

**Preventing Discrimination,
Exploitation and Abuse of Women
Migrant Workers**

An Information Guide

**Booklet 6
Trafficking of Women and Girls**

**Gender Promotion Programme
International Labour Office Geneva**

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Booklet 6

Trafficking of Women and Girls

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6.1 Aims and structure of the Guide

This Information Guide is intended:

- **To enhance knowledge and understanding of the vulnerability of women migrant workers to discrimination, exploitation and abuse throughout all stages of the international migration process, including being trafficked;**
- **To promote and improve legislation, policies and action to prevent such discrimination, exploitation and abuse and to better protect those women migrant workers who are vulnerable; and**
- **To emphasize and explain why and how the prevention of discrimination, exploitation and abuse, including trafficking, of women migrant workers should be addressed as a matter of:**
 - ☑ **Upholding basic human rights, including labour rights and migrant rights;**
 - ☑ **Promoting gender equality and ending all forms of discrimination, racism and xenophobia;**
 - ☑ **Promoting decent and productive work for all workers, women and men, in conditions of freedom, equity, security and human dignity; and**
 - ☑ **Eradicating poverty and social exclusion.**

Box 6.1. Focus on women from a rights-based, gender perspective

Although the focus is on women (and girls), the Information Guide is not women-exclusive. It adopts a rights-based, gender-sensitive perspective that:

- Recognizes the similarities and differences in the migration experiences of different categories of women *and* men in relation to vulnerabilities, violations and consequences;
- Relates these differences in migration experiences to gender - by distinguishing the biological ("sex") from the socially determined ("gender") differences between women and men. Links differences in migration experiences to the different roles, attributes and behaviour that society deems socially appropriate for women and men, and to the division of labour, access to and control over resources and decision-making and constraints, opportunities and needs facing women and men;
- Addresses the differential and often discriminatory impacts of legislation, policies and programmes on different groups of women and men;
- Considers the interaction between gender and other social categories, such as national origin, class, ethnicity and age;
- Gives particular attention to the especially vulnerable groups of women or men;
- Approaches the issues of women migrant workers not merely from the perspective of moving, working and living in foreign countries but also from the perspective of their generally less valued socio-economic roles and disadvantaged position vis-à-vis men;
- Emphasizes the need for policies that not only address the supply of and demand for migrant workers but also address gender discrimination and inequalities;
- Holds that the elimination of gender inequality and discrimination is a human right and core to efforts to address the problems of women migrant workers;
- Aims to empower, not just to protect, women (and, where appropriate, men), so that they can claim their rights and make informed decisions about their lives.

The Guide shows that changing labour markets with globalization have increased both opportunities and pressures for women to migrate. Women are migrating for employment on almost the same scale as men, accounting for about half of the total migrants worldwide. For many women, as for men, migration leads to a better life, to improvement of their economic and social position. The labour migration process can enhance their earning opportunities, autonomy and empowerment and, thereby, change gender roles and responsibilities and contribute to gender equality.

But migration for employment can also expose women to serious violation of their human rights, including their labour rights. Whether in the recruitment stage, the journey across national borders, transit or living and working in another country, women migrant workers, especially those in irregular situations, are vulnerable. They are exposed to harassment, intimidation or threats to themselves and their families, economic and sexual exploitation, racial discrimination and xenophobia, poor working conditions, increased health risks and other forms of abuse, including trafficking into forced labour, debt bondage, involuntary servitude and situations of captivity. The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase – because of hardened attitudes towards migrants in general and because gender-based attitudes and perceptions continue to be slow in changing. Gender inequalities persist and labour markets remain highly segmented and segregated in both origin and destination countries.

The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase.

Women migrant workers, whether documented or undocumented, are much more vulnerable to discrimination, exploitation and abuse – relative not only to male migrants but also to native-born women. Women and girls are also more at risk than men and boys to trafficking. Gender-based discrimination intersects with discrimination based on other forms of “otherness” – such as non-national/foreigner status, race, ethnicity, religion, economic status – placing women in situations of double, triple or even fourfold discrimination, disadvantage, marginalization and/or vulnerability.

Gender-based discrimination intersects with discrimination based on other forms of “otherness”.

The Guide recognizes that for many women, migration represents a positive experience and has important empowering impacts. Women migrants are able to achieve their goals and may gain comparatively more than male migrants, not so much in terms of income, but in status and position back home. Although

For many women, migration represents a positive experience and can have important empowering impacts. But the focus of the Guide is on those women migrant workers for whom the migration experience is not empowering and who are vulnerable to discrimination, exploitation and abuse, including trafficking.

they may earn less than male migrants and they usually work in non-regulated sectors of the labour market, they are often able to improve the economic position of their family and their own status, independence and decision-making power within the family. They may also be able to have a better chance in the local labour market upon return and to earn money to start their own business. But the focus of the Guide is on the large numbers of women migrant workers for whom the migration experience is not empowering and who are vulnerable to discrimination, exploitation and abuse, including trafficking.

The main **target audience of the Information Guide** are advocates and activists, policy makers and implementers concerned with migration issues and women workers' rights in origin, transit and destination countries. They include government officials responsible for the administration of justice, the judiciary and service providers -- such as migration officers, embassy personnel, labour attachés, labour inspection officials, police and law enforcement personnel, judges, prosecutors, equality officers, social and public health workers and officials from women's bureaus and ministries of labour, justice and immigration/emigration. The Guide is also more broadly addressed to workers' and employers' organizations, associations of migrant workers (including associations of domestic workers), public and private recruitment and employment agencies, as well as non-governmental organizations (NGOs), community-based organizations (CBOs) and other civil society groups concerned with the rights of migrant workers.

Although the focus is on women migrant workers, many of the concerns and issues raised, analysis and guidelines provided cut across gender and, sometimes, age. Therefore, **this Information Guide is also aimed at individual migrants, women and men**, so that they can better understand the risks involved in labour migration, know their rights and are better able to protect themselves. The Guide also shows why among children, girls are often more vulnerable than boys to exploitation and abuse. However, the greater vulnerability of children to exploitation and abuse and the particular physical, psychological and psychosocial harm suffered by trafficked children require that they be dealt with separately. **This Guide does not deal with children-specific solutions, which should also be specific for girls and for boys.**¹

The Guide comprises six booklets which are inter-related but which can be used separately. Booklet 1 provides a general introduction of the dynamics of female labour migration and highlights the specific vulnerabilities of women migrant workers. It also sets out a multidisciplinary, integrated framework of response addressing both the supply and demand sides of labour migration. Booklets 2 to 5 cover the different stages of the migration process women migrant workers go through and the corresponding activities, policies and practices of other actors – the government, business, private sector, civil society groups and their own families -- that affect their mobility and employment. Booklet 6 focuses specifically on the trafficking of human beings, particularly women and girls. Within a complex and

shifting continuum of population mobility, trafficking is the component that is defined by coercion and often constitutes “a modern-day form of slavery”.

Booklet 1 *Introduction: Why the focus on women international migrant workers*

Highlights the vulnerability of women migrant workers to discrimination, exploitation and abuse in the different stages of the migration process. The labour market situations women migrant workers go into put them at greater risk to human rights violations, compared to male migrants and local women. To protect women migrant workers, it introduces a multidisciplinary and comprehensive framework – addressing both demand and supply factors, and incorporating the promotion of human rights, gender equality, decent work and poverty reduction; and involving a wide range of social actors in legal and policy instruments and practical action at international, regional, national and community levels.

Booklet 2 *Decision-making and preparing for employment abroad*

Describes the process of decision-making and preparation for moving to and working in a foreign country. It highlights the kinds of accurate and realistic information and assistance services that potential migrants should have to properly decide on employment abroad. It also identifies other actors in the decision-making process, in particular the families of the women, and emphasizes the need to reach out to and sensitize these other actors. For those who make the decision to become labour migrants, the Booklet describes the information that would help steer them safely through the recruitment and journey process, practical information on the country of destination, their legal rights and obligations and how to claim their rights and what to do in crisis situations. It also stresses the importance of measures to ensure that migrant workers have access to social protection.

Booklet 3 *Recruitment and the journey for employment abroad*

Distinguishes the different modes of recruitment and emphasizes that fraudulent and exploitative practices are very common in the recruitment stage. It defines illegal recruitment and draws attention to the various dangers and risks women can face in the recruitment process. Trafficking is one form of illegal recruitment. It describes what governments, the social actors and migrants themselves can do to prevent these malpractices.

Booklet 4 *Working and living abroad*

Raises awareness of the working and living conditions of women migrants in the destination countries, and provides guidelines on how to improve their situation and especially to prevent and redress cases of violation of their basic labour rights and migrant rights and to also ease their adjustment and integration in the destination societies. It

provides examples to show that where women migrant workers are organized and have networks of information and social support, exploitation is much less likely to occur. The focus is on migrant domestic workers who are among the most vulnerable to exploitation and abuse and because domestic work is the single largest employment category for women migrants.

Booklet 5 *Back home: return and reintegration*

Illustrates the specific problems faced by women migrants returning to their home countries and families. It identifies the kinds of supports – logistical, legal, socio-psychological, employment, skills related and financial - they need to enable them to achieve successful reintegration and avoid re-migration or being re-trafficked. It emphasizes opportunities for remunerative employment as key to successful reintegration.

Booklet 6 *Trafficking of women and girls*

Focuses on a global problem of growing concern: trafficking in persons, especially women and girls. It identifies the supply-side and demand-side causes, describes the mechanics of trafficking and explains why women and girls are more vulnerable to becoming victims. It points out that trafficking in human beings is, first and foremost, a violation of human rights; it should not be dealt with merely from the perspective of fighting illegal migration nor protecting national interests. A wide range of actors need to tackle the entire cycle of trafficking through policy, action and cooperation at different levels for the prevention of trafficking, support for and protection of victims and prosecution of traffickers.

Each booklet is structured to:

- **Enhance knowledge and understanding** by government officials, the social actors and individual migrants themselves of the concerns and challenges relating to the prevention of discrimination, exploitation and abuse of migrant workers, in particular women migrant workers, and the protection of their human rights.
- **Facilitate learning from the experiences of actors in countries of origin, transit and destination** by documenting a variety of approaches, strategies and practical examples for preventing and redressing discrimination, exploitation and abuse of women migrant workers, including those who have been trafficked. Where possible, the factors behind the success or failure of these strategies and approaches are also identified.
- **Indicate the normative framework** that could be used for addressing discrimination, exploitation and abuse of women migrant workers. Law and policy makers can refer to relevant international and regional standards and

some national examples to adopt a rights-based approach and to formulate or review legislation.

- **Present guidelines, checklists and practical examples for action**, so that government agencies, workers' and employers' organisations, non-governmental organizations (NGOs), community-based organizations (CBOs) and other interested groups and migrants themselves have better knowledge and are equipped with practical tools on what might be possible or effective for assisting vulnerable women in the migration process. However, since circumstances vary from one country to another, the information is not intended to represent "best" or "good" practices that should be adopted in all situations or be used in any definitive manner.

- **Indicate the scope for, and the advantages of, cooperation and collaboration** between government agencies, law enforcement and judiciary sectors, workers' and employers' organisations, NGOs, CBOs, the media, research institutions and other interested groups in countries of origin, transit and destination.

6.2. How to use the Guide

The booklets of the Guide do not constitute a modular training package or a step-by-step manual on how to design, implement and monitor policies and strategies to improve the situation of women migrant workers. The booklets are intended to serve as a “user-friendly” information source, to be used in a flexible manner by a wide variety of users. Although the Guide focuses on women migrant workers – because they are generally more at risk to discrimination, exploitation and abuse than men – the approach throughout the guide is gender-sensitive and many parts of the guide are also helpful for male migrant workers. The greater vulnerability of girls, as compared to boys, to migration in abusive conditions is also pointed out, but child-specific measures are outside the scope of the Information Guide.

Individual and institutional users may select one or more particular booklets or take the Guide as a whole and utilize and adapt the materials according to their specific needs and contexts. Notes, a bibliography and useful websites are provided at the end of each booklet for readers interested in more detailed or additional explanations and reference materials.² Cross-references are provided where there are areas of overlap in the different booklets or where issues are dealt with in more than one section or booklet. Important information is repeated, so that each booklet is as complete as possible.


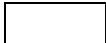








The Information Guide can be used for:

- **Awareness raising or sensitisation:** To improve understanding of the vulnerabilities faced by migrant workers to discrimination, exploitation and abuse, including trafficking, and the challenges confronting government, workers’ and employers’ organizations, NGOs and other civil society actors in addressing these vulnerabilities, protecting human rights and promoting decent work for migrant workers, in particular for women migrant workers. Access to such information may empower the women themselves to increase their self-esteem and build confidence to defend their rights as women, as migrants and as workers.
- **Advocacy and publicity:** The Guide intends to place the discrimination, exploitation and abuse that women migrant workers experience on the “radar screen” of the international human rights, development and donor communities. Government agencies, NGOs and other social actors may also use the Guide for media campaigns, community mobilization and outreach to inform or educate the general public and other concerned actors, including migrant women and men themselves, about the role they can play and the possible measures they can take to protect vulnerable women migrant workers and to improve the situation of migrants of both sexes in general.
- **Tool for action:** The Guide highlights international instruments, examples of national legislation, actual policies and tested action programmes. It also

provides checklists for social actors to verify whether they have taken into account all the critical considerations when planning and implementing certain initiatives.

- **Training and educational purposes:** The information in the booklets may serve as background material in training seminars (such as for migration officers, labour attachés, law enforcement officers and employment agents), topics to include in school curricula or general education programmes targeting potential female migrants, and, importantly, in preparation courses for migrant women before they go abroad.
- **Networking tool:** The Guide offers ideas for improving networking and collaboration between and amongst government and social actors, trade unions, NGOs and employment agencies; for generating discussion and stimulating action amongst various stakeholders; and building alliances between various organizations and individual migrant women within and between countries of origin, transit and destination.

To assist users of the Guide, the information is organized in different ways:

- Aims of the different booklets and sections of the Information Guide
-  *Text box in coloured italics, main themes and highlights of different sections of the Information Guide*
-  *Text box in bold italics, international instruments*
-  Coloured text box, important explanations or examples of policies or action
-  **Key points to bear in mind**
-  *Elaboration/details of key points*
-  Checklists or guidelines
-  *Good practices*
-  *Bad practices*
-  *Lessons learned*
-  Refer to, cross-references

6.3. Trafficking: A global problem affecting particularly women and girls



Trafficking is one component in the complex and shifting continuum of population mobility and migration, but it is an especially abusive component [👁️ Box 6.2].

Although there are no precise data available – because of the very nature of trafficking – the evidence indicates an alarming increase in the incidence³, severity and global reach of trafficking; the highly systematic nature and sophisticated mechanisms involved; the links with organized crime and official corruption; the varied purposes for which persons are trafficked; and the particularly exploitative and abusive effects of trafficking. In recent years, trafficking, especially in women and children for sexual exploitation and other forms of labour exploitation, has come high on the agenda of government and non-government actors worldwide:

*“Trafficking in persons is a particularly abusive form of migration. In the Millennium Declaration, States resolved to take measures to ensure respect for the protection of the rights of migrants and to intensify their efforts to fight trafficking [...]. Urgent, effective and coherent action is therefore required. It is essential to recognize the complexities involved. Trafficking is not one single event, but a series of constitutive acts and circumstances involving a wide range of actors. It is essential that anti-trafficking measures take account of this fact and that efforts are made to address the entire cycle of trafficking”.*⁴



The main reasons for the growing international concern over the trafficking of human beings are:

- ☑ *The human rights dimension of the problem;*
- ☑ *Forced labour and a modern form of slavery;*
- ☑ *The gender dimensions;*
- ☑ *An extremely serious decent work deficit;*
- ☑ *The links with globalization;*
- ☑ *The conflation of trafficking with migration;*
- ☑ *The links between trafficking in human beings and organized crime;*
- ☑ *The links between trafficking and the sex industry;*
- ☑ *The possible links between trafficking and the spread of sexually transmitted infections (STIs) and HIV/AIDS;*
- ☑ *The inadequacy of current legal provisions and policy interventions.*

- ☑ *The human rights dimension of the problem:*

Depending on the respective interest of the

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

actors and institutions involved, trafficking used to be viewed mainly as a problem of organized crime, irregular migration or prostitution. More recently, however, it is the human rights aspect that has gained prominence. Trafficking is defined by the coercive, non-consensual and exploitative or servile nature of the purpose of movement, and involves a number of serious human rights violations, including forced labour, sexual and labour exploitation, violence and abuse of the victims. “Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers”.⁵

☑ **Forced labour and a modern form of slavery:**

“Trafficking in

Although sexual servitude of women is most often highlighted, other forms of forced labour – such as in domestic service, agriculture, sweatshop manufacturing – can be equally serious and should be given equal attention.

persons is a modern form of slavery, and it is the largest manifestation of slavery today”.⁶ Traffickers use threats, intimidation and violence to subject victims to involuntary servitude, peonage, debt bondage, and forced or phoney marriages, to engage in forced prostitution or to labour under conditions comparable to slavery for the traffickers’ financial gain. Although sexual servitude of women is most often highlighted, other forms of forced labour – such as in domestic service, agriculture, sweatshop manufacturing – can be equally serious and should be given equal attention. The *ILO Forced Labour Convention, 1930 (No.29)* defines forced or compulsory labour as:

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

☑ **The gender dimensions:**

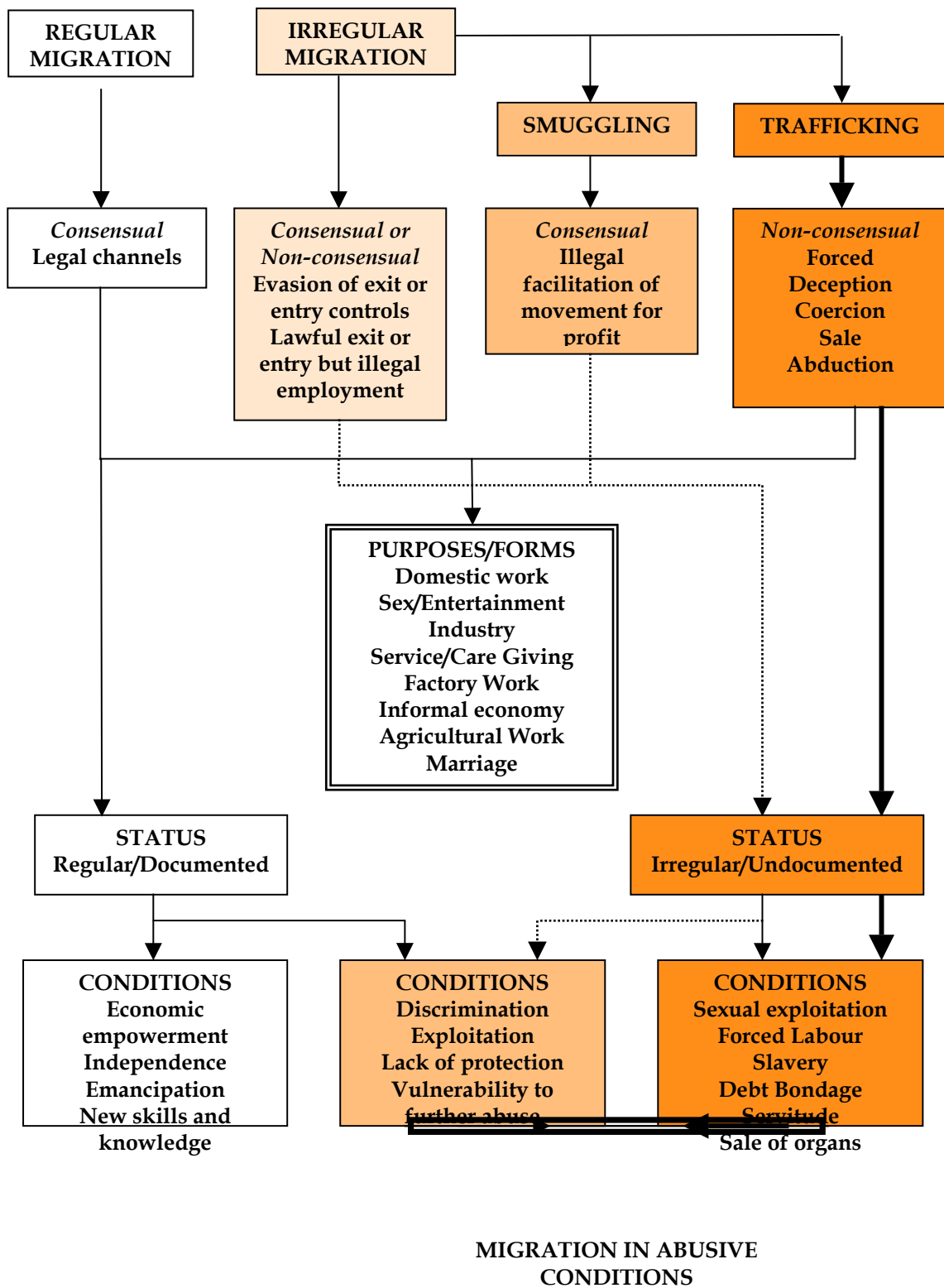
A rights-based concern is necessarily also a gender-responsive concern.

Trafficking is a serious manifestation of the feminization of poverty and the broader challenges facing women and girls in a world still characterized by gender discrimination, both within and outside the labour market.

Gender is a determining factor in trafficking, both on the supply and demand sides. Women and girl children are much more likely than men and boys to be the victims of trafficking, in particular into prostitution and other forms of sexual exploitation, but also into labour exploitation and contemporary forms of slavery. Trafficking is a serious manifestation of the feminization of poverty and the broader challenges facing women and girls in a world still characterized by gender discrimination, both within and outside the labour market.

Box 6.2.

Interrelations between regular and irregular migration, trafficking and smuggling



However, it is important to avoid the misperception sometimes made that “men migrate or are smuggled, women are trafficked”. In some areas the largest numbers of victims of trafficking may be male. For example, studies have suggested that over 80 per cent of the migrants trafficked into Ukraine and Poland have been male.⁷

☑ *An extremely serious decent work deficit:*

Trafficking is inimical to the ILO’s

Trafficking is inimical to the ILO’s primary goal of promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

primary goal of promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Trafficking flouts fundamental labour standards and proper working conditions for all workers, national or migrant. Trafficking disrupts or circumvents the efficient functioning of labour market institutions in source, transit and destination countries.

☑ *The links with globalization:*

Trafficking has been highlighted as the “underside of globalization”.⁸ Research and various reports have emphasized the increase in trafficking with the rise of globalization, which has accentuated and demarcated the stark differences between communities and countries and between persons. At the same time, globalization has shrunk the globe through transportation, information and communications technology and transformed the ways in which such technology sells dreams of a better life elsewhere. The processes integral to globalization have also intensified the disruptive effects of modernization and capitalist development and contributed to growing economic and social insecurity.

