

## **Human Rights and Trafficking in Persons: A Handbook**

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## PREFACE

Trafficking in persons is an issue of growing concern from the international community. International organisations, regional bodies and national governments are working on programmes and policies, creating new laws and regulations to stop trafficking of persons. It is sad to see that most of these initiatives and actions are of criminal concern and grossly neglect the human rights of trafficked persons. They protect the interest of the state, rather than the interest of the affected people. Hence, trafficked persons are very often revictimised in the remedial process.

People who are working with trafficked persons need to be concerned with the basic rights of victims of trafficking. They must see the necessity to shift the working paradigm from one of criminal sanction to human rights promotion. Activists working on the trafficking issue need to know the human rights principles, international instruments and mechanisms to ensure that every step they take does not further violate the rights of trafficked persons.

The Global Alliance Against Traffic in Women (GAATW) has organised trainings for anti-trafficking activists on human rights in the context of trafficking since 1996. A handbook entitled *Human Rights Action in the Context of Trafficking in Women* was produced after the first training for activists from Asia and Eastern Europe in 1997. After two more trainings, participants from each met in Geneva in June 1999 to share their thoughts and ideas for the formulation of this new handbook.

NGO activists from each region, who are working in their own capacity to eliminate this form of modern slavery, firmly believe that a solution to the problem cannot be found unless human rights of trafficked persons are respected and promoted by all stakeholders. The struggle for human rights of trafficked persons will make states more accountable for this crime against persons. It will also encourage participation and respect for the right to self-determination of affected persons.

Siriporn Skrobaneck  
October 2000

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## INTRODUCTION

This Handbook has several objectives. Firstly, it aims to inform readers about human rights violations in the context of trafficking in persons, by providing conceptual clarity on human rights and trafficking in persons. Secondly, it shows how to develop strategies to combat trafficking from the human rights perspective. The Handbook gives ideas for concrete strategies to be carried out at all levels, from local to international. Finally, it acts as a resource tool, and is a guide to international instruments and other materials relevant to trafficking.

The Handbook is intended for NGOs, activists and persons who come into contact with trafficked persons or who are interested in the issue of trafficking. Trafficking is a global phenomenon, and GAATW as an international organisation hopes this book is useful for readers from all parts of the world. This is a broad-based manual, containing general strategies that can be further adapted to local contexts. The Handbook was developed out of regional human rights trainings held for Asia and Eastern Europe, Africa and Latin America. In GAATW's 1999 Global Evaluation Meeting on the regional human rights trainings, participants from each of the trainings agreed that defining specific actions is very dependent upon the regional context. One handbook could not successfully or comprehensively or effectively cover the situation of trafficking in each region. Thus whilst this handbook intends to cover the common issues of trafficking universal throughout the world, handbooks more suited to the local conditions of particular regions will be developed separately.

We received important critical input and feedback on the draft of this manual from anti-trafficking activists working in Latin America and Africa, at regional consultations organised in September-October 2000. Suggestions were incorporated into the draft and we have included case studies from all regions so as to illustrate the diversity of experiences of different countries. The regional consultations organised in Africa and Latin America also discussed development of the regional handbooks, and plans have been made for these to be developed in 2001. Another book, *Human Rights in Practice*, developed from GAATW's South East Asian trainings has already been developed to cover the Asian region and is available from GAATW.

This Handbook aims to present trafficking through the human rights framework. Thus there is a need to understand the human rights framework to understand the concept of trafficking as involving fundamental human right violations. When we think about "what is trafficking" we need to do so from the perspective of human rights, that is how we get to our definition of what "trafficking" is.

**Chapter One** introduces the core concepts of human rights and the articles of the main international instruments relevant to trafficking. The concept of trafficking is introduced, with discussion on past and present definitions. The definition used by GAATW is clarified and the elements illustrated through the use of case studies.

**Chapter Two** contains the main contributing factors of trafficking. It deals with the consequences of trafficking in terms of crimes committed by traffickers and recommended government responses. In this respect, the Human Rights Standards for the Treatment of Trafficked Persons (HRS) is introduced and explained through the use of case studies.

**Chapter Three** discusses the fundamental principles that should guide the formulation of strategies for rights-based action on trafficking. It suggests how, even from differing approaches to the problem, action can be taken to enhance and protect the rights of trafficked persons.

**Chapter Four** deals with NGO strategies at all levels. It contains guides on a step by step basis of how to develop research and advocacy strategies. There are examples of appropriate anti-trafficking strategies at the local level. It also acts as a guide to various regional and international mechanisms that are relevant to trafficking. Recommendations are made concerning how to best activate and use the HRS at all levels.

Finally, the Handbook is just that: a Handbook. It is a resource material on human rights and trafficking in persons and as such is not necessarily intended to be read from cover to cover. We hope it is useful tool for organisations working on trafficking and related-issues throughout the world.

**GAATW**

## CHAPTER I

# HUMAN RIGHTS PRINCIPLES, GOVERNMENT OBLIGATIONS AND TRAFFICKING IN PERSONS

## A. WHAT ARE HUMAN RIGHTS?

The concept of "Human Rights" is a powerful tool. One hundred eighty-nine countries are members of the United Nations. As such, these governments have made a commitment to the human rights principles enshrined in the United Nations Charter and in the Universal Declaration of Human Rights<sup>1</sup> (UDHR, 1948). The UDHR establishes the principle that fundamental human rights and basic freedoms are guaranteed to all persons. Civil society needs to understand the nature of human rights and governments' responsibility to protect these rights. This knowledge provides civil society with a basis upon which to demand governments take actions to protect the human rights of all persons, including trafficked persons. All of us can educate and lobby our governments on how to fulfil their responsibility to uphold and make real the UDHR principles for all people. This chapter introduces the basic principles of human rights and the primary instruments addressing the human rights abuses suffered by trafficked persons.

### 1. Human Rights Principles of Universality, Inalienability and Indivisibility.

Human rights are universal, inalienable and indivisible. Human rights exist in the civil, political, economic, social and cultural spheres. Examples of human rights are the right to life, the right to work and a decent living, the right to freedom from discrimination and the right to education. They are based on fundamental principles of respect for human dignity, equality and non-discrimination.

