参与作为贩运直接后果的非法活动，依然被判有罪。确认程序不够完善，往往意味着被贩运者将被简单粗暴地遣返回原籍国，完全忽视这些人国内可能遭遇的风险。

被贩运者的康复是一个漫长而复杂的过程。以往的经验表明，认为应遣返贩运受害者、让其同家人团聚的传统观念是错误的，这种做法通常会导致受害者陷入困境，遭受更严重的伤害。

研究的作用

研究贩运人口问题，对于充分预防、保护和援助被贩运者以及起诉罪犯都具有重大意义。需要在多个重要领域持续开展研究，特别要分析被贩运者的特点和造成脆弱性的条件、贩运者使用的方法以及问题涉及的范围（包括被贩运者的人数）。此外还要监测、评估和评价预防和康复工作的作用，确保有资金支持的方案能够切实有效。

本文作者最后承认，打击贩运工作面临的问题之一是国际、区域和专门宣传机构及组织给各国政府提供的建议过多。需要开展协调一致的行动，协助各国确定具体的“良好做法”，并就此达成共识，确保打击贩运的行动更加有效，用于打击贩运的资金能够得到更为有效的利用。

Резюме документов

1. Уязвимость

Уязвимость, торговля людьми и ее предупреждение: необходимость новой парадигмы

Чтобы понять, почему торговля людьми по-прежнему определяется как нарастающее явление, в настоящем документе анализируются нынешние методы предупреждения торговли людьми. Несмотря на принятие многочисленных инициатив в области предупреждения и выделение значительного финансирования, предварительно можно сделать вывод, что используемые на практике методы предупреждения не отражают тот всеобъемлющий подход, который воплощен в определениях термина "предупреждение преступности" в целом и в характерном определении понятия "предупреждение", приведенном в статье 9 Протокола о предупреждении и пресечении торговли людьми, особенно женщинами и детьми, дополняющего Конвенцию Организации Объединенных Наций против транснациональной организованной преступности.

В документе рассматривается, как понятие "предупреждение" концептуализируется в нормативно-правовых актах и почему эти акты осуществляются весьма узко. В формулировках хорошо разработанных стратегий и практических мер отсутствует такое звено, как уязвимость, в частности уязвимость отдельного человека в его/ее социальном контексте. Основное внимание в документе уделяется тому, как соотносится проблема уязвимости и торговля людьми, являясь одной из предпосылок для разработки действенных программ предупреждения преступности. В документе приводятся новые идеи в отношении разработки стратегий по предупреждению торговли людьми, которые позволят решать реальные проблемы уязвимых групп населения, исходя из их собственных потребностей и в их специфических условиях.

Автор задается вопросом, что имеют в виду эксперты, когда описывают торговлю людьми как нарастающее явление, поскольку невозможно произвести количественную оценку роста масштабов торговли людьми, кроме как в самых общих чертах. Помимо отсутствия непротиворечивых, надежных и сопоставимых данных, это обусловлено различиями в национальных определениях торговли людьми, а также того, кто является жертвой такой торговли.

Предупреждение преступности и сокращение уязвимости – это эффективные методы борьбы с торговлей людьми. Для каждого из них необходима своя динамика планирования политики и программ. Акцент на уязвимость будет способствовать

усилению правозащитного компонента в политике, направленной на предупреждение торговли людьми. Традиционные определения предупреждения преступности могут содействовать повышению эффективности мер по борьбе с торговлей людьми, подчеркивая необходимость сокращения элементов риска в условиях жизни людей. Следовательно, теоретически предупреждение должно иметь своей целью исключение возможности торговли людьми еще до прецедента путем устранения факторов, делающих отдельных лиц уязвимыми в плане торговли людьми.

Основные принципы предупреждения преступности, такие как участие широкого круга заинтересованных сторон, расширение прав и возможностей уязвимых лиц и сокращение факторов риска, были учтены при разработке понятия "предупреждение" в том смысле, которое ему придается в статье 9 Протокола о торговле людьми. К сожалению, реализация этих принципов была ограничена тем, что основное внимание уделялось проведению как широких, так и небольших кампаний по информированию общественности, ориентированных на потенциальных жертв торговли людьми. Подобные программы исходят из того, что повышение осведомленности о возможном вреде поможет тому или иному лицу выбрать другую модель поведения. Однако такие программы оказываются неэффективными, поскольку не информируют потенциальных жертв об альтернативной линии поведения. Если в программах по предупреждению торговли людьми упор делается исключительно на повышение информированности потенциальных жертв, предупреждение носит ограниченный характер. Вследствие того, что в рамках таких мер не предлагается никаких альтернатив, ответственность за предупреждение эксплуатации возлагается на самого человека. Потенциальные жертвы остаются в равной степени уязвимыми как до, так и после просмотра соответствующих плакатов, фильмов и телевизионных программ.

Автор документа подчеркивает, что невозможно эффективно помочь уязвимым группам населения защитить себя без понимания прежде всего того, что делает их уязвимыми в отношении насилия, жестокого обращения и эксплуатации. Переосмысление проблемы предупреждения путем формулирования понятия уязвимости в отношении жестокого обращения и эксплуатации позволит разработать более последовательный подход к предупреждению торговли людьми. Хотя во многих странах широкая концепция предупреждения существует как составная часть нормативно-правовой базы, на практике программы предупреждения редко увязываются с проблемой социальной, культурной, экономической и политической уязвимости определенных групп населения в плане торговли людьми.

Несмотря на то, что понятия "уязвимый" и "уязвимость" часто используются в дискуссиях по проблеме торговли людьми, они еще не получили окончательного определения вне рамок юридического контекста. В настоящем документе содержится анализ некоторых аспектов понятия уязвимости и приводится определение "уязвимости" как "состояния, возникающего вследствие негативных ощущений индивидов в связи со сложными взаимодействиями социальных, культурных, экономических, политических и экологических факторов, определяющих контекст, в котором функционируют их общины".

Исходя из этих соображений, показатели, характеризующие условия уязвимости, необходимо разработать в следующих областях: дети; гендер; бедность; социальная и культурная изоляция, ограниченность образования; политическая нестабильность; война и конфликт; социальные, культурные и правовые рамки; передвижение по принуждению; а также спрос.

Поскольку в большей своей части обстоятельства, являющиеся причиной уязвимости, носят системный характер и обусловлены политикой, проводимой правительством, именно государство несет ответственность за обеспечение защиты уязвимых лиц.

2. Воздействие

Воздействие торговли людьми

В данном документе рассматривается воздействие торговли людьми как на отдельных лиц, так и на политические, экономические и социальные системы, а также та цена, которую за нее приходится платить. Торговля людьми – это преступление против личности, и ее последствия наиболее ощутимы для ее жертв. Хотя торговля людьми представляет собой глобальное явление, не знающее международных границ, ее долгосрочные и глубокие последствия проявляются именно в конкретных странах и обществах. Торговлей людьми затронуты более 130 стран. В настоящем документе рассматриваются некоторые из наиболее существенных последствий торговли людьми для социальной, политической и экономической сфер, а также приводятся важные соображения политического характера для каждой из этих областей.

Последствия торговли людьми для отдельных лиц

Лица, ставшие жертвами торговли людьми, испытывают ее воздействие во всех областях их жизни. На каждом этапе процесса торговли людьми жертва может столкнуться с физическим, сексуальным и психологическим насилием, деприацией и пытками, принуждением к употреблению психотропных веществ, незаконными действиями, экономической эксплуатацией и тяжелыми условиями жизни и труда. В отличие от многих других насильственных преступлений торговля людьми обычно связана с травмой, имеющей долгосрочный и воспроизводящийся характер. В документах и материалах исследований описывается, как мужчины, женщины и дети подвергаются жестокому обращению в конкретных условиях эксплуатации, в результате чего получают физические травмы различной степени тяжести, которые в результате могут привести к инвалидности и смерти. По ряду указанных причин у лиц, ставших жертвами торговли людьми, чрезвычайно высок риск ВИЧ-инфицирования. Жертвы торговли людьми получают также психические травмы: у них развивается посттравматический стресс, чувство тревоги, депрессия, отчужденность, дезориентация, агрессивность и трудность концентрации внимания. В исследованиях указывается, что в процессе торговли людьми состояние

травмированных жертв усугубляется и может сохраняться в течение длительного периода уже после того, как закончится какая-либо эксплуатация. Подвергаясь такому же наносящему вред обращению, что и взрослые, дети особенно уязвимы в плане торговли людьми вследствие своего возраста, незрелости и отсутствия опыта. Дети могут подвергаться различным видам жестокого обращения, что может затормозить их дальнейшее физическое развитие, и продолжительной виктимизации, возникающей в результате проблем в эмоциональной сфере, в области развития и социальной адаптации. Поведение жертв торговли людьми, возможно, трудно понять посторонним лицам, поскольку жертвам может быть трудно осознать, что с ними произошло, обсудить это с другими, или объяснить это другим. Окружающим и даже оказывающим им поддержку лицам жертвы могут показаться необщительными, раздражительными, враждебными, агрессивными или неблагодарными. Доказано, что приобретаемое ими в качестве жертвы клеймо оказывает существенное и продолжительное воздействие на их жизнь, проявляясь, в том числе, в виде психической травмы, испытываемой самой жертвой, или в том, что жертва может быть физически отвергнута семьей и/или общиной. Долгосрочные последствия торговли людьми для отдельных лиц носят комплексный характер и зависят от многих факторов, причем без каких-либо гарантий излечения и восстановления. Более отдаленным последствием пережитого жертвой является повторная виктимизация.

Политические последствия торговли людьми

Торговля людьми является предметом широких обсуждений и обеспокоенности международной общественности. Поскольку она связана с транснациональным перемещением людей, одной из важных обсуждаемых в связи с этим проблем является политика в области миграции. Другая проблема касается правозащитных аспектов. Автор рассматривает сложную взаимосвязь между политикой и практическими действиями в таких областях, как торговля людьми, контрабандный провоз мигрантов и миграционные потоки. Отмечается важность усиления пограничного контроля, а также установления статуса лиц, въезжающих в какую-либо страну нелегально. Непредусмотренным последствием мер, направленных, главным образом, на борьбу с незаконной миграцией, может стать отказ в установлении статуса и виктимизация лиц, ставших жертвой торговли людьми. В документе рассматриваются конкретные вопросы миграции, с которыми сталкиваются страны происхождения и назначения и которые могут иметь прямые последствия для торговли людьми, а также системные проблемы, которые приходится решать стране в случае необходимости установить статус лица, незаконно переправленного из другой страны.

Воздействие торговли людьми на экономику

Трудности с оценкой воздействия торговли людьми наиболее наглядно проявляются при попытках количественно определить связанные с ней экономические издержки. Тем не менее, основные экономические последствия

торговли людьми удалось установить. Издержки преступной деятельности, связанной с торговлей людьми, включают многие компоненты, в том числе стоимость всех ресурсов, направляемых на ее предупреждение, на лечение и помощь жертвам и на задержание и судебное преследование правонарушителей. Эти расходы могут частично покрываться за счет изъятия преступных доходов и активов лиц, занимающихся торговлей людьми. В результате торговли людьми также происходит убыль людских ресурсов и сокращение налоговых поступлений. Кроме того, вследствие торговли людьми финансовые выгоды от миграции получают не мигранты, их семьи, общины и правительства или иные потенциальные законные работодатели, а торговцы людьми и их пособники. Все указывает на то, что доход от связанных с торговлей людьми организованных преступлений весьма значителен и носит глобальный характер. Учитывая непрерывный характер эксплуатации, торговля людьми является стабильным и постоянным источником дохода для преступных сетей и оказывает последующее влияние как на иные формы преступной деятельности, так и на законное предпринимательство.

Воздействие на правопорядок

Будучи преступным деянием, торговля людьми нарушает правопорядок, угрожает национальным юрисдикциям и международному праву. Организованная преступность является одним из наиболее эффективных механизмов незаконного перераспределения национального богатства путем неправомерного воздействия на рынки, на отношения в политической и социальной сферах. Это воздействие может быть особенно сильным в странах, занятых ликвидацией последствий гражданских беспорядков, стихийных бедствий или находящихся в постконфликтной ситуации. В этих условиях правительства вынуждены решать многочисленные проблемы, а перед торговцами людьми открываются широкие возможности для преступной деятельности. Торговля людьми представляет собой скрытую угрозу, из-за которой ее все чаще признают проблемой глобальной безопасности.

Торговля людьми, являющаяся проявлением сложной взаимосвязи глобальной экономики, организованной преступности и нарушений прав человека, ставит в крайне тяжелое положение, как предполагается, миллионы ставших ее жертвами людей повсюду в мире, а также оказывает воздействие на финансовые рынки, экономику и социальную структуру стран, где ей позволяют существовать. В качестве основного компонента организованной преступности, обладающей значительной финансовой мощью, торговля людьми оказывает сложное взаимосвязанное негативное воздействие на все области человеческой, социальной, политической и экономической жизни.

Диапазон дестабилизирующих и опасных последствий торговли людьми очень широк: от таких легко устанавливаемых фактов, как насилие, прямые экономические убытки и значительные проблемы миграции, до с трудом поддающихся измерению, не менее серьезных, но более комплексных воздействий, связанных с рисками и вредом для окружающей среды, социальной сферы, здравоохранения и безопасности; а также нарушение прав человека. Торговля людьми представляет собой прямую угрозу для развития стабильных, процветающих обществ и легальной

экономики и служит препятствием для согласования политических интересов и обязательств в гуманитарной областях и в области прав человека. Широкий спектр связанных с торговлей людьми преступлений и их масштабные и взаимодополняющие воздействия в совокупности создали реальную угрозу для международного мира, безопасности и стабильности; под их влиянием были намечены политические, социальные и экономические ответные меры как на национальном, так и на глобальном уровне.

3. Действия

Ответные меры в отношении торговли людьми: осуществление международных норм в рамках действий на национальном и региональном уровнях

В данном документе рассматриваются основные ответные меры, принятые правительствами различных стран в отношении торговли людьми после подписания в ноябре 2000 года Протокола о предупреждении и пресечении торговли людьми, особенно женщинами и детьми, и наказании за нее, а также способы повышения эффективности некоторых из этих мер. Основное внимание государства уделяли розыску и уголовному преследованию торговцев людьми, выявлению тех, кто уже стали жертвами такой торговли, обеспечению их защиты, оказанию им помощи и самое главное – принятию мер по предупреждению того, чтобы люди становились объектами торговли. В документе подчеркивается необходимость проведения дальнейшей исследовательской работы и сбора данных в отношении всех форм торговли людьми в целях разработки специализированных и эффективных стратегий по борьбе с торговлей людьми и осуществления последующего мониторинга соответствующих мер, для того чтобы убедиться в достижении желаемого результата.

Законодательство

По состоянию на 4 декабря 2007 года, из 116 государств, ратифицировавших Протокол по торговле людьми, большинство уже приняли новые законы или внесли в существующее законодательство поправки, направленные на осуществление данного Протокола, разработку определения такого преступления, как торговля людьми, и ужесточение наказания для торговцев, а также создали институты и процедуры по введению этих законов в действие. Было также осуществлено много региональных инициатив. Однако в разработанных нормативно-правовых актах как национального, так и регионального уровня отсутствует согласованность в основных определениях торговли людьми, а национальные законодательства нередко не соответствуют всеобъемлющим положениям Протокола. В законодательствах некоторых стран могут содержаться ссылки на сексуальную эксплуатацию в коммерческих целях или на торговлю женщинами и детьми, но при этом в них опускается положение о торговле людьми в целях их принуждения к труду или

подневольной службе. В других законодательствах, несмотря на то, что в Протоколе прямо указывается на то, что, когда речь идет о ребенке, любые виды незаконных действий в целях эксплуатации считаются торговлей людьми, даже если они не связаны с какими-либо средствами воздействия, это положение не отражено либо дается иное определение "ребенка", нежели "лицо, не достигшее 18-летнего возраста".

Отсутствие четкости в определениях создает немало серьезных проблем для международного сотрудничества. Все государства, ратифицировавшие Протокол, должны обеспечить соответствие своего законодательства его положениям.

Работать вместе: координация и сотрудничество – важнейшие инструменты борьбы с торговлей людьми

Сотрудничество начинается на национальном уровне, но не менее важно его поддерживать на уровне двусторонних отношений, на региональном и международном уровнях. На национальном уровне согласованным действиям против торговли людьми в немалой степени способствуют такие институциональные структуры, как национальные справочные механизмы, национальные докладчики и национальные координаторы/ координационные центры.

Уголовное преследование и правоохранительная деятельность

Несмотря на значительные усилия по идентификации жертв торговли людьми и оказание им помощи, а также по розыску и уголовному преследованию торговцев, торговля людьми до сих пор считается одним из наиболее доходных видов транснациональной организованной преступности. Трудности с различением таких явлений, как торговля людьми, с одной стороны, и незаконный ввоз мигрантов и другие связанные с иммиграцией правонарушения, с другой, тормозят процесс в области правоохранительной деятельности. Проблема надлежащей идентификации жертв торговли людьми высветила необходимость разработки минимальных стандартов в отношении мер реагирования, принимаемых в рамках систем уголовного правосудия.

Основная проблема, с которой сталкиваются сотрудники иммиграционных и правоохранительных органов, заключается в том, как выявить жертв торговли людьми среди всех других лиц, с которыми эти сотрудники могут иметь дело. Существуют значительные противоречия между мерами, направленными в первую очередь на исполнение соответствующих законов в отношении торговцев людьми, и мерами, призванными защитить права человека жертв такой торговли. Однако эти два подхода не являются взаимоисключающими, и факты свидетельствуют о том, что своевременная идентификация жертв и надлежащее обращение с ними решительно способствуют повышению эффективности ответных правоохранительных мер. В некоторых государствах выявленным на их территории жертвам торговли людьми стали предоставлять "период обдумывания", в течение которого пострадавшие имеют возможность восстановить силы и подумать над тем, способны

ли они и хотят ли сотрудничать с правоохранительными органами. Наиболее спорным является вопрос о том, следует ли предоставление жертвам торговли людьми временного вида на жительство (помимо права на период обдумывания) ставить в зависимость от их сотрудничества с органами уголовного правосудия. Вопросу о компенсационных выплатах или возмещении ущерба жертвам торговли людьми пока не уделялось большого значения.

Предупреждение

В стратегиях борьбы с торговлей людьми мерам по предупреждению не уделяется надлежащего внимания, возможно, вследствие неуверенности в эффективности различных методов профилактики данного преступления. Отсутствие мониторинга и оценки в отношении программ предупреждения затрудняет выявление тех мероприятий, которые оказались успешными. Торговле людьми способствует множество сложных по своему характеру факторов, в том числе обуславливающих и причинно-следственных, которые влияют на принимаемые людьми решения, поощряют торговлю людьми и создают социально-экономические условия для процветания такой торговли и эксплуатации. Эти факторы включают экономические кризисы, социальную изоляцию, гендерную дискриминацию и слабость систем социальной или правовой защиты населения. Для решения этих проблем необходима более широкая программа действий, нежели та, что разработана специально для пресечения торговли людьми.

В странах происхождения меры по предупреждению торговли людьми в основном принимали форму информационно-просветительских кампаний, уведомляющих население об опасностях, связанных с поиском работы за границей, а также инициатив, содействующих развитию приносящей доход деятельности, формальных и неформальных образовательных программ и программ, ориентированных на группы лиц, которые в наибольшей степени рискуют стать жертвами торговли людьми. В некоторых случаях программы по предупреждению принимали форму мер по усилению социальной защиты населения.

Промышленно развитые страны, куда незаконно переправляются жертвы торговли людьми, инвестировали средства в первую очередь в меры по предупреждению такой торговли в странах происхождения, однако в последние годы они также начали предпринимать соответствующие усилия у себя, в основном в виде пересмотра и полномасштабного осуществления стратегий в области иммиграции и занятости. Что касается проблемы спроса на труд и услуги лиц, ставших жертвами торговли людьми, в этих странах используются такие методы, как контроль за условиями труда, в частности в неформальном секторе экономики, регулирование деятельности кадровых агентств в тех секторах, где имеет место торговля людьми, создание структур по защите мигрантов от злоупотреблений и жестокого обращения и применение соответствующих законов. В странах назначения также проводились широкомасштабные кампании по информированию мигрантов о возможных злоупотреблениях, с которыми они могут столкнуться в этих странах.

Защита и помощь

В настоящее время международные руководящие принципы внесли разъяснение в отношении прав, которые жертвы торговли людьми имеют в соответствии с существующим международным правом, в частности в отношении их прав на защиту и помощь. Межправительственные учреждения и неправительственные организации выпустили ряд руководств по наилучшей практике, касающихся оказания содействия и помощи, в соответствии с которыми идентифицированные жертвы торговли людьми могут быть помещены в надежное место, где им предоставят разнообразные услуги, включая физическую и психологическую помощь, правовые услуги, убежище и защиту. Были также предприняты значительные усилия в целях разработки стандартов по осуществлению особой заботы о детях.

Обращение с жертвами торговли людьми существенно различается по странам, где имеет место их эксплуатация. При ограниченном определении понятия "жертвы торговли людьми" (например, к ним относятся только женщины, незаконно вывозимые для сексуальной эксплуатации) другие категории жертв торговли людьми остаются без каких-либо средств правовой защиты. Во многих странах жертв торговли людьми по-прежнему криминализируют за незаконный въезд или пребывание в странах транзита и назначения или за их участие в незаконной деятельности, хотя все это является прямым следствием того, что они стали жертвами торговли людьми. Результатом неправильной процедуры идентификации, как правило, является массовое возвращение жертв торговли людьми в страну происхождения, без учета потенциальных рисков, с которыми они могут столкнуться на родине.

Для жертв торговли людьми восстановление – это длительный и сложный процесс. Накопленный опыт опровергает традиционное представление о том, что жертв следует репатриировать и возвращать в семьи. Такая практика чаще всего приводит к тому, что жертвы возвращаются в условия, где они и далее подвергаются пагубному воздействию и испытывают страдания.

Роль исследований

Проведение исследований в области торговли людьми крайне необходимо для принятия надлежащих мер предупреждения, защиты и помощи жертвам торговли людьми и обеспечения судебного преследования преступников. В некоторых ключевых областях исследования следует проводить постоянно, особенно это касается вопросов характеристики жертв и условий, способствующих уязвимости; используемых торговцами методов; масштабов проблемы, включая численность вывозимых лиц; необходимо также проводить мониторинг и оценку воздействия мер по предупреждению и реабилитации в целях обеспечения действительной эффективности финансируемых программ.

В заключении автор документа признает, что одной из проблем, с которыми сталкиваются сегодня специалисты по борьбе с торговлей людьми, является обилие

рекомендаций, которые направляют правительствам международные, региональные и специализированные учреждения и организации по информационно-пропагандистской деятельности. Требуются объединенные усилия, чтобы помочь государствам определить, что является "наилучшей практикой", и добиться согласия в этой области. Только тогда можно обеспечить повышение эффективности мер по борьбе с торговлей людьми и более рационального использования финансовых средств, выделенных на эти цели.

غير الحكومية مجموعة من المبادئ التوجيهية بشأن الممارسات الجيدة المتعلقة بالمساعدة والرعاية لكي يتسنى نقل من تتم استبانته من الأشخاص المتّجر بهم إلى مكان آمن ليتلقوا مجموعة متنوّعة من الخدمات تشمل الرعاية البدنية والنفسية، والمساعدة القانونية، وتوفير المأوى والحماية. وبذلت أيضا جهود كبيرة لوضع معايير للرعاية الخاصة للأطفال.

وتفاوتت معاملة الأشخاص المتّجر بهم في البلدان التي يتم فيها استغلالهم تباينا واسعا من بلد إلى آخر. ويمكن أن تؤدّي القيود الموضوعية على تعريف الشخص المتّجر به (مثلا، تعريفه بالنساء المتّجر بهن لأغراض الاستغلال الجنسي التجاري) إلى ترك الأشخاص الآخرين المتّجر بهم دون أي ملاذ قانوني. وفي كثير من الأماكن، مازال الأشخاص المتّجر بهم يجرّمون لدخولهم غير المشروع أو إقامتهم غير المشروعة في بلدان العبور وبلدان المقصد، أو لمشاركتهم في الأنشطة غير المشروعة التي كانت نتيجة مباشرة للاتجار بهم. وعادة ما تكون نتيجة عدم كفاية إجراءات الاستبانة هي أن الشخص المتّجر به يعاد بصفة عاجلة إلى بلده الأصلي دون أي انتباه للمخاطر المحتملة التي قد يتعرض لها في وطنه.

وتعاني الأشخاص المتّجر بهم عملية طويلة ومعقّدة. وتكشف الدروس المستفادة أن الافتراض التقليدي بأن الضحايا ينبغي أن يعادوا إلى وطنهم وإلى العيش مع أسرهم هو افتراض غير ملائم ومن السهل جدا أن يؤدّي إلى إعادة الضحايا إلى وضع يعانون فيه المزيد من الأذى.

دور البحوث

البحوث في مجال الاتجار بالبشر ضرورية لضمان وجود ما يكفي من المنع والحماية والمساعدة للأشخاص المتّجر بهم وملاحقة المجرمين. ومن الضروري إجراء بحوث مستمرة في عدة مجالات رئيسية، وخصوصا بشأن خصائص الأشخاص المتّجر بهم وظروف القابلية للتأثر؛ وبسبب أساليب المتّجرين؛ وبسبب نطاق المشكلة، بما في ذلك أعداد الأشخاص المتّجر بهم؛ ورصد وتقييم وتقدير أثر جهود المنع وإعادة التأهيل، بغية ضمان أن البرامج التي تموّل فعّالة في الواقع.