☑ *The conflation of trafficking with migration:*

Many States make the mistake of conflating trafficking in persons with migration. They do not

Many States make the mistake of conflating trafficking in persons with migration and attempt to stop trafficking by placing stricter restrictions on migration and mobility especially of women. However, restrictive migration regimes often have the unintended opposite effect of encouraging trafficking and aiding and abetting traffickers.

distinguish between trafficking, migrant smuggling and other forms of irregular or undocumented migration [👁 **Box 6.2**], and attempt to stop trafficking by placing stricter restrictions on migration and mobility especially of women. However, restrictive migration regimes often have the unintended opposite effect of encouraging trafficking and aiding and abetting traffickers. Restrictive migration policies and tighter border controls in the face of strong pull and push pressures may, on the one hand, make irregular migration channels the only alternative for migrants and, on the other hand, present lucrative opportunities for those who make a business out of circumventing these restrictions [👁 **Section 6.4.1 below** which explains the dangers especially for women of conflating trafficking with migration and also trafficking with prostitution].

☑ *The links between trafficking in human beings and organized crime:*

Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. The United Nations Office for Drug Control and Crime Prevention has described trafficking as the fastest growing business of organized crime – because of the number of people involved, the scale of profits being generated and its multifold nature.⁹ It is one of the most lucrative criminal enterprises in the world, estimated to be the third largest source of profits for organized crime, behind only drugs and guns.¹⁰ Vertical and horizontal linkages have been traced between trafficking networks and sectors of the crime industry and corporate enterprise, including transportation and tourism. It has also been noted that the traditional competition and antagonism between different ethnically based criminal organizations has been overcome, so that now, for example, Russian, Chinese, Turkish, Albanian Mafia and Italian criminal groups actively collaborate in trafficking and other criminal activities.¹¹ Trafficking is often aided by official corruption in countries of origin, transit and destination, thereby threatening the rule of law.

☑ *The links between trafficking and the sex industry:*

Women and girls are particularly vulnerable

Women and girls are particularly vulnerable to being trafficked for the purpose of prostitution and sexual exploitation. However, trafficking should not be equated with sexual exploitation; other forms of labour exploitation and forced labour are equally significant.

to being trafficked for the purpose of prostitution and sexual exploitation. At the same time, trafficking of women and girls for purposes of sexual exploitation relies upon, and sustains prostitution and gender inequality. The South Asian Association for Regional Cooperation (SAARC) specifically adopted a *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* in January 2002¹², and the Committee of Ministers of the Council of Europe adopted a recommendation on action against trafficking in human beings for the purpose of sexual exploitation.¹³ The *United States Victims of Trafficking and Violence Protection Act of 2000* defines “severe form of trafficking in persons” as including “sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age”.¹⁴ Many NGOs too have placed trafficking high on their political agenda mainly because they view trafficking as central to and emblematic of the globalization of female sexual exploitation. However, it is important to re-emphasize: trafficking should not be equated with sexual exploitation; other forms of labour exploitation and forced labour are equally significant.

☑ *The possible link between trafficking and the spread of sexually transmitted infections (STIs) and HIV/AIDS:*

The Declaration of Commitment on HIV/AIDS, adopted by the United Nations General Assembly by its resolution of June 2001, called for reduction of the vulnerability of women and girls to HIV/AIDS through the elimination of all forms of discrimination, including trafficking of women and girls. The main areas of concern for trafficked women and girls are reproductive and general health, the use

of and access to contraception, access to counselling and support for reproductive health, and the effects of physical violence and STIs, including HIV/AIDS. On the other hand, the threat of HIV/AIDS can also be used to further discriminate against the female victims of trafficking. Women and girls who are rescued from traffickers are often subject to compulsory HIV/AIDS testing upon return to their home countries, whereas men are not.

☑ *The inadequacy of current legal provisions and policy interventions:*

The law and order approaches that are adopted by governments to combat trafficking are often at odds with the protection of human rights and may create or exacerbate existing situations that cause or contribute to trafficking.

The lack of specific

appropriate and effective legislation on trafficking at national level has been identified as one of the major obstacles in the fight against trafficking. Existing legislation and law enforcement in most countries have been inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offences involved:

- Most countries do not have legislation that would allow the perpetrators to be prosecuted directly for the crime of trafficking. This leads to a situation whereby even the most obvious cases of trafficking are prosecuted under laws that apply to lesser offences – such as laws on prostitution or on pimping. The limited scope of these laws allows traffickers to receive a relatively light penalty that does not reflect the serious and brutal nature of trafficking;
- Even when trafficking is defined as a crime in law, it is sometimes confined to trafficking for the purpose of sexual exploitation and does not cover other forms of forced labour, slavery or servitude. Such an approach of conflating trafficking with prostitution not only means that traffickers often escape deserved punishment; it can also lead to further discrimination against female victims of trafficking because of prejudicial attitudes of law enforcers and society at large towards prostitutes;
- On the other hand, the victims of trafficking are often punished more harshly than the traffickers themselves; they are prosecuted and deported, rather than protected. The authorities tend to treat trafficked persons as criminals rather than as victims, because of their irregular residence and employment status in the destination country, or because they work in prostitution. These actions lead victims to mistrust authorities and to refuse to co-operate with investigations, thereby decreasing the chance that traffickers will be successfully prosecuted;
- The government approach is to combat ‘illegal migration’, organized crime and (illegal) prostitution, whereas the need for prevention programmes and victims’ rights protection does not receive adequate attention. This narrow approach deprives trafficked persons of their basic human rights, and may create or exacerbate existing situations that cause or contribute to trafficking;
- Law enforcement agencies may simply move trafficked persons from one system of control to another – from being controlled by traffickers to being controlled by law enforcement officials. They tend to prioritise the needs of

law enforcement over the rights of trafficked persons, who are seen primarily as witnesses, as tools of law enforcement. The right of victims to have access to justice is often denied, and prosecutions tend to fail because trafficked persons will not be willing to testify;

- Law enforcement is often hampered by official indifference, corruption, collusion with traffickers, lax or under-funded regulatory mechanisms, such as the police, border guards, labour inspection services and the judiciary, and the failure of governments to prosecute public officials involved in trafficking.

Trafficking in human beings affects everyone, women, men, girls and boys. However, of greatest and most direct concern in this Information Guide is the fact that the majority of trafficked persons are women and girls. This concern over the greater vulnerability of women and girls to trafficking is certainly shared internationally, as evident in the elaboration of a specific *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000*, and other international initiatives.¹⁵

The United Nations Special Rapporteur on Violence against Women, in focussing on trafficking in women, noted that:

*“ Trafficking of women, as the Special Rapporteur defines and understands it, is a particularly violent form of movement, which has to be prohibited. Nevertheless, the Special Rapporteur is of the opinion that trafficking must be considered in the broader context of violations that are committed against women in the course of their movement and migrations. While the experience of being trafficked may affect the level or degree of marginalization or violations that are perpetrated against women, trafficking is not the sole determinant of whether women’s human rights are violated in the course of their national and international movements. Movement and migration, coupled with Governments’ reactions to and attempts to restrict such movements through immigration and emigration policies, and the exploitation of such attempts by traffickers, place women in situations in which they are unprotected or only marginally protected by law. As such, women who attempt to exercise their freedom of movement are often placed in vulnerable positions vis-à-vis the protection of their human rights”.*¹⁶

Among children, girls are more vulnerable than boys to being trafficked, particularly for sexual exploitation. But, as already explained above in Section 6.1, this Booklet does not deal with the specific framework of response to child trafficking.

The problem of child trafficking is a distinct one requiring special attention:

- **Children have special rights under international law, in particular the United Nations Convention on the Rights of the Child, 1989 and the ILO Worst Forms of Child Labour Convention, 1999 (No.182);**

- **Child victims of trafficking have special needs that must be recognized and met;**
- **The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions;**
- **In dealing with the child victims of trafficking the best interests of the child are to be at all times paramount;**
- **Trafficked children should not be criminalized in any way.¹⁷**

6.4. Trafficking: what, who and how

6.4.1. Defining trafficking: its coercive and exploitative nature

It was only in November 2000 that an international definition of trafficking was agreed to, under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (also known as the Palermo Convention)*:

Trafficking Protocol

Article 3 Use of Terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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 over another person, for the purpose of exploitation. Exploitation shall include, at the 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;*
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of means set forth in subparagraph (a) of this article;*
- (d) "Child" shall mean any person under eighteen years of age.*

Box 6.3. Key features of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

- Defines trafficking as a crime against humanity, marked by the intent to deceive and exploit;
- Expands the range of actions considered part of the trafficking process – recruitment, transportation, transfer, harbouring, and receipt of persons in end-institutions;
- Addresses a wide range of means used, from blatant force to subtle inducements that capitalize on vulnerability, to achieve “consent”;
- Makes “consent” to the intended exploitation irrelevant, where any of the means outlined in the definition are used;
- Acknowledges men are also trafficked, though it emphasizes trafficking in women and children;
- Recognizes a range of purposes of trafficking, in addition to sexual exploitation;
- Contains rights-based and protective social, economic, political and legal measures to prevent trafficking, protect, assist, return and reintegrate trafficked persons, and to penalize trafficking and related conduct; and
- Calls for international cooperation to prevent and combat trafficking.

Source: UNIFEM and UN Project on Human Trafficking in the Mekong Sub-region, *Trafficking in Persons A Gender and Rights Perspective Briefing Kit*, Sheet 2.

Throughout the preparation of the Trafficking Protocol, it was the concern of the United Nations, the ILO and other international organizations that the very definition of trafficking should include a reference to its coercive and exploitative elements, including forced labour, involuntary servitude, peonage, debt bondage, kidnapping, physical violence and other slavery-like practices. It is the presence of **coercion, force and/or deception for the purpose of exploitation** that is the key to determining whether or not a person has been trafficked, and that distinguishes trafficking from migrant smuggling and other forms of irregular migration [👁️ **Box 6.2**]. It is also important that trafficking is not conflated with smuggling or with prostitution. Trafficking is not just for sexual exploitation; it encompasses all forms of forced labour, slavery and servitude in any sector of the economy.

Compared to trafficking, **smuggling may involve no coercion or exploitation whatsoever.** Smuggling refers to the

The typical profile of a smuggled migrant is not from the poorest families or communities – because they have to be able to pay upfront in cash for the services of the smugglers – but trafficked persons are most often from the poorest, most marginalized communities and families.

facilitated, illegal movement of persons across national borders for profit. The smuggled person, desiring to reach a destination country where legal channels of migration have been blocked off, may enter into an entirely consensual contract in order to achieve clandestine or irregular migration. In principle, the smuggling of persons constitutes an illegal border crossing and is therefore a violation against the State. In contrast, trafficking in human beings is a violation of the rights of the individual, so that the victims of the crime are the trafficked persons themselves. Research shows, for example, that the typical profile of a smuggled migrant is not from the poorest families or communities – because they have to be able to pay upfront in cash for the services of the smugglers – but trafficked persons are most often from the poorest, most marginalized communities and families.

The *Protocol Against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol)*, supplementing the *United Nations Convention Against Transnational Organized Crime*, 2000¹⁸ defines migrant smuggling as:

Smuggling Protocol

Article 3 Use of terms

- (a) *“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident;*
- (b) *“Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;*
- (c) *“Fraudulent travel or identity document” shall mean any travel or identity document:*
 - (i) *That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or*
 - (ii) *That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or*
 - (iii) *That is being used by a person other than the rightful owner.*



It is extremely crucial not to conflate trafficking with various manifestations of migration and mobility on the one hand and with prostitution and sex work on the other:¹⁹

- Equating trafficking with migration can lead to simplistic and unrealistic solutions – in order to prevent trafficking, there are both conscious as well as inadvertent moves to stop those who are deemed vulnerable from migrating. For example, some countries do not allow women under a certain age to travel abroad unless accompanied by a male relative or can show proof of consent from their guardian. “Conflating trafficking with migration results in reinforcing the gender bias that women and girls need constant male or State protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a living in a manner they choose”;
- Curbing migration does not stop trafficking, and merely drives the activity further underground;
- Conflating trafficking with sex work or prostitution leads to anti-trafficking measures being invariably anti-prostitution measures – “Prostitution per se as the exclusive purpose of trafficking is an untenable definition as not all victims are prostitutes and nor have all the prostitutes been trafficked”.

*“Trafficking becomes an offence and a violation of human rights because of the non-consensual or deceptive nature of the movement and the exploitative or servile nature of the conditions of work and life to which the trafficked person is confined. It does not become an offence because of the purpose for which a person is moved or moves. The common elements in the trafficking are not the movement or the site of work per se but the brokering, lack of consent and exploitative conditions of work. Unfortunately, most initiatives on trafficking have failed to make these distinctions, and are focused on stopping movement, especially of women, regardless of the consent of the subject, on the assumption that they will be trafficked”.*²⁰

6.4.2. The mechanics of trafficking

It is important to understand how trafficking in persons operates from the start to the finish of the cycle, the various actors involved, the typical routes, the types of exploitative situations in which trafficked women and girls are victimized, and the roots and contributing causes of the problem. Such understanding is essential for planning a range of interventions at the different stages in the trafficking process.



The trafficking cycle can be described as a well-organized business²¹ that is divided into three consecutive stages: the process of mobilization by which migrants are recruited; the requirements en route as migrants are transported to an unfamiliar milieu; and the receipt or harbouring of migrants under coercive, exploitative or forced labour conditions.



In the mobilization stage, trafficking in persons operates:

- ☑ *By force, coercion, complicity or ignorance;*
- ☑ *Through voluntary recruitment of unsuspecting victims;*
- ☑ *Through the links between prostitution and trafficking;*
- ☑ *Through the use of false documentation and the enforcement of procedures.*

☑ ***By force, coercion, complicity or ignorance:***

Women and girls may become the victims of trafficking by force, coercion, trickery, complicity by family members or other persons or by misinformation or ignorance about what really awaits them at their destination [👁️ **Box 6.4**]:

- Sometimes women are kidnapped outright in one country and taken forcibly to another. **Indigenous women and women from ethnic minorities may be particularly vulnerable;**
- Traffickers may make an outright purchase of the victim through family members or have a contract with the family and the girl or woman is taken abroad to earn back the money lent to the family;
- There can be complicity, with the involvement of family members. Those exposed to domestic violence may be more likely to be trafficked;
- Victims are lured with job offers. Many potential victims are already seeking a chance to migrate when they are enticed with false promises of good paying jobs in foreign countries as au pairs, models, dancers, waitresses, hotel maids, domestic workers, etc. Traffickers advertise these phoney jobs in the local media or they may approach the women or their families directly with offers of well-paying jobs elsewhere. The women may believe that they are being recruited for legitimate employment abroad;
- After providing transportation and false documents to get victims to their destination, traffickers subsequently charge exorbitant fees for those services, creating lifelong debt bondage;

- Victims are lured with false promises of marriage opportunities. Crime syndicates use marriage agencies, mail order bride agencies and matchmaking parties – even the Internet - to find their victims. Traffickers may even enter into false marriages with their victims.

☑ **Through voluntary recruitment of unsuspecting victims:**

Coercion may not be evident at the beginning of the trafficking process. The person may enter into an agreement with the recruiting agent on an apparently voluntary basis, albeit often without having been given full information.

Coercion may not be

evident at the beginning of the trafficking process. The person may enter into an agreement with the recruiting agent on an apparently voluntary basis, albeit often without having been given full information. The fact is that many women and girls voluntarily go with recruiters who traffic them, they may even seek out the recruiters and willingly pay for travel or for documents – because they believe that relocation for employment is beneficial, because they are enticed by those returning with tales of a better life and higher incomes, because any option appears better than their current desperate economic straits:

*“Whatever levels of knowledge and ‘consent’ are involved, however, women are never made aware of the extent to which they will be indebted, intimidated, exploited and controlled. They believe (not just because of their own naivety but because of the deliberate strategies used by traffickers) that they can travel to a richer country and earn large amounts of money in a short space of time, which they can then use to move themselves and their families out of poverty and despair”.*²²

☑ **Through the links between prostitution and trafficking:**

Women who work in the sex industry in their country of origin are much more vulnerable to being trafficked.²³ Some of the women working as prostitutes decide voluntarily to migrate and work abroad but the majority are trafficked. In the countries of Southeastern Europe, for example, the prostitution markets are controlled almost entirely by pimps and criminal networks and are based on a system of internal trafficking. Prostitution is located in big cities, in tourist resorts and in border areas. Women working in the sex industry in these areas come from the poorest parts of their countries. They work for pimps, are moved from place to place, sold to other pimps or kidnapped by them. In the process, some are trafficked.

☑ **Through the use of false documentation and the enforcement of procedures:**

Systems that provide forged documents are in place to supply migrants with appropriate papers at different points en route. This may include the use of:

- Falsified passports and entry visas,
- Fake marriage certificates,
- False work contracts,
- False documents relating to studies at universities and colleges or “language schools”,
- Requests for family reunion, or
- Supposed health reasons, seeking medical treatment in a country.

Prior to departure, traffickers may make the women and their families pay for their passage in part or full, in cash or kind. Traffickers may also impose certain conditions on the women, such as sponsorship by a representative of the trafficking network in the country of destination; obligatory employment in the destination country on terms dictated by the traffickers (such as 1-2 years and fixed “pocket money”); occupation in sectors selected by the traffickers with no right to complain (prostitution for women, farm labour for men); and oath of silence which, if broken, generates police arrest and deportation.



An essential component of the trafficking cycle is that the movement or transport involved is such as to place the victim in an unfamiliar milieu where she is often culturally, linguistically or physically isolated, away from family and friends and other sources of protection and support, and denied legal identity or access to justice. Such dislocation increases the trafficked women’s marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination by traffickers and by State officials. The trafficking can be:

- ☑ *Within countries or across national borders;*
- ☑ *Through use of a variety of means of transport and equipment and methods of crossing borders;*
- ☑ *Through simple and direct or complex and circuitous routes.*

☑ ***Within countries or across national borders:***

Trafficking occurs within as well as across national borders. In very many countries, women and children are trafficked from rural to urban areas for exploitation in labour and in commercial sex. Tourism often draws women and girls from rural areas to resort areas; there can also be movement to the cities to fill the demand for domestic workers. Cross-border trafficking is also growing, especially as economic differentials between countries widen. Many countries across the globe are sending, transit and/or destination countries. Some are all three, with indigenous women being trafficked abroad, parts of the country being used as transit routes between two other countries, and women being trafficked in from still other countries. Most countries, however, are either origin or destination, with the former being characterized by poverty and the latter by relative affluence. The traditional flow between certain poor countries (in South and Southeast Asia, Northern and Central Africa, Latin America) and western destination countries continues. However, the most striking increase in recent times has been the trafficking of women and children from Central and Eastern European countries into Western Europe.

☑ ***Through use of a variety of transport means and equipment and methods of crossing borders:***

Traffickers may employ transport providers and operators who are adept at circumventing the methods used by the authorities to combat illegal migration. They

change routes and methods often.²⁴ The means of transport may vary at different stages of the journey – by air, train, truck/containers, small buses, small vessels, speedboats, on foot. The traffickers also use sophisticated equipment, such as for high frequency communications. Border crossings may be simple (such as traffickers/smugglers arranging for the migrants to walk across unguarded borders and be picked up by handlers) or complex and dangerous (such as being ferried in small boats and forced to swim to shore or being concealed in refrigerated vehicles, false baggage compartments in trains). En route, migrants may require accommodation, sometimes for considerable periods in a transit country, before embarking on the next stage of their journey.²⁵ Traffickers/smugglers have a string of contacts along the routes. For example, they may rely on the bribery of officials at border crossing points who ignore forged documents.

☑ ***Through simple and direct or complex and circuitous routes:***

The time between departure from origin and arrival in final destination may be several months or even years. The choice of destination country is often made by the traffickers, rather than the women themselves -suggesting that the decision to target particular countries depends on traffickers' perceptions of the weak links in the geography of migration control systems.²⁶ Once the woman or girl has been recruited, she is transported to another place, often following migration routes and patterns but sometimes along routes used for the smuggling of arms or drugs. "All along the road from acquisition to exploitation, there may be people who can be described as indirectly complicit: taxi and bus drivers, ship's captains, train guards, immigration officials, border guards, hotel clerks [...]. Accessories to trafficking may be involved in the production and supply of forged identity and travel papers that make the trafficking victim more difficult to trace and leave him or her in a situation of illegal migration, in fear of detection and vulnerable to threats and continued coercion".²⁷



It is increasingly common that the coercive elements of trafficking are only manifested at the destination:

- ☑ ***Through coercion, exploitation and abuse at the destination and through a complex web of dependence;***
 - ☑ ***From being smuggled to being trafficked.***
-
- ☑ ***Through coercion, exploitation and abuse at the destination and through a complex web of dependence:***

Once victims are brought to destination countries, they are obliged to repay heavy debts consisting of the costs of the agency fees, documentation and transportation; their passports are confiscated, their money taken away. Their promised jobs do not materialize and wages are not paid. Instead, they frequently find themselves in slavery-like conditions, particularly those in prostitution but also in domestic service and sweatshops. Trafficking victims are often subjected to cruel mental and physical abuse in order to keep them in servitude, including beating,

rape, starvation, forced drug use, physical restraint, confinement and seclusion. Traffickers also threaten to inform the family of the women that they are working abroad as prostitutes or they may even threaten to physically harm their family members back home. The women feel trapped, especially because of their situation as undocumented immigrants. The victims are often subject to progressive exploitation: a woman or girl trafficked into one form of labour often ends up being further abused in another. Those who are recruited to work as domestic workers or in restaurants, bars or other labour situations are also often targets of sexual violence. When sick or unable to work, they may simply be discarded by their traffickers.

☑ *From being smuggled to being trafficked:*

What started as a smuggling situation often

Those who voluntarily enter into a contract with a smuggler to be achieve undocumented entry into a foreign country or to obtain departure from highly restrictive situations in their origin countries often end up being severely exploited and trafficked.

changes into a trafficking one [👁️ **Box 6.2**]. Those who voluntarily enter into a contract with a smuggler to achieve undocumented entry into a foreign country or to obtain departure from highly restrictive situations in their origin countries often end up being severely exploited and trafficked. The women arrive in a country and find their debt or terms of repayment have changed considerably. The smugglers/traffickers engage in irregular accounting practices and charge usurious interest rates, so that the women find themselves never able to pay their debts. Largely uneducated and heavily indebted to smuggling rings, some undocumented migrant women are urged or coerced to sell drugs or to go into prostitution to repay their debts. The fact that they have been smuggled and are irregular migrants who are afraid of being reported to the authorities also makes them highly vulnerable to coercion and exploitation.



Trafficking involves a wide range of actors and supporting mechanisms. Different actors may be involved at each stage of the trafficking process

[👁️ **Box 6.5**]:

- The recruiter or agent at the local village level who identifies vulnerable women and girls and directly approaches them or their families and gains acquiescence through deception or an agreed payment;
- Recruiters may target beauty contest winners;
- It may also be a friend or relative who persuades the woman or girl that relocation offers benefits;
- The traffickers are not only men; there are a growing number of women, including those who used to work as prostitutes, who travel abroad several times and in the process start recruiting other women;
- There can also be more organized mechanisms; these range from small-time agents working under the guise of employment/tour/entertainment/ modelling/marriage agencies to larger crime

- syndicates with elaborate networks and structures. Employment agencies and recruitment agents are often a major source of abuse and exploitation;
- The internet is also being increasingly used to promote global trafficking of women and children and to lure them to foreign cities with false promises²⁸;
 - The entire range of people involved in supplying false documentation and providing transportation;
 - Corrupt officials and bureaucrats;
 - Employers – including brothel owners, factory or sweatshop owners and employers of domestic workers - who use trafficked labour because they are cheaper, easier to control, prepared to take up 3-D (dirty, degrading or dangerous) jobs which others, especially nationals, are not prepared to do;
 - Clients/customers – some men seek the “thrill” of the services of foreign prostitutes, being prepared to pay more for them than for local women, thus adding to the profitability of trafficking.