**Universality** means that human rights belong to everyone, everywhere, and they are the same for all people. Rights exist without distinction, for example, without regard to nationality, race, sex, religion, class, ethnicity, language or age. All people have the same basic needs and rights, which need to be upheld and protected at all times.

**Inalienability** means all rights belong to all persons from the moment of birth. We are born with rights and governments should assert human rights principles. No government or person has the right to deny anyone's basic human rights.

**Indivisibility** means all human rights are related to each other; consequently rights are interrelated and interdependent. Civil, political, economic, social and cultural rights cannot be viewed as unconnected. They complement each other. One right is not more important than another, and one person's rights are not more important than another person's rights. The right to speak, or the right to choose the number and spacing of your children, is interdependent with other rights, for example, on the ability to obtain information, and equal rights within the family. No one set of rights can be sacrificed for another.

### 2. Women's Rights are Human Rights

*We specifically mention women's rights because, although all persons, regardless of gender, are entitled to enjoy all basic human rights, women are often denied these*

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<sup>1</sup> <http://www.unhchr.ch/html/intlinst.htm>



*rights simply because they are women. In the context of trafficking, many basic rights of women are violated e.g. the right to be free from all forms of discrimination. Due to the unequal nature of gender relations, women and girl-children form the majority of those who are trafficked.*

"The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights... the human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women"<sup>2</sup>. This statement, from the 1993 Vienna Declaration on Human Rights, represents the first official recognition that women's rights are human rights by the international community.

Saying 'women's rights are human rights' is not claiming 'special rights' for women. On the contrary, it is a call to recognise that women have the same basic human rights as men. Many women are deprived of their rights because some societies consider women inferior to men and deny them access to justice, participation in political life and the ability to make personal life decisions.

The traditional debate on, and interpretation of, human rights, has focused on men's actions in the public sphere, such as repression of political speech and political participation. Women's rights have been largely ignored in this debate, because women are typically seen as actors in the private sphere. As a result, their participation in the public sphere has been largely curtailed, and in the private sphere, controlled. Therefore, in fighting for women's rights, we are trying to make the picture whole, in claiming all rights for all women.

To ensure that women enjoy all the rights they have, a good starting point is to examine the particular obstacles faced by women. For instance, although the right to education is an universal right for all human beings, girls are more likely than boys to be uneducated. In times of poverty, parents tend to send boys to school rather than girls. Some cultures value males more than females, and males are expected to be major breadwinners in the family. Also, women tend to be at risk of being treated as property, sexually harassed or abused more than men, even though individual freedom and the right to safety and security are rights for all.

Trafficking of women and girls is directly linked to the failure, sometimes the refusal, of governments to accord women the same basic human rights as men. Women who have been denied the right to education and legal rights are denied the right to control their own lives. Unskilled and unable to be economically independent, such women are especially vulnerable to trafficking.

### 3. Children and human rights

Children have human rights in the same way that adults do. Children's rights are of equal value to adults' rights. However, some human rights have a special application to children, reflecting their need for special care and attention, their vulnerability and the difference between childhood and adulthood. Childhood in itself has a value. To recognise this, when we talk about human rights of children, the best interests of the child should be a primary consideration in all actions concerning children, over the interests of a parent or a state.

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<sup>2</sup> Vienna Declaration and Programme of Action, A/CONF. 157/23, adopted on 12 July 1993, para 18. See [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

The human rights of children including the "best interests" principle are set out completely in the Convention on the Rights of the Child. This Convention and the articles relevant to trafficking are laid out later in this Chapter. We mention children here, because as a group they are also very vulnerable to being trafficked, and it is important to recognise that as children they have special rights for their protection. Strategies adopted to address trafficking in adult persons will not always be appropriate for trafficking in children (see later in this Chapter "Children as trafficked persons").

#### 4. Government Responsibility and Accountability

States have a responsibility to provide protections to trafficked persons pursuant to the Universal Declaration of Human Rights and through ratification or accession to numerous international and regional instruments. Government accountability is the obligation and responsibility a government has to uphold human rights under international and national systems of law. Governments have the obligation and responsibility to ensure the protection of all human rights for all individuals and to prosecute individuals and government officials who violate the rights of others. So in the context of trafficking, a government is responsible for acts committed by its own actors, such as immigration officials, border patrols or police.<sup>3</sup> Individuals can hold governments accountable under international laws embodying human rights principles.

The concept of "due diligence" is sometimes mentioned as the standard by which government responsibility for violation of human rights by non-State actors is assessed. Governments that have signed human rights treaties are responsible to act with due diligence (or good faith) to prevent, investigate and punish any violation of rights recognised by those treaties. They are also required to provide a mechanism to restore the right violated and provide compensation as warranted by the damages resulting from the violation.<sup>4</sup> Due diligence in the context of trafficking means governments have a duty to provide protection to trafficked person according to their obligations under international law. So governments must apply the due diligence principle in ensuring effective prevention of trafficking, prompt and thorough investigation, and prosecution of traffickers and compensation for the trafficked person.<sup>5</sup>

Human rights are further protected in many national constitutions and in national legislation of countries all over the world. Governments are bound to respect, ensure/protect and promote the rights of all people:

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<sup>3</sup> Economic and Social Council, *Integration of the Human Rights of Women and the Gender Perspective: 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 at para 50. See <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/e29d45a105cd8143802568be0051fcfb?Opendocument>

<sup>4</sup> *Id.* at para 51 referring to Velasquez Rodriquez case, Judgement of 29 July 1988, Inter-Am.Ct.sR.(Ser. C) No.4, 1988, para 167.

<sup>5</sup> *Id.* at para 53. Refer to this document for a more detailed explanation of "due diligence" in the context of trafficking.

- a. **Respect:** Governments must refrain from violating the human rights of individuals and take actions to uphold human rights principles. Governments shall not violate human rights of people in their territories in administering the nation's activities. For example, immigration officials, military and police must not violate the human rights of any person, including undocumented migrants and trafficked persons.
- b. **Ensure/Protect:** Governments must ensure that their laws and policies do not permit any person to violate the human rights of any other person (including non-citizens). Governments have a duty to punish all perpetrators, including government officials, private actors, corporations, religious groups and other entities.