ويخلص الكاتب إلى التسليم بأن أحد التحديات التي تواجه الجهات المعنية بمكافحة الاتجار بالأشخاص اليوم هو وفرة التوصيات المقدمّة إلى الحكومات من الوكالات والمنظمات الدولية والإقليمية والمتخصّصة. ويلزم بذل جهد منسق لمساعدة الدول على تحديد ماهية "الممارسة الجيدة" والتوصّل إلى اتفاق حول ذلك التحديد من أجل ضمان أن تصبح مبادرات مكافحة الاتجار أكثر فعالية وأن تستخدم الأموال المخصّصة لوقف الاتجار بالأشخاص استخداما أكثر فعالية.

ملخصات الأوراق

قادرين على التعاون مع أجهزة إنفاذ القوانين وراغبين فيه. وثمة مجال مناقشة يثير الجدل بوجه خاص وهو ما إن كان منح تصاريح إقامة مؤقتة (غير استحقاقات فترة التدرج) لضحايا الاتجار بالأشخاص ينبغي أن يكون مشروطا بتعاون الشخص المتجر به مع نظام العدالة الجنائية. ولم يمنح حتى الآن سوى القليل من الأولوية لمنح تعويضات لضحايا الاتجار بالأشخاص.

المنع

لم يعالج المنع معالجة كافية في استراتيجيات مكافحة الاتجار بالأشخاص، وربما يرجع ذلك إلى عدم اليقين بشأن فعالية مختلف أساليب المنع. وقد أدى عدم رصد برامج الوقاية وتقييمها إلى صعوبة تحديد المبادرات الناجحة. وتسهم في الاتجار بالبشر عوامل عديدة معقدة، تشمل مجموعة متنوعة من العوامل السببية الكامنة والجذرية التي تؤثر في القرارات التي يتخذها الأفراد والتي تؤدي إلى الاتجار بهم وتسهم في إيجاد بيئة اجتماعية واقتصادية يمكن أن يزدهر فيها الاتجار والاستغلال. وتشمل هذه العوامل الأزمات الاقتصادية، والإقصاء الاجتماعي، والتمييز بين الجنسين، وضعف نظام الحماية القانونية أو الاجتماعية. ويتطلب علاج جوانب القصور هذه مجموعة من الإجراءات أوسع من تلك التي تصمم خصيصا لوقف الاتجار بالأشخاص.

والشكل الرئيسي الذي اتخذته مبادرات المنع في المناطق الأصلية للمتجر بهم هو شكل حملات إعلام/توعية تنبّه الناس إلى الأخطار التي ينطوي عليها البحث عن العمل في الخارج، وترويج الأنشطة المدرة للدخل، ومبادرات التعليم الرسمي وغير الرسمي، والمبادرات الموجهة إلى الفئات التي يكون من المعروف أنها معرضة بقدر كبير للاتجار بها. واتخذ بعض برامج المنع شكل تدابير ترمي إلى تعزيز الحماية الاجتماعية.

ورغم أن الدول الصناعية التي يتم الاتجار بالناس فيها قد استثمرت الأموال أساسا في المنع في بلدان المنشأ فقد بدأت أيضا في بذل جهود داخل بلدانها، وذلك أساسا في شكل تنقيح وتنفيذ شامل لسياسات الهجرة والعمالة. ومن الأدوات التي تستخدمها الدول للتصدي للطلب رصد ظروف العمل، ولا سيما في القطاعات الاقتصادية غير الرسمية، والتنظيم القانوني لوكالات التوظيف في القطاعات التي يحدث فيها الاتجار بالأشخاص، وتوفير تسهيلات لحماية المهاجرين من ممارسات إساءة المعاملة، واستخدام التشريعات للتصدي للطلب على الأعمال والخدمات التي يؤديها الأشخاص المتجر بهم. كما نفذت بلدان المقصد حملات إعلامية واسعة النطاق لإطلاع الجمهور على إمكانية حدوث ممارسات إساءة المعاملة في بلدانهم.

الحماية والمساعدة

توضّح المبادئ التوجيهية الدولية الآن ما للأشخاص المتجر بهم من حقوق بمقتضى القانون الدولي القائم، وبخاصة حقهم في الحماية والمساعدة. وقد أصدرت الوكالات الحكومية الدولية والمنظمات

مدخل إلى مسائل الضعف والأثر والإجراءات في مجال الاتجار بالبشر

وتعريف جريمة الاتجار بالأشخاص، وتشديد العقوبات على المتجرين بالأشخاص، واستحدثت مؤسسات وإجراءات لتنفيذ القانون. وقد نفذ أيضا العديد من المبادرات الإقليمية. بيد أنه لا يوجد، في صياغة هذه الأطر المعيارية، على الصعيدين الوطني والإقليمي على السواء، سوى القليل من الاتساق في التعريف الأساسي للاتجار بالأشخاص، وفي كثير من الأحيان لا يرقى التشريع الوطني إلى أحكام البروتوكول الشاملة. فقد تشير الدول إلى الاستغلال الجنسي التجاري، أو الاتجار بالنساء والفتيات، بينما تغفل الاتجار لأغراض السخرة أو العبودية. وفي حالات أخرى، ورغم أن البروتوكول يشير بوضوح إلى أنه في حالة الأطفال لا يولى الاعتبار لوسائل الاتجار غير المشروعة المختلفة، لا يظهر هذا الحكم في بعض التشريعات، أو تحدّد سنّ الطفل بشيء غير أنّها أقل من ١٨ سنة.

ويشكّل هذا الافتقار إلى الوضوح في التعاريف تحديات رئيسية للتعاون الدولي. وينبغي أن تتأكد جميع الدول التي صدّقت على بروتوكول الاتجار بالأشخاص من أن تشريعاتها تمثل لأحكامه.

العمل المشترك: التنسيق والتعاون باعتبارهما أداتين جوهريتين في مكافحة الاتجار بالأشخاص

يبدأ التعاون على الصعيد الوطني، ولكنه على نفس القدر من الأهمية على الأصعدة الثنائي والإقليمي والدولي. وعلى الصعيد الوطني، أدى وجود هيكل مؤسسية مثل آليات الإحالة الوطنية والمقررين الوطنيين والمنسقين الوطنيين/الهيكل التنسيقية الوطنية إلى تيسير اتخاذ إجراءات متضافرة لمكافحة الاتجار بالأشخاص.

أنشطة الملاحقة القضائية وإنفاذ القوانين

على الرغم من بذل جهود كبيرة لاستبانة الضحايا وتوفير الرعاية لهم ولكشف المتجرين بالأشخاص وملاحقتهم، ما زال يتردّد أن الاتجار بالأشخاص من أكثر قطاعات الجريمة المنظمة عبر الوطنية ربحية. وقد أدى الخلط بين الاتجار بالبشر، من ناحية، وتهريب الأشخاص أو غيره من الجرائم المتصلة بالهجرة، من الناحية الأخرى، إلى إعاقة إحراز تقدّم في جهود إنفاذ القوانين. وأبرزت التحديات التي تواجه في التحديد السليم لضحية الاتجار بالأشخاص الحاجة إلى معايير دنيا بشأن ردود نظم العدالة الجنائية.

ويتمثل تحد رئيسي للموظفين المسؤولين عن المهجرة وإنفاذ القوانين في كيفية تمييز ضحايا الاتجار بالأشخاص من غيرهم ممن قد يتعامل معهم أولئك الموظفون. ويوجد كثير من أوجه الشد والجذب بين المبادرات التي تهدف أساسا إلى إنفاذ القوانين على المتجرين بالأشخاص وتلك التي تهدف إلى إحقاق حقوق الإنسان لضحايا الاتجار بالأشخاص. غير أنّ النهجين لا يستبعد أحدهما الآخر، وتشير الدلائل إلى أنّ سرعة استبانة الضحايا وتوفير المعاملة المناسبة لهم هي أمر حاسم الأهمية لفعالية ردود أجهزة إنفاذ القوانين. وقد بدأت بعض الدول في اعتماد "فترات تأمل" متاح للأشخاص المتجر بهم الذين تتم استبانتهم داخل حدودها، بغية إعطائهم الوقت اللازم للتعافي وللتفكير في ما إن كانوا

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ويسبب الاتجار بالبشر، بصفته مظهرا معقدا من مظاهر الاقتصاد العالمي والجريمة المنظمة وانتهاكات حقوق الإنسان، مشقة قصوى لملايين الأفراد في جميع أنحاء العالم ممن يشته في أهم وقعوا ضحايا له، وله أيضا أثر على الأسواق المالية والاقتصادات والهياكل الاجتماعية في البلدان التي يُسمح له بالوجود فيها. وللإتجار في الأشخاص، باعتباره عنصرا رئيسيا من عناصر الجريمة المنظمة، بكل ما لها من قوة مالية، أثر سلبي معقد ومتشابك في جميع المجالات الإنسانية والاجتماعية والسياسية والاقتصادية.

وتمتد عواقب الاتجار بالبشر المزعزعة للاستقرار والخطيرة من العنف الذي يسهل التعرف عليه والخسائر الاقتصادية المباشرة والشواغل الرئيسية المتعلقة بالهجرة إلى الآثار التي لا يمكن تقديرها كليا بنفس السهولة والتي تتسم بنفس القدر من الخطورة ولكنها أكثر تعقدا، المتمثلة في المخاطر والأضرار التي تمس البيئة والمجتمع والصحة والسلامة، وفي انتهاكات حقوق الإنسان. ويشكل الاتجار بالأشخاص تحديا مباشرا لتطور مجتمعات مستقرة وأكثر ازدهارا ولتطور الاقتصادات المشروعة، وهو يعمل بقوة ضد التوفيق بين المصالح السياسية والالتزامات الإنسانية والمتعلقة بحقوق الإنسان. وقد أحدثت مجموعة الجرائم المتصلة بالاتجار بالبشر، وآثارها الواسعة النطاق والمتراطة، تهديدا تراكميا للسلام والأمن والاستقرار على الصعيد العالمي، وشكلت الردود السياسية والاجتماعية والاقتصادية على الصعيدين الوطني والعالمي.

٣- الإجراءات

التصدي للاتجار بالأشخاص: ترجمة الأعراف الدولية إلى إجراءات على الصعيدين الوطني والإقليمي

تبين هذه الورقة جوانب التصدي الرئيسية من جانب الحكومات للاتجار بالأشخاص منذ أن اعتمد في تشرين الثاني/نوفمبر ٢٠٠٠ بروتوكول منع وقمع ومعاقبة الاتجار بالأشخاص، وبخاصة النساء والأطفال، كما تبين كيف يمكن أن تكون بعض هذه الردود أكثر فعالية. وقد انصب التركيز الرئيسي للدول على كشف المتجرين بالبشر ومقاضاتهم، وتحديد وحماية ومساعدة الضحايا الفعليين للاتجار، واستحداث إجراءات لوقاية الناس من الاتجار بهم أصلا. وتؤكد الورقة على الحاجة إلى إجراء مزيد من البحوث وجمع البيانات عن جميع أشكال الاتجار بالأشخاص، بغية وضع استراتيجيات مصممة خصيصا وفعالة لمكافحة الاتجار بالأشخاص، ثم رصد هذه التدخلات للتأكد من أنها تُحدث التأثير المطلوب.

التشريع

حتى ٤ كانون الأول/ديسمبر ٢٠٠٧، صدقت ١١٦ دولة على بروتوكول الاتجار بالأشخاص، واعتمدت غالبيتها قوانين جديدة أو عدلت التشريعات القائمة لترجمة البروتوكول إلى إجراءات،

مجال آخر في الجوانب المتصلة بحقوق الإنسان. ويبيّن الكاتب الترابط المعقد بين السياسات والإجراءات المتعلقة بالاتجار بالأشخاص وتهريب المهاجرين وتدفعات الهجرة. ويشير الكاتب إلى أهمية زيادة الرقابة على الحدود، وكذلك أهمية الصفة التي تنسب إلى من يدخلون الدولة بطريقة غير مشروعة. ويمكن أن تترتب على الجهود الموجهة أساساً إلى الهجرة غير المشروعة نتيجة غير مقصودة تتمثل في عدم التعرّف على ضحايا الاتجار وتعرّضهم للإيذاء. وتبيّن الورقة ما تواجهه بلدان المنشأ وبلدان المقصد من قضايا محدّدة تتعلق بالهجرة يمكن أن يكون لها تأثير مباشر على الاتجار بالأشخاص، وكذلك التحدّيات المؤسسية التي ينبغي مواجهتها في حالة التعرّف في إحدى الدول على شخص متّجر به ينتمي إلى دولة أخرى.

الأثر الاقتصادي للاتجار بالأشخاص

تنضح الصعوبات التي ينطوي عليها تقييم أثر الاتجار بالبشر أكثر ما تنضح عند محاولة تقدير تكاليفه الاقتصادية كمّياً. غير أن الورقة تبين العواقب الاقتصادية الرئيسية. وتشتمل تكاليف جريمة الاتجار بالأشخاص على عناصر عديدة، منها قيمة جميع الموارد المكرسة لمنع هذه الجريمة ولعلاج الضحايا ودعمهم والقبض على المجرمين ومحاكمتهم. وقد يعوض عن جزء من هذه التكاليف باسترداد العائدات الإجرامية وموجودات المتّجرين. ويؤدّي الاتجار بالأشخاص أيضاً إلى فقدان موارد بشرية وإلى انخفاض الإيرادات الضريبية. وعلاوة على ذلك يؤدّي الاتجار بالأشخاص إلى إعادة توجيه الفوائد المالية للهجرة من المهاجرين وأسرهم والمجتمع المحلي والحكومة أو أرباب العمل الشرعيين الآخرين المحتملين إلى المتّجرين وأعوانهم. وتشير كل الدلائل إلى أن الإيرادات المتولّدة من الجريمة المنظمة المتصلة بالاتجار بالأشخاص كبيرة وعالمية. وبالنظر إلى الطابع المستمر للاستغلال فإن الاتجار بالبشر يشكّل مصدر دخل مستقر ومنتظم للشبكات الإجرامية، مع ما يخلفه ذلك من آثار على الأشكال أخرى من الأنشطة الإجرامية وكذلك على الأعمال المشروعة.

الأثر على سيادة القانون

ينتهك الاتجار بالأشخاص سيادة القانون بما يهدّد الولاية القضائية الوطنية والقانون الدولي، لكونه عملاً إجرامياً. والجريمة المنظمة من أهم الآليات لإعادة التوزيع غير المشروع للثروة الوطنية، ولها تأثير غير ملائم على الأسواق وعلى السلطة السياسية والعلاقات الاجتماعية. ويمكن أن تكون هذه الآثار حادّة في البلدان التي تنصّد لقلّات مدنية أو كوارث طبيعية أو حالات ما بعد انتهاء الصراعات. وتتناقض التحدّيات المناظرة التي تواجهها الحكومات تناقضاً صارخاً مع الفرص التي تنشأ للمتّجرين بالبشر. والخطر الكامن الذي يشكله الاتجار بالأشخاص هو السبب في الاعتراف المتزايد بأن هذا الاتجار مسألة تمسّ الأمن العالمي.

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بطريقة مباشرة أكثر من غيرهم. وفي حين أن الاتجار بالبشر ظاهرة عالمية لا تعرف الحدود الدولية فإن عواقبها البعيدة المدى والواسعة الانتشار تُحسّ داخل البلدان والمجتمعات كلا على حدة. ويتأثر بالاتجار بالبشر أكثر من ١٣٠ بلدا. وتحدّد الورقة بعض أبرز الآثار الاجتماعية والسياسية والاقتصادية للاتجار بالبشر، وأيضا الاعتبارات الهامة المتعلقة بالسياسات في كل من تلك المجالات.

عواقب الاتجار على الأفراد

للاتجار بالبشر أثر على ضحاياه من الأفراد في جميع مجالات حياتهم. فكل مرحلة من مراحل عملية الاتجار يمكن أن تنطوي على ضروب بدنية وجنسية ونفسية من الإيذاء والعنف، والحرمان والتعذيب، والإكراه على استخدام مواد الإدمان، والتلاعب، والاستغلال الاقتصادي، وظروف العمل والمعيشة السيئة. وخلافا لمعظم جرائم العنف الأخرى، ينطوي الاتجار بالبشر عادة على صدمات نفسية طويلة ومتكررة. وتبين الوثائق والبحوث كيف تُساء معاملته الرجال والنساء والأطفال في ظروف استغلال محدّدة، والأضرار الجسدية القصيرة الأجل والطويلة الأجل والإعاقات والوفيات التي يمكن أن تنجم عن ذلك. ولعدد من الأسباب المحدّدة، يغدو الأشخاص المتجر بهم عرضة بشدّة للإصابة بفيروس نقص المناعة البشرية. وتشمل الصدمات التي يصاب بها ضحايا الاتجار الاضطراب الإجهادي اللاحق للصدمة، والقلق، والاكتئاب، والاعتراب، والتوهان، والعدوانية، وصعوبة التركيز. وتشير الدراسات إلى أن الإحساس بالصدمة يسوء خلال عملية الاتجار وقد يستمر إلى وقت طويل بعد انتهاء جميع ضروب الاستغلال التي تتعرّض لها الضحية. وفي حين يتعرّض الأطفال الضحايا لنفس المعاملة الضارة التي يتعرّض لها البالغون فإنهم أشد عرضة للاتجار بهم، بسبب صغر سنّهم وعدم نضجهم وافتقارهم إلى الخبرة، وعرضة للممارسات المؤذية التي قد تؤدي، مثلا، إلى تعويق نموهم البدني، وإلى استمرار معاناتهم نتيجة لما يواجهونه من صعوبات في الارتباط بالآخرين وصعوبات اجتماعية وصعوبات تتصل بالنمو. ويمكن أن يكون فهم سلوك ضحايا الاتجار بالبشر صعبا على الغير، في حين أنه يمكن أن يكون من الصعب على الضحايا فهم ما حدث لهم أو مناقشته مع الآخرين أو شرحه لهم. وقد يبدو الضحايا، حتى لمن حولهم، وحتى لمن يقدمون إليهم الدعم، غير متعاونين، أو سريعين الاستثارة، أو عدائيين، أو عدوانيين، أو جاحدين. وقد ثبت أن الوصمة التي تلحق بهم كضحايا تُحدث تأثيرا كبيرا ومستمرًا على حياتهم بضرور من بينها معاناة الضحية من مشاعر الصدمة إلى جانب احتمال أن تنبذه أسرته و/أو مجتمعه نبذا حقيقيا. والعواقب الطويلة الأمد التي تصيب الفرد من جراء الاتجار بالبشر معقّدة وتتوقّف على عوامل كثيرة، دون أي ضمان للتعافي. وكثيرا ما يكون تحدّد الإيذاء نتيجة أخرى لتجربة الاتجار.

الآثار السياسية للاتجار بالأشخاص

الاتجار بالبشر قضية تنال قدرا كبيرا من المناقشة والاهتمام على الصعيد الدولي. وبما أنه ينطوي على نقل أفراد عبر الحدود الوطنية فإن سياسات الهجرة من مجالات النقاش الهامة ذات الصلة. ويتمثل

والمبادئ الأساسية لمنع الجريمة، مثل إشراك مجموعة واسعة من أصحاب المصلحة، وتمكين الأشخاص القابلين للتأثر، والحد من عوامل الخطر، جوهرية لتوضيح المقصود بعبارة "المنع" الواردة في المادة ٩ من بروتوكول منع الاتجار بالبشر. ولسوء الحظ فإن تنفيذ هذه المبادئ كان محدوداً، حيث انصبَّ أغلب الاهتمام على إعداد حملات كبيرة وصغيرة للتوعية العامة موجَّهة نحو ضحايا الاتجار المحتملين. وتوضع هذه البرامج على فرضية أن زيادة الوعي بشأن الضرر المحتمل ستساعد الفرد على أن يختار طريقاً مختلفاً. بيد أن هذه البرامج لا تفي بالغرض المطلوب لأنها لا توفرّ للضحايا المحتملين مسارا بديلاً للعمل. وإذا انحصر تركيز برامج المنع في توعية الضحايا المحتملين، فسيضيق نطاق المنع. وبعدم توفيرها للبدائل، تضع هذه التدخّلات عبء منع الاستغلال على عاتق الفرد نفسه. ويظل الضحايا المحتملون عرضة للخطر بالمثل كما كانوا قبل مشاهدة المصققات والأفلام والإعلانات التلفزيونية وبعد مشاهدتها.

ويشدّد الكاتب على أن النجاح في مساعدة فئات السكان الضعفاء على حماية أنفسهم من الضرر لا يمكن أن يتحقّق دون فهم ما يجعلهم أصلاً عرضة للعنف وإساءة المعاملة والاستغلال. ومن شأن إعادة صوغ مسألة المنع، من خلال وضع تعريف للقابلية للتعرض لسوء المعاملة والاستغلال، أن يتيح اتباع نهج أكثر اتساقاً لإزاء منع الاتجار بالبشر. وفي حين أن المفهوم الواسع للمنع موجود كجزء من الإطار المعياري في العديد من البلدان فإن النظر إلى نماذج المنع من حيث علاقتها بالقابلية الاجتماعية والثقافية والاقتصادية والسياسية للتأثر لدى فئات أو مجموعات معينة من السكان للاتجار بهم قد أهمل إلى حد بعيد في الممارسة.

وعلى الرغم من أن كلمتي "الضعيف" (vulnerable) و"الضعف" (vulnerability) تستخدمان كثيراً في المناقشات حول مكافحة الاتجار بالبشر فإنهما لم تعرّفا تعريفاً قاطعاً ما عدا في السياق القانوني. وتتضمّن هذه الورقة تحليلاً لعدّة اعتبارات في فهم القابلية للتأثر، وتقدّم تعريفاً يشير فيه "الضعف" إلى "حالة ناجمة عن الكيفية التي يعايش بها الأفراد التفاعل المعقّد للعوامل الاجتماعية والثقافية والاقتصادية والسياسية والبيئية التي تشكّل سياق مجتمعاتهم المحلية معيشة سلبية".

واستناداً إلى هذه الاعتبارات، سيلزم وضع مؤشرات لظروف الضعف في المجالات التالية: الأطفال؛ النوع؛ الفقر؛ الإقصاء الاجتماعي والثقافي؛ التعليم المحدود؛ عدم الاستقرار السياسي؛ الحروب والصراعات؛ الأطر الاجتماعية والثقافية والقانونية؛ الحراك الاضطرابي؛ الطلب.

وبما أن معظم الظروف التي تسبّب الضعف هي ظروف تتعلق بالنظم وناجحة عن السياسات التي تضعها الحكومات، فمن مسؤولية الدول أن تضمن حماية الأفراد الضعفاء الذين يعيشون في ظلها.

٢- الأثر

أثر الاتجار بالأشخاص

تبين هذه الورقة ما للاتجار بالبشر من أثر وتكلفة على الأفراد وعلى النظم السياسية والاقتصادية والاجتماعية. والاتجار بالبشر جريمة تمارس ضد الأفراد، وضحاياها هم الذين يشعرون بعواقبها

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١ - جوانب الضعف

جوانب الضعف، والمنع، والاتجار بالبشر: الحاجة إلى مفهوم جديد

تحلّل هذه الورقة الممارسات الحالية في مجال منع الاتجار بالبشر، من أجل فهم السبب في أن الاتجار بالبشر ما زال يعدّ ظاهرة متنامية. فعلى الرغم من مبادرات المنع العديدة والتمويل الكبير الذي يوفّر لها، فإن الاستنتاج الأولي الذي يمكن الخروج به هو أن ممارسات المنع الحالية لا يتجلّى فيها النهج الشامل المتجسّد في تعريف مصطلح "منع الجريمة" عموماً أو في التعريف الإيضاحي لمصطلح "المنع" الوارد في المادة ٩ من بروتوكول منع وقمع ومعاقبة الاتجار بالأشخاص، وبخاصة النساء والأطفال، المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية.

وتبحث الورقة مفهوم "المنع" (أو الوقاية) كما تصوّره الأطر المعيارية، كما تبحث في دقة تطبيق هذه الأطر. ويتبيّن من الورقة أن جوانب الضعف، لا سيما جوانب الضعف التي تعتري الفرد في سياقه الاجتماعي، هي الحلقة المفقودة في صوغ سياسات وممارسات جيدة الإعداد. وتركّز الورقة على العوامل التي تجعل البشر عرضة لعمليات الاتجار بهم باعتبار ذلك التركيز شرطاً مسبقاً لصوغ برامج منع صحيحة. وتستحدث الورقة اعتبارات جديدة بشأن وضع سياسات استراتيجية لمنع الاتجار بالبشر تكون قادرة على التصدّي للمشاكل الحقيقية لمجموعات السكان المعرضة للخطر، وفقاً للاحتياجات الخاصة لتلك الفئات وفي السياقات الخاصة بها.

ويتساءل الكاتب عمّا يقصده الخبراء عندما يصفون الاتجار بالبشر بأنه ظاهرة متنامية، لأن أي تقييم للزيادة في الاتجار بالبشر يستحيل التعبير عنه كمياً إلاّ بعبارات عامة. ويشير إلى أن من أسباب ذلك الاختلافات في التعاريف الوطنية لجريمة الاتجار بالبشر، وكذلك في تعاريف ضحية الاتجار بالبشر، إلى جانب الافتقار إلى البيانات المتسقة والموثوقة والقابلة للمقارنة.