Trafficking networks and organized crime: Although there is small scale trafficking involving few individuals and small enterprises, there are, more importantly, large enterprises and international networks creating a sophisticated and well-organized “industry” with political support and economic resources in countries of origin, transit and destination. When the criminal organizations control the whole chain from recruitment through transportation to the destination situation, the influence over the victims is very strong and the coercion and exploitation very serious. ²⁹

Trafficking has become a major source of income for organized crime groups. The same organized criminal networks that trade in weapons and narcotics are often also active in trafficking. Most operate without fear of reprisal because criminal sanctions against traffickers are often weak or not enforced. Unlike the trade in drugs and guns, the trade in women and children is virtually cost-free, and thus extraordinarily lucrative. High profits gained by these criminal organizations also often imply the creation of front companies involved in legitimate activities. Cases of corruption of officials are also not uncommon:

“Transnationally operating crime cartels have become an important mediator of immigration in Europe and North America ‘partly replacing or at least overlaying the classic push-and-pull factors of migration-inducing ties between origin and destination country or migration-maintaining kinship and family networks’. These organized criminal networks are heavily involved in trafficking as well as in migrant smuggling. As a result of this involvement, the trafficking process is becoming more efficient and flexible, better structured, increasingly coercive and less amenable to traditional law enforcement responses”. ³⁰

Box 6.4. Entering the cycle of trafficking in Central America and the Caribbean

Recruiting strategies and entrance into sex trafficking in **Central America** and the **Caribbean** appear in numerous forms. The following means of induction have been detected:

- **Deception/false promise of employment:** this strategy of recruitment of women and adolescents is by far the most common. Known and unknown persons present attractive offers for jobs as waitresses, dancers, bartenders, factory workers (maquiladoras), domestic labourers, and models. Adolescents may travel with legitimate parental permission, the families having been victim of the deception as well. This type of trafficking was detected for domestic and international destinations.
- **Misadventure:** Increasingly, women and adolescents in pursuit of employment or adventure will seize opportunities to be transported outside their home countries. Young women petition for rides with truck drivers to Mexico and the United States. Migrant smugglers are often used. In both these circumstances, the abandonment of the women is frequent. Far from home and lacking finances, many are pressed into prostitution.
- **Abduction:** Reports of children being abducted and trafficked for commercial sexual exploitation were received, although it appears to occur to a lesser extent than other forms of trafficking.
- **Gang-related:** In Honduras and El Salvador, young women and adolescent gang members were reported to have been trafficked for sexual exploitation in order to raise capital for the gang.
- **Peer-influenced:** Trafficking of children, often homeless, runaways or seeking an escape from a troubled home, was reported to occur as a result of peer recruitment. Such cases appear to be largely limited to domestic movement.
- **Family controlled:** A few reports of parents or guardians allowing their children to enter into circumstances of sexual exploitation were reported. More often, family members who may have been trafficked themselves or are in the sex trade become recruiters for younger relatives.
- **Marriage fraud:** In the Dominican Republic, foreign men have been reported to pursue marriages with local women in order to take them abroad for purposes of prostitution.
- **Visa system:** Panama presents atypical circumstances of a state-sponsored migration programme for sex workers. This system is commonly abused and participating women are trafficked as a consequence. In most cases, there is material deception as to the conditions of employment. While women are recruited under guaranteed contract provisions, none of the terms are met upon arrival. In addition, passports and other travel documents are confiscated and earnings are often withheld.

Source: International Human Rights Law Institute DePaul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas Central America and the Caribbean Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama* (Chicago, International Human Rights Law Institute, DePaul University College of Law, 2002), pp. 40-42.

Box 6.5. The actors in the trafficking cycle

The forms of trafficking outlined in Box 6.4 exist at the hands of a wide variety of actors:

Private Actors: The networks that facilitate and maintain trafficking for sexual exploitation involve a variety of private sectors, including transportation, tourism, media/communications, entertainment and legal:

- **Taxi drivers, rickshaw drivers and truck drivers** participate in the movement of women and children to and between places of exploitation. Often drivers add to the exploitation by forcing sexual favours for their services. They may also be engaged as recruiters, working under agreements with establishment owners or independently;
- The **media** was a noted method of recruitment through classified and radio advertisements. Increasingly, the *internet* is being used to support and encourage the demand for commercial sexual services, through web-based tourism operations, sex tourism guides and chat rooms;
- **Hotels and motels** are often used as “safe-houses” for those in a migration process and also to support prostitution;
- The **legal profession** has been implicated in trafficking activities by arranging for false documentation to allow children to travel without parental permission and fixing immigration status in destination countries;
- **Owners and managers of the bars, nightclubs and brothels** where trafficked women and minors are exploited and pressed into sexual servitude. Owners receive and control the majority of profits from trafficking, money that secures the owner’s position in the community and guarantees a certain degree of impunity.

Public Actors: Immigration police and other civil servants aid traffickers. Public participation has been identified in providing fraudulent birth certificates and other documents, arranging for illegal border crossings, protecting bar and brothel owners from investigations or prosecutions, and becoming clients. Some countries have installed disciplinary measures to be used against corrupt officers. The numbers, however, seem to suggest that these procedures are ineffective.

Clients: The root cause of trafficking is demand for commercial sexual services, without which trafficking for purposes of sexual exploitation would dissolve. The demand connected to trafficking in the region is predominantly for prostitution and stripping. Demand within the region is concentrated in “zones of tolerance”, tourist areas, ports, along international trucking routes, and in certain agricultural areas where migrant labourers are predominantly male. The growth of the tourism industry and the increasing number of gambling establishments have also opened markets for the industry. Varying forms of prostitution also occur in public markets and border areas. Bar owners, taxi drivers, hotel managers, market vendors and independent pimps all serve the demand of clients.

Source: International Human Rights Law Institute DePaul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas Central America and the Caribbean Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama* (Chicago, International Human Rights Law Institute, DePaul University College of Law, 2002), pp. 42-45.

6.5. The root causes of trafficking

To tackle trafficking it is necessary to address the root causes on both the supply and demand sides –

On both supply and demand sides, there is one uniting and pervasive factor: the multi-layered discrimination and inequality, which serve to prevent women and girls from exercising power over their lives.

with implications for action by both source and destination countries. On both supply and demand sides, there is one uniting and pervasive factor: “the multi-layered discrimination and inequality which serve to prevent women and girls from exercising power over their lives”.³¹ In the context of globalization, while trade and capital flows have been liberalized, deregulated and integrated globally, people flows are not. Restrictive immigration laws and policies are obstacles to the demand for cheap, unskilled labour in destination countries and a large supply of human resources from source countries. This generates a lucrative market for traffickers.

Box 6.6. Factors behind the trafficking of women and girls

Supply-side

- Feminization of poverty
- Chronic unemployment and lack of economic opportunities
- Growing materialism and desire for a better life
- Dysfunctional family situations
- Gender inequality in access to education and training
- Lack of access to information
- Discrimination on the basis of gender and/or ethnicity
- Cultural contexts and community attitudes and practices which tolerate violence against women
- Sex-selective migration policies
- Ineffective legal and regulatory frameworks
- Displacement and disruption due to natural and human-created catastrophes

Demand-side

- Employer demand for cheap and exploitable labour
- Consumer demand for services sometimes provided by trafficked persons
- Gender discrimination
- Increasing casualization and informalization in the labour market
- Growth of sex and entertainment industries
- Low-risk, high-profit nature of trafficking
- Absence of effective regulatory framework and lack of enforcement
- Lack of organization and bargaining power of workers
- Discriminatory socio-cultural practices relating, for example, to marriage
- Lack of respect for/violations of human rights

Box 6.7.**Identification of risks and vulnerabilities to trafficking**

<i>Type of risk to the Poor Lifecycle</i>	<i>Sub-set associated with risks/vulnerabilities to trafficking</i>
<i>Economic</i>	<ul style="list-style-type: none"> ▪ Street children with no guardians ▪ Adolescent girls ▪ Children with families in crisis (alcoholic parents, traumatized from war or civil conflict) ▪ Single women with children ▪ Single women (traumatized through stigmatisation, e.g. Rape victim) ▪ Women/girl migrants – either alone or with families
<i>Environmental</i>	<ul style="list-style-type: none"> ▪ Family that cannot meet basic needs (e.g. Large number of dependents without assets, female-headed, one or more members out migrated) ▪ Livelihood based on arduous labour ▪ High unemployment or long-term unemployment ▪ Sudden economic shocks ▪ Indebtedness of family – girls living in communities where dowry payments required upon marriage divert scarce resources ▪ Income disparities between rural/urban areas or between countries
<i>Social/Governance</i>	<ul style="list-style-type: none"> ▪ Long-term lack of sustainable livelihood from erosion, drought, etc ▪ Sudden disaster victims. E.g. Cyclones, earthquakes, floods ▪ Social capital: recently arrived migrants have few if any social contacts and cannot benefit from, or may be excluded from, existing social capital; development initiatives and projects may disrupt existing social capital networks and fail to provide replacement mechanisms ▪ Security: those living in violent or abusive families; living under conditions of civil unrest or war; children living without parents or guardians ▪ Status: women and girls unable to control their lives or seeking options outside their current limiting/discriminatory/restrictive conditions ▪ Stigmatisation: women abandoned, divorced, raped; pressures of community following inappropriate behaviour but not necessarily illegal or immoral such as inappropriate friendships, seeking to challenge traditional inequalities, etc., difficulties for women migrants or trafficked persons returning to communities where stigmatisation leads to re-victimization; ▪ Emotional stability: dysfunctional families from addiction or war/civil conflict trauma, absence of caring guardians ▪ Adventurers: new technologies, access to information and education and improved transportation systems facilitate migration of those dreaming of a better life, but still at risk when they have few assets or experience with outside world; traffickers use returned migrants to demonstrate validity of false promises.

Source: Asian Development Bank, "Integration of trafficking concerns into ADB Operations", internal document (Manila, ADB).

6.5.1. Supply-side causes



There are many factors behind the vulnerability of women and girls, and hence the supply of potential victims, both voluntary and coerced. The factors are complex and should usefully be understood in relation to the motivations of the principal actors:

- ☑ *Economic factors, in particular poverty and chronic unemployment;*
- ☑ *Growing materialism and desire for a better life;*
- ☑ *Family situations;*
- ☑ *Lack of educational opportunities;*
- ☑ *Lack of access to information;*
- ☑ *Gender discrimination and deep rooted inequalities;*
- ☑ *Tolerance of violence against women;*
- ☑ *Sex-selective migration policies;*
- ☑ *Ineffective legal and regulatory frameworks;*
- ☑ *Economic crises, natural disasters, wars and political conflicts.*

- ☑ *Economic factors, in particular poverty and chronic unemployment:*

With the feminization of poverty, the pressures are increasingly strong on women to earn a living and they find it difficult to resist the promise of jobs and higher incomes in a foreign country and are willing to take their chances.

In the majority of

cases, poverty is the most important root cause of vulnerability and powerlessness. Whereas smuggled migrants are generally not from the poorest families or communities – because they have to be able to afford to pay for the services of the smugglers – the victims of trafficking are most often from the poorest, marginalized communities and families. Available evidence indicates that women account for growing proportions of the poor; with the feminization of poverty, the pressures are increasingly strong on women to earn a living and they find it difficult to resist the promise of jobs and higher incomes in a foreign country and are willing to take their chances. Desperately poor families may also sell off their daughters to traffickers for the immediate cash payoff.

- ☑ *Growing materialism and desire for a better life:*

It is not just **absolute poverty** (living below the poverty line) and lack of jobs that drive women and girls into the hands of traffickers. It is also **relative poverty** (income inequalities, considering oneself poor relative to others and seeking to close the gap). Influenced by return migrants who have been successful, by exposure to media (including the internet) images of desirable alternative lifestyles and by the growing tendency towards materialism and consumerism, young women and girls are willing to take their chances. Or even at a more basic level, they may wish to escape the drudgery of unpaid work on the family farm, informal enterprise or care work in the household. Their desire for a better life may be so strong as to outweigh their recognition of the potential dangers. Even when they have an idea of their

vulnerabilities (although never the complete information), many may still feel the risks are worth it.

☑ ***Family situations:***

Young women and girls from poor and indebted families are often “selected out” as part of survival strategies by their families to work in other areas or countries. They are the ones most likely to be “sold” or handed over to traffickers because of their relative powerlessness within their own families or because they are more reliable than young men in sending remittances and providing for the family. In many parts of the world, there is also a growing trend of females taking responsibility for the survival of the whole family and looking for new sources of income; there are more single mothers, female heads of households and female sole breadwinners. Dysfunctional family situations - including domestic violence, alcoholism, child abuse and neglect, incest, marital discord and family disintegration, the death of parents or guardians - may also push women and girls to leave home and make them more vulnerable to traffickers. Research has indicated that women living on their own may be less likely to be trafficked than those who live with their relatives, especially if the family is dysfunctional.³²

☑ ***Lack of educational opportunities:***

A strong correlation has been observed between trafficking and the low levels of education, inadequate training and lack of educational opportunities for women and girls.³³ Parents often do not invest in the education of girls because the expectation is that soon enough they will marry into the husband’s family and not bring in income to their parental home. But the lack of education and skills greatly exacerbates the vulnerability of women and girls - because they have restricted options for earning incomes and because they have less access to reliable information. Within their own countries and also in destination countries, the only jobs open to women with little or no education are those stereotyped as “feminine jobs” which are the lowest paid and most vulnerable to exploitation and abuse.

☑ ***Lack of access to information:***

Illiterate or semi-literate women and girls are also especially vulnerable because they do not have access to accurate information about the labour market and job opportunities, about migration processes and recruitment channels, and do not know how to contact and make use of proper support institutions and structures, such as government employment services. Compared to men, women and girls are much less likely to be aware of the range of risks involved in migration.

☑ ***Discrimination and deep-rooted inequalities:***

Gender is a determining factor in

Discrimination by race or ethnicity may also be an important factor. Women and girls from ethnic minorities, scheduled castes, unemployed or floating populations, indigenous people and other marginalized groups are particularly vulnerable to trafficking.

trafficking, both on the supply and demand sides. Discrimination by race or ethnicity may also be an important factor. Women and girls from ethnic minorities, scheduled castes, unemployed or floating populations, indigenous populations and

other marginalized groups are particularly vulnerable to trafficking. In many societies, girls are often seen as expendable and are expected to sacrifice education and security and take on responsibilities towards parents and siblings. In some societies, young women and girls may be manipulated by cultural traditions to show duty, care or gratitude to their parents even if it means being trafficked into prostitution or other forms of exploitation. In many societies, “daughters are perceived as a liability to the natal family encumbered with marrying them off early and appropriately, ensuring their pre-marital sexual purity, providing hefty marriage expenses and other material resources on auspicious occasions to the daughter’s marital kin. Poor households, in particular, cope with this in various ways. If an opportunity presents itself, families are willing to trade unwanted women and girls with little thought for their rights or future well being. Examples are: sale of women and girls into marriage; willingness to marry women/ girls off even to strangers who make no monetary demands, thus predisposing them to trafficking; sale of women and girls into prostitution when sexuality acquires an attractive market value”.³⁴ Policies that deny women and girls equal rights with men and boys to education, information, property and other resources may not only entrench sex-based divisions in the labour market but may also make women more vulnerable to abusive forms of migration and trafficking.

☑ ***Tolerance of violence against women:***

In cultures and communities where women and girls have low status and are considered chattel and dispensable, where domestic violence is condoned, where traditions or attitudes tolerate violence against women, they are much more likely to be vulnerable to being coerced and becoming victims of trafficking. Various reports have highlighted domestic violence as one of the root factors causing women to migrate abroad for work. Domestic violence is related to the absence of adequate legal provisions, the lack of knowledge about the nature of such violence, the absence of support networks and women’s low social and economic status relative to men as financial dependence prevents them from leaving abusive relationships.

☑ ***Sex-selective migration policies:***

Since the view is still common that “men migrate

Restrictive migration policies often have the consequence of pushing women and girls into seeking illegal channels for migration and making them much more vulnerable to entrapment by traffickers.

and women and girls are trafficked”, government policies often attempt to “protect” the women and girls by banning or restricting their mobility. For example, some countries require a male family member to sign a woman’s application for a passport or do not allow legal recruitment of women for overseas employment.³⁵ However, as mentioned in **Section 6.3** above, such restrictive migration policies often have the consequence of pushing women and girls into seeking illegal channels for migration and making them much more vulnerable to entrapment by traffickers. On the other hand, of course, such restrictive policies present lucrative “business” opportunities to those helping people – whether legally or illegally – to arrange travel, obtain documents, cross borders and find jobs in destination countries.

☑ *Ineffective legal and regulatory frameworks:*

Many countries still do not have laws specifically aimed at trafficking in human beings [👁 **Section 6.3** above, on the inadequacy of current legal provisions and policy interventions]. And even when there are laws, they tend to be ineffective because of legislative loopholes for trafficking and/or commercial sexual exploitation. In addition, many countries suffer from lax regulatory environments and under-funded regulatory mechanisms and personnel, such as the police, border guards and judiciary. Also, many law enforcement agencies and governments ignore the plight of trafficking victims and downplay the scope of the trafficking problem or they may fear reprisals from the criminal organizations involved in trafficking and may find it easier and safer to deny knowledge of trafficking. In some cases, police, migration authorities and other government agents accept bribes and collude with the traffickers.

☑ *Economic crises, natural disasters, wars and political conflicts:*

Such disasters cause serious disruptions and dislocations and increase economic and social insecurity – with the burdens often falling disproportionately on women and girls. There tends to be a sharp increase in female-headed households and greater feminization of poverty, especially in the face of greatly reduced economic opportunities. The disintegration of family, community and state support systems and the lack of social safety nets prompt women and girls to flee in search of alternatives and, in the process, to put themselves in the hands of traffickers. For example, the huge increase in trafficking of women and girls from **Southeastern Europe** has been traced to: “The combined effects of transition from conflict to post conflict situations, the presence of the international community and peace keeping forces, and the transition from state to market economies have brought a greater diversification of economic status and social position, as well as new social phenomena. Lack of the rule of law and difficult economic situations have allowed black market economies to flourish. Smuggling of goods, arms and people, corruption of state employees, organized crime groups and acceptance of illegal ways to earn money, as well as unregulated migration, have become the new norm”.³⁶

6.5.2. Demand-side causes

A focus on supply factors alone without looking at the complex

A focus on supply factors alone without looking at the complex issues of demand in the destination countries will always prove inadequate.

issues of demand in the destination countries will always prove inadequate. Globalization processes have changed the boundaries of markets, increased global integration, altered the international division of labour and heightened competitive pressures. These changes have created a demand for cheap labour and also generated the 3-D kinds of jobs – dirty, degrading and dangerous – that citizens of developed, industrialized countries are unwilling to accept. Trafficking and exploitation of female migrant workers is often a means to meet the demand for workers to fill such jobs.



The main sources of demand and the root causes in destination countries can be traced to:

- ☑ *Cost competitiveness in labour-intensive, export-oriented production;*
- ☑ *Growth of the informal economy;*
- ☑ *“Replacement mobility” demand;*
- ☑ *Expansion of a lucrative sex and entertainment industry;*
- ☑ *Lack of respect for labour standards;*
- ☑ *Lack of organization, representation and voice of workers;*
- ☑ *A burgeoning marriage market and bride trade;*
- ☑ *Inadequate legislation and law enforcement.*

☑ *Cost competitiveness in labour-intensive, export-oriented production:*

The pressures for businesses to survive in increasingly competitive markets have led manufacturing industries and large firms to relocate part or all of their operations in low-wage economies or to outsource production to sub-contractors in these countries. However, small and medium size enterprises and many service sector activities tied to locations close to their markets do not have the choice of relocation. These small and medium size enterprises, therefore, have an increased demand for cheap migrant labour. Various reports have highlighted the use of undocumented female migrant workers in sweatshops, small factories, home-based subcontracting in places ranging from the United States, to Japan, Republic of Korea, Hong Kong, Malaysia and Singapore.³⁷

☑ *Growth of the informal economy:*

The increasing informalization and casualization of production and employment relationships

The conditions in the informal economy – which is not covered by labour law and social protection and outside the scope of labour inspection and where there is a lack or absence of organization and representation of workers – facilitate the incorporation of trafficked and undocumented female migrant workers.

has been a very important factor behind the exploitation of female migrant workers.

The conditions in the informal economy – which is not covered by labour law and social protection and outside the scope of labour inspection and where there is a lack or absence of organization and representation of workers – facilitate the incorporation of trafficked and undocumented female migrant workers.³⁸ Employment in the informal economy is largely invisible and practically unreachable by current labour standards inspection and enforcement. Irregular migrants are often preferred employees in the informal economy because of their vulnerability and their inability to protest, denounce or call in regulatory inspection.

☑ ***“Replacement mobility” demand:***

A major source of demand for female migrant labour is in domestic work and the care economy. As more and more local women with rising levels of education are going into the labour force, more countries are making efforts to draw female nationals into employment outside the home, demographic trends lead to a growing number of dependents needing care in aging societies, and rising household prosperity demands the presence of live-in help, they are resorting to migrant women to take over these responsibilities. But because the female migrants go into individualized work situations in homes where there is greater isolation and lower likelihood of establishing networks of information and social support, they tend to be much more vulnerable to exploitation and abuse, as compared to male migrants who commonly work in groups such as on construction sites or agricultural farms. Many cases of trafficking within national borders involve young girls and adolescents sold or tricked into domestic servitude.

☑ ***Expansion of a lucrative sex and entertainment industry:***

Trafficked women from Central and Eastern Europe are found in brothels as far away as East and Southeast Asia and Latin America and trafficked women from Southeast Asia, Africa and Latin America are prostituted in Western Europe and North America. The rapidly expanding global sex industry has been a major factor behind the increased trafficking of women and girls and the serious sexual exploitation associated with such trafficking. The growth of the sex industry has been linked to the growth of the tourism industry and gambling establishments, a pornography industry linked to the use of the internet, the expansion of international trucking routes and the large-scale concentration of unaccompanied male migrants in certain areas such as agricultural and construction sites.