It may be difficult to document and monitor the steps a government takes to ensure and protect human rights, especially if civil society is unaware of the existence of human rights principles and government obligations. Human rights violations against undocumented migrants and trafficked persons are particularly difficult for civil society to monitor, because trafficked persons are not visible in the public sphere. Trafficked persons may not have legal working documents and thus work in underground sweatshops or factories. They may work in an occupation, such as the sex industry, that is illegal in many countries. They may be in sectors that are in the private sphere, such as domestic work or marriage. However, governments are responsible for ensuring protection of human rights in all these spheres.

- c. **Promote:** Governments must ensure that people know their rights and how to exercise their rights. Governments must promote conditions on their territories that allow people to exercise their rights, such as providing education, upholding democracy, ensuring economic justice and allowing NGOs to criticise the government's human rights record. A country's laws must not restrict the free promotion of human rights; for example, no law should restrict people's access to knowledge about their basic rights.

## United Nations System

### What is the United Nations?

The United Nations (UN) is a worldwide organisation made up of 189 governments of recognised countries of the world. Its headquarters are in New York and Geneva. It is the formal international system that monitors human rights implementation and violations worldwide. By understanding the nature of human rights and the governments' responsibility to protect human rights, we can demand action be taken on behalf of trafficked persons. We can pressure governments to fulfil their commitments under the Universal Declaration of Human Rights.

### UN Instruments

Several types of instruments operate in the UN. Some of these are:

- treaties (including conventions)
- declarations
- resolutions
- protocols

Treaties are legally-binding conventions or covenants. Once signed and ratified by

countries, they impose the highest possible level of obligations on governments. Most treaties are accompanied by recommendations, which are documents explaining how a treaty should be interpreted and applied.

Protocols are additions to treaties that usually must be agreed to separately from the treaty itself. They also impose the highest level of obligations on governments.

Declarations are not binding, but give an indication of international political commitment to an issue.

Resolutions are formal statements of persuasive value calling for action, but are not binding upon States.

A State Party is a country that has ratified (signed and agreed to be bound to) a treaty.

Earlier we mentioned the Universal Declaration of Human Rights (UDHR). Countries do not ratify the UDHR as they do treaties. The principles of the UDHR are included in two covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In this way, they are made binding as treaties. Also, nowadays the UDHR is binding as part of customary international law (adhered to out of custom and thus treated as law).

## 5. Primary Human Rights Instruments

All human rights treaties apply to all persons. Certain provisions of some human rights instruments are especially relevant to the situation of trafficked persons. This is true even if the documents do not specifically mention 'trafficking'. Many governments have signed these instruments and so have made commitments to protect and promote the rights contained in those instruments. All of the instruments below can be found on the internet at <http://www.unhchr.ch/html/intlinst.htm>. You can find out whether your government has signed the following instruments by checking <http://www.unhchr.ch/tbs/doc.nsf> (status of ratifications by country). If you do not have access to the web, you can contact your Ministry of Foreign Affairs.

The UN has established committees for different treaties to monitor the progress of countries that have signed them. Countries are required to submit reports to these committees. The reports describe how the country is currently taking action to uphold the rights contained in that treaty. Chapter IV of this Handbook gives suggestions about how NGOs can participate in the committee review of their country's reports.

Human rights of persons are violated by governments in three ways:

- Laws that permit or encourage discriminatory practices against women or others, and hinder the ability of individuals to develop their full human potential;
- Actions taken by government officials or employees that violate human rights principles;
- Failure to prosecute public officials and private actors, including traffickers, and, in trafficking cases, failure to recognize and protect the rights of all persons, especially trafficked persons during the post-trafficking period.

These actions violate recognised human rights that are located in a number of human rights instruments. Below are the main instruments that set out the human rights applying to everyone; men, women, trafficked persons and migrants. The following tables list the more common rights which are violated in the context of trafficking. Human rights violations suffered by trafficked persons are so extensive that it is necessary to look at all major human rights instruments. The names of the relevant committees reviewing government compliance are set out below each table. The instruments are listed in order of their significance at the international level.

You may wish to refer back to this section again after reading part B of this chapter ‘What is trafficking.’<sup>2</sup>

*a. International Covenant on Civil and Political Rights (1966)*

Article	
2	No distinction based on sex
3	Equal rights for men and women in the enjoyment of civil and political rights
7	No cruel, inhumane or degrading treatment
8	Prohibition on slavery and servitude
9	Right to liberty and security of person; no one shall be subject to arbitrary arrest or detention
12	Freedom of movement
14	Equality before the courts and tribunals
26	Equal before the law, equal protection of the law

Monitoring body is the Human Rights Committee.

*b. International Covenant on Economic, Social and Cultural Rights (1966)*

Article	
2	No distinction based on sex, nation or social origin
3	Equal rights for men and women in the enjoyment of economic, social and cultural rights
6	Right to do work that one freely chooses under conditions protecting fundamental freedoms of the individual
7	Right to just and favourable conditions of work
10	Marriage must have consent of both parties
11	Right to adequate standard of living including food, clothing, housing
12	Right to physical and mental health

Monitoring Body is the Committee on Economic, Social and Cultural Rights.

*c. Convention on the Elimination of all Forms of Discrimination Against Women (Women's Convention, 1979)*

Article	
2	States must eliminate discrimination by any person, organisation or enterprise and must abolish discriminatory laws, regulations, customs and practices
6	State parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women
9	Marriage shall not automatically change nationality

11	Right to free choice of employment
12	Right to health care and services
14	Protection for women in rural areas
15	Equality before the law
16	Right to freely choose a spouse, minimum age for marriage

Monitoring Body is the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW and its mechanisms are discussed further in Chapter IV.

*d. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*

Article	
1	Torture is an act where severe pain or suffering, physical or mental, is intentionally inflicted for purposes including: punishment; intimidation or coercion; by person acting in official capacity
3	No expulsion or return of a person to another State if substantial grounds for believing she would be in danger of torture
13	Alleged victims of torture have the right to complain to and have her case promptly and impartially examined by competent authorities. Complainant and witnesses shall be protected against any consequential ill treatment or intimidation.
14	Redress and right to compensation

Monitoring Body is the Committee Against Torture.