وتذكر الورقة أن كلا من نهج منع الجريمة ونهج الحد من جوانب الضعف صالح لمكافحة الاتجار بالبشر. ويتطلّب كل من النهجين ديناميات مختلفة في تخطيط السياسات والبرامج. فالتركيز على جوانب الضعف يعزّز عنصر حقوق الإنسان في سياسات منع الاتجار بالبشر. ويمكن أن تسهم التعاريف التقليدية لمنع الجريمة في تعزيز السياسات المناهضة للاتجار بالبشر، من خلال التركيز على الحد من عناصر الخطر الموجودة في البيئة. ولذلك ينبغي، من الناحية النظرية، أن يهدف المنع إلى القضاء على الاتجار بالبشر قبل حدوثه، عن طريق الحد من العوامل التي تجعل الأفراد عرضة للاتجار بهم.



 HUMAN TRAFFICKING  A CRIME THAT SHAMES US ALL

PART ONE

Vulnerability

Vulnerability, prevention and human trafficking: the need for a new paradigm

Michèle A. Clark

I. Introduction

In the present paper, current practices in the prevention of trafficking in human beings are analysed in order to understand why trafficking continues to be identified as a growing phenomenon. Numerous prevention initiatives and considerable funding notwithstanding, a preliminary conclusion is that existing prevention practices do not reflect the comprehensive approach embodied in definitions of crime prevention in general or in the illustrative definition of “prevention” in article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.¹ “Prevention” as it has been conceptualized in normative frameworks are examined, as also how those frameworks have been narrowly implemented. Vulnerability, in particular the vulnerability of an individual in his or her social context, emerges as the missing link in formulating well-developed policies and practices. Focus is placed on what constitutes vulnerability to trafficking as a prerequisite for the development of valid prevention programmes. New considerations are introduced as regards the development of strategic policies to prevent trafficking that are capable of addressing the real problems of vulnerable populations according to their own needs, in their own contexts.

The Trafficking Protocol was adopted in November 2000 and had been ratified by 116 countries as at 4 December 2007. Since the adoption of the Protocol, the international community has witnessed an explosion of popular and political interest in combating trafficking in human beings, reflected in an influx of funds, widespread awareness-raising campaigns, feature films and numerous books, the enactment of anti-trafficking legislation around the world, law enforcement-centred training and the rapid proliferation of victim support services provided by non-governmental, international or regional organizations. These measures are being implemented within the framework established in the Trafficking Protocol, now known as the “3P” approach, focusing on the prevention of the crime, the prosecution of offenders and the protection of victims.

Several years later, it is now reasonable to ask how far countries have come in preventing trafficking. In areas of prosecution and protection, tangible evidence of new

¹General Assembly resolution 55/25, annex II.

legislation and a rise in law enforcement activities (police training, arrests, trials, convictions and sentences) indicate that efforts have been made. Some victims of trafficking have been identified and provided with shelter and/or other forms of assistance. It is more difficult to identify the impact of these efforts: few baseline data exist to provide a context against which to assess progress. In the case of prevention, it is even harder to determine the extent to which measures have been effective.

Despite a lack of consensus on the actual extent of global human trafficking, experts nonetheless report that the crime is increasing.² Conferences open with energetic statements related to the growth of human trafficking, often referred to now as a form of “modern-day slavery”. Poignant illustrative examples describing heart-wrenching abuse and exploitation are intended to reinforce the commitments of Governments, civil society and donors.

Those who have had direct contact with trafficked persons readily validate such accounts of human suffering.³ Many advocates hold on to vivid memories of emotionally wounded and physically beaten human beings as indelible reminders of the reality of the cause and as powerful incentives to continue fighting the good fight. But the battle must be won not only in the hearts of the public, but also in the minds of policymakers and donors.

Effective policy requires valid and reliable information. Experts have so far been hard pressed to explain what an increase in human trafficking means in real terms.⁴ Are they referring to more arrests, prosecutions and (with luck) convictions? Do they include all forms of trafficking, such as labour and organ trafficking to name only two, or are they limiting themselves to trafficking for sexual exploitation? Are the speakers perhaps talking about the numbers of men, women and children rescued in brothel and/or sweatshop raids? Perhaps they mean individuals in possession of fraudulent travel documents or deported as illegal migrants? Or the numbers of individuals identified as victims of trafficking according to the laws and (most frequently) practices of a country and assisted through shelters or other social service organizations? And what about the rapidly expanding forms of trafficking beyond the purposes described in the Trafficking Protocol, stemming in particular from innovations in medical technology and not yet known when the Trafficking Protocol was being drafted?⁵

Such indicators and others are used to demonstrate the increase in trafficking and trafficking-related crimes. And, while the above information collectively paints a picture of

²See, for example, Kevin Bales, *Understanding Global Slavery: a Reader* (Berkeley, California, University of California Press, 2005).

³The author includes herself in this category.

⁴William Easterly, “Foreign aid and developing economies”, transcript of a panel discussion, Council on Foreign Relations, New York, 16 May 2006.

⁵An example of a disturbing new trend is the harvesting and trafficking of human eggs to be used in in vitro fertilization (IVF) treatments. The documentation has been limited to date, but is of such a provocative nature that the European Union has issued the “European Parliament resolution on the trade in human egg cells”, *Official Journal of the European Union*, C 320 E, 15 December 2005 (P6_TA(2005)0074).

widespread human misery, there are limitations to speaking in such broad terms. A closer examination of numerous reports reveals little consistency on even some of the most basic terminology. There is no consensus on the definition of the term “victim of trafficking”, although the Trafficking Protocol acknowledges the trafficked person as victim. The Protocol itself does not define the term, although it contains numerous references to victims of trafficking. Some countries have criminalized trafficking for sexual exploitation but not for labour. There is not always consensus on what “sexual exploitation” means, nor is there any broadly accepted tool for the identification of victims. A recent report cites differences in definitions of who is a victim of trafficking, the nature of the term itself and social practices that may contribute to trafficking as challenges in reaching international consensus.⁶ The same report also indicates that such definitional inconsistencies, combined with a lack of reliable, consistent and comparable data, make any assessment of a rise or fall in human trafficking impossible to quantify except in general terms.⁷

Unsubstantiated claims of an increase in trafficking offer little guidance to policymakers, practitioners or donors seeking to introduce effective anti-trafficking measures. The anti-trafficking community, however, is not alone in attempting to solve a problem for which there are no clear-cut parameters. An analysis of the implementation of the Millennium Development Goals,⁸ accepted now as criteria by which to measure international development efforts, reveals that challenges in achieving some of their objectives stem from a lack of documentation and, consequently, an inability to determine clear-cut objectives. A recent report on the challenges of meeting the Goals indicates:

“Only 57 out of 163 developing countries have counted the poor more than once since 1990. Ninety-two have not counted them at all.”⁹

The same challenges are present in quantifying the effects of certain disease prevention programmes or infant and child mortality. Current statistics are based on estimates, making any assessment of progress extremely difficult.

While each of the terms “prevention”, “protection” and “prosecution” can benefit from further definitional clarity, this paper will discuss the limitations to achieving progress in combating human trafficking by relying on narrow definitions and interpretations of what constitutes prevention.

⁶United States of America, Government Accountability Office, *Human Trafficking: Monitoring and Evaluation of International Projects are Limited, but Experts Suggest Improvements*, GAO report GAO-07-1034 (Washington, D.C., July 2007), p. 13.

⁷Ibid., p. 16.

⁸See A/56/326, annex, and A/58/323, annex.

⁹“Millennium Development Goals: the Eight Commandments”, *The Economist*, 5 July 2007.

II. The current framework for prevention of trafficking

The term “prevention” is defined by illustration in the Trafficking Protocol. Such a definition has enabled it to acquire meaning primarily through practice rather than policy. While recognized as a critical issue in combating trafficking, little clarity exists as to what constitutes comprehensive preventive measures. Notably, national anti-trafficking policies or national action plans, where they exist, acknowledge the importance of prevention in an overall national strategy, but seldom define the term.

A recent study on measures to combat trafficking among member States of the Organization for Security and Cooperation in Europe (OSCE)¹⁰ indicates a high level of importance attached to furthering prevention efforts, but also reveals a diversity of perspectives on the nature of prevention itself. Member States identified the need for prevention-related activities encompassing three broad areas. The first is prevention through public awareness and education, reflecting a need to inform the public, including individuals who are potentially at risk, of the dangers of being trafficked. The second is prevention through data collection and research in order to understand both the scope as well as the nature of trafficking in those countries. The third form of prevention cited by OSCE member States involves the development of social and economic interventions related to human trafficking, reflecting the need to generate alternatives for those potentially at risk of being trafficked. All three areas are necessary to the development of comprehensive prevention activities and all are described in the OSCE Action Plan to Combat Trafficking in Human Beings. Notwithstanding identified needs as well as a clear normative framework, the study also shows that the most frequently implemented prevention programmes in countries with an OSCE field presence belong to the first category. Certainly, some prevention programmes corresponding to the second and third categories mentioned above are being implemented by international organizations, civil society groups and government agencies, but they are not the majority.

Is this emphasis on public awareness and education sufficient? Can the reported increases in trafficking referred to at the beginning of this paper possibly be linked to limited prevention efforts? In order to answer these questions honestly, it is necessary to understand the meaning of prevention in the context of human trafficking. Firstly, practitioners need to be clear as to what they are trying to prevent. An initial response stems from the context of the Trafficking Protocol itself, which states in its preamble that preventing trafficking involves preventing a crime. This response is further clarified in the definition of the term “trafficking in persons”, found in article 3 of the Protocol, describing the various acts, means and purposes of trafficking. Of particular interest here is the inclusion, as a means of trafficking, of the “abuse of ... a position of vulnerability”. In identifying the abuse of a position of vulnerability as part of the definition, the Protocol allows us to consider that prevention includes both preventing a crime and reducing the conditions that make an individual vulnerable to trafficking.

¹⁰Organization for Security and Cooperation in Europe, Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *From Policy to Practice: Combating Trafficking in Human Beings in the OSCE Region*, 2006 annual report submitted by the Anti-Trafficking Assistance Unit (OSCE, 2006).

Both crime prevention and reduction of vulnerability are valid approaches. Each calls for different dynamics in policy and programme planning. They involve different actors, including at-risk individuals themselves, civil society and government agencies. Neither approach diminishes the reality that, in addition to being a crime, trafficking in persons is also an abuse of human rights. A focus on vulnerability will in fact enhance the human rights component of any anti-trafficking policy. Indeed, the two different approaches are complementary, as an examination of various definitions of crime prevention will show.

Traditional definitions of crime prevention can contribute to the enhancement of anti-trafficking prevention policies, because they provide for a broad inclusion of actors, the empowerment of individuals and the reduction of risk factors in the environment. One definition of “crime prevention” is “the anticipation, recognition and appraisal of a crime risk, and the initiation of action to remove or reduce it”.¹¹ A further definition is “the promotion of those attitudes, activities and behaviours that create and maintain safe and vital communities where crime and delinquency cannot flourish”.¹² And a third indicates:¹³

“Crime prevention is any initiative or policy which reduces, avoids or eliminates victimization by crime or violence. It includes government and non-government initiatives to reduce fear of crime as well as lessen the impact of crime on victims.”

Studies of efforts to prevent domestic violence can be particularly helpful to anti-trafficking efforts, especially in understanding and applying the principles of inclusion, empowerment and risk reduction. Recognizing that research efforts in this area are still quite new, experts acknowledge the complexity of preventing domestic violence and the difficulty of making choices in focus and concentration. It has been said that prevention action must choose between two approaches ... one is directed at the social environment, the other at the individual. In domestic violence, as in human trafficking, the challenge is whether one should focus on empowering potential victims or on changing the structures that encourage violence, abuse and exploitation. What it means to empower potential victims will form the basis for the next section of this paper.

Theoretically, prevention efforts should aim to eliminate acts of violence before they occur. In the prevention of infectious diseases or environmental disasters, where cause and effect can more readily be identified, it is relatively commonplace to inoculate against an infection or to shore up a weak levy against threat of flood. Such primary prevention efforts become more complex when talking about human behaviour: it is not always possible to determine conclusively that any single adverse behaviour will result in specific negative consequences, nor is it possible to claim that any single preventive measure will conclusively reduce the risk of harm or abuse. In domestic violence, as in human trafficking, it is difficult to identify projects and programmes that will eliminate such abuse before the

¹¹Timothy D. Crowe, *Crime Prevention through Environmental Design* (Stoneham, Massachusetts, Butterworth-Heinemann, 1991), p. 23 (see www.jus.state.nc.us).

¹²American Probation and Parole Association (see www.appa-net.org/about/ps/crimeprevention).

¹³“What is crime prevention,” article available on the website of the University of Ottawa, Faculty of Social Sciences, Institute for the Prevention of Crime (see http://www.socialsciences.uottawa.ca/ipc/eng/what_is_crime_prevention.asp).

fact. In the realm of trafficking prevention, it would appear that it is easier to obtain funding for awareness-raising programmes that describe the potential harms than for general empowerment programmes directed at broader social problems such as illiteracy, poor standards of health or under- or unemployment. This attitude towards funding is premised more on assumption than fact, for it has so far not been proved that either the former or the latter are more or less effective in preventing trafficking.

Currently, there is little knowledge or understanding of the causes of human trafficking, although there is extensive descriptive work on the process of trafficking itself. Because it is difficult to identify causal relationships, most prevention programmes limit themselves to describing the harmful aspects of trafficking as a means of preventing harm. Prevention programmes do make efforts to prevent subsequent acts of revictimization.¹⁴ Thus, many programmes are directed at assisting returning trafficked persons in their countries of origin through counselling, training and job placement.

A comprehensive discussion of prevention must also recognize the dynamic nature of the trafficking process along a supply-demand continuum. Such an approach has traditionally included countries of origin, destination and transit, but does not provide for internal trafficking, which can occur within a single country (from rural regions to urban centres, for example). Any discussion of prevention should focus on developing measures that consider both the supply and the demand components. The acts of trafficking are different along the continuum, from recruitment to exploitation to return and possible revictimization. Trafficked persons are also vulnerable in different ways along the continuum and different measures to prevent both trafficking and revictimization are necessary. Countries of destination, which drive the demand for human trafficking, must increasingly recognize their role in preventing exploitation and abuse and must include both the consumers of commercial sex as well as the employers of individuals trafficked for forced and exploitative labour. A study of the literature on risks and vulnerabilities of refugees and displaced persons is particularly useful in the development of such a dynamic framework.¹⁵

The Trafficking Protocol and prevention

For some, the discussion above might appear to be yet one more layer of criteria to include in the development of prevention policies, perhaps even the basis for a subsequent addendum to or enhancement of local or regional action plans. However, this is not necessary. Basic principles of crime prevention such as inclusion, empowerment and risk reduction are intrinsic to the Trafficking Protocol's elaboration of what is meant by "prevention" in article 9, which recommends action for States parties in areas of prevention. The Protocol maintains that it is the State that drives change, with the support and assistance of civil society, and that, through its various social protection and law enforcement policies, the State can play a role in both the prevention of criminal activity and the empowerment of vulnerable populations.

¹⁴Women Against Violence Europe, *Prevention of Domestic Violence Against Women: European Survey, Good Practice Models, WAVE Training Programme* (Vienna, WAVE Office, Austrian Women's Shelter Network, 2000).

¹⁵See, for example, Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk: Risk Factors, Protection Solutions and Resource Tools* (New York, February 2006).

The table below identifies actions recommended in article 9 of the Trafficking Protocol for State parties to take in order to prevent trafficking. Identifying the goal of each recommended action assists in determining the components of a definition of prevention.

Recommended action for States parties	Factors requiring prevention activities and creating conditions of vulnerability
<p>1. States parties shall establish comprehensive policies, programmes and other measures:</p> <p>(a) To prevent and combat trafficking in persons; and</p> <p>(b) To protect victims of trafficking, especially women and children, from revictimization.</p>	<p>(a) Absence of prevention policies, programmes and other measures;</p> <p>(b) Absence of policies, programmes and other measures to protect against revictimization.</p>
<p>2. States parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.</p>	<p>(a) Lack of data and information;</p> <p>(b) Lack of information regarding trafficking (for the public and possible individuals at risk of being trafficked);</p> <p>(c) Social conditions that might contribute to trafficking;</p> <p>(d) Economic conditions that might contribute to trafficking.</p>
<p>3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations and other elements of civil society.</p>	<p>Insufficient cooperation with non-governmental organizations and civil society.</p>
<p>4. States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.</p>	<p>Insufficient bilateral and/or multilateral cooperation aimed at alleviating factors of vulnerability to trafficking, including underdevelopment and lack of opportunity.</p>
<p>5. States parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral or multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.</p>	<p>Insufficient educational, social or cultural measures to discourage demand.</p>

Do prevention programmes as currently implemented address all the potential areas of vulnerability addressed in the Trafficking Protocol? If so, have they been effective? It is hard to answer these questions because the evaluation of trafficking prevention programmes in general remains limited.¹⁶ Furthermore, most programmes focus on trafficking for sexual exploitation despite the growing recognition of trafficking for forced and bonded labour, among others.¹⁷ One measure of effectiveness is that laws have been enacted. In some cases, perpetrators have been brought to justice. Most importantly, some individuals have been helped. However, it is not possible to say with certainty that fewer vulnerable individuals are being trafficked.

Although broad categories of prevention programmes include awareness-raising and education, employment, empowerment and community life, crisis prevention, safe migration and job-vetting activities, demand reduction and policies and legislation regarding prevention,¹⁷ in practice these activities tend to be focused on the development of small- and large-scale public awareness campaigns directed at potential victims of trafficking.¹⁸ Awareness-raising activities have predominantly taken the form of large- and small-scale public education and awareness campaigns, usually aimed at individuals/social groups considered to be at risk of being trafficked. There has also been a recent increase in awareness campaigns directed at men, the clients of women trafficked for prostitution. For initiatives funded by the United States Government, assistance is generally aimed to enhance efforts to prevent human trafficking through public awareness, outreach, education efforts and advocacy campaigns.¹⁹

Public awareness campaigns are developed on the premise that increased awareness of potential harm will help an individual to choose an alternative course of action. Although efforts to evaluate such programmes indicate that target audiences report an increase in knowledge, no studies have shown that they actually influence choices, in large part because they are not able to provide potential trafficked persons with viable alternatives. A telling illustration of this was provided by an NGO outreach worker in a large Western European city, who asked several trafficked youth whether or not they had been warned about the dangers of accepting foreign job offers. One young person responded, "Yes, but the nightmare I don't know is preferable to the nightmare I live every day at home."²⁰

¹⁶The challenges of evaluating anti-trafficking programmes are documented in numerous reports and studies (see Ruth Rosenberg and others, *Best Practices for Programming to Prevent Trafficking in Human Beings in Europe and Eurasia* (Bethesda, Maryland, Development Alternatives Inc., 2004) and Asia Foundation and Horizons Project Population Council, *Prevention of Trafficking and the Care and Support of Trafficked Persons: in the Context of an Emerging HIV/AIDS Epidemic in Nepal* (Kathmandu, Creative Press, February 2001)).

¹⁷Rosenberg and others, op. cit., p. 2.

¹⁸Discussions of the prevalence of awareness-raising campaigns within the broader context of prevention can be found in numerous sources (see Organization for Security and Cooperation in Europe, Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *From Policy to Practice ...* and Rosenberg and others, op. cit.).

¹⁹United States of America, Government Accountability Office, *Human Trafficking: Monitoring ...*, p. 7.

²⁰Author's notes.

If the emphasis of prevention programmes is placed exclusively on increasing the awareness of potential victims, prevention is limited. By failing to provide alternative courses of action, these interventions place the onus for prevention of exploitation upon the individual him- or herself. Ultimately, potential victims remain equally vulnerable before and after viewing posters, films and television advertisements and participating in educational programmes.

III. The purpose of a discussion on vulnerability

It is not possible to be successful in assisting vulnerable populations to protect themselves from potentially harmful situations without an understanding of what makes them vulnerable to violence, abuse and exploitation in the first place.²¹ Consistent with the international framework for combating trafficking in persons created by the Trafficking Protocol, the mission statement of the Global Initiative to Fight Human Trafficking includes, as one of its goals, to strengthen prevention, warn vulnerable groups and alleviate the factors that make people vulnerable to trafficking such as poverty, underdevelopment and lack of opportunity.²² The organizers of the Vienna Forum to Fight Human Trafficking recognized that prevention is to be considered largely as a function of the reduction of vulnerability and the provision of options to actions with otherwise potentially harmful consequences. By focusing on vulnerability, the planners of the Forum hoped to expand the discussion on prevention through the identification of factors that create conditions of vulnerability and the subsequent development of targeted strategies to alleviate many of those conditions.

Reframing the issue of prevention in relation to a definition of vulnerability to abuse and exploitation will allow for a more consistent and measurable approach to the prevention of trafficking. The clarification of what is meant by “vulnerability” will also help to identify causal factors, usually the direct result of policy decisions, which increase vulnerability. While the concept of prevention remains part of the normative framework of many countries, viewing prevention models largely in terms of their relationship to the social, cultural, economic and political vulnerability of certain population groups to being trafficked has mainly been neglected in practice.

²¹See, for example, the Asia Foundation and Horizons Project Population Council, *Prevention of Trafficking ...*

²²Website of the Global Initiative to Fight Human Trafficking (UN.GIFT): www.UNGIFT.org.

IV. Vulnerability: a definition

The terms “vulnerable” and “vulnerability” are used in areas of economic development, social science, human security, crime prevention, environmental research, disaster relief, famine, contagious diseases and mental health. Each of these areas has carefully developed frameworks that serve as road maps for early warning systems as well as carefully crafted countermeasures. The increased focus on vulnerability leads to measures that can be implemented before the occurrence of a potential danger, trauma or abuse, thereby lessening its human, economic and social consequences. Thus, an understanding of vulnerability implicitly leads towards prevention.

A. Vulnerability and human trafficking

There is no broadly accepted definition of the terms “vulnerable” and “vulnerability” in relation to prevention of trafficking. One definition of the term “vulnerable” is “exposed to the possibility of being attacked or harmed, either physically or emotionally”.²³ In much of the literature on trafficking, the terms “vulnerable” and “poor” have been used synonymously, and poverty is often cited as a leading cause of trafficking. Vulnerability, however, is not the same as income-poverty or poverty even more broadly defined. In the development literature, for example, vulnerability does not refer to lack or want, but rather to exposure and defencelessness.²⁴ Vulnerability refers to the condition of a person in a specific context. A response to vulnerability needs therefore to take into account²⁴ the external conditions of an individual as well as the coping mechanisms that enable the individual to protect him- or herself against a negative impact from those external conditions.

The terms are more precisely understood in law, where the term “vulnerable victim” is used to refer to “a victim who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to criminal conduct”.²⁵ The concept of vulnerability is also used to enhance penalties in cases of trafficking.²⁶

The words occur three times in the Trafficking Protocol. The first is in the preamble, which includes the paragraph:

“Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected”.

The second mention of the term occurs in the definition of “trafficking” (art. 3, subpara. (a)):

²³Judy Pearsall and Patrick Hanks, eds., *New Oxford Dictionary of English* (Oxford University Press, 2001).

²⁴Robert Chambers, “Poverty and livelihoods: whose reality counts?”, *Environment and Urbanization*, vol. 7, No. 1 (1995), p. 189.

²⁵Mohamed Y. Mattar, “Incorporating the five basic elements of a model anti-trafficking in persons legislation in domestic laws: from the United Nations Protocol to the European Convention”, *Tulane Journal of International and Comparative Law*, vol. 14, No. 2 (2005), p. 385.

²⁶*Ibid.*, p. 387.

“Trafficking in persons’ shall mean the recruitment, transportation, 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 the 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 for another person, for the purpose of exploitation.”

The last reference (art. 9, para. 4) has already been cited:

“States Parties shall take or strengthen measures, including through bilateral or multi-lateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking.”

The travaux préparatoires to the Trafficking Protocol also indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.²⁷ On the basis of this note, it is possible to state that the individuals most vulnerable to harm are those with the fewest alternatives. With the knowledge that crime is increasing in a given neighbourhood, residents with means can choose to leave, to put protective bars on windows and doors and/or to lobby their local representatives aggressively to ensure a more visible law enforcement presence. Where there is a strong employment market and numerous jobs, individuals are able to remain in their home countries rather than pursue foreign employment opportunities that might turn out to be exploitative. The core of trafficking prevention activities should therefore be the provision of alternatives to the individuals who are most vulnerable. When confronted with a potentially exploitative situation, they should be able to know that they have choices.

Based on the above analysis, a new definition of vulnerability will now be introduced, in which “vulnerability” refers to “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities”. As such, vulnerability is not a static, absolute state, but one that changes according to context as well as to the capacity for individual response. The development of indicators requires careful attention to the unique characteristic of the group being assessed in order to develop the most effective preventive solutions and should allow for the development of goals and strategies to ensure reduction of vulnerability. Specific indicators will make it possible to set tangible goals for the reduction of vulnerability. Conditions of vulnerability can be very real, such as ill health or illiteracy; equally important, however, are those areas of vulnerability which are not clearly demonstrable, difficult to identify and consequently difficult to address.

²⁷See the note on article 3, subparagraph (a), of the Trafficking Protocol in the *travaux préparatoires* (A/55/383/Add.1, para. 63).

Illustration

The true story below will help to illustrate the complexity of identifying vulnerability. The poignancy of the situation will also demonstrate the fallacy of simple solutions and the need for long-term answers that empower individuals and provide them with opportunities.