☑ ***Lack of respect for labour standards:***

A major incentive for trafficking in labour is the

A major incentive for trafficking in labour is the lack of application and enforcement of labour standards in countries of destination (as well as origin).

lack of application and enforcement of labour standards in countries of destination (as well as origin). These standards include respect for minimum working conditions and consent by the worker to her/his working conditions. Tolerance by the authorities of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, sub-standard housing, etc. all contribute to expanding a market for trafficked migrants who have

no choice but to labour in conditions simply intolerable and unacceptable for legal employment. Worse still is the absence of worksite monitoring, particularly in such already marginal sectors as agriculture, domestic service, sex work, which would contribute to identifying whether workers are in situations of forced or compulsory labour.³⁹

☑ *Lack of organization, representation and voice of workers:*

Research has shown that the demand for

The demand for trafficked persons' labour or services is almost completely absent in sectors where workers are well unionised and where labour standards regarding working hours, health and safety, wages and employment contracts are well established, routinely monitored and enforced.

trafficked persons' labour or services is almost completely absent in sectors where workers are well unionised and where labour standards regarding working hours, health and safety, wages and employment contracts are well established, routinely monitored and enforced. By contrast, the demand for trafficked persons' labour or services is very often found in contexts that are socially imagined to involve non-market relations, or that are viewed as occupying some twilight zone between market and non-market relations. For example, domestic work may not be fully understood as "work" when it takes place in private households. Bonded labour involving adults and children may be cloaked behind fictitious kinship or some form of paternalism.

☑ *A burgeoning marriage market and bride trade:*

Gender and racist stereotypes (for example, of Asian women as docile, subservient homemakers and Russian women as beautiful and sexy) have generated another form of trafficking – the mail order bride system. Marriage agencies provide catalogues with photographs and profiles of women who are lured by the prospect of marriage and residence in a foreign country. There are countless cases of women who correspond by mail and the internet with the men who have selected them from these catalogues, migrate for "love" and end up as domestic or sex slaves for their "husbands" [👁️ **Booklet 3**]. Demographic factors have also contributed to growing marriage markets. In China, for instance, the male-dominated, one-child population policy has produced demographic imbalances weighted against women, while long years of war in Vietnam have skewed the balance in favour of women. A thriving trade in Vietnamese women for the Chinese marriage market has thus emerged.⁴⁰ There is also a demand for foreign brides by Japanese men living in rural areas because Japanese women are unwilling to accept the conditions of rural life -- leading to a trade in Sri Lankan and Thai women.

☑ *Inadequate legislation and law enforcement:*

Existing legislation and law enforcement, whether in countries of origin, transit or destination, are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offences involved [👁️ **Section 6.3**]. For example, the introduction of the *United States Victims of Trafficking and Violence Protection Act of 2000* noted, "no comprehensive law exists in the United States that

penalizes the range of offences involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offences, so that traffickers typically escape deserved punishment. In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers".⁴¹ In Hong Kong, as in many other countries, domestic legislation prohibits trafficking for the purpose of prostitution but not for any other purpose, so trafficking for labour exploitation is technically legal.⁴²

6.6. Response Framework

- In Booklet 1 [👁 Section 1.4.1] of this Information Guide, it was emphasized that the response mechanisms to address the multifaceted causes, manifestations and consequences of the discrimination, exploitation and abuse of women migrant workers, including trafficked women and girls, should be comprehensive, multi-pronged and multi-level. In this Booklet, the elements of such a response framework for trafficking are elaborated upon.
- The response framework makes close reference to the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Trafficking Protocol)* and also the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002*.⁴³ (The text boxes that reproduce these Recommended Principles and Guidelines are distinguished in a darker colour).



A comprehensive response framework should:

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

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

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

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

☑ **Address the root causes of both the supply of and demand for trafficked persons:**

The United Nations Recommended Principles on Human Rights and Human Trafficking emphasize that strategies aimed at preventing trafficking should address demand as a root cause of trafficking; and States and intergovernmental organizations should ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.

The root causes behind the supply of and the demand for trafficked women and girls were identified above [👁️ **Section 6.5**]. Although admittedly not easy and although measures would need to be over the long term, these root causes must be dealt with if efforts to address trafficking are to be effective and sustainable [👁️ **also Section 6.7**].

📖 *It is necessary to avoid what has been described as the “push down – pop up” phenomenon. The lesson learned from the **Asia Pacific** region is: ⁴⁴ While successful interventions may be made in one community or country, the lack of reduction on the demand side results in a shift of the supply pool to the next vulnerable community or country. Successful community based protection strategies will have limited impact and only result in transferring the problem until more attention is paid to regional cooperation and tackling the demand side.*

- ☑ **Promote human rights, including labour rights and migrant rights:**

Human trafficking is first and foremost a violation of human rights.

Trafficking is a grave human rights abuse and, in responding to this problem, States should prioritise the protection of the human rights of trafficked persons, taking the steps necessary to prevent abuses and provide remedies where abuses occur. “Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights”.⁴⁵

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

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



Basic labour rights and migrant rights are part of human rights:

Universal Declaration of Human Rights

Article 23

- *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;*
- *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;*
- *Everyone has the right to form and to join trade unions for the protection of his interests.*

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up [👁️ **Booklet 1, Section 1.4.3.1**], which was unanimously adopted by the member States in 1998, reaffirms the right to freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation for all workers, nationals and non-nationals. The Preamble of the Declaration makes specific reference to the protection of migrant workers:

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation.

Box 6.8. Guidelines for the promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

- ☞ Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked;
- ☞ Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes;
- ☞ Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society;
- ☞ Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner;
- ☞ Protecting the rights of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right;
- ☞ Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement;
- ☞ Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures;
- ☞ Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies;
- ☞ Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law;
- ☞ Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 1, pp.5-6.

☑ *Promote a standards-based approach to combat trafficking, together with protecting the basic rights of all migrants:*

A response framework must have its foundation in the rule of law. It is critical to establish legal rights and policy standards so as to ensure social legitimacy and accountability. Therefore, the aim should be to promote the adoption and implementation of the key UN and ILO Conventions [📖 **Booklet 1, Section 1.4.3**]:

- *United Nations Convention Against Transnational Organized Crime, 2000;*
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000;*
- *Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000;*
- *International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;*
- *ILO Migration for Employment Convention (Revised), 1949 (No.97);*
- *ILO Migrant Workers (Supplementary Provisions) Convention, 1975, (No.143); and*
- *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, and the related core Conventions.*

☑ *Promote decent work for all workers:*

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

Migration in abusive conditions and the exploitation and trafficking of migrant workers occur in contexts of serious decent work deficits – in terms of the absence of rights at work, lack of productive and remunerative jobs, inadequate social protection and lack of representation and voice – in source, transit and destination countries.

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

It is crucial to address the labour market and employment situation, labour standards and working conditions in origin and destination

The aim is to focus not only on migration policies or on crime control but also, and very importantly, to include labour market and employment policies; measures for strengthening labour institutions, including labour inspection and monitoring; and employment services to inform job seekers of their options.

countries. Trafficking cannot be effectively tackled without addressing the reasons behind labour market failures (rising unemployment and under-employment and poor working conditions); persistent occupational segregation and the disadvantaged position of women relative to men in the labour market; and why and how informalization, flexibilization and casualization of production and employment relationships is increasing the demand for unregulated migrant workers. The aim is to focus not only on migration policies or on crime control but also, and very importantly, to include labour market and employment policies in both origin and destination countries; measures for strengthening labour institutions, including labour inspection and monitoring; and employment services to inform job seekers of their options.

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

☑ ***Work towards informed and transparent labour migration systems:***

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

However, measures to protect vulnerable migration workers and prevent trafficking cannot focus only on the supply of such workers and the factors in the source countries. The aim should be to "manage" or promote orderly migration by admitting labour migrants into a destination country based on systematic and realistic assessment of the labour market situation and "respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must be based in labour ministries, and rely on regular labour market assessments conducted in consultation with social partners to identify and respond to current and emerging needs for workers, high and low skilled".⁴⁶ The aim should be to establish legal labour migration channels that will contribute to reducing exploitation, trafficking and smuggling of migrant workers.

☑ ***Take action at all levels: community, national, regional and global:***

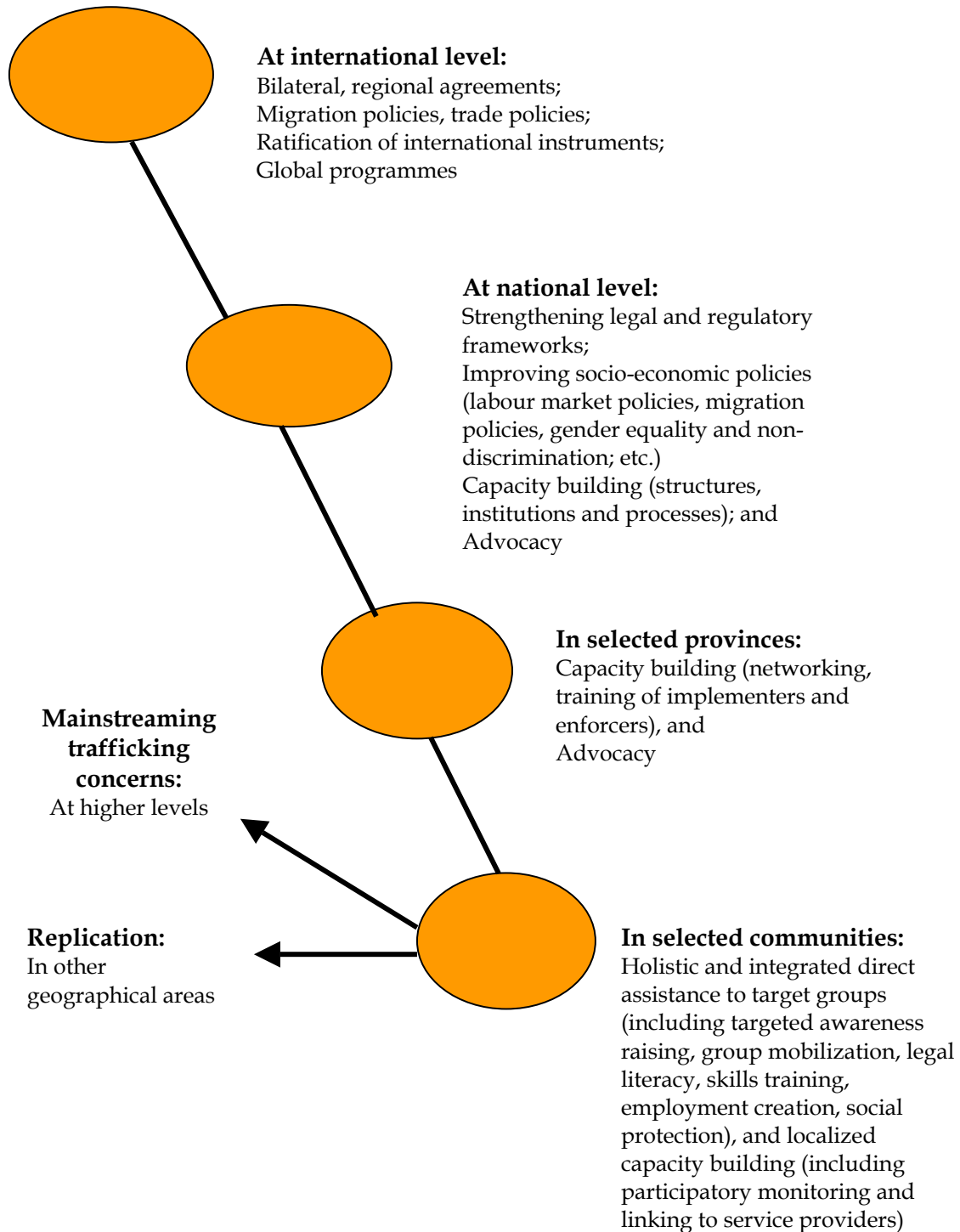
It is important to work at the grassroots, community level, so as to directly reach vulnerable women and girls. In source communities, programmes and practical interventions have focused mainly on raising the awareness of vulnerable women and girls and their families to the dangers of trafficking and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

[👁️ **Box 1.7 in Booklet 1** for a description of comprehensive response at community level]. In transit and destination communities, efforts have focused on shelter, health and counselling services for the victims of trafficking.

All such micro-level efforts are important but inadequate unless *Trafficking is still not widely recognized as related to the global macro economic environment and to specific macro policies in both countries of origin and destination.* combined with a range of complementary interventions and supported by socio-economic development policies at the macro level that address the root causes of the supply of and demand for trafficked women and girls. Alternative livelihood schemes in communities where women and girls are vulnerable to being trafficked should be supplemented by employment-intensive development policies and social protection schemes at national level. **Boxes 6.9 and 6.10** show the links between actions at different levels. Ideally, as shown in **Box 6.10**, there should also be a review of policies at regional and international/global levels: including regional or bilateral agreements for the temporary or permanent movement of persons across borders; and trade policies to cover the temporary movement of service providers (highly skilled, semi-skilled and unskilled). Regional action programmes and global initiatives have also been developed to combat trafficking.⁴⁷

Box 6.11 provides an example of mainstreaming trafficking concerns into socio-economic development policies and programmes. Socio-economic development policies should also be complemented by law reform and law enforcement, so as to eliminate deep-rooted gender discrimination and to ensure proper working conditions and labour standards in all sectors of the economy and for all workers. Trafficking is still not widely recognized as related to the global macro economic environment and to specific macro policies in both countries of origin and destination.

Box 6.9. Action at different levels to address trafficking



Box 6.10. Response Framework at all levels

At the global level:

- **Migration policies:** Ratification, implementation and monitoring of the relevant international instruments relating to the rights of migrants and fighting trafficking;
- **Labour policies:** Ratification, implementation and monitoring of the relevant international instruments relating to the rights of workers, including migrant workers;
- **Trade regime:** Review the movement of persons – highly skilled, semi-skilled or unskilled service providers – vis-à-vis the flow of goods and capital;
- **International initiatives:** Global programme against Trafficking in Human Beings, monitoring and advocacy role of the UN Special Rapporteur on Violence against Women, etc.

At the regional level:

- **Regional labour markets:** Agreements, Memorandums of Understanding (MOUs) on the movement of workers within the labour markets of a regional grouping of countries;
- **Regional migration regimes:** Agreements, MOUs on the temporary or permanent movement of persons across borders within a regional grouping of countries;
- **Regional anti-trafficking policies:** Examples are the EU Council Framework Decision on Combating Trafficking in Human Beings and SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;
- **Regional Programmes:** such as the STOP Programme, DAPHNE Programme, Stability Pact Task Force on Trafficking in Human Beings.

At the national level:

- **Macro socio-economic development policies:** Government policies to explicitly integrate migration and the protection of migrants into a development policy planning process;
- **Labour migration admissions system:** An informed and transparent labour migration admissions system based on systematic and realistic assessment of the demand for migrant workers;
- **Labour export policy:** For the source countries, a transparent and properly managed overseas employment policy; policies to effectively utilize remittances and to reintegrate returned migrants;
- **Employment and labour market policies:** to promote employment-intensive growth in source countries, to strengthen labour market institutions – labour inspection, employment services – in all countries;
- **Policies, including where appropriate, affirmative action, to promote gender equality and to fight all forms of discrimination:** both within and outside the labour market, in access to education, information, resources, and decision-making.

At the community level [Box 1.7 in Booklet 1]:

- Establishment of consultation and coordination mechanisms to involve all social actors;
- Community mobilization and outreach;
- Capacity building;
- Advocacy and awareness raising;
- Group mobilization and group dynamics, especially among vulnerable women and girls;
- Alternative livelihood opportunities and social protection.

Box 6.11. Integration of trafficking concerns into operational policies and programmes

The **Asian Development Bank** provides a good example of a major institution that has developed an array of policies that provide both the mandate and instruments to engage more effectively in addressing trafficking issues:

- *Policy on Gender and Development* provides guidance and measures to adapt operational designs to improve the status of women and girls, and in so doing, among many other benefits, build their resistance to the risks of being trafficked;
- *Social Protection Strategy* sets out specific considerations that may need to be built into ADB operations to ensure that vulnerable groups can be protected from factors that cause and sustain their poverty – and their risks of being trafficked. The Strategy also identified how labour markets can also be used to strengthen social protection through implementation of core labour standards, which will have additional impacts on the demand for trafficked labour;
- *Guidelines contained in Promoting Good Governance, ADB's Medium Term Agenda and Action Plan:* provides opportunities to improve the effectiveness of anti-trafficking initiatives as well as other programmes to combat poverty;
- *Policy on Involuntary Resettlement* and accompanying guidelines that provide guidance on limiting vulnerabilities and risks of those living in and around project areas as well as stressing the importance of building or maintaining social capital to limit risks, such as trafficking; and
- *Handbook on Poverty and Social Analysis:* provide guidance on ensuring that project impacts do not increase vulnerability to being trafficked and identifying opportunities to prevent, minimize and mitigate development induced risks.

Bank operations have the potential to address trafficking in five key ways:

- ☞ *Target the most vulnerable to trafficking:* In many cases a sub-group within those targeted for poverty reduction as relative and absolute poor. Ensuring that this sub-group have their basic needs met to limit migration or mobility under stressful and hence most vulnerable situations – for example, for families who send away children/girls who end up being trafficked;
- ☞ *Assess the impacts of ADB operations* – ensure that ADB supported activities do not push people into migration and hence vulnerability to trafficking. ADB operations have opportunities to prevent, minimize and mitigate development-induced risks. Clear links can be made between involuntary displacement and its associated risks of being trafficked;
- ☞ *Emergency loans and assistance in post-conflict reconstruction:* these activities usually take place among mobile populations, such as refugees or in areas where communities are returning from involuntary displacement. It is important that ADB activities provide adequate scope to rebuild social and human capital through community-based activities to ensure that physical and social dislocation does not lead to vulnerability to trafficking, especially for women and girls in high-risk situations. Disaster early warning mechanisms can also incorporate anti-trafficking and safe migration messages as communities and individuals plan for possible displacement;
- ☞ *Encourage safe migration:* reduce the risk of being trafficked of those already mobile through various policy and social protection measures:
 - Access by migrants to basic needs e.g. urban improvement schemes take measures to identify specific needs of migrant communities where social and community networks do not exist;
 - Social protection measures extended to migrants (e.g. insurance schemes, social security schemes). This is challenging as migrants generally work in the informal sector and many are squatters without official residence status; and
 - Governance strengthened to ensure entitlements to protection from criminal activities extended to those migrants most vulnerable to being trafficked; specific activities to increase community and government accountability to protect children, women, labour force, etc.;
- ☞ *Stem demand for trafficked labour:*
 - Core labour standards implemented and monitored in partnership with private sector, ILO, etc. particularly among SMEs and in the informal sector; and
 - Encourage activities with indirect impacts in key areas of demand, for example monitoring effects on demand for commercial sex workers along highways of changed behaviour of transport workers. These kinds of activities also have links with HIV/AIDS prevention activities.

Source: Asian Development Bank, website: www.adb.org

- ☑ **Establish institutional mechanisms to involve all social partners:**

Unfortunately, the (potential) role of employers' organizations and trade unions is often forgotten or ignored. Yet, they are best placed to help realistically determine the labour market needs for migrant labour and to promote the use of proper contracts and observance of basic labour standards for migrant labour.

Since the current

approach to trafficking is very much from a criminal law enforcement and crime prevention perspective, the responsible government agencies are normally the Ministries of Interior, Immigration, Police and Judiciary. Hardly ever are *Ministries of Labour* involved. Yet, as emphasized above, migration today is about work and if the aim is to achieve informed and transparent orderly labour migration systems based on realistic assessment of labour market needs, Ministries of Labour and the social partners – workers' and employers' organizations – need to be closely involved. The role of the Ministries of Labour in countries of origin and destination is also in providing employment services and labour inspection.

The role of *NGOs* in the fight against trafficking is important and normally highlighted – the majority of them concerned with trafficking for sexual exploitation. But, unfortunately, the (potential) role of *employers' organizations and trade unions* is often forgotten or ignored. Yet, they are best placed to help realistically determine the labour market needs for migrant labour and to promote the use of proper contracts and observance of basic labour standards for migrant labour. Employers' organizations are often an important lobby group in destination countries for the orderly admission of migrant workers. The protection of migrant workers is part of the larger trade union fight against racism, racial discrimination, xenophobia and related intolerance. The *International Confederation of Free Trade Unions (ICFTU) No to Racism and Xenophobia! Plan of Action for Trade Unions* has a section specifically devoted to migrant workers.⁴⁸ In the **United States**, the American Federation of Labour -Congress of Industrial Organizations (AFL-CIO) announced: "All workers – immigrant, native-born, documented or undocumented – should have the full protection of our system of workplace rights and freedoms".⁴⁹

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

Various *networks of organizations and cooperation frameworks* at local, national or regional levels have been established to combat trafficking.⁵⁰ A major challenge is to find mechanisms that ensure that the many and diverse networks that have developed to combat trafficking do not work as "closed circles" but that they come together in as many ways as possible to share information and exchange experiences. Where networks have different experiences, they can be potentially important points

at which evaluation of impacts, drawing together of lessons and realistic assessment of progress can be made and then shared.



An important **lesson learned** by a working group looking at effective models of cooperation was the importance of not "over-cooperating", but rather of deciding what levels of cooperation are necessary in order to maximize relative strengths but not waste scarce resources on cooperation mechanisms that do not add anything to the impact or efficiency of programming. Sometimes cooperation needs to be no more than just sharing information with others working in the same area, whereas in other circumstances, it might need regular meetings and consultation (often having budgetary implications) and also closely coordinated planning and policy formulation.⁵¹

☑ Gather and share information:

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

At community level, many women and children in difficult circumstances remain invisible or highly mobile and engaged in occupations and activities that are not regularly monitored by any government body or NGO. Methodologies for obtaining more reliable information on such women and children need improvement, particularly a community based mechanism where data and information are collected, analysed and acted upon by people at that level. For example, communities could use a Table of Risks to assess and monitor departure from the community, as shown in **Box 6.12** below.

Box 6.12. Table of risks	
Highest risk (trafficking)	Person abducted or kidnapped
	Person sold by relatives into prostitution or other exploitative situation
	Person clearly forced to leave against own will
	Person following suspicious/untrustworthy agent
Grey area	Person forced to leave by circumstances (e.g. child of broken family)
	Person leaving the village with no explanation
	Person leaving the village for a job prospect that is unclear or unchecked
	Person leaving the village without a clear goal
Lowest risk (legal migration)	Person following a trusted agent
	Person leaving the village for a clear, certain, non-exploitative situation
Source: M. de Monchy, "Providing social security and protection to women and children in difficult circumstances". Paper presented at the Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, 7-9 October 2002, Bangkok.	

The *Trafficking Protocol* also calls for information exchange between countries, so as to more effectively coordinate efforts to address trafficking:

Trafficking Protocol

Article 10 Information exchange and training

- 1. Law enforcement, immigration or other relevant authorities of State Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:*
 - a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;*
 - b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and*
 - c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking and possible measures for detecting them.*

Box 6.13. Guidelines on improving the information base on trafficking

Effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis. It is essential that all parties involved in developing and implementing these strategies have and maintain a clear understanding of the issues.


The media has an important role to play in increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards. States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

- ☛ Adopting and consistently using the internationally agreed definition of trafficking contained in the Palermo Protocol;*
- ☛ Standardizing the collection of statistical information on trafficking and related movements (such as migrant smuggling) that may include a trafficking element;*
- ☛ Ensuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity and other relevant characteristics;*
- ☛ Undertaking, supporting and bringing together research on trafficking. Such research should be firmly grounded in ethical principles, including an understanding of the need not to re-traumatize trafficked victims. Research methodologies and interpretative techniques should be of the highest quality;*
- ☛ Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another;*
- ☛ Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing and implementing anti-trafficking interventions and evaluating their impact;*
- ☛ Recognizing the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.*

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 3, pp.7-8.