*e. Convention on the Elimination of All Forms of Racial Discrimination (1965)*

Article	
2	Protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them full and equal enjoyment of human rights and fundamental freedoms
5	Right to equality before the law, especially rights to: equal treatment before all organs of justice; security of person and protection by the State against violence of bodily harm whether inflicted by government officials or by any individual, group or institution; leave and return to/from one's own country; nationality; marriage and choice of spouse; work just and favourable working conditions and remuneration, health services
6	Effective protection and remedies against any act of racial discrimination which violates ones human rights

Monitoring Body is the Committee on the Elimination of all Racial Discrimination.

*f. (i) Convention on the Rights of the Child (1989)*

Article	
7	Right to nationality
16	Legal protection from arbitrary or unlawful interference with privacy, family home or correspondence nor unlawful attacks on honour or reputation
19	Protection against physical or mental violence, injury, abuse, neglect or negligent maltreatment or exploitation, including sexual abuse

28	Right to education
31	Right to rest and leisure, engage in play and recreational activities
32	Protection from economic exploitation or performing any work likely to be hazardous, interfere with education or harmful to child's health or physical, mental, spiritual, moral or social development
34	Protect from all forms of sexual exploitation and sexual abuse
35	Protect from abduction, sale or traffic in children for any purpose or form
36	Protect against all other forms of exploitation prejudicial to child's welfare
37	Free from torture or other cruel, inhuman or degrading treatment or punishment, no unlawful or arbitrary deprivation of liberty
39	Promote physical and psychological recovery and social reintegration of a child victim

Monitoring Body is the Committee on the Rights of the Child.

*(ii) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) [adopted by the General Assembly but not yet in force]*

Article	
1	Prohibit sale of children, child prostitution and child pornography
2 (a)	Sale of children: any act or transaction whereby a child is transferred by any person/s to another for remuneration or other consideration
(b)	Child prostitution: use of a child in sexual activities for remuneration or other consideration
(c)	Child pornography: any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes
3	Criminal or penal law to cover sale of children including offering, delivering or accepting a child for purposes of sexual exploitation, transfer of organs for profit, forced labour
8 (1)	Protect rights of child victims in criminal justice process: in recognising their special needs, especially as witnesses; in keeping them informed at all times of all things; providing support services; protecting privacy and identity of child; providing for their safety and that of their family where appropriate and avoiding unnecessary delay in granting compensation
(3)	"Best interests of the child" shall be a primary consideration
(4)	Ensure appropriate training for persons working with child victims
(2)	Prevention of sale of children, child prostitution and child pornography through legal and social laws and policies
(3)	Prevention by education campaign and training with participation of children and child victims
(4)	Measures to ensure victim assistance including full social reintegration and recovery
(5)	Access to adequate procedures for compensation for damages
10 (1)	International cooperation by agreements for prevention, detection, investigation, prosecution and punishment of offenders
(2)	Promote international cooperation to assist child victims in recovery, reintegration and repatriation

*g. Slavery Convention (1926)*

Article	
2 (1)	Slavery is the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised.
(2)	The slave trade includes all acts involved in: the capture, acquisition or disposal of a person with intent to reduce him to slavery; the acquisition of a slave with a view to selling or exchanging him; disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and trade and transport of slaves.
2	State parties to prevent and suppress slave trade
3	State parties to prevent compulsory or forced labour

No monitoring committee.

*h. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)*

Article	
1	Abolition of slavery-like practices including debt-bondage & serfdom, forced marriage and sale/ transfer of children for labour exploitation (all further defined within this article)
2	Minimum age of marriage
6	Act or attempted act of enslaving or inducing another to slavery or slavery-like practices is a criminal offence

No monitoring committee.

*i. Convention on the Protection of the Right of All Migrant Workers and their Families (1990)[adopted by the General Assembly but not yet in force]*

Article	
10	Prohibits torture or cruel, inhuman or degrading treatment or punishment
11	Prohibits slavery, servitude, forced or compulsory labour
16 (1)	Right to liberty and security of person
(2)	Effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions
(3-9)	Minimum standards with regard to verification of identity, arrest, detention
25-30	Minimum standards with regard to the labour conditions of migrant workers, remuneration, medical care and social security
40	For documented migrants, the right to form associations and trade unions to protect their economic, social, cultural and other interests
41	For documented migrants, the right to equal benefits with regard to access to State educational and health services
68	To impose effective sanctions against persons, groups or entities which use violence, threats or intimidation against migrant workers in an irregular situation

The Migrant Workers Convention sets out comprehensive protection standards. Only fourteen countries have ratified it, so it is not yet in force and thus has no enforcement mechanism. It may never come into force because the majority of states are not in favour of adopting a convention that would require them specifically to recognize the rights of



non-citizens in their countries, even though other conventions establish the human rights obligation to protect the rights of all persons, whether they are citizens or not.

*j. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organised Crime [adopted October 2000, open for signature December 2000]*

Article	
3	Defines trafficking (see page 24 modern definition)
6	Assistance and Protection for trafficked persons <b>in appropriate cases and to the extent possible</b> under domestic law:
(1)	Protecting privacy of trafficked person with regard to legal proceedings
(2)	Information on relevant court and administrative proceedings and facilitate trafficked persons to present their views and concerns in non-prejudicial manner in court proceedings
(3)	Measures for physical, psychological and social recovery in cooperation with NGOs including appropriate housing, counseling and information in native language, medical, psychological and economic assistance and employment, educational and training opportunities
(4)	Special needs of child victims especially in regard to housing, education and care
(5)	Physical safety of victims
(6)	Possibility of obtaining compensation
7	Possible temporary or permanent resident status in destination countries <b>in appropriate cases</b>
9 (1)	Measures to prevent and combat trafficking in persons and protect trafficked persons from revictimisation
(4)	Address factors that make persons vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity

The Trafficking Protocol is the most recent international instrument that focuses specifically on trafficking. It is one of two Protocols attached to the Crime Convention, the other one deals with smuggling in persons. The creation of two separate protocols on trafficking in persons and smuggling in persons respectively is important because it reflects the difference between the acts, and the need for different measures to address these crimes. Trafficking is defined for the first time in international law in the Protocol. It will be further discussed later in this chapter under 'Current Definitions'. The Trafficking Protocol and its effectiveness in terms of protecting rights of trafficked persons will be discussed further in Chapter IV<sup>6</sup>.