Jana, 18, is from a country in Eastern Europe known to be a major source for trafficked women. She has just completed secondary school and works in a confectionery factory. Her older sister, Lydia, was trafficked two years ago. After being arrested in a brothel raid, Lydia agreed to testify against her traffickers and was given temporary residence for the duration of the trial. Although her testimony contributed to the prosecution's obtaining a conviction and a sentence, Lydia was told she needed to go home. Rather than face the shame and stigma of returning as a criminal and a prostitute, she hanged herself. Now her four-year-old daughter lives at home with Lydia's mother, who also works in a confectionery factory, and Jana. The father is a migrant labourer and is often away from home for long periods of time.

Extensive conversations with the family revealed feelings of deep shame about what had happened to Lydia. Her pictures had been removed from the house and her name was not mentioned. Jana admitted that, while being afraid of what could happen to her, she still wanted to work overseas because there was nothing for her at home, other than to stay in the confectionery factory and "marry a worthless alcoholic like my sister did". A small foundation offered to pay for Jana's university education over four years, including a subsidy to make up for lost wages as well as all books and fees. Although definitely bright enough, Jana declined the offer, saying that she did not know anyone who had gone to the university and she didn't think it was her place. She asked, instead, to be sent to a vocational programme to study hairdressing, following the example of many of her friends.²⁸

Jana is a potential victim of trafficking. She is vulnerable because she faces limited employment opportunities in a country with a volatile economy and a limited job market. She is also vulnerable because she feels no support to pursue a university education, because of the expectations of her community that overseas jobs are the only option and because she can see little opportunity for either personal or professional fulfilment at home.

How can the anti-trafficking community prevent Jana, and other young women like her, from being trafficked? What are those programmes that will work? Prevention programmes designed to increase Jana's awareness of the potential trafficking situations will fail her. Her personal situation has provided her with sufficient knowledge and experience of the risks involved in seeking overseas employment. Only prevention programmes that are inclusive of members of her community, that reduce the potential for harm in her country and that empower her to make choices by providing her with viable alternatives will contribute to preventing harm.

²⁸Author's files.

Conditions of vulnerability are usually the results of political, social, cultural or economic practices and policies that fail to ensure equal access and protection to all members of a society. Any prevention programme that is based on an understanding of vulnerability will therefore include two components: one will address the external conditions that create hardship and stress and that will contribute to enhancing the well-being of an individual; the second, equally important approach will focus on enhancing an individual's capacity to seek options, enabling the individual to participate in ensuring his or her well-being.²⁹ Such a perspective takes into account the different components of empowerment and risk reduction that were identified in the previous discussion on definitions of crime prevention.

There is still no agreement on the conditions that lead to vulnerability to human trafficking. A review of reports, however, reveals a general consensus on the broad factors that make individuals vulnerable. Further research is necessary in order to expand on these definitions and to highlight factors that are specific to different geographical regions, ethnic groups and political situations. Conflict, for example, creates a unique set of vulnerability factors that must be addressed in any discussion on the prevention of human trafficking.

B. Conditions of vulnerability

The preceding discussion becomes relevant in the identification of broad conditions of vulnerability in order to formulate indicators that take into account multiple social, cultural, political and economic contexts.

The following is a list of “conditions” or factors affecting vulnerability that have been extracted from numerous publications addressing the root causes of trafficking. The list is not intended to be conclusive, but to serve as a starting point for further discussion. These conditions are described here only in general terms. The development of specific indicators to identify how individuals are vulnerable in particular situations or contexts would provide the basis for specific and strategic interventions. For example, not all young women from a single region are trafficked for purposes of sexual exploitation. By identifying particular vulnerabilities, a framework such as this can assist in the development of prevention programmes targeted at those who are in fact most vulnerable.

1. Children

In the context of trafficking, children should not be treated merely as small adults: they are uniquely vulnerable in ways that differ from the vulnerability of adults. They are vulnerable to the demands and expectations of those in authority, including their parents, extended family and teachers. Physically, they are not able to protect themselves. They

²⁸Of importance to the development of these ideas has been Amartya Sen's discussion on the role of individual agency in development programmes (see, for example, Amartya Sen, *Development as Freedom* (New York, Knopf, 1999), chap. X).

are usually unaware of any laws that may exist to protect them and they are unable to negotiate fair treatment for themselves. When rescued from a trafficking situation, children are not always able to articulate the nature of their experiences in a way that corresponds to protocols used to identify adult victims of trafficking. They are also physically vulnerable in harsh environmental conditions.

2. Gender

Women are vulnerable to trafficking because they are frequently excluded from mainstream economic and social systems, such as employment, higher education, and legal as well as political parity. They are often the hidden victims of war and conflict, and this vulnerability extends to their status as displaced persons or refugees. It is also arguably exacerbated by their “relatively unequal” (secondary) status in the family and society more generally.³⁰ Women are vulnerable to rape, domestic violence, harmful traditional practices, trafficking and lack of or limited access to resources. Many of these gender-based conditions of vulnerability are linked to social and cultural conditions.³¹

3. Poverty

“Poverty” is a complex term that refers to numerous negative conditions, including a lack of food and productive resources; hunger and malnutrition; ill health; limited or no access to education and other basic services; increasing mortality and morbidity from illness; homelessness and inadequate housing; unsafe environments; social discrimination and exclusion; and lack of participation in the decision-making process. Generalizations about poverty, without identifying its components, make it difficult to identify responsibility and, consequently, solutions. Poverty is created by policies and preserved through structures that reinforce these same policies.³² For this reason, it is counterproductive to say that poverty is a cause of trafficking without defining the term. Furthermore, it is not necessarily the poorest of the poor who become victims of exploitation leading to trafficking, although victims of labour exploitation, notably in developing nations, are poor.³³ According to Bales:³⁴

“The ill, the elderly, the malnourished, the disabled and the infirm are not sought out by traffickers. They are human commodities of insufficient value to bring high profits.”

Clearly, a more sophisticated understanding of the relationship of poverty to the risk of being trafficked is necessary.

³⁰The Special Rapporteur on violence against women, its causes and consequences has recently observed that while the failure of the States to protect and promote women’s human, economic and social rights has created a situation in which trafficking flourishes, trafficking further subjects women to numerous additional human rights violations.

³¹Women’s Commission for Refugee Women and Children, *Displaced Women and Girls ...* .

³²Muhammad Yunus and Alan Jolis, *Banker to the Poor: Micro-Lending and the Battle against World Poverty* (New York, Public Affairs, 2003).

³³International Labour Office, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, International Labour Office, 2005).

³⁴Bales, *op. cit.*, p. 141.

The effects of globalization have also introduced new variables into traditional discussions of poverty. A World Bank analysis of the social consequences of the economic collapse of countries of the former Soviet Union reveals what the study identifies as “new poverty”, the result of structural adjustments and political decisions that have destabilized the economies of these emerging States and plunged entire sectors of the population into situations that in fact constitute a new form of poverty among people who had never thought of themselves as poor.³⁵ This form of crisis-driven poverty has contributed to a feeling of hopelessness among many of the population. Their sense of despair, coupled with a sense of panic at finding themselves suddenly without any traditional social protection mechanisms to assist their families, was a motivation behind many young women seeking employment outside their countries of origin, leading to extreme forms of exploitation, abuse and trafficking. Ascribing trafficking to poverty in general terms in such situations fails to recognize the complexity of cause as well as motivation and leads to inadequate prevention programmes.

4. *Social and cultural exclusion*

In every country, certain groups benefit from privileges and access to resources and political power that inure them to the potential hazards of economic downturns, political instability or natural disasters. Those who do not fall into the “preferred” category suffer discrimination in education, employment, access to social services, including health care, access to resources (especially in times of natural disaster) and lack of a political voice. Socially excluded groups are cultural subgroups who are marginalized according to complex factors, including ethnic, linguistic and religious differences, low social status and involuntary minority status. Social exclusion prevents groups from receiving benefits and protections that are intended for all citizens. Their economic mobility is usually affected and they are excluded from mainstream activities such as education and employment.³⁶ Social exclusion can be the result of state policies as well as ingrained cultural traditions and practices. In developing such prevention programmes, it is important to understand where changes need to be made.

Social exclusion is particularly important when discussing how to prevent revictimization and re-trafficking. Trafficked persons face considerable obstacles upon their return home, not the least of which are the attitudes and biases of their own communities. Young women trafficked for purposes of sexual exploitation may encounter discrimination based on their involvement in prostitution. Others face the shame and humiliation of returning penniless in spite of hopes of coming back with provision for their families. And, frequently, these same persons return with the added black mark of having been arrested as “illegal immigrants”, notwithstanding their true status as victims of crime.

³⁵Nora Dudwick and others, eds., *When Things Fall Apart: Qualitative Studies of Poverty in the Former Soviet Union* (Washington, D.C., World Bank, 2003).

³⁶Maureen A. Lewis and Marlaire E. Lockheed, “Social exclusion: the emerging challenge in girls’ education”, *Exclusion, Gender and Education: Case Studies from the Developing World*, Maureen A. Lewis and Marlaire E. Lockheed, eds. (Washington, D.C., Center for Global Development, 2007).

5. *Limited access to education*

Individuals with limited education or who are illiterate will likely have fewer income-generating opportunities, whether in the formal or the economic sector. In addition, they will not have the knowledge or confidence to inquire about the terms of their contracts or working conditions. Limited access can be determined by gender, social customs, economic capacity, limited access to educational institutions and the cultural relevance of getting an education. Once again, tangible as well as intangible factors contribute to limited access to education, including community attitudes to education, the need for children to earn an income and lack of gender-appropriate teachers or relevant curriculum.

6. *Political instability, war and conflict*

Women and girls are particularly vulnerable to the consequences of political instability and armed conflict. The disruption of traditional community life, along with its protective framework, and the resulting displacement make them extremely vulnerable to exploitation, including abuse of power by relief workers, limited access to resources and sexual assault.³⁷

7. *Social, cultural and legal frameworks*

The status of an individual within his or her environment, whether that status is defined through formal systems (such as a legal system) or informal systems, creates different levels of vulnerability. A telling example of this is the emerging importance accorded to birth registration as a long-term anti-trafficking strategy in some parts of the world.³⁸ Some factors that could be considered in such a discussion include discriminatory labour practices; patriarchal social structures; women's role in the family; precedents of bonded labour and servitude; and early and forced marriage. Social and cultural frameworks are particularly sensitive to context and must therefore be considered with special caution so as to avoid making harmful generalities. One particularly perceptive study on HIV/AIDS prevention describes the extent to which values related to having large families and disapproval of use of any form of contraceptive are so imbedded in some communities that they override any efforts to teach women to use condoms in order to protect themselves against possibly infected partners.³⁹

³⁷Women's Commission for Refugee Women and Children, *Displaced Women and Girls ...*

³⁸Vital Voices Global Partnership, *Stateless and Vulnerable to Human Trafficking in Thailand*, (Washington, D.C., June 2007), p. 13 (see www.vitalvoices.org).

³⁹Desmond Cohen and Elizabeth Reid, "The Vulnerability of Women: Is this a Useful Construct for Policy and Programming?", Issues paper No. 28, HIV and Development Programme (New York, United Nations Development Programme, 1996).

8. Movement

Movement under duress exacerbates existing vulnerabilities and creates new conditions under which individuals are made vulnerable to exploitation and trafficking. Refugees, internally displaced persons and asylum seekers, who find themselves in highly volatile situations and without traditional protection mechanisms, are extremely vulnerable. Outreach workers in a large Central European city encountered numerous young foreign prostituted women in the city's red light district, who upon investigation proved all to have been approached by the same agency in their home country offering to assist them in obtaining asylum. Having successfully facilitated their receipt of asylum status, the agency then forced the women to reimburse it by the provision of sexual services. In the unnatural and often violent conditions pertaining in camps and asylum centres for refugees and internally displaced persons, the need for individuals to obtain and/or provide food and other necessities for dependants is constant and has reportedly been exploited. Consequently, women and children, in particular, find themselves in situations where they must exchange sexual services for food or other survival-related necessities.

9. Demand

The conditions listed above are found primarily in countries or regions of origin, where most prevention programmes are implemented. A discussion of vulnerability is not complete, however, without a recognition that trafficking is driven in large part by the profits made by various actors along the trafficking chain resulting from the exploitation of men, women and children. Such profits are realized because of the unabated demand for cheap labour and services mainly in the developed world, usually in construction, seasonal agriculture work, the garment and hospitality sectors, domestic service and the ubiquitous commercial sex trade.⁴⁰

Demand provides the incentive to recruiters, who capitalize on misery, despair and desperation. Once an individual is transported to the site of exploitation, that person becomes vulnerable in ways different from those in their countries of origin. Lack of familiarity with the local language and culture, isolation, fear of reprisal and mistrust of local authorities (whether real or imagined) all contribute to sustaining an ongoing exploitative relationship with traffickers. Preventing, or limiting, demand is different from preventing exploitation. Prevention becomes important in countries of destination, although both the factors contributing to vulnerability as well as the methods of empowering individuals will be different from those used in countries of origin. Primary targets for prevention activities, notably awareness-raising campaigns, are clients, consumers and members of the different communities where trafficked persons may be found.

⁴⁰International Labour Office, *A Global Alliance against Forced ...*

V. Practical implications for a vulnerability-based programme for the prevention of trafficking

Conditions of vulnerability are rarely brought about by individual agency or choice. They are, instead, the results of policies as well as social and cultural practices that place individuals in circumstances where they feel that they have no choice but to submit to a harmful alternative. It should also be evident that the conditions described above contribute to an individual's vulnerability to many forms of exploitation, abuse and hardship, including human trafficking, although it is not possible to cite any single condition as being the sole determinant of vulnerability to any one form of abuse. Study of victims of human trafficking and domestic violence, as well as of those most vulnerable to rampant epidemics, indicates that these individuals share many of the same characteristics of vulnerability. It would appear to make fiscal as well as practical sense, therefore, to examine prevention from a broader perspective.

How are such conditions of vulnerability to be used to identify individuals at risk of being trafficked and make prevention of trafficking more effective? In re-examining existing prevention policies on the basis of an understanding of conditions of vulnerability, a framework must be developed that will include the following:

- *Inclusion.* The involvement of all relevant actors (individuals, community groups, NGOs and government agencies) in the development of prevention programmes
- *Risk reduction.* An assessment of the scope of the problem in a country, as well as an assessment of factors that make individuals vulnerable to exploitation leading to trafficking and other forms of abuse, relevant to each specific context
- *Empowerment.* Improvement of the well-being of the individual, including empowerment of the individual to seek options that are not potentially harmful or exploitative

The Grameen Bank: an example of prevention through vulnerability reduction

Micro-enterprise development is frequently cited among prevention activities to address the economic needs of possible victims of trafficking and of returning trafficked persons. Critics of such programmes, however, have raised concerns that a "one-model-fits-all" approach to helping trafficked persons is not always helpful and indeed, in some cases, can cause harm. The most common criticisms directed towards those programmes focusing on women include:

- (a) Trafficked women need extensive physical and psychological rehabilitation before they can begin to establish their own business. It is not reasonable to expect that a person who has experienced severe trauma can immediately begin the complex process of developing and implementing a business plan;⁴¹

- (b) Limited training and the provision of seed money do not necessarily prepare women for an entrepreneurial life;⁴²
- (c) In communities targeted for trafficking prevention activities, women who express an interest in entrepreneurial activities may often be outside of the age group most vulnerable to trafficking, although they may be considered vulnerable to other forms of abuse and exploitation, notably domestic violence;
- (d) An entrepreneurial life is solitary and women do not feel that they have sufficient support;⁴³
- (e) In some cultures, the empowerment of women is seen as an affront to the men of the community and the negative consequences outweigh any realized economic benefits.⁴⁴

These opinions are worth examining, especially because, in some areas, microfinance programmes have proved successful in alleviating poverty, increasing the well-being of entire communities and providing options for economic self-sufficiency for individuals who were at one time reduced to conditions of debt bondage and servitude.⁴⁵

Muhammed Yunus, an economist from Bangladesh, founded the Grameen Bank as a way of providing the poorest inhabitants of his country with small loans to encourage personal initiative and ultimately break the cycle of poverty over their lives. Almost 20 years later, the Grameen Bank model is used throughout the world as a means of empowering individuals to improve their own lives. Furthermore, as a business, it makes good sense. It is a highly cost-effective business and enjoys a remarkably high loan repayment rate.⁴⁶

The Grameen Bank works because it identifies factors that make people vulnerable to exploitation and is closely linked to the cultural and social contexts of vulnerable women. Project ideas are generated by the loan applicants, who are grouped together in teams where they are mutually accountable to one another for the repayment of their debts as well as for support. Any gain benefits the entire community and this factor alone provides a strong incentive to the ongoing success of its initiatives.

⁴¹Rosenberg and others, op. cit.

⁴²Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe, 2004: Focus on Prevention in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro and the UN Administered Province of Kosovo*, joint report by the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (New York, United Nations Development Programme, 2005).

⁴³Rosenberg and others, op. cit.

⁴⁴Maria Vlachová and Lea Biason, eds., *Women in an Insecure World: Violence against Women – Facts, Figures and Analysis* (Geneva, Centre for the Democratic Control of Armed Forces, 2005).

⁴⁵Nathanael Goldberg, *Measuring the Impact of Microfinance: Taking Stock of What We Know* (Washington, D.C., Grameen Foundation USA, 2005).

⁴⁶Mark Schreiner, "A cost-effectiveness analysis of the Grameen Bank of Bangladesh", *Development Policy Review*, vol. 21, No. 3 (2003), pp. 357-382.

VI. Conclusion

This paper has outlined a comprehensive approach to preventing trafficking in human beings based on both an understanding of the conditions that render an individual vulnerable to trafficking and the empowerment of the individual to resist potentially dangerous situations in the presence of viable alternatives. The new definition of the term “vulnerability” provided here is offered as a guideline to both developing comprehensive prevention strategies as well as to identifying those responsible for changing potentially harmful policies and practices.

There is one final factor that contributes to conditions of vulnerability leading to the ongoing exploitation of men, women and children around the world that has not yet been mentioned here: human naïveté. The world recently watched the jubilant celebrations marking the 200th anniversary of the end of the transatlantic slave trade, all the while forgetting that individuals remain in bondage around the world.

Prevention is vital and yet it fails to attract attention. A person who is trafficked and bears physical signs of abuse and violence is a visible and newsworthy target for help. Helping victims gets good press. Most trafficking stories in the popular media focus on the exploitation of victims of trafficking, and a reporter’s first question, when calling an NGO or government agency will be: “Can I interview a victim?” But the coverage—and the response—remains myopic. Directing media attention, donor funds and political will primarily towards the visible end result of a cycle of abuse and exploitation rather than addressing what allows the cycle to occur in the first place will ensure that trafficking in human beings continues.

Conditions of vulnerability are systemic, entrenched within the social, economic and educational policies of nations. They are further fuelled by racism and discrimination based on gender, ethnic and cultural considerations. It is necessary to ask, therefore, why and how we as donors, policymakers, care-givers and nations have failed to take the preventive actions necessary and, by that failure, have contributed to an escalation of the very problem we seek to prevent.



 HUMAN TRAFFICKING  A CRIME THAT SHAMES US ALL

PART TWO

Impact

The impact of trafficking in persons

Judith Dixon

I. Introduction

Human trafficking today is a global phenomenon, affecting men, women and children in over 130 countries of the world.¹ Trafficking is a crime against individuals.² As such, the consequences are most directly felt by trafficked persons. As well documented, trafficking activities contravene fundamental human rights, denying people basic and broadly accepted individual freedoms. Trafficking also has broad economic, social and cultural consequences. As a criminal act, trafficking violates the rule of law, threatening national jurisdictions and international law. Further, trafficking in persons redirects the benefits of migration from migrants, their families, community and government or other potential legitimate employers to the traffickers and their associates. Difficult as it is to measure accurately the scope of human trafficking, it is equally difficult to measure its impact. The dynamics of the trade are constantly evolving and a range of national perspectives exist. Available statistics are dependent upon a variety of sources, methodologies and definitions. Because trafficking is an underground activity, its consequences are also hidden and adequate indicators have yet to be developed that will allow the anti-trafficking community to successfully measure the impact of this crime. This paper identifies some of the most notable social, political and economic impacts of human trafficking and outlines important policy considerations in each of these areas.

¹United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, United Nations, 2006).

²Trafficking in persons and the smuggling of migrants are distinct crimes. While there are many similar components, there are four important differences:

- (a) Consent. The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers;
- (b) Exploitation. Smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and become more traumatized by their experiences and are also in greater need of protection from revictimization and other forms of further abuse than are smuggled migrants;
- (c) Source of profits. The financial benefits derived from these crimes come from quite different activities. Those who smuggle migrants profit from effecting the transportation of migrants from one country to another. The key source of criminal income from human trafficking is the exploitation of victims in the countries they are transported to;
- (d) Transnationality. Smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country. For further reference, see the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (General Assembly resolution 55/25, annex II), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (resolution 55/25, annex III), both supplementing the United Nations Convention against Transnational Organized Crime; available at www.unodc.org/unodc/en/treaties/CTOC/index.html.

While these impacts are described separately below, in reality they cannot be so readily compartmentalized or discussed in isolation. There are significant and complex interrelationships, influences and overlapping factors within each area. Impacts may both contribute to and/or influence each other in many ways and they are frequently closely interwoven. Recognition of the complex nature of trafficking in persons and how it has an impact upon us is pivotal to informing action taken in response and, ultimately, to sustaining success in countering human trafficking.

II. The consequences of trafficking upon individuals

Violent crime can have a significant impact upon the health and well-being of its victims. The effects of victimization strike particularly hard at the poor, the powerless, the disabled and the socially isolated. Those already affected by prior victimization are particularly susceptible to subsequent victimization.

The effects of trafficking have an impact on individuals in all areas of their lives. Victims of trafficking often experience abuse, exploitation, poverty and poor health prior to being trafficked. These conditions are only exacerbated by their experiences as victims of crime.³ Each stage of the trafficking process can involve physical, sexual and psychological abuse and violence, deprivation and torture, the forced use of substances, manipulation, economic exploitation and abusive working and living conditions.⁴ What differentiates the consequences of trafficking from the effects of singular traumatic events is that trafficking usually involves prolonged and repeated trauma.⁵

A. The physical impact of trafficking

All forms of trafficking, because of the abusive and exploitative nature of the crime, produce harmful effects on trafficked individuals. For example, the National Human Rights Commission of Thailand reported in 2003 the impact of trafficking on a group of approximately 100 male fishermen. After three years of exploitation, 39 had died, while those who returned home were seriously ill—emaciated, emotionally disturbed and unable to see, hear or walk properly.⁶

Trafficked victims may be deliberately selected for their specific physical attributes, which are then exploited in specific labour conditions. For example, the small size and dexterity of children makes them desirable for work at rug looms where the exploitation of these

³United Nations Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (New York, 1999), p. 7.

⁴United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (United Nations publication, Sales No. E.06.V.11), p. 154.

⁵Cathy Zimmerman and others, *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study* (London, London School of Hygiene and Tropical Medicine, 2003), p. 23 (see <http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>).

⁶Subhatra Bhumiprabhas, "The misery of male slavery", *The Nation* (Thailand), 14 May 2007 (see www.nationmultimedia.com/2007/05/14/headlines/headlines_30034148.php).

physical attributes leaves them with eye damage, lung disease, stunted growth and a susceptibility to arthritis as they grow older. Small children making silk thread dip their hands into boiling water that burns and blisters them, breath smoke and fumes from machinery, handle dead worms that cause infections and guide twisting threads that cut their fingers.⁷

However, in terms of global documentation, most is known about the impact of trafficking upon women and children for purposes of sexual exploitation. Detailed research on the physical consequences of trafficking upon women is relatively new. In 2006, a major study gathered statistical evidence on the health needs of women who had recently escaped from a trafficking situation, most of whom had been trafficked for commercial sexual exploitation. The findings indicate that more than half of the 207 respondents, from 14 different countries, reported some form of violence prior to being trafficked. Nearly all respondents (95 per cent) reported physical or sexual violence, with three quarters of respondents having been physically hurt, and 90 per cent reporting having been sexually assaulted, all of which occurred while being trafficked. Most respondents had been threatened with violence and forced into performing sexual acts. Physical symptoms of these trafficked women included headaches, fatigue and weight loss, stomach, chest, back, pelvic and vaginal pain, as well as dental and eye, ear and skin problems. A majority consistently reported vaginal discharge and gynaecological infections, which usually remained untreated. This is consistent with earlier work and estimates on the extent of health problems expected to be experienced by women trafficked for sexual exploitation.⁸

B. HIV/AIDS

Increased likelihood of HIV infection is often cited as a risk among women trafficked for sexual exploitation owing notably to a lack of bargaining power concerning condom use and other potentially dangerous sexual practices. Trafficked women are also less likely to be beneficiaries of medical or educational services made available to non-trafficked women working in prostitution.⁹ Lack of information about HIV/AIDS, as well as prevalent popular misconceptions, including that sexual intercourse with a virgin will cure the disease and that younger girls are disease-free, has increased the demand for younger victims and increased the vulnerability of children to infection.¹⁰

A recent study focusing on the prevalence and predictors of HIV infection among trafficked women and girls rescued from brothels in a South Asian country found that 22.9 per cent of trafficked individuals tested positive for HIV. Those trafficked at younger ages and having spent a longer time in brothels were slightly more likely to become infected

⁷"Child labor", article available on the website of Human Rights Watch at <http://hrw.org/children/labor.htm>.

⁸Cathy Zimmerman and others, *Stolen Smiles: a Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (London, London School of Hygiene and Tropical Medicine, 2006), pp. 9-15 (see www.lshtm.ac.uk/genderviolence/).

⁹Youth against HIV/AIDS and trafficking: sensitisation of National Service Scheme (NSS) volunteers in Maharashtra: inter-linkages and vulnerability of trafficking and HIV/AIDS", project available on the website of Save the Children India at www.karmayog.com/ngos/stci.htm.