- ✔ *Ensure adequate and harmonized legal frameworks and effective law enforcement response:*

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

The importance of good laws, strong enforcement and cooperation among States cannot be over-emphasized in the fight against trafficking. Legislation must protect, promote and give practical effect to the rights of trafficked persons. The United Nations has, therefore, developed specific principles and guidelines, as set out in **Boxes 6.14 and 6.15** below. It is worth re-emphasizing that to be effective, there should be specific legislation setting out a criminal offence that covers trafficking for all purposes – not just sexual exploitation but all forms of forced labour [ **Section 6.3**]. Examples of laws that adopt a comprehensive coverage of the crime of trafficking are:

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

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

In addition, **legal literacy** should be promoted, especially among vulnerable women and girls and their families so that they understand the law and are able to claim and defend their rights under the law. Access to affordable **legal assistance** in a language victims of trafficking can understand is also important. Setting up telephone hotlines and effective information networking systems could encourage trafficking victims to seek legal advice and redress. Effective **law enforcement** would also require sensitisation of all officials, so that they are able to identify if someone might have been trafficked and can inform that person of her/his rights. Enforcement would also require clean and transparent authorities. Often enforcement is hindered by official indifference, corruption and collusion with traffickers, and lax or under-funded regulatory mechanisms.

Box 6.14. Guidelines on an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. States should consider:

- ✎ Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized;
- ✎ Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services;
- ✎ Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials;
- ✎ Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund;
- ✎ Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons;
- ✎ Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family;
- ✎ Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings;
- ✎ Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked;
- ✎ Ensuring that the right of trafficking victims to pursue civil claims against traffickers is enshrined in law;
- ✎ Guaranteeing that protection for witnesses is provided for in law;
- ✎ Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 4, pp.8-9.

Box 6.15. Guidelines on an adequate law enforcement response

Although there is evidence to suggest that trafficking in persons is increasing in all regions of the world, few traffickers have been apprehended. More effective law enforcement will create a disincentive for traffickers and will therefore have a direct impact upon demand. An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated. States and, where applicable, intergovernmental and non-governmental organizations should consider:

- ☛ Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons;
- ☛ Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness;
- ☛ Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony;
- ☛ Establishing specialist anti-trafficking units (comprising both women and men) in order to promote competence and professionalism;
- ☛ Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation;
- ☛ Implementing measures to ensure that “rescue” operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place;
- ☛ Sensitizing police, prosecutors, border, immigration and judicial authorities, and social and public health workers to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combating trafficking and protecting the rights of victims;
- ☛ Making appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation;
- ☛ Encouraging law enforcement authorities to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 5, pp.9-10.

☑ **Ensure that legislation, policies and programmes are gender-sensitive:**

To realize human rights equitably for women and men, it is essential to mainstream gender concerns in the formulation, implementation, monitoring and evaluation of legislation, policies and programmes. Adopting a gender perspective means addressing the similarities and differences in the trafficking experience of women and men (girls and boys) in relation to vulnerabilities, violations and consequences; addressing the different impacts of policies on women and men; and – importantly – tackling trafficking by tackling the social constructs that stereotype, marginalize and disadvantage women relative to men. The focus should be not only on providing equal treatment but also on ensuring equal outcomes for women and men [👁 **Box 1.11 in Booklet 1**].

Box 6.16. Promoting gender-sensitive legislation, policies and programmes

- 👉 Assess legislation, policies and programmes in terms of their gender-selective outcomes – how do they differently affect women and men;
- 👉 Do not assume that “men migrate, women are trafficked”;
- 👉 Regularly review migration policies and regulations in order to detect and avoid discriminatory practices, such as exit restrictions on women, pregnancy tests for migrant women;
- 👉 Collect and analyse information disaggregated by age and ethnic origin on the position of female and male migrants in different sectors of the economy;
- 👉 Ensure that the issue of gender-based discrimination is addressed systematically when formulating anti-trafficking measures, so as to be certain that such measures are not applied in a discriminatory manner;
- 👉 Ensure gender sensitivity not only in migration policies – broader economic and social policies and legal provisions that perpetuate or reinforce gender inequality or discrimination, such as those that deny women equal rights with men to education, information, property, or other resources, should be reviewed;
- 👉 Assess anti-trafficking measures in relation to social, economic, political and legal policies, for example, policies regulating the sex industry, labour and social security laws that include or exclude domestic workers, family and nationality laws, that may affect women’s status in general and the status of women migrants in particular;
- 👉 Review labour market policies to eliminate occupational segregation by sex;
- 👉 Develop sensitisation and advocacy programmes to positively change attitudes and practices based on gender stereotypes and concepts of male and female sexuality that create and reinforce the demand for women in sectors such as domestic work and the sex sector;
- 👉 Provide awareness raising and gender sensitisation for immigration officers, labour attaches, embassy staff, the police, judiciary and other concerned officials in origin, transit and destination countries so that they better understand and are able to address the problems of women migrant workers and are able to identify and assist trafficked persons;
- 👉 Identify those areas for policy making where it is necessary to be sensitive to and to provide for the needs of especially vulnerable groups, such as indigenous women and less educated women who are most at risk of being trafficked.

- ☑ *Promote the principle of non-discrimination and fight xenophobia:* *Trafficking is not only rooted in gender discrimination but also in ethnic/racial discrimination. Women and girls from socially marginalized ethnic minorities and indigenous groups are much more likely to trafficked.*

There should be measures to address direct and indirect discrimination – based on nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or other status – both within and outside the workplace. It is important to deal with the fact that trafficking is not only rooted in gender discrimination but also in ethnic/racial discrimination. Women and girls from socially marginalized ethnic minorities and indigenous groups are much more likely to trafficked, and therefore require specifically targeted interventions.

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

The *Durban Declaration and Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001* has no less than 40 paragraphs on the treatment of migrant workers. The text specifically urges States to address discrimination and xenophobia and to ensure full equality for all before the law, including labour law.⁵²

6.7. Prevention measures

- In this and the next two sections of the Booklet on protection and prosecution, the focus is on strategies, practical measures and lessons learned.

Trafficking Protocol

Article 9

Prevention of trafficking in persons

- 1. States Parties shall establish comprehensive policies, programmes and other measures:*
 - a) To prevent and combat trafficking in persons; and*
 - b) To protect victims of trafficking in persons, especially women and children, from revictimization.*
- 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;*
- 3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society;*
- 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;*
- 5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multicultural cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*



Prevention measures should be at the heart of action plans to combat trafficking, simply because effective prevention means fewer lives are damaged. Prevention is the best form of protection.



Preventive strategies require an integrated, multi-sectoral and multi-agency approach that is both gender-sensitive and rights-based and locates the causes of migration and trafficking within national development strategies in both origin and destination countries. At one level, most anti-poverty, people-oriented, employment-focused national development strategies should also contribute to the prevention of trafficking.

Preventive strategies should be over the short, medium and longer term and should address the root causes of both the supply of and demand for trafficked women and girls and also the factors that increase vulnerability to trafficking. Integrated practical measures could include:

- ☑ *Awareness raising and information campaigns;*
- ☑ *Community mobilization and outreach;*
- ☑ *Capacity building and institutional strengthening;*

- ☑ *Individual and group empowerment;*
- ☑ *Alternative livelihood opportunities and social protection;*
- ☑ *Legislative and programmatic measures to address the root causes of gender discrimination and inequalities;*
- ☑ *Labour migration policies to promote “safe” migration.*

Box 6.17. Guidelines on preventing trafficking

Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information. States in partnership with intergovernmental and non-governmental organizations, and where appropriate, using development cooperation policies and programmes, should consider:

- ☞ *Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues;*
- ☞ *Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups;*
- ☞ *Improving children’s access to educational opportunities and increasing the level of school attendance, in particular by girl children;*
- ☞ *Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal non-exploitative migration;*
- ☞ *Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions;*
- ☞ *Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws;*
- ☞ *Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers;*
- ☞ *Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations;*
- ☞ *Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.*

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 7, pp.11-12.

☑ *Awareness raising and information campaigns* [👁 **Booklet 2**]:

Awareness raising and information campaigns are critical – since trafficking involves deception, misinformation or ignorance. Depending on the communities at risk, awareness can be raised and understanding enhanced, using any channel through which people generally receive information that they consider relevant to their lives. These may be the radio, television, newspapers and the Internet or even street plays or local drama groups. Information can be disseminated through

community meetings, door-to-door contacts, at places of worship, markets, health centres, by NGOs, trade unions, government agencies, community leaders, educators, peer group members, including victims of trafficking themselves. The targets of awareness raising campaigns include:

- *Potential migrants/victims of trafficking and their families before the migration decision is actually made:* It is especially important to address families, in particular male heads of households, because very often the woman or girl may have very little choice in the decision. The target audience for such information campaigns should also include adolescent girls and boys who are still in the educational system. The information provided should be culture-sensitive, in the local language, presented in ways that will be readily understood and adequate to allow informed decisions to be made. The information should cover:
 - ✓ The relative economic and social costs and benefits of labour migration;
 - ✓ The phenomenon of trafficking as distinguished from the different forms of migration, including smuggling;
 - ✓ Opportunities for employment and income generation within own community;
 - ✓ Existing possibilities and requirements for legal migration and employment in destination countries;
 - ✓ Recruitment channels used by traffickers and how to spot traffickers;
 - ✓ Earning possibilities, to provide a basis upon which overseas job offers can be evaluated;
 - ✓ Health risks, including HIV/AIDS associated with work in the sex industry and the dangers of drug and alcohol use;
 - ✓ Legal literacy, so that they understand and are able to claim their rights.
- *Out-going migrants:* Often, the coercion and exploitation of female migrants is only manifested at the destination. Government and non-governmental organizations should organize pre-departure programmes for out-going labour migrants, who should be well-informed about:
 - ✓ Documentation (passports, employment contract, work permit, receipts for payments made) needed, and taking precautions to not hand over the documentation to an agent or employer;
 - ✓ Leaving a set of copy of documents with family and/or trusted friend at home;
 - ✓ Legal migrant and employment rights and how to claim these rights and seek redress in the case of violations;
 - ✓ Contact details for embassy, fellow migrant workers, migrant associations and civil society/religious groups working with migrants in destination countries;
 - ✓ The importance of organization and representation – joining migrant associations and trade unions;
 - ✓ Support services available in the country of destination.

- *The general public and particular groups*, including politicians and community leaders, law enforcement agencies, the judiciary, etc. Awareness raising aimed at the general public can build a supportive environment for anti-trafficking measures. For the particular groups, specially tailored information/awareness raising modules may be needed and would be part of efforts to enhance their capacity to deal with the problem.
- *Traffickers, abusive employers and clients*: Although such awareness raising is less common, results may be achieved by informing this group of the illegal nature of their activities, the sanctions in place and more generally societal intolerance of the crime. Such information may help to gradually break down the safety nets that passive complicity puts in place for such people.

☑ **Community mobilization and outreach:**

Various evaluation studies have emphasized the importance of engaging an entire community in preventing trafficking:

“In general, the most effective are those campaigns, which are organized by or in close collaboration with local groups, and are reaching particular communities or target groups. Knowledge about the existence of trafficking after years of media attention is quite wide spread. What is lacking is the recognition that trafficking is a problem or potential problem for particular groups/communities and the lack of involvement of those groups in counter-trafficking activities. As long as trafficking is perceived as an issue concerning migrant women and anti-trafficking activities are organized by international organizations, there will be no real counter-trafficking activities at the local level”.⁵³

At community level, the aim should be to harness the skills, experience and outreach of as many different groups as possible, and to mobilize them to actively contribute to and participate in the prevention efforts. This will inevitably mean looking beyond traditional partnerships and finding ways to work together despite potentially different approaches and methods. The partners could include: social workers, school teachers, religious leaders, the news media, politicians and community leaders, health workers, transport workers, the judicial and law enforcement personnel, trade unions and employers’ organizations, the victims of trafficking themselves. **Boxes 6.18 and 6.19** provide examples of mobilizing and working with different types of outreach partners.

Communities are not only villages, slum settlements, community-level governance structures (such as *barangays* in the Philippines). They could be more widely defined to include shop floors, youth groupings, professional associations, schools, whole sectors of business such as hotels, airline companies, travel agents’ associations, all of which can legitimately be defined as ‘communities’ and in each of which volunteer teams from within that community could be set up to transmit information, influence peer opinion and monitor the situation of vulnerable women and children.

Box 6.18. Prevention Measures: Awareness raising

Philippines: The Philippines Government and NGOs have developed various information packages, including illustrated handbooks, brochures, posters, pre-departure training modules targeting women, in particular those intending to go into domestic service and the entertainment industry. Apart from structured education programmes, some TV and radio stations have daily talk show programmes that deal with the problems of migrant workers. These nationally broadcast programmes provide travel advisories and discuss the processes of migration, legal rights and remedies for victims of illegal recruiters, the Migrant Workers and Overseas Filipino Act, the policies of the Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration, how to start livelihood programmes, individual experiences of migrant workers, conditions in specific destination countries and the like. A migrant worker website has also been set up to disseminate information more widely and also as a means of communication among migrant workers and members of their family.

Dominican Republic: Two NGOs, CIPROM and FLACSO offer a certificate programme for public officials and NGOs on issues of gender, migration and trafficking. A similar programme has also been incorporated into the foreign service training curricula of the diplomatic corps.

Nicaragua: An ILO survey⁵⁴ of migrants who had returned to Nicaragua, mainly from Costa Rica, found that almost all those surveyed were unaware of the initiatives undertaken by local organizations for their protection. Their suggestion was that the organizations in Nicaragua coordinate with those in Costa Rica to carry out campaigns to inform the migrant population of those organizations that are working for them, where they can be found and the types of services they provide. The need for conveniently located offices within easy reach of potential and actual migrants was also emphasized.

Bulgaria: La Strada⁵⁵ has been the most active NGO in prevention/awareness raising activities aimed at providing women and girls the means to make informed choices when planning to migrate. Their information campaign includes dissemination of copies of the leaflet "Travel Guide for Modern Girls", the video "You have the right to dream, you have the right to know", a prevention leaflet for girls with lower levels of education "A girl's story" and a leaflet for sex workers "Small book for the big world".

China: An ILO Mekong Sub-regional Project to Combat Trafficking in Women and Children has used *Women's Homes* (established by the All-China Women's Federation) in 12 project villages in Yunnan province as venues for vulnerable women to find out facts about trafficking and to openly discuss with other community members reasons for migration and related concerns and to jointly identify possible anti-trafficking measures. The initiative represents a good practice with potential for replication, with some key features: venues for village women to network, have a voice and forum for discussion; support of national women's organization; support of local authorities; discussion of migration and trafficking linked to local economic situation; awareness raising and advocacy leading to identification of prevention measures, including employment alternatives. Other **lessons learned** include: (i) Integrating gender equality and trafficking prevention awareness raising into agricultural training increases opportunities for raising awareness of the whole community; (ii) Inserting gender equality and trafficking prevention into the school curriculum of young children is effective.

Box 6.19. Mobilizing a wide range of partners

Nicaragua: The Asociacion Mary Barreda has used the “social network” concept to work with highly targeted groups of people who come into contact with young people in areas where they may be vulnerable to recruiters and traffickers. Among them are women who work as vendors in the local bus station and who observe the activity of travellers and those who meet them. The women themselves say that they have been empowered through the NGO’s activities and have begun to watch out for and to report possible cases of exploitation.

Ethiopia: In response to the pressures put on the Government regarding the lack of protection of Ethiopian migrant women and due to reports of severe abuses, the Ministry of Foreign Affairs set up a National Committee in June 1999 to look into the issues of trafficking to the Gulf States and to come up with solutions. The Committee consisted of representatives from the Ministry of Foreign Affairs, the Police Commission, Ministry of Justice, the Security, Immigration and Refugee Affairs Authority, Ministry of Labour and Social Affairs, Ministry of Information and Culture and the Women’s Bureau in the Prime Minister’s Office. As a result of the Committee’s work, a number of actions were taken to prevent trafficking, regulate and control recruitment agents, assist victims as well as to inform the public about the risks of being trafficked and its consequences.

Italy: The Italian trade union Confederazione Generale Italiana del Lavoro (CGIL) set up a department on migration policies in the late 1980s, in response to the increasing waves of immigration into Italy. “Via Amica” is a project that the union developed to protect migrant prostitutes, involving NGOs and local and national authorities. NGOs work with the union to train special educators called “Street Units” who work in the areas where prostitutes operate, making contact and winning their trust. Migrant prostitutes are given information on healthcare, work and residency permits, housing and legal rights. CGIL plays an important role mediating between the prostitutes, the local community, the public authorities and the police. Upon request from the prostitutes, the union also assists the women to find alternative occupations. A more recent example of cooperation between trade unions, industry and local administrative bodies is an agreement signed in September 2000 in the Veneto Region to promote initiatives for migrant workers regarding integration and equal opportunities.

Sri Lanka: In 1994, a Migrant Services Centre, formed under the auspices of a trade union, the National Workers Congress, embarked on a programme to solve specific problems confronting women migrating for overseas employment. The Migrant Service Centre is affiliated with the All Ceylon Federation of Free Trade Unions (ACFFTU), which has taken a multi-pronged approach to advocate for social justice and to mobilize migrant resources for economic empowerment. The organizers continuously challenge the root causes of the migrant trade through public discussion, the most recent being a critical analysis of the budget proposals of the Government. The Migrant Service Centre is confident of being able to sustain its activities on a long-term basis owing to its links with the ACFFTU and the World Federation of Labour in Brussels. Their aim is to integrate the migrants’ movement with the labour movement, well aware that migrant associations working in isolation are not in a position to assert control over the political power base to win workers’ rights.

☑ **Capacity building, institutional strengthening and networking:**

Community mobilization efforts should be complemented by measures to enhance the capacity of the local partners and to strengthen the structures and mechanisms for coordination, networking, community coalitions and linkages with national and higher levels. Capacity building programmes can aim to:

- Offer specially tailored training programmes to those involved in volunteer teams at community level, so that they can more effectively conduct advocacy, identify traffickers and those at risk, and provide support and services, including training them in women- and children-friendly procedures and in dealing with hostile witnesses;
- Strengthen law enforcement agencies and mechanisms, including providing para-legal education for law enforcement agents and community watch groups against trafficking;
- Create and strengthen institutions not only at the local but also national level in the fields of legal, economic and social assistance to those at risk or the victims of trafficking;
- Strengthen partnerships and networks between non-governmental organizations and employers' and workers' organizations in origin and destination countries.

The Trafficking Protocol makes specific reference to the types of training that would be useful for enhancing the capacity of government officials to prevent trafficking:

Trafficking Protocol

Article 10

Information exchange and training

2. States parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. This training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

Some of the **lessons learned** are:



Institutional structures and mechanisms are much more effective when they actively involve workers and employers' organizations - their experience of organizing and campaigning can be invaluable;



Capacity building programmes should aim to involve cooperation among a number of international organizations of the UN family, international trade unions and employers' organizations and international NGOs – so that they can pool their diverse specializations and programming experience and ensure that the capacity building programmes are broader in scope and more comprehensive;



At the community level, skills of local administrators need to be strengthened. This must go beyond the traditional skills associated with social service

delivery when the intent is to reach the socially excluded. While village leaders, health workers and teachers need to be trained to respond to indications of risk, they cannot be expected to provide time-intensive counselling and social work assistance to women and children who may be suffering from intra-familial violence or who are coping with difficult choices. Social workers, both professional and para-professional, may be the service providers best positioned to respond to the psychosocial family and individual based root causes that result in women and children being in difficult circumstances. The traditional role of religious institutions in this regard should also be recognized and supported;



Examples of cooperation and networking between NGOs and trade unions in origin and destination countries have proved successful. In cases of detected victimization, trade unions, migrant workers organizations and support groups in the destination country can be mobilized to support the victims, while trade unions and migrant organizations in the origin country put pressure on the national government for stronger representation on behalf of the victimized migrant worker.

☑ Individual and group empowerment:

Prevention of trafficking should also include measures that contribute to the development of individual and collective empowerment. Measures to empower vulnerable women and girls - so that they can take control over their own lives - include education and access to information. As was pointed out in **Section 6.5.1** above, the lack of educational opportunities is a major root factor:



Education is an important preventive measure. Educated women and girls are not only more likely to be aware of and understand the risks, they are also more likely to have control over decision-making and, of course, to have more options in terms of employment. Awareness raising on migration and trafficking and gender issues can be effectively introduced in education and training programmes;



Since dropout rates tend to be much higher for girls than for boys – often because poor parents choose to invest in the education of sons rather than daughters - special measures can help to keep girls in school. Such measures can include financial stipends to help with educational expenses for children's, especially girls', education;





For illiterate or semi-literate adult women (and men), adolescent school dropouts and working children, non-formal education programmes can have an important positive impact. Such programmes should give priority to occupational and skills training to equip them for alternative livelihood opportunities;





Education and training alone are not adequate. Complementary measures including access to credit, information on employment opportunities and entrepreneurship development are needed to enable women to use their education and training in livelihood alternatives (as described below).

Empowerment is not only at the individual level but can also be through group organization and dynamics. The **lessons learned** from various ILO GENPROM women-specific projects in different parts of the world have underscored the importance of group organization and group dynamics for empowering poor and high-risk women and girls in both rural and urban areas.

 *Actions to organize vulnerable women and girls into their own “self-help” groups should be based on participatory approaches and include leadership training. They are able to build their self-confidence, strengthen their voice vis-à-vis others, in particular males, in the community, and participate in their own upliftment. It is through such groups that poor women can have a voice in decision-making at the community level;*

 *Women’s groups at the community level provide an important forum for the women to discuss issues, share experiences, learn innovations and, in the process, be better informed and able to protect themselves from traffickers and even from other forms of discrimination or exploitation within their communities. They can also be their own “watchdog” groups, looking out for high-risk women and children;*

 *These women’s groups are particularly effective when they are formed around economic motives, such as savings and production groups. They can, therefore, be doubly effective in combating trafficking through empowering women both socially and economically. Alternative livelihood schemes are often more effective when organized at the group rather than individual level;*

 *Trade unions can play an important role in helping women at the grassroots/community level to organize. Cooperatives are also an important form of organizing.*

 **Alternative livelihood opportunities and social protection:**

Since poverty and high unemployment or under-employment are major root causes, anti trafficking programmes should emphasize the creation of alternative livelihoods in communities of origin. **Box 6.20** shows how poverty reduction strategies could be more effectively linked to combating trafficking. Poverty reduction, income generation and employment creation measures can be effective only if they:

- Lead to true economic empowerment of the vulnerable women,
- Offer viable and attractive alternatives to the potential earnings and working conditions in the destination areas,
- Are sustainable over the longer term in terms of offering continuing access to decent employment, and
- Are linked to more broad-based social and community development efforts.