*k. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

The 1949 Convention purports to cover trafficking; however, it is inherently problematic. It contains no definition of trafficking and simply addresses prostitution and the movement of persons into prostitution. The Convention considers prostitution an 'evil'; as 'incompatible with the dignity and worth of the human person'. Its goal is to abolish prostitution by stopping women from moving, even voluntarily, into the sex industry. It does not mention trafficking for other purposes such as domestic work, marriage or

<sup>6</sup> for an analysis of the UN Anti-Trafficking Protocol contact Ann Jordan of the International Human Rights Law Group, Washington D.C., at [annj@hrlawgroup.org](mailto:annj@hrlawgroup.org)

sweatshop labour. It adopts a crime control perspective on trafficking into prostitution by criminalising all activities by third parties associated with prostitution regardless of the women's age or consent<sup>7</sup>.

The 1949 Convention, though gender neutral, predominantly affects women. It contains provisions to ensure supervision of airports and appropriate public places<sup>8</sup>, and of employment agencies “to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.”<sup>9</sup> It thus deprives persons, especially women, of the right to non-discriminatory treatment, the right to move freely within their country's borders, the right to enter and leave their country of citizenship freely and their labour rights including the right to choice of work, the right to unionise and the right to just and favourable conditions of work.

By focusing on the elimination of prostitution instead of on the protection of human rights of trafficked persons, the 1949 Convention is not an effective human rights convention. Up till now, it has been ratified by only 72 countries, and thus has been, and will continue to be, an ineffective treaty.

The 1949 Convention has no monitoring mechanism, although the Working Group on Contemporary Forms of Slavery now officially requires reports from State Parties. However, only a few governments bother to submit reports.

*1. ILO (International Labour Organisation) Convention No. 29 on Forced Labour (1930)*

Article	
1	States to suppress use of forced or compulsory labour within shortest possible period
2	Forced or compulsory labour is all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered herself voluntarily
6	Officials shall not constrain any person to work for private individuals, companies or associations

The monitoring body of all ILO Conventions is the Committee of Experts on the Application of Conventions and Recommendations. More information on the ILO and its mechanisms is available in Chapter IV.

<sup>7</sup> Article 1 obliges state parties to punish any person who:

- (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) exploits the prostitution of another person, even with the consent of that person.

Article 2 further obliges punishment of any person who:

- (1) keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

<sup>8</sup> Article 17.

<sup>9</sup> Article 20.

*m. ILO Convention No. 105 on Abolition of Forced Labour (1959)*

Article	
1	Suppress all forms of forced labour as a means of racial, social, national or religious discrimination
2	Effective measures to secure the immediate and complete abolition of forced labour

*n. ILO Convention No. 182 on the Worst Forms of Child Labour (1999)*

Article	
1	Prohibition and elimination of worst forms of child labour
2	Worst forms of child labour includes all forms of slavery or practices similar to slavery including trafficking
6	Design and implement programmes of action to eliminate, as a priority, worst forms of child labour
7	Importance of education to prevent child labour, take into account special situation of girls
8	Enhance international co-operation and/or assistance including development, poverty eradication programmes and universal education

*o. UN General Assembly Declaration on Violence Against Women, 1993*

Article	
2	Definition of violence against women includes trafficking in women and forced prostitution
3	Rights to: liberty and security of person, equal protection under the law, non-discrimination, highest standard attainable of physical and mental health, just and favourable conditions of work, not be subjected to torture or cruel, inhuman or degrading treatment or punishment

These are the primary international instruments relevant to trafficking; however, some relevant international mechanisms related to trafficking do not spring directly from treaties. These mechanisms, such as UN Special Rapporteurs, are also important for NGO strategies to address trafficking and are discussed further in Chapter IV.

## **D. WHAT IS TRAFFICKING?**

*Case of Shenaz<sup>10</sup>*

Shenaz, from Bangladesh, was a married woman and mother of three when she decided to pay an agent to go to Bahrain to work. Her family was very poor, and her husband had already tried to get work abroad, but was cheated out of a lot of money. Shenaz wanted her children to get an education. She approached an agency, borrowed money from loan sharks, neighbours and friends and put her house down as collateral to pay the agent for the \$1000 ticket to Bahrain. She would work as a domestic worker for a family in Bahrain.

<sup>10</sup> Source: Campaign for Migrant Domestic Workers, Institute for Policy Studies, Washington DC, USA.

After one month there, the employer told Shenaz she had to go to work in America. Shenaz was frightened and refused, but eventually agreed to go.

Shenaz moved to New York to work as a live-in domestic worker for a high level diplomat of the United Nations and his wife. Upon arrival, her employers took her passport away from her. She worked seven days a week and was virtually imprisoned. They paid her husband in Bangladesh US\$100 per month, but Shenaz was given no money for herself. They left Shenaz alone in New York for days at a time without any food. She was forbidden from going out alone, and in nine months, she only left the apartment three times, and always with her employers. On one occasion, the diplomat's wife struck her with a glass. After ten months living and working under these abusive conditions, Shenaz finally managed to escape with the help of a community group.

Stories like Shenaz's are becoming increasingly common throughout the world. Women from Latin America, Africa, Eastern Europe or elsewhere in Asia have similar tales to tell. Many people, often women and children, are "trafficked" from one place to another, to work in conditions where they are abused, treated like slaves or forced to work for little or no money. Trafficking in persons, particularly women and children, is now a global phenomenon. Yet what exactly is trafficking?

### 1. Historical Background of Trafficking in Persons

We can understand the phenomenon of 'trafficking in persons', and the need for a clear and unambiguous definition better if we trace the historical development of the concept of "trafficking", and see what it has meant to different people, organisations and governments over time.

The earliest understanding of "trafficking" comes from UN instruments. The term "traffic" was first used to refer to the so-called 'white slave trade' in women around 1900. The trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes was of particular concern to European middle-class men, women and governments. The result was the creation of an international agreement for suppression of the 'white slave trade' in 1904. At this time, "traffic" meant the movement of women for an immoral purpose i.e., prostitution. Initially, this definition required the crossing of country borders, but by 1910 it changed to acknowledge traffic in women could occur within national boundaries. Traffic in women was seen as related to slavery, but also to closely linked to prostitution.