¹⁰United Nations Development Programme, *From Challenges to Opportunities: Response to Trafficking and HIV/AIDS in South Asia* (UNDP, 2003), p. 7 (see http://www.youandaids.org/UNDP_REACH_publications).

with the HIV virus.¹¹ These findings demonstrate the need for increased attention to HIV among young victims of sex trafficking in research and practice. It is difficult to determine the absolute rates of HIV infection among trafficked persons and little research has been done to determine whether these rates are higher than those of non-trafficked prostituted women or than those in the general community.¹²

C. Mental health impact

Relentless anxiety, insecurity, fear and physical pain and injury will have significant effects on the mental health and well-being of trafficked victims. Symptoms of psychological trauma reported by trafficked persons include post-traumatic stress disorder, anxiety, depression, alienation and disorientation. These individuals report feelings of extreme sadness and hopelessness about the future.¹³ They may be suicidal, have cognitive impairment and memory loss, and may be withdrawn. They may also have difficulty concentrating and show aggression and anger. Studies indicate that trauma worsens throughout the duration of the trafficking process. Initial trauma commonly experienced either before they were trafficked or when they first discovered that they were trafficked, will be continually increased by the process of the trafficking. The longer victims remain under the control of their traffickers, the more severe and long-lasting are the effects of their trauma. The symptoms may persist for a long time after the trafficking experience unless support and appropriate counselling is provided.¹⁴

D. Child victims

Child victims of trafficking are subject to the same harmful treatment as adults. Their age makes them even more vulnerable to the harmful consequences of abusive practices. Prolonged abuse in children, including physical and sexual abuse, hunger and malnutrition, may lead to permanent stunting of growth. Trafficked children may suffer, for example, from poorly formed or rotting teeth and may experience reproductive problems at a later date. The International Labour Organization (ILO) has documented that children in some tropical regions are at high risk of sunstroke, increased heart rhythm, poisoning due to chemicals in insecticides, dust inhalation in sawmills and mines, machinery accidents, burns, road accidents, stagnation of growth and general fatigue that makes them less resistant to malaria and other diseases because of their exposure to harsh working conditions.¹⁵

¹¹J. G. Silverman and others, "HIV prevalence and predictors among rescued sex-trafficked women and girls in Mumbai, India", *Journal of Acquired Immune Deficiency Syndromes*, vol. 43, No. 5 (2006), pp. 588-593.

¹²Paul Williams, "Sex work, the Palermo Protocol and HIV/AIDS", paper presented by the HIV/AIDS technical adviser of UNODC to the Global Consultation on HIV/AIDS and Sex Work, Rio de Janeiro, Brazil, 13 July 2006.

¹³Zimmerman and others, *Stolen Smiles: a Summary Report ...*, p. 18.

¹⁴Ekaterina V. Shkurkin, "The consequences of the sexual abuse in human trafficking", paper presented at Human Trafficking Conference, Riga, 5 December 2004 (see http://homepages.stmartin.edu/fac_staff/kshkurkin/Conseq%20of%20Hum%20traffic%20with%20inserts%2025feb05.doc).

¹⁵Kathleen Fitzgibbon, "Modern-day slavery? The scope of trafficking in persons in Africa", *African Security Review*, vol. 12, No. 1 (2003) (see www.iss.co.za/Pubs/ASR/12No1/EFitz.html High profits, low risk).

Trafficked children are less likely than adults to have accurate information about the transmission and prevention of sexually transmitted infections and have fewer negotiating skills. Girls are especially vulnerable, as sexually transmitted infections are likely to have long-term physical consequences. The emotional well-being, self-esteem and ability to set personal goals and form healthy relationships of these younger victims of trafficking will be significantly damaged.

Trafficked children find it difficult to trust authority figures. If their trafficking situation was initiated by a family member, or if they were very young, they may be subsequently unable to return to their families or connect with them. They may have attachment problems and anti-social behaviours, aggression, sexualized behaviour or addictions. If offered a chance at education, they may suffer developmental delays, language and cognitive difficulties, deficits in verbal and memory skills, poorer academic performance and grade retention. They may experience difficulty in adapting themselves to the rules, regulations and discipline of the education system.¹⁶

E. Substance abuse

Trafficked victims may be subjected to substance abuse by their traffickers. Some trafficked women have described how they were forced to use drugs or alcohol to ensure their compliance and to enable them to take on more clients, work longer hours or perform objectionable or risky acts.¹⁷ Trafficked persons may also turn to substance abuse to alleviate the pain of their situation, often resulting in addiction, organ damage, malnutrition, needle-induced infections, overdose and death.

F. Impact on behaviour

Prolonged physical and mental abuse affects victims' behaviour in negative ways, having an impact on both physical and emotional responses. Because trafficked persons often experience extreme forms of trauma over long periods of time, their capacities both to understand what has happened to them and to describe their experiences are directly impaired as a result of such abuse. Victims can find that it is difficult to make personal sense of the abuse they have experienced, much less try to explain it to the authorities. They are even less able to identify what help they might need as a result of the abuse.¹⁸ This lack of clarity may have negative consequences when a victim is being interviewed

¹⁶Yvonne Rafferty, "Child trafficking and commercial sexual exploitation: psychological and social policy perspectives", presentation available on the website of the Pace University at <http://appserv.pace.edu/emplibrary/yvonneraffertypresentation050107.pdf>, slides 15 and 16.

¹⁷Zimmerman and others, *The Health Risks and Consequences ...* , p. 4.

¹⁸Zimmerman and others, *Stolen Smiles ...* , p. 22.

by relevant authorities. Trafficked persons may be unsure of how they are supposed to answer questions. They may be reluctant to disclose information, or may give false information, be irritable or hostile and aggressive towards others, even support persons. They may seem complaining, uncooperative or ungrateful. As a result, they may not be identified as victims of crime, further compounding the injustice they have experienced. In many instances, failure to identify a person as a trafficking victim commonly results in deportation from the country of transit or destination without access to legal, medical or social services. Such behaviour, however, may manifest in individuals for many years.

Upon return to the country of origin, assistance to trafficked persons will depend on existing economic, political and social conditions. Assistance, when available, may be contingent upon certain behaviours and conditions, for example, zero tolerance of substance abuse and adherence to structured daily regimens. Victims may be too traumatized to participate effectively in programmes, take decisions, show preferences or accept help. Unaddressed physical health symptoms and chronic pain will also affect victims' ability to participate in programmes available for their assistance. In some countries, service programmes and providers limit a victim's right to determine what is best for themselves. Where "assistance" is perceived as placing unnecessary or unwanted restrictions on victims, trafficked individuals may respond through various forms of uncooperative behaviour. Worst case examples are those which impose a "victim" status on a trafficking person that further victimizes, rather than rehabilitates, that individual.

Fear, in its many manifestations, is also a common behavioural response to return. Leaving aside the stigma and shame associated with trafficking, trafficking victims anticipate and frequently suffer reprisals upon return to their points of origin, from threats and actual physical violence against themselves or those close to them through to the very real possibility, in many cases, of being re-trafficked.

G. Stigma

The response of family members and the community will have an impact upon the recovery process of trafficked persons. Although more is known about the stigma facing victims of trafficking for sexual exploitation, all trafficked persons may face social disapproval if they return without promised wealth, regardless of the harm they suffered.¹⁹ In many countries, the impact of the trauma is influenced significantly by how victims imagine their culture will view their experiences. Many victims know that cultural attitudes to prostitution could prevent them from being accepted by their families and communities. In some cultures the entire family could be ostracized as a result of the victim's past.²⁰

¹⁹More needs to be done to address stigma and discrimination towards women trafficked for sexual exploitation". International Organization for Migration, Regional Office in Finland, press release for International Women's Day, 8 March 2006 (see www.pld.iom.int/en/news).

²⁰Elizabeth Peffer Talbot, "An assault on the soul: an international plague in the 21st century", paper presented at the Convention of the North American Association of Christians in Social Work, Philadelphia, Pennsylvania, October 2006, page 5 (see www.nacsw.org/Publications/Proceedings2006/TalbotEAnAssaultontheSoulE.pdf).

In a recent national study, surveyed communities exhibited some understanding of the role of social and economic hardships in vulnerability to trafficking, but overwhelmingly blamed the immoral character of the trafficked girl herself, who was seen to bring disgrace and shame to her family and community. Returned victims were considered likely to continue as prostitutes or try to recruit other young girls as prostitutes—all trafficking was associated with sex work, and those who were trafficked were assumed to be infected with HIV/AIDS and to be a source of infection in the communities.²¹

Prevention messages may unknowingly contribute to the stigmas surrounding a trafficked person, notably in the way they portray the negative results of a trafficking situation. For example, some campaigns use fear to discourage women from leaving their homes and associate trafficking with contracting HIV, implying that all women trafficked for sexual exploitation have HIV/AIDS.²²

Even participation in a recognized return programme for victims of trafficking may expose trafficked persons to the stigma of prostitution. Men trafficked for sexual purposes may experience the double shame and stigma of being branded a prostitute and of having sex with men despite not being homosexual themselves.²³ In some cases victims will simply move away from the home area and return to prostitution, while others choose not to reveal anything at all about the trafficking experience, with this choice significantly affecting their physical and psychological recovery.²⁴

H. Recovery

Return and reintegration for a trafficked person is a long-term and complex process with no guarantee of recovery. Even where physical problems can be addressed and stigma overcome, trauma and psychological damage make recovery a difficult task rendered even more so by the problems in accessing necessary resources and in communicating with support persons and family. Some trafficked victims may not adjust to a lifestyle that they previously considered “normal”. If employment can be found, a trafficked person’s behaviour, as a result of the experiences of severe trauma, may make it difficult to remain employed.

²¹Vaishali Sharma Mahendra and others, *Community Perceptions of Trafficking and its Determinants in Nepal* (Kathmandu/New Delhi, Asia Foundation, Horizons and Population Council, December 2001), p. 53 (see http://www.asiafoundation.org/pdf/nepal_traffickingperceptios.pdf).

²²Asia Foundation, Horizons and Population Council, “Research summary: trafficking and human rights in Nepal: community perceptions and policy and program responses”, August 2001, p. 4, (see <http://www.popcouncil.org/pdfs/horizons/traffickingsum1.pdf>).

²³Barbara Limanowska, “Anti-trafficking action in south-eastern Europe: lack of effectiveness of law enforcement and migration approaches”, paper prepared for the Consultative Meeting on Migration and Mobility and how this movement affects women, Malmö, Sweden, 2-4 December 2003 (CM/MMW/2003/EP.6) (see <http://www.un.org/womenwatch/daw/meetings/consult/CM-Dec03-EP6.pdf>).

²⁴Diana Tudorache, *A General Review of the Psychological Support and Services Provided to Victims of Trafficking*, outcome of empirical analysis assisted by the Counter-Trafficking Return and Re-integration Programme, International Organization for Migration Kosovo, September 2003, p. 84.

Problems may be compounded if, as often happens, trafficked persons are returned to their place of origin to face the same problems of unemployment, abuse and discrimination that compelled them to leave in the first place, all of which may be exacerbated by the new stigma. With previous victimization a better predictor of future victimization than any other characteristic of crime, these circumstances contribute extra risk.²⁵ For some, especially those who survived longer periods in a trafficking situation, a return to a situation of exploitation may provide the only alternative for which their practical skills and survival mentality are now oriented.²⁶

III. The political implications of trafficking in persons

In addition to the tragic impact on individuals, human trafficking has now reached such a scale that it has begun to influence the domestic and foreign policies of many of the countries where the problem has become particularly noted. Because trafficking involves the movement of people across international borders, one of the most important areas of debate is migration policy. However, because trafficking in persons is also a deeply human issue, it has become a major issue of discussion and concern in human rights circles. The following discussion will outline what are some of the major concerns and challenges in each of these two areas.

A. Shaping migration policies

Unprecedented numbers of people leave their homes and families every year in search of economic opportunities that are not available to them at home. Many of these individuals migrate legally. The numbers are so great, however, and the restrictions on regular or legal migration usually so stringent, that many migrants become absorbed into the illicit world of people smuggling. In too many cases, smuggling leads to conditions of ongoing exploitation and human misery. Commonly, many States equate “trafficking” with “illegal migration” or “smuggling of aliens” or movement of asylum-seekers, even though these are different—albeit often overlapping—phenomena. It is within this overall concept and not as a separate issue that trafficking in persons has helped to shape migration policies, in countries both of origin and destination.

²⁵United States of America, Department of Justice, Office of Community Oriented Policing Services, Deborah Lamm Weisel, *Analysing Repeat Victimization, Problem-Oriented Guides for Police, Problem-Solving Tools Series No. 4* (Washington, D.C., August 2005) (see <http://www.cops.usdoj.gov/files/ric/Publications/e07055803.pdf>).

²⁶Tudorache, *op. cit.*, p. 94.

B. Border control

Just as a common response to irregular migration has been to tighten borders, so too have countries responded to the increase in human trafficking by strengthening border control. Stricter border controls and increased law enforcement are common methods.²⁷ Expenditure on border control is increasing rapidly throughout Australia, the United States, Western Europe and other perceived destination areas.²⁸

At the global and regional levels, international cooperation in addressing trafficking is largely within the context of action to deter and prevent irregular movements and the promotion of national legislation to assist in this. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, set up in South-East Asia, has a strong crime control emphasis and focuses on capacity-building of operational-level law enforcement, immigration and other key personnel involved in combating migrant smuggling, trafficking in persons and related forms of transnational crime.²⁹ In Western and Central Europe, the European Union has focused extensively on issues of smuggling and trafficking within the context of controlling immigration from outside. Following the 1999 Tampere European Council, which guaranteed access to European territory to asylum-seekers, draft council directives were formulated on penal frameworks for those who facilitate unauthorized entry and residence.³⁰

Regional forums all include bilateral aid and trade programmes, assistance with poverty alleviation and development as part of their focus. These policies are directly linked to the expectation that increases in overseas development and humanitarian assistance will also result in decreases in irregular migration, including trafficking.³¹

C. Human rights

When trafficking is defined within the context of irregular migration, the crime control focus becomes the illegal entry or stay in a country, that is, infraction of state laws by the migrant him- or herself. This focus raises the danger that the human rights abuses and exploitation that are the characteristics of trafficking may not be addressed. Even when government measures primarily target the recruiters and exploiters, trafficked persons are at risk of being considered collaborators in illegal migration rather than as victims of crime.³²

²⁷Raimo Väyrynen, "Illegal immigration, human trafficking, and organized crime", discussion paper No. 2003/72 (Helsinki, United Nations University, World Institute for Development Economics Research, October 2003), p. 4 (see <http://www.wider.unu.edu/publications/dps/dps2003/dp2003-072.pdf>)

²⁸Bimal Ghosh, "Managing migration: whither the missing regime?", draft article in the Migration Without Borders series, document SHS/2005/MWB/4 (Paris, United Nations Educational, Scientific and Cultural Organization, 15 February 2005), p. 2 (see <http://unesdoc.unesco.org/images/0013/001391/139149E.pdf>)

²⁹Australia, Department of Foreign Affairs and Trade, "Background to the Bali process" (see http://www.dfat.gov.au/illegal_immigration/bali_process_background.html).

³⁰John Morrison, "Human smuggling and trafficking", Forced Migration Online Research Guide (October 2002) (see <http://www.forcedmigration.org/guides/fmo011/>)

³¹John Morrison, "The trafficking and smuggling of refugees: the end game in European asylum policy?", pre-publication edition, commissioned by the Office of the United Nations High Commissioner for Refugees, July 2000, p. 93 (see http://www.ecre.org/eu_developments/controls/traffick.pdf)

³²Statement adopted by the European NGO Conference, held in Noordwijkerhout from 5 to 7 April 1997, for presentation to the EU Ministerial Conference from 24 to 26 April 1997.

The unintended consequence of this approach can be severe. To cross closed borders, irregular migrants are more likely to use professional smugglers or traffickers. The involvement of criminal groups in migration means that smuggling may lead to exploitation and potential instances of trafficking, victimization and the violation of human rights.

With trafficking being potentially more profitable than smuggling, owing to the ongoing exploitation of the victim, States of destination may be inadvertently creating a lucrative market for the traffickers. The more strictly the laws of immigration against the illegal entrants are enforced, the more sophisticated forms of criminality are used in human trafficking to overcome the barriers that are needed to making a profit. This may increase the violence and abuse associated with the practice.³²

The impact of focusing on trafficking as a migration issue is significant. As the Secretary-General stated on 21 November 2003:

“The more we try to deal with migration simply by clamping down on it with tighter border controls, the more we find that human rights are sacrificed—on the journey, at the border, and inside the host countries.”³³

The vast majority of asylum-seekers now enter Europe and other regions of destination in an irregular fashion and quite possibly with the assistance of traffickers and smugglers. This may in turn lead to further blurring of the categories of people movements and threaten the right of asylum.³⁴ It is necessary for destination countries to develop accurate and reliable protocols to determine the status of all individuals who have entered their borders under seemingly illegal means acknowledging the possibility that these individuals may be victims of crime.

D. Regular migration: countries of destination

As a result of the increase of illegal migration, many countries of destination have tightened their immigration requirements. While the demand for unskilled domestic and care workers, women in particular, has increased, countries of destination have restricted the flow of regular or legal migration by imposing educational, language and other requirements. Short-term contracts with dependence upon specific employers, lengthy contract approval processes, certification of skills, recruitment fees, bonds, police and health checks and travel costs may further impede legitimate migration.

These practices may not be designed specifically to address trafficking, but are rather aimed at regulating and controlling legal immigration. The possible discrimination against unskilled migrants (in the face of the growing demand) can have the unintended impact

³²Statement adopted by the European NGO Conference, held in Noordwijkerhout from 5 to 7 April 1997, for presentation to the EU Ministerial Conference from 24 to 26 April 1997.

³³Franciscans International and others, “The migration and trafficking nexus”; statement submitted to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/NGO/115) (see <http://www.franciscansinternational.org/docs/statement.php?id=240>).

³⁴Morrison, “The trafficking and smuggling ...”, p. 101.

of further increasing the vulnerability of migrants to being trafficked.³⁵ Where a legal opportunity cannot be found, potential migrants may turn to traffickers for assistance. Restrictive migration policies that limit opportunities to migrate safely and legally will fuel demand for the services of traffickers.

E. Regular migration: source countries

It becomes important for labour-exporting nations, which are the primary source countries for trafficking, to manage migration in such a way that it contributes to social and economic development and is not seen as a danger by their own citizens, a threat to public security or as stigmatizing their citizens. Some source countries attempt to protect their citizens from exploitation through a variety of regulated programmes prior to departure. Some important methods commonly used in the Philippines, for example, include a range of subsidized benefits, including pre-migration training on social and work conditions abroad, life insurance and pension plans, medical insurance and tuition assistance for the migrant and his or her family, and eligibility for pre-departure and emergency loans.³⁶ Nevertheless, despite these efforts, significant numbers of migrants, especially women, fall into conditions of exploitation and trafficking.

Other source countries may impose discriminatory exit requirements and may restrict migration among certain population groups, notably women. These restrictions may stem from a country's norms related to the status of women or as a direct response to abuse or exploitation perceived in countries of destination. The restrictions may take the form of complete bans or age-, occupation- and country-specific limitations on women's emigration.³⁷

In some source regions, well intended trafficking prevention messages have sometimes taken a negative position on migration. Frightening messages about the dangers of migration have been used to discourage women from leaving their villages.³⁸ The unintended consequence of such strategies may make individuals more vulnerable to exploitation.³⁹ Poor women job-seekers, in particular from remote rural areas with less access to accurate information on migration procedures, job opportunities, recruitment channels and legitimate jobs, are at higher risk of being trafficked in these situations. Given the global demand for female labour and the increasing willingness of female migrants to travel overseas, restrictive female migration policies will encourage women to use informal or irregular channels to assist their movement. This in turn increases their vulnerability to trafficking.⁴⁰

³⁵Naila Kabeer, "Footloose" *Female Labour: Transnational Migration, Social Protection and Citizenship in the Asia Region* (Ottawa, International Development Research Centre, 2007) section 6.1 (see http://www.idrc.ca/uploads/user-S/11829727461WRC_WP1_-_Kabeer_-_Migration.doc).

³⁶Kevin O'Neil, "Labor export as government policy: the case of the Philippines", *Migration Information Source*, January 2004 (see <http://www.migrationinformation.org/Feature/print.cfm?ID=191>).

³⁷Kabeer, *op. cit.*

³⁸John Davies, "The role of migration policy in creating and sustaining trafficking harm", University of Sussex, Migration Research Centre, 31 August 2002, p. 5 (see <http://www.belgium.iom.int/STOPConference/Conference%20Papers/OSLO.pdf>).

³⁹"Anti-trafficking policies and programs in Nepal may infringe on women's rights", *Population Briefs*, vol. 7, No. 4 (2001) (see [http://www.popcouncil.org/publications/popbriefs/pb7\(4\)_1.html](http://www.popcouncil.org/publications/popbriefs/pb7(4)_1.html)).

⁴⁰Jean D'Cunha, "Trafficking in persons: a gender and rights perspective", paper prepared for the Expert Group Meeting on trafficking in women and girls, Glen Cove, New York, 18-22 November 2002 (EGM/TRAF/2002/EP.8), p. 19 (see <http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/EP-DCunha.pdf>).

F. Management of the status of trafficked persons

The detection and identification of trafficked persons in countries of destination raises significant political and social challenges. States are faced with reconciling their obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to protect victims with their own domestic policies of preventing irregular migration. Trafficked persons will not usually have a regular residence status in the State of destination, either because they arrived in an irregular way or because their residence permit has expired.

A number of countries of destination have recently recognized the humanitarian risks of returning victims precipitously to their country of origin. To address both their human rights obligations and their national security and migration requirements, several destination States have adopted measures for the temporary or permanent residence of victims of trafficking. In some cases, that protection entitles the victims to other rights and benefits. Additionally, in some countries, reflection periods are granted to allow for a period of time in which the presumed trafficked person is referred for services and counselling, without having to make an immediate statement to the police. This enables trafficked persons to receive appropriate support and to make informed decisions. Such support and assistance will assist in their recovery and may encourage them to testify against traffickers, assisting in successful prosecutions. Early assistance can promote recovery and may in turn have a positive future impact on the reduction of trafficking, by preventing re-trafficking. Cooperative bilateral assistance efforts between the State of destination and the State of origin have also been developed in some cases and will assist in reducing the risks faced by victims.

IV. The economic impact of trafficking in persons

A. The costs of trafficking

The cost of crime is essentially a measure of the impact of that crime on society. The costs of trafficking include the value of all resources devoted to its prevention, the treatment and support of victims and the apprehension and prosecution of offenders. For example, as a component of organized crime, there are costs to the police (who investigate suspected crime and gather and record evidence), the prosecution services, criminal courts, legal aid and non-legally-aided defence costs, and costs of the prison and probation services. The foregone productivity of imprisoned traffickers (although such labour may not in all cases have been put to productive use) should be included. There may also be costs to witness protection schemes and health, welfare and other government services. While in some countries a successful prosecution may mean some cost recovery and asset confiscation, in most circumstances, the resources devoted to these elements of the criminal justice system and health and welfare systems come from the public purse, which may severely challenge existing resources, notably in source countries. Realizing the potential to offset these costs through the confiscation of traffickers' income and assets is of great significance to continued success against trafficking activities.

These costs are linked with the human and social costs to the victims and their communities and may include the physical and emotional suffering of victims as well as the toll upon community members who may develop increased fear and anxiety about crime as a result of public trials and media attention. Given that violence, corruption and trafficking are invariably linked, the cost of enforcement and reform may be affected by public perceptions that government cannot cope with criminal organizations.

The ongoing care and support of victims, costs associated with immigration and customs processes, repatriation, direct government funding or funding grants to non-governmental organizations to assist victims, along with other health, welfare housing and associated costs, will also have an impact. For some source countries especially, this is a significant economic burden.

While expenditures on trafficking prevention programmes, advocacy and research projects may be seen as discretionary, such expenditures are often accepted by Governments that are parties to the Trafficking Protocol as a requirement of their domestic commitment to addressing the crime of trafficking and a part of their enforcement efforts against the crime.

The public health impact of trafficking is potentially very costly. Recent epidemiological data suggest that tuberculosis, which is regarded worldwide as a re-emerging infectious disease, has reached the level of an epidemic in some countries from which victims are trafficked.⁴¹ In areas where vaccination programmes and health service standards and

⁴¹"Conference background information and further readings", paper presented to the regional workshop and conference entitled "Health Aspects of Trafficking in Persons", Budapest, 19-21 March 2003 (see <http://hub.usembassy.hu/programs/background.doc>).

protocols are not widely developed or infection rates are higher, diseases such as tuberculosis or HIV/AIDS may be brought to the country of destination, with attendant costs and problems.

B. Lost resources

Human trafficking results in an irretrievable loss of human resources and reductions in revenue. Trafficking yields no tax revenues, and may even lead to a net revenue loss as a result of tax evasion and money-laundering. There will be a lower accumulation of human capital and a lower rate of participation in the labour market. In source countries, trafficking will influence the future productivity of children, who may lose access to education or suffer health problems where a parent is trafficked and family support is lost. There will be fewer individuals available to care for elderly people or children, with fewer resources.

Non-monetary economic loss such as health-related impacts may be significant, as trafficked victims and their families suffer the consequences of this crime. Since trafficking may result in premature death, a possible consequence is the loss of the future productive capacity of the victim. As is also common for families of homicide victims, or those who die prematurely because of crime, the emotional, psychological, and social impacts will be borne by the family and community of the deceased person.