Box 6.20. Addressing poverty and links to combating trafficking

Approaches to poverty reduction	Examples of Links to Combating Trafficking	
<p>Extend opportunities to increase access to and control over assets to poor and excluded groups:</p> <ul style="list-style-type: none"> ▪ Build assets ▪ Ensure access ▪ Develop affordable basic services ▪ Employment of the poor ▪ Redress asset inequalities ▪ Private investment 	<p>Outcomes that increase life/livelihood options:</p> <ul style="list-style-type: none"> ▪ Most vulnerable to trafficking/ forced migration benefit from activities, e.g. girls in school, marginalized families participate fully ▪ Affirmative action codes of conduct in place to employ women and build skills among adolescents 	<p>Outcomes that facilitate safe migration:</p> <ul style="list-style-type: none"> ▪ Education, skills and information to build capacities to resist traffickers ▪ Basic services offered to migrant populations in destination points e.g. education, health services in squatter communities ▪ Core labour standards respected in private investments to discourage employment of trafficked labour
<p>Facilitate empowerment of the poor and excluded:</p> <ul style="list-style-type: none"> ▪ Political/legal ▪ Good public management ▪ Decentralization ▪ Social capital development ▪ Gender equality ▪ Address social barriers 	<p>Outcomes that increase life/livelihood options:</p> <ul style="list-style-type: none"> ▪ Increased status of women and girls through empowerment (political, legal, economic) and ensure their needs are addressed ▪ Increased access to decision makers at community level to build mechanisms to resist activities of traffickers 	<p>Outcomes that facilitate safe migration:</p> <ul style="list-style-type: none"> ▪ Government policies more responsive to needs of migrant women e.g. domestic workers permitted to migrate legally across borders and support services developed ▪ Decentralized municipal governments responsive to needs of newly arrived migrant families
<p>Reduce risk and overcome vulnerabilities:</p> <ul style="list-style-type: none"> ▪ Preventive ▪ Self-reliance ▪ Labour market programmes ▪ Pro-poor social expenditure ▪ Secure social assistance ▪ Disaster relief 	<p>Outcomes that increase life/livelihood options:</p> <ul style="list-style-type: none"> ▪ Community surveillance mechanisms in place through social mobilization to limit traffickers activities and increase accountability for community protection of the most vulnerable e.g. orphaned or street children ▪ Disaster relief targets those with limited assets to restart livelihoods e.g. no savings, uneducated or no skills; including women and children with no guardians 	<p>Outcomes that facilitate safe migration:</p> <ul style="list-style-type: none"> ▪ Governments adopt policies that recognize long-term development benefits from safe migration e.g. encourage settlement of entire migrant families; provision of services to new migrants ▪ Regional labour market integration identified as policy dialogue concern in ASEAN, SAARC, etc. to facilitate improved and safer migration management ▪ Address demand for trafficked labour, e.g. road transport driver behaviour changed through work practices standards, enforcement of child labour standards

Source: based on Asian Development Bank *Handbook on Poverty and Social Analysis A Working Document* (Manila, ADB, 2001).

In this context, some of the **lessons learned** from ILO programmes, such as on more and better jobs for women, local economic development and small enterprise development, are useful to note:



Measures to create alternative livelihood opportunities based on an area, community or group approach and building upon systematic economic opportunity identification exercises are much more likely to be sustainable and effective, compared to measures that merely target individual women;



The economic opportunity identification exercises⁵⁶ are key to success for community-based approaches. They should involve all stakeholders in a target community in assessing the resources and potentials of the community, identifying and analysing the potentials for local development and market access, determining the needs and constraints in realizing these market potentials and working out how the needs can be met and constraints overcome. Properly conducted, the opportunity identification exercises would help to ensure community “buy-in” and commitment – because of the participatory approach -- and would also be economically sound;



In an opportunity identification exercise at community level, attention should be given to the identification of economic activities with upstream and downstream linkages so that natural production chains⁵⁷ can ensure that the benefits spread to as many people within the community as possible and entire communities can be lifted out of abject poverty. Such chains would also mean that activities are diversified – concentration in one economic activity would raise competition, limit markets and ultimately drive prices down;



Once the livelihood alternatives are selected on the basis of the economic opportunity identification exercises, an integrated, multi-component approach is the most effective way of creating and sustaining them. The main elements would include: training so that the women are equipped with the necessary technical skills; credit to enable them to utilize their training in income and employment generation; business support and advisory services; and group organization so that the women form production and/or savings groups or cooperatives;



Various complementary elements can be added to enhance effectiveness and impact. The training component of an anti-trafficking programme is likely to be more effective when focused not only on skills training but also include awareness raising on trafficking, gender, and health issues. Access to credit can be made conditional upon families undertaking to send their daughters to school;



Alternative livelihood schemes cannot be left only to NGOs if they are to have sustainable impact – the government and business community must be closely involved, particularly in providing the necessary infrastructure and support services;⁵⁸



Social protection measures can be introduced, linked to the economic activities and production groups. There are many successful examples⁵⁹ of women putting aside very small sums from their earnings to establish safety nets for contingencies – important because falling into debt is often a root cause of trafficking;



In communities identified to be at special risk, or for high-risk populations, targeted service provision and resources are needed. The services range from counselling to safe shelters and girls residential schools. For example, when domestic violence and rape are the risks, shelter programmes may need to be established to provide a safe environment for women and girls to be assisted with identifying their options.

☑ **Legislative and programmatic measures to address the root causes of gender discrimination and inequalities:**

It has been stressed throughout that anti-trafficking strategies must address the underlying gender discrimination and inequalities that make women and girls much more vulnerable to trafficking. In this section, it is obviously not possible to describe the entire range of factors responsible for such inequalities or the solutions. To illustrate, some examples can be cited: The OSCE (Organization for Security and Cooperation in Europe) Office for Democratic Institutions and Human Rights (ODIHR) within the framework of the Stability Pact Task Force⁶⁰ identified the need to deal with violence against women; end discrimination in the labour market; and improve women's access to political and economic decision-making. The OSCE/ODIHR put forward the following checklist of recommendations relating to women in the labour market:

- ✓ States should introduce anti-discrimination legislation, granting women and others an effective remedy against all forms of discrimination related to employment, including discrimination with regard to access to employment or vocational training, determination of wages or termination of employment. States should ensure that the burden of proof lies not with the victim but with the alleged perpetrator;
- ✓ States should take measures to ensure that women are not marginalized into low-paid insecure employment sectors. This could be achieved for example, by introducing affirmative action including quota systems, promoting vocational training for women in non-traditional employment areas and mainstreaming gender-sensitive education in school curricula;
- ✓ States should take measures to facilitate the equal sharing of family responsibilities between women and men. For example by extending the concept of "maternity leave" to "paternity leave", making available affordable child-care facilities and adequately protecting part-time workers under labour and social law;
- ✓ States should establish programmes to promote access to employment, vocational training and micro-credit lending to women, particularly in rural areas.

☑ **Labour migration policies to promote "safe" migration:**

Bilateral or multilateral labour agreements between origin and destination countries, which formalize each side's commitment to ensuring that migration takes place in accordance with established rules and pre-agreed terms and conditions, can be an effective means to supervise migration processes, control abuses in recruitment and employment and prevent trafficking beings [👁 **Section 3.5.1 in Booklet 3**].

What exactly is specified in these labour agreements would depend on the parties involved. A model agreement is provided in the *Annex to the ILO Migration for Employment Recommendation (Revised), 1949 (No.86)*. The **Philippines**, as a sending country, has initiated several such labour agreements, **Box 6.21** shows an example [👁️ **Box 3.5 in Booklet 3**]. **Italy** is another example of a country that has signed some 22 bilateral agreements on issues ranging from the problem of readmission of irregular migrants to the implementation of information campaigns and training programmes. A bilateral agreement Italy signed with the **United States** on the traffic of human beings on 28 October 2000 covers: ⁶¹

- Data collection and information sharing on statistical data and general analysis of trafficking mainly with the cooperation of the Italian National Anti-mafia Directorate;
- Prevention realized through joint public information campaigns in countries of emigration with the cooperation of their authorities and local NGOs;
- Protection of the rights of victims of trafficking through exchange of best practices with respect to assistance, protection, and social integration of victims;
- Development of witness protection procedures and victim services in countries of origin in case of repatriation, including training for law enforcement and assistance to NGOs that provide services to victims.

Box 6.21. Example of a bilateral labour agreement/Memorandum of Understanding

A bilateral labour agreement or Memorandum of Understanding would provide the general statement or framework of agreement for the protection of migrant workers, for example:

“Both parties shall undertake to facilitate the mobilization and deployment of manpower between the two countries, within the framework of existing and applicable laws, rules and regulations of each country”. Agreements provide further that “the basic conditions for the rights, duties and terms of employment applicable to both the employer and the employee shall be set out in a mutually agreed individual contract of employment which conforms with the relevant laws, rules and regulations of both countries. In the settlement of labour disputes arising from employee-employer relationships, the Government authorities concerned of both parties, in accordance with their respective laws, rules and regulations shall work towards an amicable settlement through negotiations, conciliation and arbitration. When efforts to amicably settle the dispute fail, the parties concerned may resort to courts in accordance with their respective laws, rules and regulations”.

Taken from the Memorandum of Understanding on Labour and Manpower Development between the Government of the Republic of the Philippines and the Government of the State of Kuwait, signed in 1997. Quoted in M. A. M.C. Villalba, *Philippines: Good practices for the protection of Filipino women migrant workers in vulnerable jobs* (Geneva: ILO GENPROM Series on Women and Migration, 2002), pp.11-12.

The use of **model employment contracts** for the recruitment, placement and employment of migrant workers is another important means of promoting orderly labour migration and preventing fraudulent and abusive recruitment and trafficking. Model employment contracts normally include the following minimum conditions

[👁️ **Boxes 3.6 and 3.7 in Booklet 3**]:

- ✓ Description of the job, site of employment and duration of contract;
- ✓ Basic monthly salary, including benefits and allowances, as well as rates of overtime pay;
- ✓ Non-cash compensation and benefits, including free food and accommodation;
- ✓ Regular working hours, rest days and holidays;
- ✓ Maternity leave, particularly when covered by national legislation;
- ✓ Transportation to the country / place of employment and return, including repatriation;
- ✓ Employment injury and sickness compensation, and emergency medical and dental care;
- ✓ Social security rights and obligations;
- ✓ Valid grounds for termination of contract;
- ✓ Dispute settlement.

The employment contract should be a written document in a local language that the migrant worker understands. It should be signed by both the migrant and the employer, so as to ensure that each worker who goes abroad for employment has in her/his possession a valid and legally enforceable document showing the agreed terms of employment. Many governments of countries of origin also require that (i) the employment contract is verified or authenticated by their embassy in the destination country, including checks on the credibility of the employer; and (ii) migrant workers register their employment contracts with the relevant authorities. Emigration clearance is not given to the worker unless the terms of the contract comply with the relevant provisions of the country's legislation:



The Sri Lanka Bureau of Foreign Employment signed a series of Memoranda of Understanding with recruitment agents in the Middle East, Singapore and Hong Kong to make it compulsory for employers wishing to hire Sri Lankan domestic workers to sign an employment contract endorsed by the Sri Lankan Embassy before a domestic worker may leave Sri Lanka. This contract registration scheme requires verification of the credibility of the prospective employers by missions prior to registration and the foreign sponsor/agent has to sign an agreement, which is authenticated at the embassy concerned. This agreement binds the sponsor/agent to fulfil obligations to domestic workers and helps monitor activities and to hasten grievance settlement. The standard contract contains particulars of the overseas sponsor and the domestic worker, conditions under which the contract is offered, the monthly wage, duties and hours of work, rest days and leave, and details about food, lodging, medical care and transportation to the host country, termination of contract and dispute procedures, insurance cover and provision in the event of the employee's death.⁶²

6.8. Assistance and support measures



Assistance to trafficked persons should be based on the principles of protection and respect for the human rights of women and children, non-discrimination, access to justice, safety and fair treatment, free will and no harm done.⁶³ The main measures to assist the victims of trafficking and protect their human rights include:

- ☑ Identification of trafficked persons;
- ☑ Non-criminalization of trafficked persons;
- ☑ Residence status of trafficked persons;
- ☑ Right to recovery – assistance measures;
- ☑ Assistance and protection in legal proceedings; and
- ☑ Return and repatriation assistance.

Trafficking Protocol

Article 6

Assistance to and protection of victims of trafficking in persons

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential;*
2. *Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*
 - (a) *Information on relevant court and administrative proceedings;*
 - (b) *Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.*
3. *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*
 - (a) *Appropriate housing;*
 - (b) *Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;*
 - (c) *Medical, psychological and material assistance; and*
 - (d) *Employment, educational and training opportunities.*
4. *Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.*
5. *Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.*
6. *Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*

Box 6.22. Guidelines for the protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination. States and, where applicable, intergovernmental and non-governmental organizations should consider:

- ☞ Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses;
- ☞ Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support or assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS;
- ☞ Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.
- ☞ Ensuring that legal proceedings, in which trafficked persons are involved, are not prejudicial to their rights, dignity or physical or psychological well-being;
- ☞ Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they can understand;
- ☞ Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficked victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard;
- ☞ Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely);
- ☞ In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

Source: United Nations, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 6, pp.10-11.

☑ **Identification of trafficked persons:**

The first and most important step in an assistance and referral system is to identify a victim of trafficking in human beings as such. Related to the definition of the scope of trafficking, it is obviously critical to correctly identify a person as trafficked; failure to do so is likely to result in further denial of that person's rights. Those persons and agencies that are likely to come into contact with trafficked victims should be able to identify them as such and to refer them for assistance. However, for example, some 65 per cent of trafficked women and girls in Southeastern Europe are not identified and referred for assistance [👁️ **Box 6.23**]:

Box 6.23. Why 65 % of trafficked women and girls are not identified and referred for assistance

- Lack of guidelines or procedures for identifying all victims of trafficking, according to the Palermo definition;
- No procedure for identifying women with legal documents as trafficked;
- Girls under 18 pass as adults;
- No procedure for children under 18;
- Policy only involved in identification;
- Victim's lack of awareness of their own situation and of trafficking;
- Victim's fear of police, traffickers and consequences of illegal stay and work in the sex industry;
- Lack of assistance/services for victims not willing to return home;
- Women are blackmailed by the police to testify, and are refused support if they do not agree to cooperate with the police.

Source: UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.143.

In the countries of transit and destination, trafficked women and girls come in contact with the authorities or NGOs through:

- Detention or arrest by the police through bar raids;
- Detention or arrest by the police during routine controls (traffic control, checks of sanitary and labour conditions in bars, hotels, etc.);
- Escape and asking the police for help;
- Escape and asking their national embassy for help;
- Assistance from a client who informs the police;
- Information from friends, family or NGOs from their home country who contact NGOs or the police in the country of transit or destination;
- Termination of the contract with the club owner and his/her agreement to departure.

Very often, the first point of contact with trafficked persons is through the police, such as through a raid or routine control. Normally, those who have valid documents (passports, visas, work permits) are not questioned and the police have no mechanisms to identify trafficked women among them, unless the women request assistance at the time. Those who do not have valid documents can be questioned and arrested by the police. Those that want to return home are recognized as victims

of trafficking; while those who do not want to return home are not recognized as victims of trafficking but as illegal migrants.

One of the main problems in identifying trafficked persons and treating them as such is that

While the term “migrant worker” does not encapsulate the experience of being trafficked, the term “victim” may equally be inappropriate. In this sense a victim approach may not necessarily be appropriate in all cases.

often they do not see themselves as “victims”. Migrant workers may prefer exploited labour conditions in a wealthier destination country to impoverished freedom back home. Despite their experience of being trafficked they may see themselves as migrants or workers who have had some bad luck as a result of a bad decision or a bad contract. “People who migrate in search of employment or a better life, and end up being trafficked, tend to be those who had the initiative and courage to change their situation, by seeking better fortune and opportunity in migration. These are not people who will always blame others for misfortune, and they certainly do not start by seeing themselves as victims”.⁶⁴ So while the term “migrant worker” does not encapsulate the experience of being trafficked, the term “victim” may equally be inappropriate. In this sense a victim approach may not necessarily be appropriate in all cases.

Wrong expectations of how a “victim” should behave often leads to misinterpretations by both the authorities and service providers, which may often shift blame onto the

For many trafficked persons, they are not “rescued” from their situation, but are “captured” by the authorities. Since they may initially regard the authorities as the oppressors rather than their saviours, they may not always behave in the ways in which officials may like them to. However, this should not affect their ability to exercise their basic rights.

trafficked person.⁶⁵ For many trafficked persons, they are not “rescued” from their situation, but are “captured” by the authorities. Since they may initially regard the authorities as the oppressors rather than their saviours, they may not always behave in the ways in which officials may like them to. However, this should not affect their ability to exercise their basic rights. It is important to address trafficked persons who are “hostile victims” and witnesses, in the sense of being unwilling to cooperate with the authorities. For example, it is necessary to recognize that their hostility may be a direct result of the situation of abuse they have suffered and that treatment by authorities generally compounds, rather than overcomes, this. Since trafficked persons are rarely treated or identified as victims of crime, they are unlikely to be helpful in assisting in prosecutions straight away.

It is important to recognize that the relationship between the

The relationship between the trafficked persons and the trafficker may be very complex.

trafficked persons and the trafficker may be very complex: Trafficked persons may believe that after a period of abuse, they will eventually pay off a debt and be able to earn money for themselves. They may fear that their families will be harmed if they go to the authorities for assistance. They may think that no one else but the trafficker

is in a position to help them. They may believe that they are somewhat stupid and naïve for making a bad decision in the first place and that their situation could be worse. They may be afraid that they will be stigmatised or seen as “failures” if they return home empty-handed or be rejected by their families if they have been prostituted. Traffickers are also very smart in deftly changing their behaviour as fast as countries change their laws to criminalize trafficking. To sidestep new laws, traffickers may become less physically aggressive by, for example, adopting a romantic attitude with the trafficked person, marrying the trafficked person to legalize their status or providing small sums of money to her.

Box 6.24. Guidelines for the identification of trafficked persons and traffickers

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place. States are also obliged to exercise due diligence in identifying traffickers, including those who are involved in controlling and exploiting trafficked persons. States and, where applicable, intergovernmental and non-governmental organizations, should consider:

- 👉 Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
- 👉 Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
- 👉 Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.
- 👉 Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
- 👉 Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
- 👉 Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
- 👉 Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Source: United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Guideline 2, pp.6-7.

☑ **Non-criminalization of trafficked persons**

In both countries of destination and origin, trafficked women are often

treated as criminals rather than as victims. In countries of destination, they may be prosecuted and detained because of their irregular migration and/or labour status. Returning to their countries of origin, they may be subjected to prosecution for using false documents, having left the country illegally or having worked in the sex industry. However, neither the *UN Trafficking Protocol* nor the *Crime Convention* includes an explicit obligation of the State to refrain from criminalizing trafficked persons. Useful guidelines to consider are:

- ✓ States should not prosecute trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization;
- ✓ If trafficked persons are prosecuted for crimes committed during their period of victimhood, they must be able to raise the defence of having been subjected to psychological coercion, physical force or the threat of force when the crime was committed.

Since many countries still legally prohibit prostitution, women trafficked into the sex industry may be prosecuted under anti-prostitution

laws. Prohibitive policies towards the sex industry culminate in the criminalization of prostitution, and normally discourage or prevent trafficked women from reporting to the law enforcement authorities. The result is to drive the sex industry underground into the hands of organized crime. A country's laws relating to prostitution can have an important impact on the treatment of trafficking victims. An enlightened, non-moralistic approach would be to distinguish between the individual prostitute and the organizational structures of the sex industry, and to decriminalize prostitutes. As a legal approach, decriminalisation should involve: ⁶⁶

- ✓ Reform or review of laws and regulations that sanction, penalize or discriminate against sex workers on the basis of their work;
- ✓ Recognition of prostitution as a legal occupation, so that individuals working in the sex sector have access to the same labour rights and social protection as other workers;
- ✓ Special measures to protect the most vulnerable in the sex sector – those who do not willingly or knowingly go into prostitution but have been forced, coerced, deceived, exploited and abused;
- ✓ Tightened and stricter enforcement of criminal sanctions against those trafficking in, exploiting or abusing prostitutes;

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

A country's laws relating to prostitution can have an important impact on the treatment of trafficking victims. An enlightened, non-moralistic approach would be to distinguish between the individual prostitute and the organizational structures of the sex industry, and to decriminalize prostitutes.

- ✓ Penal provisions against corrupt enforcement authorities and clients of under-age prostitutes; and very importantly,
- ✓ Measures to deal not only with the manifestations but also the fundamental causes of prostitution.

☑ *Residence status of trafficked persons:*

Trafficked persons very often do not have a regular residence status in the country of destination, either because they arrived without a residence permit

A regular residence status is a necessary precondition of any effective victim protection strategy. Without a regular residence status, trafficked persons would normally be expelled and, therefore, would not have access to assistance and protection nor to justice, including civil compensation. On the other hand, the expulsion of trafficked persons also means that there are no witnesses available for the prosecution of the traffickers.

or because their residence permit has expired. However, a regular residence status is a necessary precondition of any effective victim protection strategy. Without a regular residence status, trafficked persons would normally be expelled and, therefore, would not have access to assistance and protection nor to justice, including civil compensation. On the other hand, the expulsion of trafficked persons also means that there are no witnesses available for the prosecution of the traffickers. The regular residence status of trafficked persons enables them to have their rights protected and, at the same time, may also serve the State's interest in effective criminal prosecution. Therefore: ⁶⁷

- ✓ States should refrain from the immediate expulsion of trafficked persons because of their irregular residence and/or labour status;
- ✓ Trafficked persons who decide to give testimony in criminal proceedings should be granted a residence status at least for the duration of such proceedings. Whether or not trafficked persons decide to testify, they should be entitled to remain in the country for an adequate period of time that allows them to recover and to receive just compensation from the traffickers;
- ✓ The residence permit should include the right to medical, psychological, social and legal counselling and assistance, physical protection, as well as access to the labour market;
- ✓ If required by humanitarian reasons, such as dangers to personal safety or lack of means for survival in case of return, the State should issue permanent residence permits, whether or not the victim has decided to act as a witness in the criminal proceedings.


The *Trafficking Protocol* mentions but does not oblige State parties to provide a regular residence status to trafficked persons in the country of destination:



Trafficking Protocol

Article 7

Status of victims of trafficking in persons in receiving States

1. *In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.*
2. *In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.*

The European Union has introduced a Council Directive on short-term residence permits issued to victims of trafficking who cooperate with the competent authorities [ **Box 6.25**]. The Directive has a provision for a “reflection delay”, which is already available in **Belgium** and the **Netherlands**. A recent report based on research conducted by Anti-Slavery International ⁶⁸ highlighted the importance of the reflection delay. It enables victims of abuse to recover somewhat from their ordeal, during which time they have access to support and assistance including shelter, legal advice, medical care and counselling. The reflection delay is needed to ensure that individuals who have been trafficked can recover sufficiently from the trauma of their experience to be willing and able to talk about it. It affords the time to ensure that the person is making an informed decision about whether or not they want to testify against the trafficker. According to NGOs assisting trafficked persons, those granted the reflection delay are more likely to press charges against their traffickers.

Some countries have introduced residence permits for trafficked persons [ **Box 6.26 on the United States and Box 6.27 on Italy**]. But it is clear from these two Boxes that the aims of the residence permits can differ significantly. Asylum law may offer another basis for providing certain trafficked persons with legal residence status. However, not all countries that have introduced such residence permits provide adequate protection to all trafficked persons. For example, if a country restricts its definition of trafficking only to the purpose of forced prostitution or to a crime to which only females are victims, then women trafficked for other purposes or men who are trafficked would be excluded from the residence permit provision, as well as all other legal protection and assistance. This underscores the practical significance of the scope of definition of trafficking [ **Section 6.4.1**].