The link between trafficking and prostitution solidified even more in the following decades, most clearly in the adoption of the 1949 Convention. We already discussed this problematic treaty under 'Primary Human Rights Instruments'. This early confusion of trafficking with prostitution is still seen in the anti-trafficking activism of some individuals, organisations and governments today.

Unfortunately, governments of some destination countries also continue to conflate trafficking with undocumented migration, particularly into prostitution. The response of such governments is predictable and harmful to women; they adopt stricter immigration policies particularly to combat the movement of young women, under the guise of combating "illegal trafficking in persons". Some countries of origin object to this approach because it violates the rights of their citizens abroad. However some countries of origin have adopted similar policies to prevent young women from leaving their country under the mistaken belief that they are preventing 'trafficking'.

So we can see that at different times in history, the then prevailing concept of trafficking has

- Ignored the human rights of trafficked persons;
- Been used by moralists to dictate to women in prostitution;
- Been used by governments to restrict the movements of women.

## 2. The Modern Definition of Trafficking

The Special Rapporteur on Violence Against Women, made the following statements in regard to the definition of trafficking in her Report to the 56<sup>th</sup> Session of the Commission on Human Rights<sup>11</sup>:

*10. At present there is no internationally agreed definition of trafficking. The term "trafficking" is used by different actors to describe activities that range from voluntary, facilitated migration, to the exploitation of prostitution, to the movement of persons through the threat or use of force, coercion, violence, etc. for certain exploitative purposes. Increasingly, it has been recognised that historical characterizations of trafficking are outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking.<sup>12</sup>*

*11. Rather than clinging to outdated notions of the constituent elements of trafficking, which date back to the early nineteenth century, new understandings of trafficking derive from an assessment of the current needs of trafficked persons in general, and trafficked women in particular. New definitions also must be specifically tailored to protect and promote the rights of trafficked persons, with specific emphasis on gender-specific violations and protections.*

Before we discuss contemporary definitions of trafficking, read the following cases and consider:

1. Has this person been trafficked or is this a case of voluntary migration?
2. Why/Why not?
3. What are the elements that make this a case (or not a case) of trafficking?

### *Case of Lui*

Lui is a 15 year old uneducated Laotian girl. A woman in her village named Jai suggested she work in a factory in Bangkok. Lui's family is very poor. Jai claimed that Lui could earn 3000 baht (\$US75) per month working in a factory in Bangkok. Lui's mother said she should go and paid for the travel cost. Jai took Lui to a house in Bangkok where there were many Laotian girls waiting for employers to select them. A few days later, Ladda, the owner of a garment factory, took Lui to her factory.

Most of the workers in the factory were children aged between 12-15 years. They came from Laos and Burma. They had to work from 6am until 10pm. Sometimes they had to work till midnight. They had three meals per day and slept on the floor in the working room. They

<sup>11</sup> *Supra* note 4.

<sup>12</sup> Miller and Stewart (Chair and Rapporteur), 'Report from the Roundtable on the Meaning of "Traffic in Persons": A Human Rights Perspective', *Women's Rights Law Reporter*, 20.1:11, Rutgers University, 1998.

could not play, laugh or talk with each other. The owners of the factory supervised the children to make sure they worked hard enough. They could not rest, even when they were very tired. Children who broke the rules were beaten. They did not have holidays and never received any salary. They were not allowed to go outside the factory. On Sundays, they received 70 baht (\$US1.75) so they could buy some necessary things, such as soap or toothbrush at a small shop besides the factory under the supervision of the employer.

One child ran away because she was beaten very badly and she reported it to the police. After that, all the children including Lui were rescued. They were detained and fined for their illegal entry before being deported.

#### *Case of Margarita*

Margarita came from the Caldras region in Colombia. Gustavo, a friend of the family offered her a job as a waitress in a club in Bogota. Her mother let her go because Gustavo told her that Margarita would earn 150,000 pesos (\$US80) a month. The money would contribute to the housekeeping and help her brothers and sisters.

After arriving in Bogota, Margarita was sold to Eugenia, a club owner. She was forced to work in prostitution at the club. She had to work between 10-18 hours per day every day, and was not allowed to leave except with clients. The club paid her enough for the costs of food and lodging, but nothing beyond that. Since she had no money, she was sometimes forced to buy clothes from the club, and so her debt kept increasing. She also had to pay fines to the club when she was late or sick and could not work.<sup>13</sup>

#### *Case of Raya*

Raya was 23 and living in Kiev, Ukraine. Her mother took in a lodger from Jordan named Azim. Raya fell in love with Azim and they had a child together. However, Azim did not want to marry her. After the child was born, Azim returned to Jordan. When the child turned one year-old, Azim returned and insisted on adopting the child, so they registered the adoption in the Ukraine. Then Azim took Raya to Jordan to see his father.

They lived with Azim's parents and life was terrible. Azim did not allow her to go out, made her cover her face and still did not want to marry her. Raya then realised that Azim needed their son only to get state benefits for the child. This went on for about six months. One day Azim told Raya that she had to live with another man because he had sold her to him as a slave. Raya finally managed to escape with the help of the Ukrainian embassy but she was forced to leave her son behind in Jordan. From time to time, Azim still called Raya, asking her to sell her flat in order to pay to get the son back.

#### *Case of Rachel*

Rachel from Benin City, Nigeria was approached by a man and asked if she would like to go abroad and earn money by buying cosmetics. She agreed and was taken to Italy via Ghana.

Once in Italy she was taken to a house and forced into prostitution. The Madam at the house, Agnes, told Rachel that she owed 90 million lire for her travel expenses, and that she would be expected to pay that back at the rate of 300 000 lire (\$US132) per day. She

would also have to pay 50 000 lire (\$22) a month for room and board and 200 000 lire (\$90) to rent the corner where she would wait for customers.

The going rate for a sexual act in Italy was 30 000 lire (\$13), which meant Rachel had to have sex with at least ten partners per day in order to make her daily repayment to Agnes. If Rachel did not make 300 000 lire per day, Agnes would beat her. She was forced to work 22 hours per day on the street, and she never made more than 150 000 lire (\$66) per day. She was repeatedly beaten into submission, until she finally managed to escape with the help of an Italian NGO<sup>14</sup>.