When victims are repatriated to their country of origin, the burden of assistance and rehabilitation is shifted to the source country, where resources are often already limited. The future impact of untreated health and welfare needs will be significant. In many cases families and communities will be required to take on this additional human, social and economic burden.

The effects of the bribery and corruption known to accompany trafficking practices may destabilize regulatory regimes and their supporting infrastructure and also significantly inhibit much needed overseas investment and trade.⁴²

C. Remittances

The most direct economic impact of human trafficking on individuals is the receipt of little or no income and, consequently, the loss of migrant remittances. While it is not possible to sensibly estimate the potential value of the labour of trafficked persons, some States have taken tentative steps, on occasion in assessing compensation, to calculate income payments due to trafficking victims. While compensation payments remain rare and generally constitute small financial sums, a well documented motivation for many identified trafficking victims in initially consenting to approaches by traffickers is, firstly, the opportunity to earn an anticipated level of income and, secondly, to apply that income as remittances.

⁴²"Searching for transparency: corruption and the global economy", *Multinational Monitor*, vol. 27, No. 3 (May/June 2006) (see <http://multinationalmonitor.org/mm2006/052006/interview-nussbaum.html>).

Official remittances, money sent home by migrants, made up of millions of individual, private, non-market income transfers, have grown steadily and represent a significant international flow of capital. Formal remittance flows from foreign workers now total over \$232 billion, with developing countries receiving \$160 billion, while informal flows and national or domestic remittances add 50 per cent more.⁴³ Women, children and the elderly are said to be the majority of beneficiaries of these remittances. While the issue of foreign remittances themselves is controversial, any discussion on this topic must acknowledge that, in the short term, they provide and make possible a number of benefits to those to whom they are sent. A direct impact of trafficking in persons is to deny a victim those benefits.

Sending members abroad may represent many families' main survival project and source of income, with a much higher return than opportunities at home. Funds provided for household needs enable receivers to maintain or increase expenditure on basic consumption and, in cases of extreme poverty, these funds will provide welfare assistance.⁴⁴ Remittances may also reduce the vulnerability of recipients to crises and be critical to how they survive and recover from disasters.⁴⁵ Sending remittances home also improves the status and negotiating power of women in their families and communities, and may create better conditions for other females in the family.⁴⁶ This may create an effective development tool, contributing to the improvement of women's economic status in countries of both origin and destination.⁴⁷

For many developing economies, remittances are the single largest source of foreign exchange and are stable and resilient in the face of economic downturns. Increasingly, it is argued that remittances are a positive force for development. They have been described as the most stable, abundant and safe source of foreign aid for developing countries,⁴⁸ with greater efforts expended on how they can be used to assist development in recipient countries, including their use in collective local development projects such as those set up in Mexico.⁴⁹ According to the World Bank, a 10 per cent increase in the percentage of remittances as a proportion of a country's GDP would result in a 1.6 per cent reduction of the number of people living in poverty in that country.⁵⁰

⁴³Committee on Payment and Settlement Systems and World Bank, *General Principles for International Remittance Services* (Basel, Switzerland, Bank for International Settlements, 2007), p. 1 (see www.bis.org/publ/cpss76.pdf).

⁴⁴Manuel Orozco, "Remittances compete with the dream of an enterprise", presentation at the Third International Policy and Expert Meeting "Entrepreneurial decisions across borders: savings, remittances and investments and migrant household decisions", The Hague, 22 November 2006, slide 7 (see [http://www.remittances.eu/dmdocuments/Gender%20and%20remittances.ppt#270,19,Leveraging remittances for financial access](http://www.remittances.eu/dmdocuments/Gender%20and%20remittances.ppt#270,19,Leveraging%20remittances%20for%20financial%20access)).

⁴⁵Kevin Savage and Paul Harvey, "Remittances during crises: implications for humanitarian response", Humanitarian Policy Group, Briefing paper No. 26 (London, Overseas Development Institute, May 2007) (see www.odi.org.uk/hpg/papers/hpgbrief26.pdf).

⁴⁶Sarah J. Mahler, "Gender matters", id21 Research Highlight, 16 January 2006 (see www.id21.org/id21ext/insights60art7.html).

⁴⁷Carlota Ramírez, Mar García Domínguez and Julia Míguez Morais, *Crossing Borders: Remittances, Gender and Development, working paper* (Santo Domingo, International Research and Training Institute for the Advancement of Women, June 2005), pp. 23- 47 (see http://www.un-instraw.org/en/images/stories/remittances/documents/crossing_borders.pdf).

⁴⁸Ramírez and others, op. cit., p. 19.

⁴⁹"Workers' remittances to Mexico", *Business Frontier*, vol. 1, 2004 (see www.dallasfed.org/research/busfront/bus0401.html).

⁵⁰Ramírez and others, op. cit., p. 47.

There is no way of assessing the value of remittances sent home by trafficked and/or exploited persons, given that trafficked persons, by definition, are not in control of the money that is earned as a result of their labour or services. The fact that the profits of trafficking derive from the exploitation of its victims, which may include keeping a great part of their earnings and thus preventing victims from sending remittances home or, at least, reducing remittances, should have an impact on the benefits outlined above.

D. The profits of organized crime

In 2005, ILO estimated that there were 12.3 million people in forced labour worldwide, of whom about 2.4 million had been trafficked, both internally and across borders.⁵¹ The profits of trafficking are significant. Unlike smuggling of migrants, which produces a one-time profit, trafficking involves the long-term exploitation of individuals, which translates into continuous income. Recent ILO estimates suggest that the global profits of trafficking in human beings are around \$31.6 billion annually. Based on the previously cited numbers of trafficked persons, this translates into an annual illicit profit of \$13,000 per victim.⁵²

The International Monetary Fund assesses the annual turnover of criminal organizations at some \$1,500 billion internationally.⁵³ Trafficking in persons is believed to be the third largest source of the profits for international organized crime after trafficking in drugs and arms.⁵⁴ Trafficking in persons guarantees criminal networks a stable and regular source of income with little risk, enabling them to form additional rings for other lucrative and dangerous illicit activities.⁵⁵ These profits have funded the expansion of international, regional and local criminal groups, contributed to corruption and undermined the rule of law.⁵⁶ Information suggests that traffickers have effectively used the new opportunities created by changes in international restrictions on movements of goods, money and services, and the creation and development of new global markets and new technologies, to operate increasingly at the international level.⁵⁶

The structure and size of the organized criminal groups involved in human trafficking range from small local networks to large transnational organizations. Those who benefit include recruiters, document forgers, brokers, brothel owners, debt collectors and managers/owners of employment agencies. Corrupt immigration officials, consular workers, embassy personnel, members of law enforcement bodies and border guards accept bribes in exchange for passports, visas and safe transit. As a major global crime, human trafficking is also often intermixed with other organized illicit activities, including

⁵¹International Labour Office, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, International Labour Office, 2005), pp. 11-14 (see www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059).

⁵²Patrick Belser, *Forced Labour and Human Trafficking: Estimating the Profits*, working paper (Geneva, International Labour Office, March 2005), p. 17 (see www.ilo.org/sapfl/Informationresources/ILOPublications/lang-en/docName-WCMS_081971/index.htm).

⁵³North Atlantic Treaty Organization, Parliamentary Assembly, Subcommittee on Democratic Governance, *Organised Crime: Drug and Human Trafficking in Europe*, document 141 CCDG 03 E (NATO, 2003), para. 50 (see www.nato-pa.int/Default.asp?SHORTCUT=368).

⁵⁴"Human trafficking exposed", *Population Today*, vol. 30, No. 1 (2002), pp. 1 and 4 (for Quotation see www.lib.msu.edu/harris23/crimjust/human.htm).

⁵⁵North Atlantic Treaty Organization, *Organised Crime ...*, para. 73.

⁵⁶Andreas Schloenhardt, *Organised Crime and the Business of Migrant Trafficking: an Economic Analysis* (Canberra, Australian Institute of Criminology, 10 November 1999), pp. 51 and 77 (see www.aic.gov.au/conferences/occasional/schloenhardt.html).

fraud, extortion, racketeering, money-laundering, bribery of public officials, drug use, document forgery and gambling.⁵⁷

Of a global sample of 40 organized criminal groups surveyed by the United Nations Office on Drugs and Crime in 2002, 8 were found to be involved in human trafficking activities, with 2 almost exclusively involved in human trafficking and the remaining 6 including human trafficking as one of a number of diversified criminal activities undertaken by the group.⁵⁸ In 50 per cent of human trafficking cases in one destination country, the perpetrators were also engaged in illegal trade in drugs or arms.⁵⁹ Links to other global criminal activities make human trafficking more profitable, as groups are able to use the safe and tested routes and work through known corrupt officials.

Human trafficking crimes are also closely integrated into legal business interests such as tourism, employment or recruitment agencies, agriculture, hotel and airline operations, and leisure and entertainment businesses.⁶⁰ Criminal organizations may hide the traces of their illegal activities by directly and indirectly investing their profits in legitimate financial institutions.⁶¹ Although some businesses are simply established to launder money and not necessarily to make profits, this practice may in turn have a negative impact on the economy, as legitimate businesses may find themselves having to compete against enterprises being secretly or unknowingly subsidised by laundered proceeds of crime or supported by the exploitation of trafficked persons. Fair competition may also be affected when exploited trafficked persons have been used further down the supply chain to produce materials such as textiles.⁶²

The most visible impact of the profits of organized crime associated with human trafficking in destination countries is trafficking for sexual exploitation within the commercial sex trade.⁶³ Well-established domestic organized criminal groups often engage in the sex trade and cheap labour markets with foreign counterparts.⁶⁴ Prostituted women have been known to be used as drug smugglers/couriers and dealers.⁶⁵ These crimes, combined with the movements of illicit profits made by the sex industry, estimated to be between \$7 and \$12 billion annually,⁶⁶ have a significant impact on economic stability and security, human rights and law enforcement and crime control.

⁵⁷James O. Finckenauer and Jennifer Schrock, "Human trafficking: a growing criminal market in the U.S" (see www.ojp.usdoj.gov/nij/international/ht.html).

⁵⁸United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, United Nations, 2006), p. 69.

⁵⁹William Hill, "Trafficking in human beings: who does it hurt, and why should we care?", article on the mission of the Organization for Security and Cooperation in Europe to Moldova, 17 November 2003 (see www.osce.org/documents/mm/2003/11/1219_en.pdf).

⁶⁰Aurora Javate De Dios, "Macro-economic exploitation and their(sic) impact on sexual exploitation and trafficking of women and girls: issues, responses and challenges" (see www.catw-ap.org/macro.htm).

⁶¹John R. Wagley, *Transnational Organized Crime: Principal Threats and U.S. Responses*, Congressional Research Service report for Congress, Library of Congress, 20 March 2006, p. 10 (see www.fas.org/sgp/crs/natsec/RL33335.pdf).

⁶²United States of America, Department of State, *Trafficking in Persons Report: June 2006* (Office to Monitor and Combat Trafficking in Persons, 2006) (see <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>).

⁶³Lisa L. Thompson, "The sexual gulag: profiteering from the global commercial sexual exploitation of women and children", testimony before the Financial Services Committee, United States House of Representatives, 22 June 2005, p. 12 (see <http://financialservices.house.gov/media/pdf/062205lt.pdf>).

⁶⁴"Organised Crime and Law Enforcement in Europe: women trafficked for prostitution", (see <http://www.organisedcrime.info/index.php?mode=12&id=5>).

⁶⁵Sami Nevala and Kauko Aromaa, eds., *Organised Crime, Trafficking, Drugs: Selected Papers Presented at the Annual Conference of the European Society of Criminology Helsinki 2003*, HEUNI Publication Series, No. 42 (Helsinki, 2004), p. 123 (see <http://www.heuni.fi/uploads/v2t9skuki.pdf>).

⁶⁶Thompson, op. cit., p. 4.

V. The impact on the rule of law

Effective and impartial application of the rule of law is indispensable for sustaining a democratic society. Corruption and other ancillary crimes linked to trafficking activities undermine Governments, reduce accountability and representation in policymaking, suspend the rule of law and result in unequal service provision.

The spread of organized crime, including human trafficking, has become, for example, one of the most important mechanisms for unlawful redistribution of national wealth in South-Eastern Europe. Organized crime undermines law enforcement efforts, slows economic growth, raises the cost of regional trade and disrupts the transition to a market economy. It has been suggested that profits from organized crime, in some parts of the globe, have been used as financial contributions to political parties and election campaigns.⁶⁷ This has a negative impact on the public's trust in democratic and market economy institutions and breeds disillusionment with reforms in general.

In countries where there is civil unrest or where major natural disasters have occurred, the destruction of infrastructure means that Governments may have difficulty exercising full control over their national territory. For example, following natural disasters or as a result of civil unrest, people housed in refugee camps or in temporary shelters, especially children separated from their families and women alone, may be at risk from criminal organizations and traffickers seeking to exploit their desperate circumstances.⁶⁸ In these often chaotic circumstances, traffickers can undermine government efforts to exert authority and to protect vulnerable populations. Public safety may be threatened and communities may lose faith in their national Governments, while international donors may be reluctant to provide aid in such circumstances.

VI. Post-conflict situations

In post-conflict areas, the association between international peacekeeping personnel and private contractors, organized crime and the growth of trafficking in women and children for sexual exploitation has raised global concerns.⁶⁹ It has been reported, for example, that during peacekeeping operations where significant human trafficking activity occurred, those who were trafficking in people also trafficked in guns and narcotics, the revenue from which could destabilize a theatre of operation.⁷⁰ It has also been suggested that the

⁶⁷Center for the Study of Democracy, *Corruption, Contraband and Organized Crime in Southeast Europe* (Sofia, 2003), p. 3 (see <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016997.pdf>).

⁶⁸United Nations Population Fund, *Gender-Based Violence in Aceh, Indonesia: a Case Study* (New York, UNFPA), p. 11 (see www.unfpa.org/women/docs/gbv_indonesia.pdf).

⁶⁹Amnesty International, "Kosovo (Serbia and Montenegro) 'So does that mean I have rights?' Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo", London, 6 May 2004 (see www.amnesty-eu.org/static/documents/Kosovo_summary.doc).

⁷⁰Sarah E. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Washington, D.C., Center for Strategic and International Studies, 2005), p. 14 (see www.ceu.hu/polsci/Illicit_Trade-CEU/Week10-Mendelson.pdf).

resources accumulated by illegal activities, including trafficking, in post-conflict zones may also become a part of redirected revenue used for the clandestine political economy of a region, with serious global consequences.⁷¹

VII. Global security

In most regions of destination, trafficking in persons along with its links to organized crime and its significant human rights, economic, social, and political impacts are acknowledged as endangering human as well as national security. For example, trafficking in persons is described in the European Security Strategy as one of the five key threats for the region.⁷² Regional forums both within the European Union and in South-East Asia commonly focus on developing collaborative efforts at addressing organized crime, including law enforcement cooperation and training, and in combating human trafficking by targeting migrant smugglers and human traffickers within a regional focus. The United States regards trafficking in persons as an important issue both because of its human impact and also because of its consequences for national security, primarily with respect to terrorism, crime, health and welfare, and border control.⁷³

In many countries, in particular in source areas, the prioritization of anti-human trafficking efforts must compete with a range of significant national concerns, including addressing poverty, corruption and/or civil unrest, as well as competing demands for scarce resources.⁷⁴ As evidenced by the ratification of the Trafficking Protocol, there is, however, broad global agreement on the significant risks and harms that relate human trafficking issues to humanitarian concerns, business interests, political relationships, investments in training and assistance, and law enforcement cooperation. The proliferation of trafficking in persons and the organized crime associated with it is recognized as having a negative impact on all these areas and undermining the effectiveness of aid and investment. There is also a consideration that organized crime networks involved in human trafficking may be a potential terrorism threat.⁷⁵

⁷¹Ibid., p. 25

⁷²Volker Perthes, "European perceptions, America's 'greater Middle East'", *The Daily Star*, 9 March 2004 (see www.pogar.org/themes/reforms/documents/04e-eu-perceptions.pdf).

⁷³United States, Department of Homeland Security, written statement of John P. Clark, Deputy Assistant Secretary, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the House Committee on Homeland Security Subcommittee on Management, Integration and Oversight: the 9/11 Reform Act: examining the implementation of the Human Smuggling and Trafficking Center, 8 March 2006 (see www.ice.gov/doclib/pi/news/testimonies/060308testimony.pdf).

⁷⁴James O. Finckenauer and Ko-lin Chin, *Asian Transnational Organized Crime and its Impact on the United States: Developing a Transnational Crime Research Agenda: a Final Report*, submitted to the National Institute of Justice, United States Department of Justice, November 2004, pp. 2-18 (see www.ncjrs.gov/pdffiles1/nij/grants/213310.pdf).

⁷⁵Louise I. Shelley, "Human trafficking: transnational crime and links with terrorism", statement to the House Committee on International Relations, Subcommittee on International Terrorism, Nonproliferation and Human Rights, on 25 June 2003

(see http://usinfo.state.gov/eap/Archive_Index/Human_Trafficking_Transnational_Crime_and_Links_with_Terrorism.html).

VIII. Conclusion

As a complex manifestation of the global economy, organized crime and human rights violations, human trafficking causes extreme hardship to the suspected millions of people worldwide who have become victims of this crime and has an impact on the financial markets, the economies and the social structures of countries where trafficking is allowed to exist. As a major component of organized crime with its enormous financial power, trafficking in persons has a complex and interlocking negative impact across human, social, political and economic arenas.

The destabilizing and dangerous consequences range from readily recognized violence, direct economic loss and major migration concerns to the less easily quantified, equally serious, but more complex effects of risks and harms to environmental, social, health and safety, and violations of human rights. Trafficking in persons directly challenges the development of stable, more prosperous societies and legitimate economies, and works strongly against the reconciliation of political interests with humanitarian and human rights obligations. The range of trafficking-related crimes and their broad and interrelated impacts have created a cumulative threat to global peace, security and stability and have shaped political, social and economic responses at both national and global levels.



 **HUMAN TRAFFICKING**  **A CRIME THAT SHAMES US ALL**

PART THREE

Action

Responses to trafficking in persons: international norms translated into action at the national and regional levels

Mike Dottridge

I. Translating international instruments into action

The adoption in November 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, precipitated intense activity around the world to stop trafficking in persons. This paper summarizes the principal responses undertaken by States parties. Their main focus has been on detecting and prosecuting traffickers, identifying, protecting and assisting people who have already been trafficked and initiating action to prevent people from being trafficked in the first place. Relatively large amounts of money have been invested in these anti-trafficking efforts by a range of donors.

A. Legislation

Many States that have ratified the Trafficking Protocol (and some that have not) have adopted new laws or amended existing legislation to translate the Protocol into action at the national level, to define an offence of trafficking in persons along the lines of the definition contained in the Protocol, to increase penalties for traffickers and to establish institutions and procedures to implement the law. Numerous agreements and declarations have also been adopted at the regional level on the issue of trafficking in persons. Some are based on the definition of trafficking contained in the Protocol.¹ Others focus only on commercial sexual exploitation² and do not consider people who have been trafficked into forced labour or servitude. Some focus exclusively on cases of trafficking involving women and girls.³

¹Such as the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe, Treaty Series, No. 197) (2005) (see <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>).

²Such as the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002) (see <http://www.saarc-sec.org/old/freepubs/conv-trafficking.pdf>).

³Such as the Council of Europe, Parliamentary Assembly, recommendation 1545 (2002) on a campaign against trafficking in women (see <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1545.htm>).

Article 3 of the Trafficking Protocol specifies a non-exhaustive range of purposes of exploitation that are associated with trafficking (“at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”). When adopting new laws, some States have made a distinction between “sexual exploitation” (such as the exploitation of the prostitution of others and forced marriage) and “labour exploitation” (i.e. forced labour and servitude).⁴

Several countries facing considerable instances of child trafficking, such as Benin, have incorporated the concept of “worst forms of child labour” in their legislation on human trafficking.⁵ This is based on the definitions in the International Labour Organization (ILO) Convention No. 182, the Worst Forms of Child Labour Convention, and includes forms of exploitation not covered by the Trafficking Protocol. The Trafficking Protocol is quite specific in its definitions that, when a child is recruited or transported, the illegal means (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits”) mentioned in article 3, subparagraph (a), are irrelevant for the case to constitute trafficking.⁶ However, in some countries new legislation does not reflect this provision, meaning that investigators must be able to show that children under 18 have been subjected to the same forms of abusive control as adults while being recruited or transported for their cases to be categorized as trafficking. Further, some countries define a child as being under 15 or 16 years of age rather than 18.

The net result of the varied ways in which States have amended their legislation is that representatives of one State, when referring to a case of human trafficking in communications with representatives of another State, may not be referring to the same practices. This result clearly contradicts the intentions of the Trafficking Protocol. It also means that, when collecting data about cases of trafficking in persons, there are still no common criteria, so that States that have similar trafficking patterns may issue public information that suggests that the patterns in the two countries are quite different. All States that have ratified the Trafficking Protocol should therefore review their legislation surrounding both trafficking and the various forms of exploitation prohibited by the Protocol to ensure that they are in compliance with its provisions. They can use a United Nations Office on Drugs and Crime assessment tool to assess their compliance.⁷ For example, one State in Latin America which ratified the Trafficking Protocol in 2004 faced difficulties when the legis-

⁴As debt bondage is a form of servitude, in principle any irregular migrant who has to work for a specified employer to pay back an extortionate loan (to finance his or her travel expenses) can be regarded as trafficked. In practice, this interpretation is sometimes contentious, as some migrants argue that it is legitimate to take such loans (and repay the substantial interest by working), as they have little access to alternative sources to finance their migration.

⁵Benin, *Loi N° 2006-04 du 5 avril 2006 portant sur les conditions de déplacement des mineurs et la répression de la traite d'enfants en République du Bénin* (see <http://www.ilo.org/dyn/natlex/>).

⁶Article 3, subparagraph (c), of the Trafficking Protocol specifies: “The recruitment ... or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article”.

⁷United Nations Office on Drugs and Crime, “Anti-trafficking assessment tool: a tool for rapidly assessing jurisdictional concordance with the requirements of UN Trafficking Protocol and the UN Convention against Transnational Organized Crime”, 2003.

lature adopted an anti-trafficking law in 2005 that was not consistent with the terms of the Protocol. The Head of State attempted to resolve the inconsistencies by promulgating a national policy to combat human trafficking in 2006, which clearly addresses all the forms of exploitation mentioned in the Trafficking Protocol.

B. Institutions to combat trafficking

States have established a variety of specialized institutions to respond to cases of trafficking in persons. Sometimes these institutions are defined in the State's anti-trafficking legislation, while sometimes they are defined separately. These institutions vary widely and include national rapporteurs (on trafficking), inter-ministerial or inter-agency coordination bodies or mechanisms, bodies to coordinate the provision of services to individuals who have been trafficked (sometimes called national referral mechanisms) and special law enforcement units, as well as specialized prosecutors to detect and prosecute traffickers. In some cases it has been left to a national human rights institution to propose new initiatives, as in India.⁸

C. Learning what works: good practice

The past seven years have been an opportunity to learn which approaches are effective and which are not. Not all the investment has yielded the intended results. Some initiatives turned out to be counterproductive for the very people they were intended to benefit. Some prove not to work when scaled up or replicated in different places. Although there has been a considerable amount of systematic learning, much remains to be learned about what constitutes good practice and how to assess the circumstances in which particular techniques can be replicated successfully.

⁸India's 455-page *Report on Trafficking in Women and Children in India: 2002-2003* (New Delhi, 2004) was compiled by the country's National Human Rights Commission, in conjunction with India's Institute of Social Sciences and the United Nations Development Fund for Women.

II. Working together

Traffickers routinely move their victims from one place to another either within a country or abroad. Consequently, any effective response to trafficking requires the collaboration of multiple agencies, often in two or more countries. Progress has been made in improving coordination between separate agencies over the past seven years, at the local, national, regional and international levels.

A. At the national level

States with a national structure to coordinate anti-trafficking initiatives (such as a national referral mechanism) or a national plan to combat trafficking or a national action plan or programme have an institutional framework for ensuring cooperation between agencies within their country. In the absence of a designated coordinating body, concerted action against trafficking has been slower to develop and coordination between different agencies in the country less easy. These various coordination mechanisms specify the roles and responsibilities of different agencies. They are particularly helpful in cases when an individual has been identified as a victim of trafficking and requires referral to various agencies for different forms of assistance.⁹

In some countries mechanisms for referring victims of trafficking to appropriate services also function at the local level. This enables locally based agencies to coordinate their efforts to protect people who have already been trafficked with their prevention efforts and to target prevention on individuals, households or communities that share characteristics with those already trafficked, that is to say, characteristics that appear to increase the likelihood that they might be trafficked.

B. At the bilateral level between two States

Various States have signed bilateral agreements on law enforcement cooperation and mutual legal assistance. Others specify how citizens from one State who have been trafficked to another are to be treated and assisted in returning home. These agreements generally emphasize the importance of respecting the human rights of the trafficked persons in order to avoid their being imprisoned, to ensure that they are protected and kept safe while being repatriated, and to continue protecting them upon arrival in their own country. Some agreements refer to women and children, such as one between Cambodia and Thailand, while others refer solely to children, such as one between Côte d'Ivoire and Mali.