Box 6.25. European Union Council Directive on the short-term residence permit

Article 1: Purpose

The purpose of this Directive is to introduce a short-term residence permit for third country nationals who are victims of offences constituted by the action to facilitate illegal immigration or by trafficking in human beings (hereafter referred to as "victims") who cooperate in the fight against perpetrators of these offences.

Article 3: Scope

- 1. This Directive shall apply to victims, as referred to in Article 1, having reached the age of majority.*
- 2. Member States may decide to apply the provisions of this Directive to minors who fulfil certain conditions laid down in their national law.*

Article 5: Non-discrimination

Member States shall apply this Directive without discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation.

Article 7: Information given to the victims

Persons who are identified by the competent authorities as victims within the meaning of Article 1 shall immediately be informed of the possibility of obtaining short-term residence permit provided by this Directive. The information shall be provided by the authorities responsible for the investigation or prosecution, an association or a non-governmental organization.

Article 8: Reflection period

- 1. Victims shall be granted a reflection period of 30 days to take the decision to cooperate with the competent authorities. This period starts from the moment they sever relations with those suspected of committing the offences referred to in Article 2(b) and (c);*
- 2. During this period and while awaiting the decision of the authority responsible for the investigation or prosecution in accordance with Article 10(1), they shall have access to the assistance and care referred to in Article 9 and it shall not be possible to enforce any expulsion order against them;*
- 3. The reflection period shall not create any entitlement to residence under this Directive*

Article 9: Assistance and care

- 1. Without prejudice to the application of measures relating to the protection of victims and witnesses, Member States shall ensure that victims have access to suitable accommodation, emergency medical and psychological treatment and medical care that cannot be postponed, and to the necessary support in the form of social welfare and means of subsistence if they do not have sufficient resources. They shall attend to the special needs of the most vulnerable;*
- 2. Member States shall provide victims with free legal aid and translation and interpreting services.*

Article 12: Work, training and education

The Member States shall authorize the holders of a short-term residence permit to have access to the labour market, vocational training and education.

Article 13: Medical and psychological care

- 1. Member States shall ensure that holders of the short-term residence permit have access to primary medical care, in addition to the assistance and care referred to in Article 9*
- 2. Member States shall meet to the special needs of victims, such as pregnant women, the disabled or victims of rape or other forms of sexual violence and, if Member States take advantage of the option provided in Article 3 (2), minors.*

Article 14: Victims who are minors

If Member States take advantage of the option provided in Article 3(2), the following provisions shall apply:

- 1. Member States shall take due account of the best interests of the child when applying the provisions of this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.*
- 2. Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.*
- 3. Besides, in the case of victims who are unaccompanied minors, Member States shall take the necessary steps to establish their identity and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in legal proceedings, if necessary.*

Article 15: Rehabilitation programmes for victims

Member States may make the issue of short-term residence permits conditional upon the victim's participation in a programme aimed either at their integration in the host country and, where appropriate, vocational training, or their assisted return to the country of origin or another country willing to accept them.

Box 6. 26. Residence status of trafficked persons: the T Visa

Under the *United States Trafficking Victims Protection Act of 2000*, victims of trafficking may receive a so-called T visa, if they: (i) comply with any reasonable request for assistance in the investigation or prosecution of the traffickers (this is not required if the person is younger than 15 years); and (ii) would suffer extreme hardship involving unusual and severe harm upon removal from the US.

The length of the visa will be set by regulations but will probably be for at least three years, when T visa holders can then apply for permanence residence. If the Attorney-General considers it necessary to avoid extreme hardship, such a visa may also be granted to the victim's children and spouse, and, if the victim is less than 21 years, to her/his parents.

T visa holders may apply for permanent residence status if they (i) have been physically present in the US for a continuous period of at least three years since the date of receiving the T visa; (ii) have been a person of "good moral character" during that period; and (iii) have complied with any reasonable request for assistance in the investigation or prosecution or would suffer extreme hardship involving unusual and severe harm upon removal from the US. The number of both T visas and permanent visas are both limited to 5,000 per year (this numerical limitation does not apply to family members).

The T visa requires both compliance with a "reasonable request for assistance" and extreme hardship, whereas permanent residence requires only one or the other. This reflects the nature of the T visa – its purpose is not just to aid the prosecution, but also to protect the trafficked victim.

Source: *United States Victims of Trafficking and Violence Protection Act, 2000.*

Box 6.27. Residence permits for trafficked persons: Article 18 of the Law 286/98 in Italy

In 1998, Article 18 of the Law 286/98 governing immigration was introduced in **Italy**. A special feature is the provision of a special residence permit to the women victims of trafficking and the possibility of granting them the rights offered to Italian citizens. This law aims to recognize the right of citizenship for trafficked women and at eliminating their stigmatisation through public awareness raising campaigns. The first step to acquiring civil and social rights is having a legal residence permit. This special residence permit is issued, firstly, for the purpose of social protection: to recognize that the woman who asks for it is an exploited person who needs help, irrespective of her willingness to denounce the exploiters. The residence permit issued for social protection is valid for six months and renewable up to one year. It is not limited to the time necessary to prosecute and conclude the criminal proceedings, but could become a regular residence permit for the purpose of work. This allows the woman to distance herself from the pimps, to work, and to be autonomous in her daily life. The special residence permit for social protection is given in the following cases:

- Whenever a woman is in danger “because of attempts to free herself from the subjugation of a criminal association”;
- Whenever a woman is in danger after having given testimony against the exploiters during penal proceedings.

This residence permit allows her to have access to social assistance services, to enter education programmes, to be included in official job-placement listings and to work. If the woman receives a work contract valid for an undefined period of time, the special residence permit can be changed into one for the purpose of work.

There are two ways in which the procedure for the special residence permit operates: the judicial way and the social reintegration way. In both cases obtaining this residence permit is conditional on the victim accepting to enter a special assistance and social reintegration programme, managed by social service institutions or NGOs.

The law also specifies that acts incompatible with the law’s specifications may result in the revocation of the special permit. The conditions considered incompatible include the autonomous practice of prostitution and voluntarily abandoning the social and working reintegration programme.

Source: D. Mannu, “Systems of protection for victims of trafficking in human beings: the Article 18 of the Law 40/98 in Italy” in Global Alliance against Traffic in Women, *Alliance News, Issue 18, July 2002*, pp.30-34.

Right to recovery: assistance measures in countries of destination:

The right to recovery should include a number of assistance measures in the countries of destination, such as:

- ✓ Accommodation in safe shelters: trafficked victims should not be held in detention centres or jails;
- ✓ Access to health care, including to confidential HIV/ AIDS testing;
- ✓ Access to legal services and counselling in a language they understand;
- ✓ Access to psychological counselling;
- ✓ Access to opportunities for employment, education and training.

Such assistance measures are provided for in international standards. For example, the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* obliges States to take effective measures against gender-based violence and trafficking in women and to protect and assist victims of these human rights abuses. In its General Recommendation No. 19, the CEDAW Committee recommends to States parties a number of measures that are significant for the protection of trafficked women.


Most research suggests that, currently, such assistance measures are poorly provided for. Some of the major obstacles are highlighted in **Box 6.28**; additional obstacles are the lack of adequate State funding for such measures, lack of coordination and an efficient referral system between different civil society and public sector providers of such measures, lack of social and legal service providers in the languages of the trafficked persons.


Box 6.28. Why 65 % of trafficked women and girls are not assisted

- Focus on return of trafficked persons and their legal status as irregular migrants instead of status as victims of trafficking;
- Restricted access to shelters – no safe place or assistance to victims not willing to return to country of origin;
- Lack of special services and treatment for children under 18;
- Lack of legal framework for assistance – there are no provisions allowing women to stay in the country of destination, even to testify;
- Lack of engagement of local NGOs in assistance work;
- Inadequate security and lack of witness protection;
- No alternatives to return.

Source: UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.144.

Some of the findings and lessons learned from the Anti-Slavery International study were:⁶⁹

 *Trafficked persons reported that housing and opportunities to be financially independent were their greatest needs.*

 *Access to appropriate shelters and housing (i.e. secure and culturally sensitive) was found to be a problem in every country. In some countries, trafficked persons often did not rely on the State but were dependent on the goodwill of people who helped them. Protection of trafficked persons was most effective where the police were aware of the complex issues involved, recognized the risks to trafficked women and girls and were able to find secure and/or secret and culturally appropriate housing in which the trafficked person felt comfortable and safe. Culturally appropriate housing should take into consideration basic cultural differences that affect how people live their daily lives, such as religion, food and language. Informal measures such as 24-hour telephone access to police officers, police escorts and panic alarms were*

particularly important in ensuring safety and peace of mind to trafficked persons [👁️ **Box 6.29**].



Employment is a crucial factor for successful recovery. Education, employment and training are crucial for ensuring financial independence, emotional stability and empowerment of the individual. A good example was Italy's social reintegration programmes that have been successful in providing trafficked persons with genuine access to education, training and employment.⁷⁰



The practical obstacles of finding work for trafficked person with limited language and specialized skills impede successful insertion into the labour market. Bureaucracy associated with employing persons who have been trafficked and who have temporary residence documents also mean that many employers are unwilling to employ them.



The shortage of State funding for basic support and assistance measures caused difficulties everywhere. In destination countries, provision of State funded services for trafficked persons was generally dependent on their having already been formally identified as "trafficked". Those perceived to be "only" undocumented migrants had extremely limited access to assistance.



NGOs assisting trafficked persons recognized legal advice to be especially important to trafficked persons. Counselling was important, but often regarded as secondary, due to more pressing immediate practical problems. Counselling was also difficult due to cultural differences and language.

Box 6.29. A toll-free number to deal with trafficking issues

The **Italian** Presidency of the Council of Ministers has provided the funds for a toll-free number to enable immediate reporting of cases of trafficking, and to launch an information campaign to sensitize the public. The main switchboard is manned by trained cultural mediators, who are able to properly inform callers about the network of services and local projects. Once the caller, who often faces danger, finally comes to the decision to end her own exploitation, the information provided enables her to know where to go and what to do. From July to October 2000, this toll free number received more than 20,000 calls. About 70 per cent of the calls were from Italian citizens, concerned friends or clients of women working in the street, who sought information about how to help them. 12 per cent of these calls were from sex workers experiencing difficulties. Even policemen called to seek guidance regarding the law. There was also suspicion that a certain number of the calls were from the exploiters.

Source: D. Mannu, "Systems of protection for victims of trafficking in human beings: the Article 18 of the Law 40/98 in Italy" in Global Alliance against Traffic in Women, *Alliance News, Issue 18, July 2002*, p.33.

☑️ **Assistance and protection in legal proceedings:**

It is essential to not treat trafficking victims as criminals and it is especially critical to avoid prejudiced treatment of women victims because they have been in the sex sector.

Adequate victim






assistance and protection is also connected to the status of trafficked women and

girls in legal proceedings, both criminal proceedings against the perpetrator as well as civil proceedings for compensation. Necessary means to support trafficked persons in legal proceedings include:

- ✓ *Provision of information and advice:* At the minimum, trafficked persons should receive information on:
 - Contacts for support organizations and the type of support they can obtain;
 - Their role in connection with criminal proceedings, especially their rights and duties;
 - Date and place of the hearing against the alleged trafficker;
 - Requirements for obtaining protection, legal aid and compensation; and
 - Outcome of the investigations and the release of the trafficker.
- ✓ *Provision of free legal representation and translation services* during criminal proceedings against the trafficker, as well as during proceedings for civil compensation;
- ✓ *Victim-sensitive and gender-sensitive methods for investigation and interrogation:* it is essential to not treat trafficking victims as criminals and it is especially critical to avoid prejudiced treatment of women victims because they have been in the sex sector. Sensitivity is required also because many of the women and girls may have been so traumatized by their experiences that they are not able to function as might be expected. Female victims may find it easier to speak to a woman law enforcement officer;
- ✓ *Measures to protect their privacy and physical security:* Such measures are needed before, during and after criminal proceedings. Victims and witnesses are at risk of being intimidated and threatened by traffickers. Therefore, measures guaranteeing their physical security, the security of NGO staff providing assistance to them, as well as measures for the protection of their family members in the country of origin are of top priority. Some measures that can be taken include:
 - Excluding the general public from the trial;
 - Not disclosing personal information about the victim or publishing such information only to the necessary extent;
 - Provision of police protection to the trafficked victim, her/his family and NGO staff supporting them;
 - Rules of evidence that protect the safety of witnesses, such as the possibility of testifying by video link;
 - Providing witnesses with new identities and relocating them to other places if otherwise their life and security would be threatened;
 - Notifying trafficked persons in case their trafficker is released.
- ✓ *Access to civil compensation:* Trafficked victims should have access to civil compensation from their traffickers for physical or mental harm or material damages (including lost wages) resulting from trafficking;

- Trafficked persons should be able to make civil claims against their traffickers irrespective of their own residence or employment status;
 - States should inform trafficked persons about their right to bring a civil suit against the accused and about any procedural requirements thereof;
 - States should primarily use assets confiscated from traffickers to pay compensation and due wages to the victims;
 - Civil claims can be made in the course of criminal proceedings against a trafficker or in separate civil proceedings.
- ✓ *Establishment of specialized and trained bodies:* The sensitivities and complexities involved in providing victim-sensitive and gender-sensitive support and assistance to trafficked persons suggest that it would be most effective to establish and train a group of persons with different competencies to deal specifically with the problems.

Some of the useful **lessons learned** that are worth bearing in mind are: ⁷¹

-  *The experience of testifying in court was the most difficult part of the trafficked victim's ordeal, second only to the abuses suffered at the hands of traffickers. Testifying in the presence of the defendant did affect some victims' ability – especially women who have suffered sexual abuse – to give evidence and answer certain questions. In the case of women who have been trafficked into prostitution, defence lawyers often try to discredit and unsettle them by raising the issue of their moral character.*
-   *Since legal systems differ in countries it is not possible to recommend standard evidentiary rules to protect witnesses, but some of the good practices include the use of written, not oral procedures and the positive application of judicial discretion in trafficking cases (as in Belgium). Pre-trial hearings which are closed to the public (as in Italy) and the preliminary deposition of evidence (as in Poland and Thailand) seemed successful in reducing trauma of victims and allowing them to move on with their lives.*
-   *Especially for women, there should be free access to specialized social workers or to counselling post-trial to enable them to address any further trauma caused by testifying.*

☑ **Return and repatriation assistance:**

Since most countries do not provide trafficked persons with permanent legal residence status, they are deported or voluntarily returned to their country of origin. En route and upon return home, women and girls in particular may face several additional risks, including being re-captured by traffickers. They may also be heavily traumatized by the violations they suffered, and especially those who had worked in the sex industry fear stigmatisation and rejection by their families and origin communities. Many countries of origin do not have specific programmes for the reintegration of trafficked victims and may even subject them to further discrimination. For example, in **Nigeria**, trafficked persons who are deported home (often from Italy) were detained upon arrival, subjected to forced HIV/ AIDS testing and had their personal details recorded to prevent them from legally travelling

abroad again.⁷² The *Trafficking Protocol* calls for the following repatriation measures:

Trafficking Protocol

Article 8


Repatriation of victims of trafficking in persons

1. *The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.*
2. *When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.*
3. *At the request of a receiving State Party, a requested State Party shall without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.*
4. *In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.*
5. *This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.*
6. *This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.*

Box 6.30. Why reintegration reaches only 7 % of trafficked women and girls

- Lack of funding and cooperation between government, NGOs and international organizations;
- Lack of support from Governments, who leave all responsibility to international agencies;
- Disempowerment of local NGOs and lack of capacity: working with trafficked women is a very difficult and long-term process. It requires well-trained and committed staff, a good understanding of the issue and a well-developed work methodology and individual approach to each case;
- Shame and stigma of being labelled as a prostitute;
- While security is a priority in the country of destination and during the journey home, there is not much consideration for their safety after return;
- Discrimination against women and girls in general, lack of opportunities, low social position of women, bad economic situation, unemployment and family violence.

Source: UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), pp.144-146.

Some useful guidelines for the return and reintegration of the victims of trafficking are [ **Booklet 5 on return and reintegration**]:

- ✓ States of origin, transit and destination should cooperate in order to facilitate the safe and orderly repatriation of trafficked persons. This cooperation could be closely coordinated with relevant international organizations and specialized victim support NGOs;
- ✓ States of origin should provide trafficked persons with the necessary travel and identity documents and, where needed, the financial means in order to enable them to travel to and re-enter their territories. Without money and without papers, it is not possible for trafficked persons to return to their origin communities. This might result in them being held in shelters or detention centres, often for years. When necessary, states of transit should also respond in an appropriate and timely manner in order to assist with repatriation efforts;
- ✓ Upon return to their home countries, states should provide trafficked persons with shelter, counselling, medical and psychological care, material assistance, as well as skills training and job counselling. The returnees should also be provided information and contact details of the kinds of support and assistance available through state agencies and NGOs. They would also need information on a law enforcement office that they can contact if a trafficker threatens them again. All programmes for reintegration should not stigmatise or victimize trafficked persons; they should also guarantee the privacy and confidentiality of the trafficked person;
- ✓ For trafficking victims who were forced into prostitution, sensitive handling is very important, especially since many of the women did not inform their families of what had happened to them, fearing stigmatisation or even rejection;
- ✓ It is essential to follow up, monitor and maintain regular contacts with the returned victims of trafficking – to ensure that they are coping and, importantly, to ensure that they do not fall into the hands of traffickers again.

Some of the **lessons learned** based on interviews ⁷³ with returnees in their origin countries show:



Many returnees feel that since most source country governments do not have programmes for the reintegration of legal returnees, it is even less likely that there are programmes for the social and economic reintegration of the victims of trafficking: “The concept of re-integration as a process where the returnee can assert some degree of control over their lives through their earnings is unimaginable to both male and female returnees. They express the view that the Government has failed to extend any kind of support to change the circumstances which forced them to work abroad and, therefore, they do not expect the Government to help them on their return”. ⁷⁴



In some source countries, returned migrants have set up their own migrant worker associations and migrant service centres, which provide a forum for

migrant returnees to meet and socialize, implement small-scale savings and credit schemes to assist returnees in various income-generating activities, carry out advocacy and lobbying at community level to provide first hand information to provide first-hand information to prospective migrant workers on workplace situations, benefits and hardships and coping mechanisms. But they do not have the specialist services, such as professionals in psychotherapy and counselling, needed to assist trafficking victims to cope with the trauma they have suffered.

6.9. Prosecution of traffickers

“Prosecution of traffickers is the most basic precondition for preventing trafficking and stopping the ‘recycling’ of women and girls. Otherwise, the anti-trafficking action will stimulate illegal migration and trafficking rather than reduce it. Return programmes will become free travel agencies used by traffickers to send back, at the international community’s expense, those women and girls whom they choose to release”⁷⁵



At this moment, prosecution is probably the weakest part of the whole anti-trafficking system. The main obstacles are:⁷⁶

- Lack of political will and action against traffickers;
- Lack of anti-trafficking legislation;
- Failure to apply relevant existing law, except to prostitution;
- Lack of enforcement of law due to corruption, lack of understanding of the legislation, lack of knowledge about trafficking and anti-trafficking legislation;
- Lack of information and training for the police and judiciary;
- Written testimonies of the victims of trafficking are not sufficient evidence in the court;
- No witness security;
- Lack of international cooperation and exchange of information.



To overcome these obstacles and improve prosecution of traffickers, the following measures are important:⁷⁷

- ☑ *Establish a distinct offence and definition of trafficking in human beings;*
- ☑ *Impose effective deterrent sanctions;*
- ☑ *Make legal entities criminally liable;*
- ☑ *Criminalize all activities related to trafficking;*
- ☑ *Establish other criminal offences related to trafficking;*
- ☑ *Establish extraterritorial jurisdiction.*

- ☑ *Establish a distinct offence and definition of trafficking in human beings:*

The criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings, as described above. This should be the first requirement.

There cannot be prosecution without a clear definition of the crime. The criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings, as described above. This should be the first requirement:

- ✓ Establish a distinct offence of trafficking in human beings sufficiently broad to cover all forms of trafficking; including at least the following elements:

- *Acts*: recruitment, transportation, transfer, harbouring or receipt of a person;
- *Means*: threat or use of force or other forms of coercion, of abduction, fraud, deception, abuse of power or a position of vulnerability;
- *Purpose*: not just for sexual exploitation, but all forms of forced labour or services, slavery, slavery-like practices and servitude.

☑ ***Impose effective deterrent sanctions:***

At present, the sanctions for trafficking

available in many countries have no deterrent effect because they are too weak. In many instances, the punishment for carrying drugs is much more severe than those for buying and selling human beings. The nature and severity of the sentences imposed may influence prosecution efforts:

- ✓ Establish and apply sanctions for trafficking that have a deterrent effect and reflect the serious nature of the crime and the human rights violations involved;
- ✓ States should consider the following sanctions: imprisonment, fines, confiscation of assets resulting from trafficking, and closure of establishments associated with trafficking;
- ✓ Assets confiscated from traffickers should be used to compensate trafficked persons and then to pay for services to trafficked persons. States should also consider supporting re-integration programmes in the countries of origin with the money derived from confiscation.

In many instances, the punishment for carrying drugs is much more severe than those for buying and selling human beings.

☑ ***Make legal entities criminally liable:***

Traffickers sometimes act through legal

entities (also called “legal persons”), such as travel agencies, marriage agencies, sex shops, bars, hotels, brothels and employment agencies. If prosecution were limited to individuals, the activities of the legal entities would go unpunished. If only individuals are sent to prison, the business may continue with other persons running them. In many cases, it is also difficult to prove the involvement of the individual persons acting for such entities. Therefore:

- ✓ States should establish criminal and civil liability of legal entities involved in trafficking in human beings. This should be without prejudice to the liability of the individual persons involved;
- ✓ Sanctions against legal entities should include fines, confiscation of assets, closure of establishments, exclusion of the entitlement to public aid or tax benefits, placement under judicial supervision and disqualification from the operation of commercial activities.

If prosecution were limited to individuals, the activities of the legal entities would go unpunished. If only individuals are sent to prison, the business may continue with other persons running them.

☑ ***Criminalize all activities related to trafficking:***

To break the trafficking cycle, it is necessary to ensure that all activities and all intermediaries at any stage of the trafficking process are prosecuted.

To break the trafficking cycle, it is necessary to ensure that all activities at any stage of the trafficking process are prosecuted. And since trafficking is now a well-organized business with elaborate structures and networks, all actors should also be prosecuted. This raises the issue of criminalizing aiding, abetting, instigating trafficking, or attempting trafficking. Persons who are not part of the criminal group but who fail to act, such as a border guard who turns a blind eye to the traffickers passing the border, could also be held liable. For effective prosecution:

- ✓ States should establish all activities relating to trafficking as criminal offences, such as instigating, aiding, abetting, attempting, omission to act against and conspiracy to traffic;
- ✓ States should specifically establish the activities of organized criminal groups involved in trafficking as a criminal offence;
- ✓ States should further ensure that trafficking cases involving public officials are prosecuted and involve not only disciplinary consequences but also sanctions under criminal law.