### *Case of Maria*

In Bolivia, Maria had worked as a domestic worker since age 7. At 29, she met an American, Robert. He offered her a job in his house in the United States. He promised to pay her \$US320 per month and to provide health insurance. Robert also promised that she would be able to study, visit friends and travel with his family. Robert organised a visa for Maria and paid for her ticket.

Maria soon realised that Robert had lied. He forced her to work 6 days per week, at least 12 hours per day, sometimes 16 hours per day. Many weeks she also worked on her day off. Despite the many hours worked, Maria was only paid \$220 per month and she did not receive health insurance.

Robert took away Maria's passport and did not allow Maria to leave the house without the family. She was forced to work even when sick. When she was very ill, Robert refused to take her to a doctor saying it was too expensive. Once someone visiting the house raped her, but when she told the family, no one helped her. Finally, Maria managed to escape with the help of a kind neighbour who had noticed her<sup>15</sup>.

#### *a. Current Definitions*

Only recently has the international community recognized the need to expand the understanding of trafficking to include, for example, forced marriage and forced labour<sup>16</sup>.

The UN Office of the High Commissioner for Human Rights, the UN Children's Fund (UNICEF), the UN Special Rapporteur on Violence Against Women and the International Organization for Migration (IOM) have all adopted definitions of trafficking that recognize it as a human rights problem involving forced labor, servitude or slavery and not a problem limited to prostitution.

The United Nations Office of the High Commissioner for Human Rights and the United Nations Children's Fund (UNICEF) and the International Organisation for Migration:<sup>17</sup>

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<sup>14</sup> Source: WOCON and the Advocacy Project, *On the Record: Girls for Sale, The Scandal of Trafficking from Nigeria*, Lagos, 2000. To receive this series of *On the Record*, send an email to: [teresa@advocacynet.org](mailto:teresa@advocacynet.org) with the text 'subscribe nigeria'.

<sup>15</sup> Campaign for Migrant Domestic Workers' Rights, the Institute for Policy Studies, USA - Public Briefing - February 15 2000.

<sup>16</sup> Strategic Objective D3 130 (b) Beijing Platform for Action, 1995. It states "...trafficking in women and girls for prostitution and other forms of commercialised sex, forced marriages and forced labour".

<sup>17</sup> Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organisation for Migration on the draft protocols

*"trafficking is recruitment, transportation, transfer or harbouring, or receipt of any person for any purpose or in any form, including the recruitment, transportation, transfer or harbouring, or receipt of any person by the threat or use of force or by abduction, fraud, deception, coercion or abuse of power for the purposes of slavery, forced labour (including bonded labour or debt bondage) and servitude".*

The UN Special Rapporteur on Violence Against Women:<sup>18</sup>

*"Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:*

- (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:*
- (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i)."*

*Subsection (i) of the definition covers all persons involved in the trafficking chain: those at the beginning of the chain, who provide or sell the trafficked person, and those at the end of the chain, who receive or purchase the trafficked person, hold the trafficked person in forced labour and profit from that labour. Criminalising the activities of all parties involved throughout the process of trafficking would facilitate efforts to both prevent trafficking and punish traffickers.*

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime,<sup>19</sup> Article 3:

*"(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 [interpretative note (63)] or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation [interpretative note (64)], forced labour or services, slavery or practices similar to slavery [interpretative note (66) on illegal adoptions], servitude or the removal or organs [interpretative note (65)];*

*Interpretative note (63): "The travaux preparatoires should indicate that the reference to the abuse of a position of vulnerability is understood to*

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concerning migrant smuggling and trafficking in persons, 2000, A/AC.254/27. See <http://www.uncjin.org/Documents/Conventions/dcatoc/8session/27e.pdf>

<sup>18</sup> *Supra* note 4, at para 13.

19



*refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."*

*Interpretative note (64): "The travaux préparatoires should indicate that this Protocol addresses the exploitation of prostitution and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of other' or 'other forms of sexual exploitation' are not defined in the Protocol. The Protocol is therefore without prejudice to how States Parties address prostitution in their respective domestic laws."*

*"(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) are established; [interpretative note (68)];"*

*Interpretative note (68): The travaux préparatoires should indicate that this subparagraph should not be construed as imposing any restriction on the right of accused persons to a full defence and to the presumption of innocence. They should also indicate that it should be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the State or public prosecutor, in accordance with domestic law (...)."*

### **Commentary on Protocol definition of Trafficking**

The Protocol contains the first international definition of 'trafficking'. It takes a different approach to trafficking from that contained in the 1949 Convention, which focused only on prostitution and considered all prostitution, voluntary and forced, to be trafficking.

The Protocol recognises the existence of voluntary prostitution and forced prostitution. It should intentionally does not define the phrase "exploitation of prostitution of others or other forms of sexual exploitation" because government delegates to the negotiations could not agree on a common meaning. All delegates agreed that involuntary forced participation would not constitute trafficking, but the majority of governments rejected the idea that voluntary, non-coercive participation by adults in prostitution constitutes trafficking.

In order to ensure the greatest number of signatories to the Protocol, delegates agreed to leave the phrase undefined and add the following explanation: "The travaux préparatoires should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws."<sup>20</sup>

Thus, Trafficking Protocol expressly permits states to focus only on forced prostitution and other crimes involving force or coercion and does not require governments to threaten all adult participation in prostitution as trafficking. Governments that want to focus on

crimes involving force or coercion in prostitution and other forms of labour do not even need to include the phrase “exploitation of prostitution of others or other forms of sexual exploitation” in their domestic law. The terms “forced labour or services, slavery or practices similar to slavery, servitude” will cover all situations including forced participation in the sex industry.

Furthermore, forced labour, slavery and servitude are defined in international law and those definitions can be incorporated into domestic legislation. As “exploitation of prostitution of others or other forms of sexual exploitation” are not defined in international law, governments would have to develop clear definitions of their criminal codes. If they do not define the phrase or define it unclearly, then convictions will be difficult because prosecutors will not know what they have to prove. Clear criminal law definitions are essential to the rule of law and the rights of the defendant.