Despite the existence of such bilateral agreements, many people trafficked or exploited in States that are parties to bilateral agreements have not been identified as victims of crime and have instead been dealt with as irregular migrants, denied protection and assis-

⁹The role of national referral mechanisms in States of the Organization for Security and Cooperation in Europe is set out in the publication *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: a Practical Handbook* (Warsaw, 2004) (see <http://www.osce.org/odihr/documents.html>).

tance, and subjected to summary deportation procedures. In other cases, as in parts of South-East Asia, long delays in official repatriation procedures have reportedly led to victims choosing not to identify themselves as such in order to return home more rapidly by being deported.

C. At the regional level, involving several States

Regional intergovernmental organizations such as the Association of Southeast Asian Nations (ASEAN), the Economic Community of West African States (ECOWAS) and the Organization for Security and Cooperation in Europe (OSCE) have adopted either declarations against trafficking or more action-oriented plans to improve cooperation and coordination of their member States' efforts to stop trafficking. The ECOWAS secretariat issued an Initial Plan of Action against Trafficking in Persons (2002-2003) and, jointly with the Economic Community of Central African States, a Joint Plan of Action against Trafficking in Persons, especially Women and Children in West and Central Africa for 2006-2009,¹⁰ while ASEAN's Senior Officials Meeting on Transnational Crime was responsible for following up a declaration, concentrating on criminal justice system responses to trafficking.¹¹ The OSCE Permanent Council issued a detailed OSCE Action Plan to Combat Trafficking in Human Beings for all participating States in 2003.¹² Declarations by themselves do not lead to change, however. In all the examples cited, implementation of the full range of commitments has been extremely uneven.

In the case of the six-country Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) in South-East Asia,¹³ the six States involved adopted a memorandum of understanding on cooperation against trafficking in persons in the Greater Mekong subregion in 2004. In 2005, they adopted a three-year subregional plan of action (2005-2007), listing 18 activities to be undertaken on seven issues. Although not all of these have been implemented, cooperation was facilitated by a pre-existing United Nations initiative to coordinate anti-trafficking initiatives by intergovernmental organizations and international non-governmental organizations (NGOs) in the subregion, the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Subregion. In this region, as in others, the specific responsibilities of the States taking part in a common initiative are made more complicated by their participation in several overlapping regional initiatives (i.e. ASEAN, COMMIT and others), each of which emphasizes different techniques or activities.

In the European Union (EU), concerted initiatives to harmonize anti-trafficking efforts began in the 1990s. In 2002 a Council framework decision on combating trafficking in

¹⁰The Economic Community of West African States Declaration and Plan of Action are described in the publication *Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons: Training Manual* (New York, United Nations Office on Drugs and Crime, 2006) (see <http://www.unodc.org>).

¹¹Association of Southeast Asian Nations, *ASEAN Responses to Trafficking: Ending Impunity for Traffickers and Securing Justice for Victims* (Jakarta, ASEAN, 2006), p. 1.

¹²Organization for Security and Cooperation in Europe, Permanent Council decision No. 557, entitled "OSCE Action Plan to Combat Trafficking in Human Beings", of 24 July 2003 (PC.DEC/557) (see www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf).

¹³The six States of COMMIT are Cambodia, China, the Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam. (For details about COMMIT, see <http://www.fmreview.org/text/FMR/25/10.doc>).

human beings specified minimum standards for member States' responses to trafficking. A conference jointly organized by the European Commission and the International Organization for Migration (IOM) in September 2002 adopted the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, accompanied by a set of recommendations on standards and best practices. The European Commission subsequently established a 20-member Experts Group on Trafficking in Human Beings, which issued a report in December 2004 making 132 recommendations for further measures to be taken by EU member States.¹⁴

At the regional and international levels, numerous training materials and reference guidelines have been published to inform and train a wide range of government, law enforcement and other professionals about what they can do in response to trafficking. The materials are mostly in English and relatively few have been translated into national languages. Consistency in the contents of such materials is not guaranteed.

D. At the international level

1. The United Nations system

Many United Nations entities run programmes to combat trafficking.¹⁵ In addition, an intergovernmental organization that does not belong to the United Nations system, IOM, plays an important role in providing services to trafficked persons and organizing their voluntary repatriation. At both the international and the regional level, it is often unclear whether one of these bodies is taking the lead or coordinating the actions of others, or if a national or regional body assumes that role. Even when it is clear in theory, in practice separate bodies appear to be in competition.

Trafficking in persons is a multidimensional problem that raises issues that many different bodies are equipped to tackle at the national and international levels. Law enforcement, human rights, economic development, gender, migration and health are all relevant. Many different intergovernmental agencies see themselves as having a leading role. Similar coordination challenges occurred in the case of child labour and efforts were made to resolve them at two international conferences in 1997. In a study of child trafficking, an NGO observed that the lack of coordination between different organizations within the United Nations system was hampering the effectiveness of their efforts. It suggested that:¹⁶

¹⁴European Commission, Directorate-General Justice, Freedom and Security, *Report of the Experts Group on Trafficking in Human Beings* (Brussels, 2004) (see http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings).

¹⁵United Nations entities working in the area of human trafficking include the International Labour Organization, the United Nations Children's Fund, the United Nations Development Fund for Women, the Division for the Advancement of Women of the Secretariat, the Office of the United Nations High Commissioner for Refugees, the United National Office on Drugs and Crime, the United Nations Population Fund, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the United National Interregional Crime and Justice Research Institute, the Office of the United Nations High Commissioner for Human Rights and the United Nations Institute for Training and Research.

¹⁶Mike Dottridge, *Kids as Commodities? Child Trafficking and what to do about it* (Geneva, International Federation Terre des Hommes, 2004), p. 86 (see http://www.stopchildtrafficking.org/site/fileadmin/stopchildtrafficking/downloads/presse/livre_fichier_final.pdf).

“The appointment of a high-level mechanism or coordinator in the office of the UN Secretary-General on human trafficking would enable the UN’s multifaceted work on trafficking to be coordinated properly”.

In 2005, the United Nations System’s Chief for Coordination recognized the challenges in countering human trafficking and proposed establishing an inter-agency mechanism to strengthen coordination.¹⁷

2. Bilateral funding

Many industrialized States fund anti-trafficking initiatives in other countries, especially in those countries from which people have been trafficked into their country or region. The effectiveness of the financial support provided by bilateral donors has sometimes been undermined when many donors have committed relatively small amounts separately to diverse projects, rather than pooling their contributions. While these small amounts have produced some results, they are usually inadequate for more systemic solutions, such as an initial needs assessment or the collection of adequate data about the abuse that a subsequent intervention aims to stop. The interventions that are supported benefit in large part because of the goals of the organization that secures funding and the preoccupations of the donor (for example, preferring their funds to assist children rather than adult women), rather than as a result of any objective assessment of needs. Inadequate funding has also resulted in insufficient evaluation and impact assessment, meaning that lessons about which techniques are effective (and which are not) are not learned properly.

¹⁷United States of America, Government Accountability Office, Human Trafficking: Monitoring and Evaluation of International Projects are Limited, but Experts Suggest Improvements, GAO report GAO-07-1034 (Washington, D.C., July 2007) p. 11.

III. Prosecution and law enforcement activities

Expertise about techniques to detect traffickers, identify and care for their victims and prosecute traffickers successfully has increased significantly since 2000. Reports of the arrest and conviction of traffickers are frequent. Nevertheless, trafficking in persons is still reported to be one of the most profitable sectors of organized transnational crime, suggesting that numerous traffickers go undetected or unpunished. Comparing the number of prosecutions with the number of identified victims shows major gaps. It is often said that the number of identified victims represents the tip of the iceberg and that large numbers of trafficked persons pass unnoticed under the noses of law enforcement officials. In the worst cases they are identified as criminals rather than as victims of crime.

Confusion among both civil servants and law enforcement officials about the difference between trafficking in persons and smuggling of migrants or other immigration-related offences has marred the progress of law enforcement initiatives in many countries. Considerable funds have been invested in training at both international and national levels. One challenge is that it is not sufficient for one part of the criminal justice system (for example, the personnel in an anti-trafficking police unit) to understand the distinction if other parts, such as frontline police, prosecutors or court personnel organizing trials (where in-court protection measures are often required to protect the identity of victim-witnesses), have not. A specific obstacle still to be overcome is that some training courses present simplistic examples to show the differences between trafficking and smuggling of migrants that are not representative of the complications encountered at the operational level, when victims may be unwilling to talk to law enforcement officials about their experiences for weeks or even months.

There have been efforts to develop minimum standards concerning the response of criminal justice systems to trafficking cases. In 2006, ASEAN issued a checklist for its member countries identifying eight key elements of an effective criminal justice response to trafficking,¹⁸ which are, in principle, equally applicable to other parts of the world. They emphasize that, because of the complexity of the crime, it is usually appropriate to form a specialist anti-trafficking investigation unit and that it is important to have effective systems in place to ensure that the criminal justice agencies in one country can cooperate with counterpart agencies in other countries. They also emphasize that, if the criminal justice system is to function effectively, it is important to identify victims of trafficking quickly and accurately, to protect them from harm and meet their immediate needs. The checklist moved the focus off the number of successful prosecutions as the prime indicator of success in combating trafficking, as this could encourage a lack of due process and the targeting of small-scale traffickers rather than major criminals.

¹⁸Association of Southeast Asian Nations, *ASEAN Responses to Trafficking ...*, p. 85.

A. Identifying trafficked persons

A major challenge for immigration and law enforcement officials is how to distinguish trafficking victims from others they come into contact with, who may be involved in similar income-generating activities, but who have not been trafficked. Numerous tools have been developed at frontiers and for police forces to aid identification.

With good intelligence about the profile of adults or children who have already been trafficked, police have identified the characteristics of such persons and used this intelligence to pick out travellers who warrant advice and protection.¹⁹ For example, the Philippine Centre on Transnational Crime developed an 11-point checklist to help identify such people and a further 11-point checklist to identify possible traffickers.²⁰

Unannounced operations or raids by law enforcement officials are a way of removing individuals who are held in captivity by their traffickers or exploiters from the site of their exploitation. In the course of some raids, both trafficking victims and others have experienced further trauma. The Asia Pacific Forum of National Human Rights Institutions has recommended the development of procedural guidelines for raids and rescues to ensure that the human rights of trafficking victims are protected, emphasizing that raids should not occur without adequate planning for the subsequent protection and support of trafficked people.²¹ Clearly, it is important that the use of raids on places where trafficked individuals might be located, in the absence of actual intelligence, should be carefully monitored by senior law enforcement officials and human rights institutions, in particular to ensure that the techniques used are proportional to the abuse they are intended to stop.

B. Interceptions at frontiers

Border posts offer an opportunity to identify victims of transnational trafficking and to intercept them. The potential role of immigration officials is greater where traffickers take their victims through an official border point. It is more difficult to control the movement of people along long land or sea borders, whether they be regular travellers or traffickers

¹⁹In the Netherlands, the Criminal Investigation Division developed a system in 2002 for recording information about individuals suspected of being trafficked into prostitution, as well as known victims. The system awards points in an individual case, according to a list of indicators suggested by the prosecution service and police (see A. van den Borne and others, *Investigating Exploitation: Research into Trafficking in Children in the Netherlands* (Amsterdam, Defence for Children International, 2005), p. 31. In the United Kingdom, "Operation Paladin Child" in 2004 involved recording the personal details of every child arriving at a border post in the United Kingdom who was assessed as possibly being at risk (of being trafficked or exploited), so that the child could be visited subsequently by social services staff. Each arriving child was given a unique identifying number, had his or her photograph taken and was asked to say where he or she would be living in the United Kingdom. Details of adults welcoming unaccompanied children at airports or ports were also recorded. If the child could not be located at the address given, an investigation was reportedly opened. Details can be found in the monthly magazine of the Metropolitan Police, *The Job*, vol. 38, No. 953 (May 2005).

²⁰Quoted in tool 6.3, entitled "Checklist to facilitate the identification of victims" (see United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (United Nations publication, Sales No. E.06.V.11)) (see www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf).

²¹Asia Pacific Forum of National Human Rights Institutions, *Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People*, Sydney, Australia, 20-23 November 2005 (see <http://www.asiapacificforum.net/services/training/regional-workshops/trafficking/downloads/conclusion/report.pdf>).

and their victims. Border police and immigration officials in some countries have developed criteria to help identify victims. Some have been over-simplistic and potentially result in discrimination against entire categories of people who share very general characteristics. The United Nations Children's Fund (UNICEF) developed a checklist for immigration officers (border officials) to assess whether a child is at risk of being trafficked, which lists seven indicators to show that a child might be in the process of being trafficked.²²

C. Increasing the effectiveness of prosecutions by using victim-friendly techniques

In the midst of efforts to enhance the effectiveness of law enforcement agencies to combat trafficking, tensions have arisen between initiatives designed to enforce the law, on the one hand, and other initiatives designed to uphold the human rights of adults and children who are trafficked, on the other. This need not be the case. Evidence suggests that the prompt identification and appropriate treatment of victims is crucial to an effective criminal justice response. In 2002, the Office of the United Nations High Commissioner for Human Rights (UNHCHR) issued a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking, emphasizing that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.²³

Critics have harshly addressed procedures that make assistance to trafficked persons and any form of residence permit conditional on cooperation with the criminal justice system.²⁴ Substantial evidence is now available indicating that women and girls who have been trafficked are not in a position to make informed choices about their future within a short time of being withdrawn from the control of traffickers, or for some time afterwards, while they are suffering from shock or trauma.²⁵

Numerous States have adopted what are commonly known as "reflection periods" for trafficked persons identified within their borders and who have no legal entitlement to be in the country. The length of time granted to foreign victims to recover and reflect on whether they wish to cooperate with law enforcement vary widely, from a few days to several months. In some States both victims and other witnesses who can potentially testify against traffickers are awarded only a short-term right to remain in the country concerned. One implication of this is that trafficked persons are left feeling very insecure about their futures. Different criminal justice systems have tried a variety of techniques to reduce the

²²United Nations Children's Fund, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe* (Geneva, UNICEF, 2006), p. 115 (see http://www.unicef.org/ceecis/protection_4440.html).

²³Principle 1 of the Recommended Principles contained in the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).

²⁴Elaine Pearson, Human Traffic, *Human Rights: Redefining Victim Protection* (London, Anti-Slavery International, 2002).

²⁵Cathy Zimmerman and others, *Stolen Smiles: a Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (London, London School of Hygiene and Tropical Medicine, 2006) (see www.lshtm.ac.uk/genderviolence/).

likelihood that victims and witnesses are exposed to further intimidation, either before, during or after a trial. The consequences for victims and witnesses who have provided prosecution evidence to help secure the conviction of traffickers have not been monitored systematically. One important initiative overlooked in many jurisdictions has been to ensure that victims and witnesses testifying against traffickers are updated regularly about the progress of the trial. In unfortunate cases, victims have come face to face with their trafficker, while believing him or her to still be in prison.

Criminal justice systems have given less priority to awarding compensation or damages to victims than to securing the conviction of traffickers. The result is that victim-witnesses do not believe that justice has been served. Instances in which individuals harmed by traffickers have been paid compensation, damages or unpaid wages remain rare. Bringing such cases has been hard for victims of transnational trafficking who were obliged to leave the country of destination before a case came to court. In other cases, the converse is true, with victims required to stay in the destination country for an unacceptably long time if they wish to pursue a case.

D. Mutual legal assistance to facilitate prosecutions

The United Nations Convention against Transnational Organized Crime, adopted in 2000, is intended to promote cooperation to prevent and combat transnational organized crime more effectively. Along the same lines, one of the purposes of its supplementary Trafficking Protocol is to promote cooperation among States parties to prevent and combat trafficking in persons, as well as protect and assist the victims of such trafficking. In this context, the provisions of the Convention concerning international cooperation in criminal matters, including extradition and mutual legal assistance, also apply to the Trafficking Protocol and can be used to facilitate cooperation between relevant agencies in different States to detect cases of trafficking, collect evidence against traffickers and bring them to justice. These provisions can also be used to facilitate cooperation in order to freeze, seize and confiscate traffickers' assets when these are located abroad. Broader use of the international cooperation provisions of the Convention, coupled with bilateral and multilateral agreements or arrangements to enhance the effectiveness of relevant mechanisms, are recommended to ensure that an appropriate legal framework is in place to pursue traffickers. Although the efficiency of international cooperation depends on the existence of legal tools, practical experience has shown that this is not enough. What has also to be in place is a sufficient number of well-trained personnel, together with the appropriate resources that help overcome the practical problems arising from operational deficiencies and bureaucratic obstacles, which often hamper cooperation. Moreover, meeting and working with the representatives of the criminal justice system in other countries helps foster mutual trust and confidence—an important precondition for efficient cooperation.

IV. Prevention

Despite the saying that “prevention is better than a cure”, the lack of certainty about which preventive techniques are effective appears to have discouraged donors from investing in prevention. Where funds have been invested in prevention initiatives, there has been insufficient evaluation of the techniques used to assess which are most appropriate in particular circumstances. Furthermore, until better systems are developed to collate existing information about where and how victims were trafficked, there is a limited basis on which to locate and target prevention initiatives.

The factors that contribute to trafficking or enable it to take place (all of which can be tackled by prevention programmes) occur at different levels and in different places. In addition to the immediate causes that put an individual into the hands of a trafficker, a variety of underlying and root causal factors influence decisions taken by individuals that lead to trafficking and contribute to a social and economic environment in which trafficking and exploitation can flourish. They include, for example, an economic crisis in the trafficked person’s home country, social exclusion, gender discrimination (both in general and specifically in relation to births, as female infanticide in several countries has resulted in an excess of men of marriageable age over women and precipitated patterns of trafficking in women into forced marriage) and a weak legal or social protection system. The remedies for these require a broader set of actions than those designed specifically to stop trafficking. Relevant factors exist simultaneously in the areas that people are trafficked from and in the places to which they are trafficked and exploited. “Poverty” has frequently been identified as a cause of trafficking. In practice, most people in dire poverty are not trafficked, demonstrating that poverty is a context, but not the specific cause. A study of the circumstances in which girls migrated and were trafficked into the commercial sex industry within one South-East Asian country identified the social and cultural reasons why certain adolescents were recruited and not others. The author urged that:²⁶

“Academics and policymakers must move beyond ‘poverty’ and ‘lack of education’ to recognize the subtleties of the challenges and frustrations confronting people living in the less developed parts of our rapidly developing world.”

A. Prevention in areas of origin

Prevention efforts in areas of origin have addressed a wide range of causal factors, some linked to the specific circumstances that precipitated individuals into the control of traffickers and some addressing shortcomings in protection systems. Prevention efforts can take several forms. The bulk of these activities use information to alert people to the risks entailed in leaving home or seeking work abroad (or to alert parents to the risks their children run, if they are sent to work elsewhere). Alongside awareness-raising, a

²⁶L. Rende Taylor, “Dangerous trade-offs: the behavioral ecology of child labor and prostitution in rural northern Thailand”, *Current Anthropology*, vol. 46, No. 3 (June 2005).

second category of efforts has focused on promoting income-generating activities in areas from which people are trafficked, including microcredit, job creation and career advice. However, in such cases insufficient attention has been given to ensuring that the individuals at highest risk of being trafficked benefit. Many initiatives assume that increasing income-generating opportunities in a community as a whole or improving women's income in general will be sufficient to reduce emigration and trafficking. Unless there has been prior research to identify the salient characteristics of the individuals being trafficked from a particular community and to understand the social and cultural reasons for their vulnerability, it is unlikely that microcredit or similar schemes will directly benefit the categories of people who are at highest risk of being trafficked or reduce the numbers of trafficked persons. The need for such research is further explained in section VI.B below.

A third set of prevention efforts focus on formal and non-formal education, including teaching life skills to young people.²⁷ A fourth set target groups of people known to be at disproportionately high risk of being trafficked. For this approach to be evidence-based, research has to be carried out among people who have already been trafficked in order to identify any salient characteristics that distinguish them from others in similar circumstances who have not been trafficked. Sometimes it appears to be their identity (they belong to a particular ethnic group), while in others it was a particular experience (such as domestic abuse) or a lack of education or skills.

Research in areas of origin has also identified weaknesses in social protection systems, which have been addressed by a fourth set of measures, strengthening social protection. In the case of children, in parts of South-Eastern Europe multidisciplinary teams have been established, consisting of a team of professionals, such as social workers, health professionals and law enforcement officials, who work together to identify children at risk and implement measures to protect them. Similar research has identified gaps that could be covered by administrative controls, such as the regulation and monitoring of agencies that have been used by traffickers to recruit people into various forms of exploitation, both ordinary recruitment agencies (both private ones and sometimes government-run) and those dealing with au pairs, marriage, entertainment and tourism. Giving every individual a legal identity is essential if administrative controls are to function, so birth registration or other procedures to register the existence of individuals, their personal data and their nationality are all important.

Raising awareness about trafficking in persons

The assumption behind disseminating information to prevent trafficking is that people who are trafficked are under-informed about the risks involved in migration or the potential risks involved in accepting informal offers of employment away from home. In particular, many of these programmes have been directed to young women, notably those at risk of being trafficked for purposes of sexual exploitation. The expectation is usually that the recipients of information will decide not to take the risks involved (and stay at home)

²⁷Life skills include learning to negotiate and take decisions, problem-solving, critical thinking, communicating effectively, managing interpersonal relationships, resolving conflicts and coping with emotions and stress.

or take adequate precautions to avoid traffickers. Materials that stress the dangers awaiting potential migrants and warn people against leaving home are reportedly perceived by some audiences to be untrustworthy anti-migration propaganda.²⁸ Some have been produced without adequate research beforehand to find out how and why people make decisions to migrate and to check whether they are indeed under-informed or choose to take risks because of the challenges they face and a lack of alternatives.

The formats for awareness-raising materials and the message they convey vary. They include films telling semi-fictional stories about adolescent girls or young women who have been trafficked into commercial sexual exploitation. Despite the expense involved in producing these and countless posters, leaflets and cartoons, there have been relatively few evaluations of their impact or efforts to learn systematically from experience and improve their effectiveness next time around.²⁹ Indeed, too many have been “off-the-peg” campaigns, based on similar initiatives in other countries, without being tailored to the needs and circumstances of the audience they are trying to influence.

Increasingly, anti-trafficking information materials are advising potential migrants instead how they can minimize risks by taking precautions. For example, in Latvia, NGOs gave adolescents a checklist of actions to protect themselves against false job promises abroad, included checking whether a job agency or opportunity was legitimate, seeking an employment contract and leaving a copy with relatives or friends.³⁰

B. Interceptions of those in transit

In addition to interceptions of persons by immigration officials at border points, when there is evidence that they are being trafficked, the technique of intercepting people has been used in a variety of other circumstances to try and prevent people from being trafficked. The disadvantage of this technique is that the criteria used for identifying possible trafficking victims have generally been far too general and the interceptions have ended up becoming a form of abuse. Interceptions have been widely criticized in West Africa, where concern about children being trafficked into forced labour at the end of the 1990s prompted several Governments to establish village-level “vigilance” committees, ostensibly to prevent children from being trafficked. As the distinction between trafficking and other forms of migration was not well understood by committee members or law enforcement officials, they are reported to have intercepted adolescents who wanted to leave home to seek work elsewhere and obliged them to return home, including older adolescents who were entitled by both national law and international standards to seek employment.³¹

²⁸Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe: 2004 - Focus on Prevention in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro and the UN Administered Province of Kosovo*, joint report by the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (New York, United Nations Development Programme, 2005), p. 31.

²⁹Ruth Rosenberg and others, *Best Practices for Programming to Prevent Trafficking in Human Beings in Europe and Eurasia* (Bethesda, Maryland, Development Alternatives Inc., 2004)(see <http://www.vitalvoices.org/files/docs/Prevention%20assessment%20Report-formatted%20CAS1.pdf>).

³⁰Alison Boak and others, eds., *Smooth Flight: a Guide to Preventing Youth Trafficking* (International Organization for Adolescents, 2003), p. 95 (see <http://www.seerights.org>).

³¹S. Castle and A. Diarra, *The International Migration of Young Malians: Tradition, Necessity or Rite of Passage?* (London, London School of Hygiene and Tropical Medicine, 2003).

C. Prevention in areas where trafficked persons are exploited

Industrialized States to which people are trafficked have invested money principally in prevention in the countries from which such people come, but different forms of prevention have also been undertaken in the places where exploitation occurs. The immigration and employment policies pursued by States to which significant numbers of people are trafficked also have a significant impact, sometimes increasing the likelihood that irregular migrants end up in the hands of traffickers.

1. *Employment laws concerning migrant workers in the informal sector*

As much of the exploitation to which trafficked persons are subjected occurs in the less regulated informal economy, one technique for reducing such exploitation is to check for abuse in sectors of employment that have formerly gone unpoliced, either by making employment laws applicable in sectors such as domestic work in private houses or deploying labour inspectors or other officials to check the contracts and working conditions of migrant workers. Of course, this technique only works if it is clear that the officials concerned are dedicated to detecting workplace abuse, rather than immigration offences. In Thailand, for example, ILO worked with the authorities to amend provisions of the Labour Protection Act that excluded certain categories of workers from labour protection (such as domestic workers).³²

2. *Regulation of recruitment in sectors where trafficking victims are found*

Likewise, as unregulated recruitment practices have resulted in migrants being tricked and subjected to forced labour in numerous countries (that is to say, they have been trafficked), improved oversight or regulation of recruitment practices is a way of preventing trafficking. For example, after reports in 2003 that temporary workers in the agricultural and food-processing sectors in the United Kingdom of Great Britain and Northern Ireland were being subjected to abuse, including forced labour and violence, and that existing controls on labour providers, known as “gangmasters”, were ineffective, the Government introduced a new form of regulation. The Gangmasters (Licensing) Act, passed in 2004, created a compulsory licensing system for all employment agents supplying workers for agricultural activities, gathering shellfish and related processing and packaging activities, supervised by a special licensing authority.³³

³²See Mariska N. J. van der Linden and others, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers: Training Manual* (Geneva, International Labour Office, 2006) (see <http://www.ilo.org>); and Elaine Pearson, *The Mekong Challenge: Human Trafficking: Redefining Demand: Destination Factors in the Trafficking of Children and Young Women in the Mekong Sub-region*, abridged (Bangkok, International Labour Office, 2005), p. 26

³³Temporary Labour Working Group, *A Licence to Operate: New Measures to Tackle Exploitation of Temporary Workers in the UK Agricultural Industry* (London, 2004).