☑ ***Establish other criminal offences related to trafficking:***

In order to ensure that the penalties applied reflect the gravity of the harm inflicted upon the trafficked person, States should, additionally to prosecuting traffickers under the offence of trafficking in human beings, invoke other applicable provisions of criminal law.

Trafficking is often only one of the crimes committed against trafficked persons. In order to ensure that the penalties applied reflect the gravity of the harm inflicted upon the trafficked person, States should, additionally to prosecuting traffickers under the offence of trafficking in human beings, invoke other applicable provisions of criminal law. Such offences include, but are not limited to the following: slavery, slavery-like practices, involuntary servitude, forced or compulsory labour, debt bondage, forced marriage, forced abortion, forced pregnancy, torture, cruel, inhuman or degrading treatment, rape, sexual assault, bodily injury, murder, kidnapping, unlawful confinement, labour exploitation, withholding of identity papers and corruption. The ability to invoke other provisions of criminal law could be particularly useful in countries where:

- A distinct criminal offence of trafficking does not exist;
- Penalties for trafficking do not adequately reflect the severity of the crime and do not have a deterrent effect;
- The existing evidence is not sufficient in order to prosecute the suspect for trafficking.

☑ ***Establish extraterritorial jurisdiction:***

Trafficking in human beings often extends beyond national frontiers. Therefore, extraterritorial jurisdiction – the possibility of a State to prosecute and try alleged offences that did not take place within its territory – is crucial in order to enable the authorities to prosecute traffickers, as well as to prohibit perpetrators from

escaping criminal prosecution in one country by moving their activities to another country:

- ✓ States should exercise jurisdiction over offences of trafficking that are committed in their territory;
- ✓ States should also establish jurisdiction if the offence was committed outside their territory, at least in cases, where the offence was committed by or against one of their nationals and in cases of transnational crime, when the act was committed outside the territory but has effects on their territory;
- ✓ States should ratify the *United Nations Convention Against Transnational Organized Crime, 2000*. Additionally, they should conclude bilateral agreements in order to facilitate extradition in cases of trafficking in human beings;
- ✓ States should ensure that its competent authorities apply such extradition treaties in practice and that suspected traffickers are extradited to the country where the evidence of an alleged offence has been uncovered;
- ✓ States should also consider extradition of their own nationals. When a State refuses extradition of its own nationals, it should immediately submit the case to its competent authorities for investigation and prosecution.

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www.hrlawgroup.org/resources/content/Protocol_annotated.pdf

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Useful websites

Amnesty International

<http://www.web.amnesty.org>

Anti-Slavery International

<http://www.antislavery.org>

Asian Migrant Centre

<http://www.asian-migrants.org>

Asian Monitor Resource Centre

<http://www.amrc.org.hk/>

Asian Pacific Forum on Women, Law and Development

<http://www.apwld.org/lm.htm>

Asia-Pacific Migration Research Network

<http://www.unesco.org/most/apmrn.htm>

Asian Partnership on International Migration

<http://apim.apdip.net>

Asian Research Centre for Migration

<http://www.chula.ac.th/INSTITUTE/ARCM/main.htm>

Bangkok Declaration on Irregular Migration

<http://www.thaiembdc.org/info/bdim.html>

Coalition Against Trafficking in Women (CATW)

<http://www.catwinternational.org/>

Charter for the Rights of Migrant Domestic Workers in Europe

<http://www.philsol.nl/of/charter-domestics-oct99.htm>

Collection of resource and links on initiatives against trafficking in persons

http://www.hrlawgroup.org/initiatives/trafficking_persons/

Coordination of Action Research on AIDS and Mobility -Asia (CARAM Asia)

<http://www.caramasia.gn.apc.org>

Council of Europe

http://www.coe.int/T/E/Committee_of_Ministers/Home/

Domestic Workers

<http://www.asylumsupport.info/news/domesticworkers.htm>

Economic Commission for Europe (ECE)

<http://www.unece.org>

European Commission Justice and Home Affairs

http://europa.eu.int/comm/justice_home

European Monitoring Centre on Racism and Xenophobia

http://europa.eu.int/agencies/eumc/index_en.htm

European Strategy on Trafficking in Women

http://europa.eu.int/comm/justice_home/news/8mars_en.htm

European Union policy documents

http://europa.eu.int/index_fi.htm

Femmigration

<http://www.femmigration.net/>

Filipino laws and Overseas Employment

<http://www.chanrobles.com/republicactno8042.htm>

Global Alliance Against Trafficking in Women (GAATW)

<http://www.thai.net/gaatw>

Global Campaign for the Ratification of the Convention on the Rights of Migrants

<http://www.migrantsrights.org>

Global Programme against Trafficking in Human Beings, UN Office for Drug and Crime Control Prevention, Vienna

http://www.odccp.org/trafficking_human_beings.html

International Human Rights Law Group

<http://www.hrlawgroup.org/>

Human Rights Watch (HRW)

<http://www.hrw.org>

Information for Domestic Workers Arriving in UK - Government Website

<http://www.ind.homeoffice.gov.uk/>

International Confederation of Free Trade Unions (ICFTU)

<http://www.icftu.org/>

International Labour Office (ILO)

<http://www.ilo.org>

<http://www.ilo.org/public/english/standards/decl/>

<http://www.ilo.org/genprom>

<http://www.ilo.org/childlabour>
<http://www.ilo.org/asia/child/trafficking>
<http://ilolex.ilo.ch:1567>
<http://natlex.ilo.org>

International Movement Against Discrimination and Racism

<http://imadr.org>

International Organization for Migration (IOM)

<http://www.iom.int>

Kalayaan. Justice for Overseas Domestic Workers

<http://ourworld.compuserve.com/homepages/kalayaan/home.htm>

Kanlungan Centre Foundation Inc.

<http://www.kanlungan.ngo.ph>

Link to anti-trafficking websites

<http://stop-traffic.org/Countries.html>

Migration Forum in Asia (MFA)

<http://www.migrantnet.pair.com>

Migrant Rights International

<http://migrantwatch.org>

Mission for Filipino Migrant Workers (MFMW)

<http://www.migrants.net>

Network of Migrant Workers Organisations

<http://www.solidar.org>

Network Women's Program (La Strada Foundation)

http://www.soros.org/women/html/info_trafficking.htm

Office of the High Commissioner for Human Rights (OHCHR)

<http://www.unhchr.ch/women/focus-trafficking.html>

<http://www.unhchr.ch/html/menu2/7/b/mwom.htm>

Office of the UN High Commissioner for Refugees (OUNHCR)

<http://www.unhcr.ch>

Organization for Security and Cooperation in Europe (OSCE): Europe Against Trafficking in Persons

www.osce.org/europe-against-trafficking

Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)

<http://www.osce.org/odihr/democratization/trafficking>

Palermo Convention on Transnational Organized Crime and its Protocols

<http://www.unodc.org/palermo/convmain.html>

Promotion of the rights of migrants (December 18)

<http://www.December18.net/intro.htm>

Scalabrini Migration Center

<http://www.scalabrini.asn.au/philsmc.htm>

STOP-TRAFFIC

<http://www.stop-traffic.org>

Stop traffic listserv and archives

<http://www.friends-partners.org/partners/stop-traffic/>

Trafficking Directory

http://www.yorku.ca/iwrp/trafficking_directory.htm

United Nations Crime Commission documents on the Trafficking Protocol

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/index.htm

United Nations Development Fund for Women (UNIFEM)

<http://www.unifem.org>

United Nations Division for the Advancement of Women (UNDAW)

<http://www.un.org/womenwatch/daw>

United Nations Interregional Crime Prevention Institute (UNICRI)

<http://www.unicri.it>

United Nations Secretariat

<http://www.un.org>

United Nations Treaty Collection

<http://www.un.org/Depts/Treaty/>

USA Government

<http://usinfo.state.gov/topical/global/traffic/>

<http://www.state.gov/g/tip>

<http://cia.gov/csi/monograph/women/trafficking>

US Anti-trafficking initiatives

<http://secretary.state.gov/www/picw/trafficking/region.htm>

UNICRI Global Programme Against Trafficking in Human Beings

http://www.unicri.it/trafficking_in_human_beings.htm

Women's Aid Organisation, Malaysia (WAO)

<http://wao.org.my>

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

<http://www.unhcr.ch/html/racism/>

World Wide Web Virtual Library (WWWVL)- Migration and Ethnic Relations

<http://www.ercomer.org/wwwvl/>

Endnotes

¹ See, for example, P. Boonpala and J. Kane, *Trafficking of children: the problem and responses worldwide* (Geneva, ILO, International Programme on the Elimination of Child Labour, 2001). Also ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002).

² Some of the background materials used to develop the Guide came from case studies in sending and receiving countries of the situation of the women migrant workers within their families, workplaces, communities and societies. The case studies also looked at the initiatives, policies and programmes, “good” and “bad” practices implemented by government, private recruitment and employment agencies and a wide range of social actors to assist and protect women migrants against discrimination, exploitation and abuse and to assist those vulnerable to being trafficked. See ILO Gender Promotion Programme (GENPROM), Working Paper Series on Women and Migration.

³ Often cited estimates are that 1 to 2 million people are trafficked each year worldwide. But care has to be taken in using such data, since so-called global estimates are dubious, often drawn from recycled reports. However, a number of individual countries are now preparing country profiles of trafficking. See, for example, United States of America Department of State, *Victims of Trafficking and Violence Protection Act 2000 Trafficking in Persons Report*, June 2002; <http://www.usinfo.state.gov/topical/global/traffic>

⁴ Office of the High Commissioner for Human Rights, “Trafficking in persons: a human rights issue”, in *Trafficking in Migrants Quarterly Bulletin* No.26, September 2002 (Geneva, International Organization for Migration, 2002); <http://www.iom.int>

⁵ United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, 20 May 2002, p.3.

⁶ U.S. Department of Justice, *Trafficking Victims Protection Act of 2000, Section 102 Purposes and Findings*, paragraph (1), <http://www.ojp.usdoj.gov/vawo/regulations.htm>

⁷ ILO, *Stopping Forced Labour Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, ILO, 2001), p.51.

⁸ The UNDP Human Development Report 1999 makes a clear link between trafficking as a criminal activity on the rise as a result of the expansion of globalization.

⁹ B. Crossette, “Trafficking in people: world’s fastest growing criminal market”, *International Herald Tribune*, Monday June 26,2000 quoting P. Arlacchi, Director-General of the United Nations Office for Drug Control and Crime Prevention.

¹⁰ U.S. Department of State, *Trafficking in women and children: the U.S. and international response* Congressional Research Service Report 98-649 C by F. T. Miko with the assistance of G.Park, May 10 2000; <http://www.usinfo.state.gov/topical/global/traffic/crs0510.htm>

¹¹ G. D’Alconzo, S.La Rocca and E. Marionni, *Italy: Good practices to prevent women migrant workers from going into exploitative forms of labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p18.

¹² It is very important, however, to note that there are a number of concerns related to this Convention. The UN Special Rapporteur on Violence against Women noted that “the Convention lacks conceptual clarity on important issues and is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new UN Convention on

Transnational Organized Crime The SAARC Convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. The draft convention also does not explicitly recognize that trafficking could be for other purposes than for prostitution. By concentrating on the end result and not on the process of trafficking and abuse, for whatever purpose, the convention does not recognize trafficking as a distinct and unique crime regardless of a nexus with prostitution.In addition, the convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced". See J. Sanghera, "Hopes belied A rights based analysis of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution" in Global Alliance against Traffic in Women (GAATW), *Alliance News* Issue No.18, July 2002, pp. 12-19. See also, <http://www.saarc-sec.org>

¹³ Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation adopted on 19 May 2000.

¹⁴ U.S. Department of State, *Victims of Trafficking and Violence Protection Act 2000 Trafficking in Persons Report*, June 2002, box on p.3.

¹⁵ For example, the United Nations General Assembly adopted a Resolution on Traffic in Women and Girls, A/RES/55/67, 31 January 2001, and pursuant to this Resolution, the Secretary-General submitted a report in July 2002 on the measures that have been taken at national level and within the United Nations system and other international bodies to combat trafficking in women and girls, A/57/170, 2 July 2002. The Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 also has several paragraphs specifically calling for action to prevent, combat and eliminate all forms of trafficking in women and children.

¹⁶ United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44. E/CN.4/2000/68*, 29 February 2000, p.6.

¹⁷ United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, 20 May 2002, Guideline 8: Special measures for the protection and support of child victims of trafficking. See also, for example, P. Boonpala and J. Kane, *Trafficking of children: the problem and responses worldwide* (Geneva, ILO International Programme on the Elimination of Child Labour, 2001). Also ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002).

¹⁸ The *Smuggling Protocol* includes a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the worst forms of exploitation, which often accompany the smuggling process. The purpose of the Protocol is to prevent and combat smuggling of migrants, as well as to promote cooperation among States Parties to that end, as well as to protect the rights of smuggled migrants. States Parties have to criminalize smuggling and related offences and establish as aggravating circumstances those situations that endanger the lives or safety of migrants or entail inhuman or degrading treatment, including exploitation. Migrants themselves are not liable to criminal prosecution for the fact of having been smuggled. It calls for the internationally recognized rights of smuggled migrants, in particular the right to life and the right not to be subjected to torture or to cruel, inhumane treatment or punishment. Migrants shall be protected from violence and States shall give due assistance, as far as possible, to those migrants whose life or safety has been endangered by reason of having been smuggled. They shall also take into account the special needs of women and children in the application of the Protocol's protection and assistance measures.

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- ¹⁹ R. Kapur, "The global war on trafficking, terror and human rights" in Global Alliance Against Traffic in Women (GAATW), *Alliance News* Issue 18, July 2002, pp.21-22.
- ²⁰ Ibid, p. 22.
- ²¹ A clear description of the trafficking cycle and the organization of trafficking is given in J. Salt and J. Stein, "Migration as a business: the case of trafficking" in *International Migration* Vol.35 (4) 1997, pp.467-494.
- ²² L. Kelly and L. Regan, "Trafficking in women", in British Council, *The Network Newsletter* May 2000, newsletter no.20, p.4.
- ²³ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.8.
- ²⁴ For example, Albanian traffickers used speedboats until a clampdown by the authorities, after which they used fishing boats or wooden riverboats, which were less conspicuous and easier to land on the Italian coast.
- ²⁵ For instance, in March 1997, more than 400 women were found locked in four separate houses in East Java, Indonesia, some of who had been held for more than eight months, unable to leave the house or to return home, because their departure would mean a major financial loss for the recruiter. The women had been promised work as maids and were waiting for the all-clear signal from Malaysia. See L. Lim, "Female migrants: winners or losers in global labour markets", Paper presented at the International Conference on Migration Scenarios for the 21st Century, Rome, 12-14 July 2000.
- ²⁶ J. Salt and J. Stein, "Migration as a business: the case of trafficking" in *International Migration* Vol.35 (4) 1997, p.483.
- ²⁷ ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002), pp.15-16.
- ²⁸ A. O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*. DCI Exceptional Intelligence Analyst Program An Intelligence Monograph, April 2000, p.5.
- ²⁹ The European Commission Justice and Home Affairs, "Trafficking in women The misery behind the fantasy: from poverty to sex slavery A comprehensive European strategy", p.3.
http://europa.eu.int/comm/justice_home/news/8mars_en.htm
- ³⁰ *Trafficking in women and girls*. Office of the High Commissioner for Human Rights and Economic Commission for Europe Secretariat for the Regional Preparatory Meeting on the 2000 Review of Implementation of the Beijing Platform for Action, 19-21-January 2000, E/ECE/RW.2/2000/3.
- ³¹ United Nations Economic and Social Council, *Trafficking in women and girls Note prepared by the Office of the High Commissioner for Human Rights and the Economic Commission for Europe Secretariat*, E/ECE/RW.2/2000/3, 1 December 1999, p.7.
- ³² UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.7.
- ³³ ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002), p.28.

³⁴ J. D’Cunha, “Concept Paper Gender Equality, Human Rights and Trafficking: A Framework of Analysis and Action”. Presented at the Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, 7-9 October 2002, Bangkok (The Swedish Ministry for Foreign Affairs, The United Nations Fund for Women, in cooperation with the United Nations Economic and Social Commission for Asia and the Pacific), p.12.

³⁵ For example, in Pakistan, women migrants have to be over 35 years of age and have to obtain the permission of their fathers and husbands. Furthermore, they have to sign an indemnity stating that they themselves are responsible for all risks undertaken, including the risk of being exploited. See Lin Chew, “Discussion Paper Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking”, Paper prepared for Anti-Slavery International in cooperation with the ILO Special Action Programme to Combat Forced Labour, January 2003.

³⁶ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.5.

³⁷ The 1997 discovery of a large number of undocumented Thai women working under slavery-like conditions in a garments sweatshop in California was a striking example. See L.L.Lim, “The processes generating the migration of women”, Paper presented at the Technical Symposium on International Migration and Development, the Hague, 29 June-3 July, 1998.

³⁸ See ILO, *Decent Work and the Informal Economy*, Report VI International Labour Conference 90th Session 2002 (Geneva, 2002), p.33.

³⁹ P. Taran and G. Moreno-Fontes Chammartin, “Getting at the roots: stopping exploitation of migrant workers by organized crime. Background paper for the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, organized by the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), Santiago, Chile 20-22 November 2002, p.8.

⁴⁰ Asian Migrant Centre and Mekong Migration Network, *Migration Needs, Issues and Responses in the Greater Mekong Subregion* (Hong Kong, Asian Migrant Centre, December 2002), p.187.

⁴¹ United States Victims of Trafficking and Violence Protection Act 2000.

⁴² See ILO, *Unbearable to the human heart child trafficking and action to eliminate it* (Geneva, ILO International Programme for the Elimination of Child Labour, 2002, p.30.

⁴³ United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, 20 May 2002.

⁴⁴ M. de Monchy, “Providing social security and protection to women and children in difficult circumstances”. Paper presented at the Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, 7-9 October 2002, Bangkok (The Swedish Ministry for Foreign Affairs, The United Nations Fund for Women, in cooperation with the United Nations Economic and Social Commission for Asia and the Pacific), pp.4-5.

⁴⁵ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.xiii.

⁴⁶ P. Taran and E. Geronimi, “Globalization, labour and migration: protection is paramount”. Paper presented at the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, organized by the Economic Commission for Latin America and

the Caribbean (ECLAC) and the International Organization for Migration (IOM), Santiago, Chile 20-22 November 2002.

⁴⁷ See, for example, the summary of regional initiatives given in Table 1 of UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), pp.169-181.

⁴⁸ The ICFTU No to Racism and Xenophobia! Plan of Action for Trade Unions has a section calling upon trade unions to: (i) urge governments to legalize undocumented workers; (ii) lobby for legislation to protect those working in the underground economy; (iii) work with communities to provide support and legal assistance for undocumented workers; (iv) undertake special campaigns to organize migrant workers, including those who are undocumented; (v) be actively involved in shaping immigration and migration policies in order to protect the interests of working peoples and their families; (vi) if from sending and receiving countries, work jointly to protect and defend rights of migrant workers. See: <http://www.icftu.org>

⁴⁹ See AFL-CIO website: <http://www.aflcio.org>

⁵⁰ See for example, Anti Slavery International website: <http://www.antislavery.org>; The Global Alliance against Traffic in Women (GAATW) website: <http://www.inet.co.th./org/gaatw>; the La Strada Foundation website: http://www.soros.org/women.html/info_trafficking.htm; the Asian Migrant Centre website: <http://asian-migrants.org>. See also description of networks and cooperation frameworks in ILO, *Unbearable to the human heart child trafficking and action to eliminate it* (Geneva, ILO International Programme for the Elimination of Child Labour, 2002, pp.38-44.

⁵¹ Ibid, p.43.

⁵² See Office of the High Commissioner for Human Rights Commission and Sub-Commission Team and Anti-Discrimination Unit, "List of Paragraphs in the Durban Declaration and Programme of Action which include provisions relating to Migrants and Refugees", May 3, 2002.

⁵³ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.140.

⁵⁴ A. D'Angelo and M.P. Marciacq, *Nicaragua: Protecting female labour migrants from exploitative working conditions and trafficking* (Geneva, ILO GENPROM Series on Women and Migration, 2002).

⁵⁵ See the description of the La Strada Foundation see website: http://www.soros.org/women/html/info_trafficking.htm

⁵⁶ See for example, G. Hyde, *Practical guide on identification of economic opportunities for women groups and communities* (Geneva, ILO Gender Promotion Programme Series on Gender and Employment, 2003).

⁵⁷ An example of a successful chain developed in a programme for poor women in Hainan island in China consisted of one group raising poultry for eggs, another for meat sold in the local market, another group canned the meat in a small factory enterprise, another used the feathers for down blankets and another used the droppings in aquaculture raising fish.

⁵⁸ In China, the local government provided agricultural extension services to support the training and new agricultural activities, arranged transportation to the villages for delivering raw materials and picking up goods produced, provided guarantee for the loans taken by the women. In Thailand, large companies work with the villagers to identify economic potentials that are linked to the company's production, train them and ensure a market for their products.

⁵⁹ Well-known examples include the social insurance schemes of the Self-Employed Women's Association in India and the Grameen Bank in Bangladesh. See Box 4.2 in ILO, *Decent work and the informal economy* Report VI International Labour Conference 90th Session 2002 (Geneva, ILO, 2002), pp.63-64.

⁶⁰ OSCE Office for Democratic Institutions and Human Rights, *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe* (Warsaw, OSCE/OIHR, 2001), pp.22-36.

⁶¹ G. D'Alconzo, S.La Rocca and E. Marioni, *Italy: Good practices to prevent women migrant workers from going into exploitative forms of labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.18.

⁶² M Dias and R. Jayasundere, *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.16.

⁶³ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.139.

⁶⁴ This is a point emphasized by Anti-Slavery International. See E. Pearson, *Human traffic, human rights: redefining victim protection* (London, Anti Slavery International, 2002), pp.32-33.

⁶⁵ Ibid.

⁶⁶ L.L. Lim, *The Sex Sector The Economic and Social Bases of Prostitution in Southeast Asia* (Geneva, ILO, 1998), pp.213-215.

⁶⁷ OSCE Office for Democratic Institutions and Human Rights, *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe* (Warsaw, OSCE/OIHR, 2001), pp.65-66.

⁶⁸ E. Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (London, Anti Slavery International, 2002), pp.41-42.

⁶⁹ Ibid, pp.53-54.

⁷⁰ See description in G. D'Alconzo, S.La Rocca and E. Marioni, *Italy: Good practices to prevent women migrant workers from going into exploitative forms of labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp.36-41.

⁷¹ See, for example, E. Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (London, Anti Slavery International, 2002), pp.50-53.

⁷² Ibid. p.60.

⁷³ From the interviews conducted in countries, such as Sri Lanka and Nigeria, for the studies reported in the GENPROM Series on Women and Migration.

⁷⁴ M. Dias and R. Jayasundere, *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.32.

⁷⁵ UNICEF, UNOHCHR and OSCE-ODIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2002), p.147.

⁷⁶ Ibid.

⁷⁷ The recommendations for this section on prosecution are taken mainly from OSCE Office for Democratic Institutions and Human Rights, *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe* (Warsaw, OSCE/OIHR, 2001), pp.39-55.