3. *Facilities for migrants that protect them from abuse*

While some trafficking victims are under the control of traffickers from the time they leave home onwards, many others fall under their control later on, sometimes after arriving at a destination where they intend to find work. For many decades, some countries have made a range of facilities available to recently arrived migrants, in particular migrant women and children, which have helped keep them out of the control of criminals who would abuse them. These include safe accommodation and drop-in centres where recent migrants can obtain advice and information, such as those established in Kunming, the capital of China's Yunnan Province.³⁴

4. *Using the law to tackle demand for the labour or services of trafficked persons*

In the last few years there has been debate about what preventive action is effective in reducing “demand” in places where trafficked people are exploited. This means implementing measures that are likely to reduce demand for products made by trafficked persons and services provided by them, which may subsequently result in fewer people being trafficked.

In her 2006 report to the United Nations Commission on Human Rights, the then Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, examined whether people who paid for the services of trafficking victims could be influenced to reduce the numbers of trafficked persons. It is notable that the treatment of demand as it relates to sex trafficking is somewhat different from that for other forms of exploitation and the Special Rapporteur's report focused on demand for commercial sex, concluding that prostitution was inextricably linked to human trafficking and that demand for commercial sex was tantamount to demand for the services of trafficked women and girls. She recommended that prostitution not be legalized or decriminalized.³⁵ This contrasted with comments by the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, who in 2000 criticized efforts to abolish prostitution by targeting and punishing third-party involvement. This Rapporteur noted that, although targeting third parties such as men and boys who paid for sex appeared in theory to protect women sex workers from being penalized, in practice women had suffered “the burden of criminalization”, even when laws were intended primarily to target procurers, pimps and men and boys who paid for sex.³⁶ While proponents on both sides of the debate hold tenaciously to their convictions, there remains no conclusive link between legalization or criminalization of prostitution and the existence of trafficking for sexual exploitation. Further research is needed on this topic.

³⁴International Programme on the Elimination of Child Labour (IPEC) Task Team of the Yunnan Provincial Statistics Bureau, *The Mekong Challenge: Analysis Report of the Baseline Survey for the TICW Project Phase II in Yunnan Province* (Bangkok, International Labour Office, 2005).

³⁵E/CN.4/2006/62, chap. II. “Demand for commercial sexual exploitation and trafficking”.

³⁶E/CN.4/2000/68, para. 24.

Some States have made it an offence to knowingly pay for the services of someone who has been trafficked. In the case of the United Nations-administered Province of Kosovo, a law containing this provision was intended to address demand for women and girls trafficked into prostitution.³⁷ Few prosecutions followed, however, apparently because it was difficult to prove that a man paying for sex knew that the prostitute involved had been trafficked. Instead, the United Nations administration found it more effective to ban individuals employed by the United Nations Interim Mission in Kosovo and foreign military personnel from visiting a range of bars and other places suspected of functioning as brothels. Awareness that men in international peacekeeping forces and peace support operations have created significant demand for commercial sex and that this has resulted in women and girls being forced into prostitution prompted the North Atlantic Treaty Organization to adopt a policy to combat trafficking in human beings in 2004;³⁸ this applies to contractors, as well as personnel taking direct part in operations led by the Organization.

There have been other attempts to reduce the demand for trafficked adults and children. As well as suggesting that the purchase of sexual services from children under 18 should be a crime, a UNICEF reference guide suggests strategies to influence the demand for the services of young people who have been trafficked to beg or work as in private houses as domestics.³⁹ They include influencing members of the public who donate money to trafficked child beggars and influencing minority communities in which school-age children work full-time instead of attending school. One of the most imaginative measures to curb demand was reported in the United Arab Emirates, to stop young boys being imported to ride racing camels. Alongside new legislation, in 2005 racing camel owners started using small robots or mannequins looking and weighing much the same as the boys who had previously ridden the camels.

5. *Publicity to prevent trafficking*

On several occasions, agencies concerned that women or children were about to be trafficked in large numbers informed the press of their concerns in order to precipitate preventive action. While such tactics achieve publicity in the short term, they risk undermining public confidence once they cease to be based on evidence and become speculative.

Following the tsunami in the Indian Ocean in December 2004, several organizations publicized their concern that conditions were suitable for children to be trafficked. However, few cases were reported.

In the run-up to the football World Cup in Germany in 2006, concern was expressed that large numbers of football supporters were likely to constitute a market for commercial sex and thus to encourage trafficking. Some publicity suggested that between 30,000 and

³⁷United Nations Interim Administration Mission in Kosovo regulation 2001/4 on the prohibition of trafficking in persons in Kosovo of 12 January 2001, section 4, entitled "Using or procuring sexual services of person, in a situation of sexual exploitation" (see <http://www.unmikonline.org/regulations/2001/reg04-01.html>).

³⁵G. Reiter, "Developing training modules for peacekeeping operations", *Challenging Trafficking in Persons: Theoretical Debate and Practices Approaches*, Sector Project against Trafficking in Women, eds. (Baden-Baden, Germany, Nomos, 2005).

³⁹United Nations Children's Fund, Reference Guide on Protecting ... , p. 39.

60,000 women and girls might be trafficked. These dramatic figures spurred others to reiterate this concern. The figures were not, however, based on the evidence available to Germany's Federal authorities, which had already initiated preventive steps of their own. Following the World Cup, the German authorities reported that 33 possible cases of trafficking had been investigated during the World Cup period and that four women and one man had been identified who had been trafficked and whose cases were believed to be linked to the World Cup.⁴⁰ A separate evaluation concluded that the 40,000 estimate was unfounded and unrealistic.⁴¹ It noted that the number of women believed to be trafficked to Germany each year was usually around a 1,000 persons per year. The evaluation observed that the publicity (of inaccurate estimates) might hinder the future efforts of German NGOs to gain long-term attention and support for the important work they were doing.

V. Protection and assistance

A. International standards on protection and assistance

Concern that the measures specified in article 6 of the Trafficking Protocol for protecting and assisting trafficked persons were of a general nature prompted several intergovernmental organizations to issue guidelines clarifying the rights of anyone suspected of having been trafficked under existing international law, in particular their rights to protection and assistance.

The first set of guidelines has already been mentioned—the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002). Five of these 17 principles address the matter of protection. They specify, for example, that:⁴²

“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

In 2003, UNICEF issued its own guidelines on how a person trafficked before reaching 18 should be protected and assisted, *Guidelines for Protection of the Rights of Child Victims of Trafficking*.⁴³ These cover 11 issues, including the appointment of a guardian for every trafficked child (who has responsibility for ensuring that all subsequent actions

⁴⁰Council of the European Union, “Experience report on human trafficking for the purpose of sexual exploitation and forced prostitution in connection with the 2006 Football World Cup in Germany”, document 5006/1/07, Rev. 1, Brussels, 19 January 2007.

⁴¹J. Hennig and others, “Trafficking in human beings and the 2006 World Cup in Germany”, draft report (Swedish International Development Agency and International Organization for Migration, September 2006) (see www.sida.se/shared/jsp/download.jsp?f=World+Cup+Study+Final+Report.pdf&a=25626).

⁴²E/2002/68/Add.1.

⁴³The Guidelines were initially designed especially for South-Eastern Europe in 2003. In 2006, a set of revised Guidelines (see United Nations Children's Fund, *Reference Guide on Protecting the Rights ...*, annex I) were issued to be applicable globally (see http://www.unicef.org/ceecis/media_1231.html).

affecting the child make the child's best interests a primary consideration), the procedures for deciding on a durable solution that is in the child's best interests and protection for trafficked children involved in court cases (whether as victims of crime or witnesses). In several other regions, such as West Africa and South-East Asia, there have been efforts to develop versions that take account of regional-specific needs and patterns of trafficking.

In 2006, the Office of the United Nations High Commissioner for Refugees issued its own *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked*.⁴⁴ These point out that some people believed to have been trafficked have a well-founded fear of persecution and “may therefore be entitled to international refugee protection” (para. 12). The *Guidelines* list forms of abuse and severe exploitation which, the Office maintains, “will generally amount to persecution” (para. 15) and consequently entitle the individual concerned to protection as a refugee.

B. Emergency assistance and medical care

Adults and children who have been trafficked are frequently in need of medical attention and sometimes suffer from post-traumatic stress syndrome. Intergovernmental organizations have issued a range of good practice guidelines concerning assistance and care, in order to ensure that anyone identified as “trafficked” is transferred to a safe place and has his or her needs assessed. In 2004, IOM issued a set of minimum standards concerning mental health care for trafficked persons.⁴⁵ The IOM minimum standards are intended to help ensure that women and girls trafficked for purposes of sexual exploitation receive comprehensive and coordinated psychosocial care, and are a guide for any organizations assisting such people. The immediate needs of trafficking victims subjected to other forms of exploitation are different: for example, women trafficked into forced labour as domestic workers need compensation (for unpaid work) and new jobs. In 2007, IOM summarized the lessons learned over the previous 13 years in *IOM Handbook on Direct Assistance for Victims of Trafficking*.⁴⁶

There have also been efforts to develop standards for the residential care of both trafficked adults and children. The concern about the poor quality of care for trafficked children mirrors concerns that other children in institutional care may be subjected to further abuse. A handbook developed by UNICEF in Kosovo, focusing mainly on procedures for interviews with children who have been subjected to sexual abuse or trafficked contains a Code of Conduct for Safeguarding Children and Young People.⁴⁷

⁴⁴Office of the United Nations High Commissioner for Refugees, “Guidelines on International Protection”, UNHCR document HCR/GIP/06/07, of 7 April 2006 (see <http://www.unhcr.org/publ/PUBL/443b626b2.pdf>).

⁴⁵International Organization for Migration, *The Mental Health Aspects of Trafficking in Human Beings: a Set of Minimum Standards*, A. Baráth and others, eds. (Budapest, International Organization for Migration, 2004).

⁴⁶International Organization for Migration, *IOM Handbook on Direct Assistance for Victims of Trafficking* (Geneva, IOM, 2007) (see http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20-handbook.pdf).

⁴⁷B. Mitchels, *Let's Talk: Developing Effective Communication with Child Victims of Abuse and Human Trafficking: Practical Handbook for Social Workers, Police and other Professionals* (Pristina, UNICEF, Kosovo Office, 2004), pp. 7-8 (see <http://www.childtrafficking.org/eng/publication.html>).

C. Assessment of cases of trafficked adults and children, including risk assessments

Procedures for making decisions about trafficking victims who have no legal entitlement to be in the country where they have been trafficked vary greatly from country to country and case to case. In some countries a de facto definition is used to define who should be categorized as a “trafficked person”, which focuses primarily on women trafficked into commercial sexual exploitation and does not consider men or boys trafficked into forced labour as “trafficked”.

States that have ratified the United Nations Convention against Torture of 1984 are required to ensure that no one is repatriated to a State where they would face torture (either by government officials or non-state actors such as traffickers), by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The high risk of a trafficking victim being tortured makes it virtually obligatory to carry out a risk assessment before returning any trafficked person to his or her country of origin. Such an assessment must look at possible threats from traffickers and their associates to the security of trafficked person and his or her relatives. However, in addition to a security assessment, a risk assessment should take broader, economic and social factors into account, which might otherwise precipitate an individual back into the control of a trafficker. Re-trafficking can be the result of a returnee being stigmatized or having no livelihood after returning to his or her place of origin. The Committee on the Rights of the Child has outlined the factors to take into account when considering whether a child should return to his or her country of origin, stating that children may not be returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child. The risk assessment must take into account the consequences for a child if he or she faces insufficient provision of food or health services.⁴⁸ A particular challenge concerns children whose parents are living illegally in the country of destination, where it is usually in the child’s best interests to be reunited with his or her parents rather than be repatriated.

In practice, repatriations have frequently taken place in the absence of any risk assessment, leaving people who have been trafficked vulnerable upon their arrival (for example, at an airport) to being re-trafficked. The lack of consensus among States on what the minimum acceptable standard is concerning the treatment of trafficking victims before or after repatriation seems to have undermined the Trafficking Protocol’s efforts to streamline repatriation procedures.

⁴⁸The Committee on the Rights of the Child adopted general comment No. 6 (CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin (see <http://www.ohchr.org/english/bodies/crc/docs/GC6.pdf>).

D. Enabling victims of traffickers to recover and restart their lives

When trafficking victims endeavour to get on with their lives, they face a series of hurdles. These include recovering their self-confidence and self-esteem, finding a suitable way of earning a living and, in the case of girls and women suspected of having been involved in prostitution, avoiding the stigma attached to prostitution.

Much has been learned in the past decade about what forms of assistance are considered most effective by people who have themselves been trafficked, although it is rare that they are monitored for long enough to draw conclusions about the long-term impact of different techniques. A significant number of victims who receive vocational training are reported to return home to circumstances that do not allow them to obtain a job using the training they have received. The lessons reveal that the conventional assumption that victims should be repatriated and returned to live with their family is inappropriate and results too easily in victims being returned to a situation where they suffer further harm (in particular if they originally left to escape an abusive situation). By the time the Trafficking Protocol was adopted, the lesson was already apparent in West Africa that sending children who had been trafficked abroad (into forced labour or servitude) back to their home villages was tantamount to trying to pour water uphill: in numerous cases, repatriated children who were accompanied back to their home villages departed again within a matter of days.⁴⁹ Much has been learned subsequently about the circumstances in which family reunification is and is not appropriate. In parts of Eastern Europe, semi-independent living arrangements for older adolescents proved successful, albeit expensive. This involved abused adolescents living in accommodation supervised by a social worker while they restarted school, engaged in vocational training or started work.

VI. The role of research

A. Research reports on regional patterns and specific countries

Research on trafficking in human beings is vital. It allows for the identification of factors that cause trafficking or enable it to happen as well as for the monitoring of the effects of anti-trafficking measures designed to prevent trafficking as well as to assist trafficked persons. The importance of research to analyse the causes and consequences of trafficking has been repeatedly emphasized, for example by an Organization of American States meeting of specialized anti-trafficking agencies.⁵⁰ Numerous reports are published every year, and a growing number of websites publicize the findings of those reports. Some

⁴⁹A. F. Adihou, *Le trafic des enfants entre le Bénin et le Gabon* (Enfants Solidaires d'Afrique et du Monde (ESAM) and Anti-Slavery International, 1999).

⁵⁰Organization of American States, Meeting of National Authorities on Trafficking in Persons, Conclusions and Recommendations of the Meeting of National Authorities on Trafficking in Persons (OEA/Ser. K/XXXIX, RTP/doc.16/06 rev.1) (see <http://www.venezuela-oas.org/Material%20Trata/1CONCLUSIONESAND-RECOMENDACIONESTraffickinginPersons.pdf>).

describe general trafficking patterns,⁵¹ while others focus on a specific country or a specific trafficking route. Some present details obtained from repatriated victims in order to draw conclusions about the characteristics of people who are being trafficked,⁵² especially when it seems that specific groups of people are being trafficked in disproportionately high numbers.

While reports published in the late 1990s and in the years following 2000 focused primarily on the abuse experienced by trafficked persons (possibly to provoke readers to conclude that more needed to be done to combat trafficking), in the past few years there has been a move towards reports of a more technical nature, which focus on methods used to address specific aspects of trafficking and examine their effectiveness.

B. Research about those already trafficked, identifying the circumstances in which they were vulnerable to traffickers

IOM has been at the forefront of efforts to identify the salient characteristics of victims of trafficking in order to learn what distinguishes them from others who have not been trafficked. For example, in South-East Europe a disproportionate number of trafficked women and girls have experienced domestic abuse or lived in residential care. A case study in northern Thailand found that in families with three daughters it was more probable that the second-born daughters would be recruited into the sex industry than either eldest or youngest daughters.⁵³ The report explained the social and cultural reasons for its findings. On the basis of detailed research of this sort, it has been possible to target prevention efforts on individuals or households with similar characteristics to those already trafficked.

Studies of individuals who have been trafficked usually trace what happens to them during the time they receive professional care, but rarely track their subsequent development. While the right to privacy entitles people to refuse to inform researchers about their subsequent experiences, in many cases it is only with the benefit of information about what happens over several years that it is possible to conclude whether the assistance and protection they received were appropriate or need improving.

C. Research about traffickers and the techniques they use

Alongside law enforcement efforts to identify individual criminals, researchers have collated the data available about both traffickers and others who collaborate with them. This regularly demonstrates that the profile of traffickers presented in public information materials is inaccurate. For example, in parts of South-East Europe where traffickers were routinely presented as disreputable male criminals, evidence collected from trafficked persons

⁵¹United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, United Nations, 2006), a 128-page report summarizing patterns, based on data supplied by States.

⁵²For example, two annual reports on victims of trafficking in South-Eastern Europe issued by the Regional Clearing Point of the International Organization for Migration, the first in 2003 and the second in 2005.

⁵³Taylor, "Dangerous trade-offs ...".

showed that numerous people had been trafficked by women or by relatives.⁵⁴ The challenge, in this case, was to work out how to warn young people that they had to remain on guard about offers made by relatives (to go abroad “on holiday” or to work) without fracturing family relationships.⁵⁵

In a few cases, research has already examined the roles played by individuals who are commonly described as “traffickers”, but who, on close scrutiny, turn out to be involved in recruitment for jobs in the informal economy that is not of a criminal nature. Indeed, in West Africa one preventive method that has been identified involves supporting and strengthening certain recruitment practices that already help protect the individuals being recruited.

D. Research on the numbers of trafficked persons

Having some idea of the numbers of trafficked persons is helpful for Governments that choose what level of resources to allocate to anti-trafficking initiatives. It is problematic, therefore, that estimates unsupported by evidence have been routinely and widely publicized. For example, in Europe an elected official reported in 2006 that the United Nations had estimated that 4 million people were transported within or between countries every year in order to be exploited sexually.⁵⁶ No evidence is available to support estimates approaching this magnitude.

A 2006 report issued by the United States of America Government Accountability Office criticizes unfounded numbers cited by Governments, including the United States Government, noting that the accuracy of the estimates was in doubt because of methodological weaknesses, gaps in data and numerical discrepancies.⁵⁷ The main weakness noted in such estimates is that terms (such as “victims of trafficking”) are not defined or used precisely. In addition, data on the number of people trafficked are confused with those on other groups of people, such as the number of migrants smuggled into a country or the number of women in prostitution. One comment in the Government Accountability Office report applies to data published virtually everywhere:

“The incompatibility of definitions for data collection is exacerbated by the intermingling of trafficking, smuggling, and illegal migration in official statistics. Countries have used different definitions regarding the scope and means of trafficking; the activities involved ... For example, there are discrepancies in the collection of data on sex trafficking.”

⁵⁴June Kane, *Child Trafficking – The People Involved: a Synthesis of Findings from Albania, Moldova, Romania and Ukraine*, (Geneva, International Labour Office, 2005); and Mike Dottridge, *Action to Prevent Child Trafficking in South Eastern Europe: a Preliminary Assessment* (Geneva, UNICEF and Terre des Hommes, 2006).

⁵⁵Mike Dottridge and Olivier Feneyrol, “Action to strengthen indigenous child protection mechanisms in West Africa to prevent migrant children from being subjected to abuse”, May 2007 (see http://www.tdh.ch/website/tdhch.nsf/pages/trafficking_documentationE).

⁵⁶European Parliament, debate on forced prostitution during the 2006 football World Cup, Strasbourg, 12 June 2006 (see <http://www.europarl.europa.eu/omk/sipade3?L=EN&OBJID=120219>).

⁵⁷United States of America, Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*, GAO report GAO-06-825 (Washington D.C., July 2006), p. 26 (see <http://www.gao.gov/new.items/d06825.pdf>).

Within the United Nations system, ILO has paid particular attention to the question of numbers of people around the world being subjected to forced labour, including those who have been trafficked. In 2005, it estimated that the number of people subjected to forced labour at any given time as a result of trafficking was 2.45 million, of whom 43 per cent had been trafficked for commercial sexual exploitation (i.e. 1.05 million) and 32 per cent for economic exploitation (i.e. 784,000).⁵⁸

Global or national estimates may be helpful to calibrate an adequate response to trafficking, but they have also glossed over key differences among the people who are trafficked and consequently may result in funds being allocated to inappropriate interventions. In Albania, for example, general statistics about the numbers of children being trafficked failed to reveal that they fell into two distinct groups: younger children trafficked for forced begging, who mainly belonged to a minority group, and older adolescent girls trafficked for commercial sexual exploitation. Distinguishing between the two was vital, as quite different initiatives were needed to address the two groups.

E. Research to monitor, evaluate and assess the impact of prevention and rehabilitation efforts

A 2004 evaluation of United States-financed initiatives to prevent human trafficking in Eurasia noted that numerous initiatives had not been evaluated and that some of the evaluations that had been carried out had measured a project's outputs (e.g. numbers of reports published or disseminated), but not their impact on people's lives or their contribution to reducing trafficking.⁵⁹ A 2007 report by the United States Government Accountability Office focused specifically on shortfalls in monitoring and evaluation, both in United States-funded bilateral initiatives and in initiatives by intergovernmental organizations.⁶⁰ It called for improvements in the assessment of the impact of United States-funded projects and for rigorous evaluation methodologies. It also urged monitoring and evaluation weaknesses to be addressed at the stage of project design.

F. Research standards: the World Health Organization

Some research about individuals subjected to forced labour (whether trafficked or not) by academic researchers and, in particular, by journalists, is reported to have resulted in reprisals by the traffickers. The research thus caused extra harm to the very people who were willing to talk about being abused. In 2003, the World Health Organization published a set of Ethical and Safety Recommendations for Interviewing Trafficked Women, containing 10 guiding principles for the ethical and safe conduct of interviews with women who had been trafficked.⁶¹ Many are also applicable to children and even adult men who

⁵⁸International Labour Office, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, International Labour Office, 2005), p. 15.

⁵⁹Rosenberg and others, op. cit.

⁶⁰United States of America, Government Accountability Office, *Human Trafficking: Monitoring and Evaluation of International Projects are Limited, but Experts Suggest Improvements*, GAO report GAO-07-1034 (Washington D.C., July 2007), p. 15 (see <http://www.gao.gov/new.items/d071034.pdf>).

⁶¹Cathy Zimmerman and Charlotte Watts, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women* (Geneva, World Health Organization, 2003) (see www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf).

have been trafficked. IOM has also published a set of Ethical Principles in *Caring for and Interviewing Trafficked Persons*, adapted from the WHO recommendations, extended to include 18 basic principles and explicitly addressing interviews with children as well as adults.⁶² Both emphasize the principle that interviewers should take precautions to avoid causing additional harm to individuals who have been trafficked.

While the physical and mental well-being of trafficked persons is always of paramount importance, one particular challenge is the ongoing need for accurate, first-hand information. The often justified reluctance of caregivers to allow access to trafficked persons can hinder the supply of accurate information about victims' experiences and makes it harder to ensure that prevention, interception or protection initiatives meet the needs of those they are intended to benefit. In conclusion, it seems crucial to continue with ethical, detailed research to ensure that future anti-trafficking efforts are evidence-based and not based on inaccurate exaggerations. It is likewise important to distinguish between research that brings benefits to people who have been trafficked (for example by making prevention efforts more effective) and research designed mainly to provide particular bodies or individuals with information that they use to publicize their activities and obtain funds.

VII. Conclusion

At the same time as summarizing major responses to trafficking in persons initiated over the past decade, this paper also points to numerous ways in which these anti-trafficking policies and initiatives could be made more effective. In particular, it emphasizes the vital role of collecting evidence about the numbers of people being trafficked and the forms of exploitation to which they are being subjected, so that prevention initiatives and virtually all other anti-trafficking efforts are tailored to meet the task before them. The corollary is that anti-trafficking initiatives should not be inspired by well-publicized but unsubstantiated estimates that have sometimes vastly exaggerated the number of people being trafficked or seriously underestimated them.

In relation to protection and assistance for trafficked persons, section V.A mentions numerous international standards that have been established to guide States and their agencies. No single body or mechanism within the United Nations system is responsible for ensuring that these standards are adhered to or for giving advice to States where the level of protection and assistance is significantly lower than called for in the standards. Not surprisingly, the result is that many trafficked persons prefer not to make contact with government agencies to protect or assist them, which has unfortunate consequences for the trafficked person, who is not able to get assistance, and for the States, which are hindered in their efforts to bring criminals to justice. It seems to be a clear priority to raise these standards and to develop mechanisms for mutual accountability between States on the quality of the protection and assistance they provide.

With so many different (and sometimes contradictory) recommendations made to Governments by international and regional governmental organizations and specialized

⁶²International Organization for Migration, IOM Handbook on Direct

agencies, it is perhaps not surprising that responses to trafficking have been so diverse. The attention given in recent years to identifying “good practice” is encouraging, but the procedures for allowing different institutions and States to discuss and reach agreement about what constitutes “good practice” are still not in place. Overcoming this challenge and making it a priority to agree on what constitutes “good practice” in the future should ensure that anti-trafficking initiatives become more effective and that money allocated to stopping trafficking in persons is used more effectively.



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