If a government insists on using language such as ‘sexual exploitation’, we should encourage them to use the following definitions so that sexual exploitation, like any other form of labour exploitation, requires the use of force or coercion etc.:

*“sexual exploitation’ means the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials under the age of 18, sexual exploitation shall be deemed to exist.”*

In explaining the definition of trafficking used by GAATW (below), we will highlight the elements that are also incorporated into the Trafficking Protocol. Most elements of the definition GAATW uses (or at least the concepts behind the definition) are included in the Trafficking Protocol. Therefore we can refer to the Protocol definition to strengthen the acceptance of the HRS definition of trafficking.

#### *b. Elements of Trafficking and the Definition of "trafficking in persons" in the Human Rights Standards*

GAATW, the International Human Rights Law Group and the Foundation Against Trafficking in Women (STV), in conjunction with many other NGOs worldwide, developed a definition of trafficking based on our collective experience in this area. This definition is consistent with the approaches of the international bodies and experts mentioned above and with the new definition recently adopted in the Trafficking Protocol. Our definition is published in the *Human Rights Standards for the Treatment of Trafficked Persons* (HRS)<sup>19</sup>, which is introduced in Chapter II and reproduced in full in Appendix A.

The HRS definition of *trafficking in persons* is

*All acts and attempted acts involved in the recruitment, transportation within and across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of*

<sup>19</sup> Foundation Against Trafficking in Women, International Human Rights Law Group, Global Alliance Against Traffic in Women, *Human Rights Standards for the Treatment of Trafficked Persons*, Bangkok, 1999. Available in several languages from <http://www.inet.co.th/org/gaatw> and <http://www.hrlawgroup.org/site/-programs.html>

*authority) or debt bondage for the purposes of placing or holding such person, whether for pay or not, in servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.*

The HRS definition focuses on clearly identifiable elements of the crime, in order to distinguish cases of trafficking from other acts, such as undocumented migration. If we consider each element of the HRS definition and apply it to the cases above, we can decide which cases are trafficking and which are not.

*i) Acts or attempted acts (included in the Trafficking Protocol)*

In the case of Raya, Azim tried to sell her as a slave; however, Raya managed to escape. By our definition, this is an "attempted act" and constitutes trafficking.

*ii) Recruitment (included in the Trafficking Protocol)*

Many trafficking cases involve a process of recruitment through agencies that organise and 'facilitate' the process of travel from one country to another. Some agencies are legitimate, while others recruit persons with lies for the purposes of trafficking. Jai and Gustavo are recruiters.

*iii) Transportation within and across borders (included in the Trafficking Protocol)*

Some form of physical movement or transportation is needed. Trafficking often occurs between different countries, but can occur without the crossing of international borders (as in Margarita's case). In either case, the harm done to the victim is the same. They are moved to an unfamiliar place, far from home and under the control of traffickers; whether they are moved two miles across a national border, or five hundred miles within national boundaries.

*Legal or Illegal Channels of Migration (included in the Trafficking Protocol)*

Trafficking can occur whether people move by legal or illegal means. Trafficking often happens to migrants with legitimate visas as Maria's case demonstrates. Maria had a legitimate work visa, had entered the country legally, but she was deceived and did not agree to the conditions of work. She ended up working in slavery-like conditions. These factors combined make this a case of trafficking. When identifying strategies to combat trafficking, it is important to remember that trafficking does not always involve undocumented migration. Stopping undocumented migration will not solve the problem of trafficking.

*iv) purchase, sale, transfer, receipt or harbouring of a person (included in the Trafficking Protocol)*

Traffickers use one or more of these actions when they move the trafficked person from the place of origin to the place of destination. Lui may have been "purchased" by the factory owner or "sold" by Jai. She is a victim of trafficking because she was "transferred" against her will or through deception, and then held in forced labour.

*v) deception (included in the Trafficking Protocol)*

"Deception" means the trafficked person is tricked into her vulnerable situation. People may be offered further education, marriage or a well-paid job and end up in forced labour or a forced marriage. Rachel and Margarita were both deceived about the kind of work they were going to do. However, if a woman is trafficked into prostitution, she may know she is going to work in the sex industry, but not that she is going to be deprived of her liberty or her earnings. This is still trafficking. In most cases, traffickers deceive trafficked persons about the conditions under which they will be forced to live and/or work. Lui, Maria, Margarita and Rachel were all forced to work under conditions to which they did not agree, and were deceived about the amount of money they would earn.

*vi) coercion (including the use or threat of force or the abuse of authority) (included in the Trafficking Protocol)*

Some agents may use force to abduct a victim and other use violence or blackmail to keep a trafficked person under their control. Rachel was subject to regular beatings by Agnes because she did not make the required sum of money each day. Trafficked persons are dependent upon the traffickers for food, clothing and housing and must submit to the demands of their captors. Margarita was dependent on her trafficker for everything, even clothing and she incurred a high debt to them as a result. Traffickers usually restrict a victim's freedom of movement or prohibit victims from leaving the premises without an escort (as in Lui's case).

Coercion may also be psychological, for example, Raya was under psychological coercion to stay with Azim, because he threatened her with the loss of her child.

Abuse of authority involves dependency situations in which a person who has power over another person (such as a parent or employer), denies the rights of the dependent person. For example, Lui's mother abused her authority by sending Lui to work in the factory and Lui (as her daughter) had no ability to refuse.

*vii) or debt bondage (included in the Trafficking Protocol)*

Debt bondage is defined in international law as "the condition arising from a pledge by a debtor of his/her personal services or those of a person under his/her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length or nature of those services are not respectively limited or defined."<sup>20</sup>

Many trafficked persons end up in a debt-bondage situation, where once at the destination they are told they will have to work to pay back a large sum for travel expenses. This debt instead of reducing over time, keeps growing because of ever-increasing and endless exorbitant expenses for (fictitious) travel, housing, clothing, medical and food expenses. Traffickers have full control over their 'employee's' movement and their income. The victim is never able to pay back the extraordinarily high debt, but the trafficker tells her the debt will be paid off 'soon'. Trafficked persons, who are anxious to start earning money, believe the lie and continue to submit to their conditions in the hope that the debt will soon be paid off and they will start earning money. However, the traffickers

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<sup>20</sup> Article 1 of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1957).

continually find new expenses to charge and the payoff date continues to be postponed. These factors show the situation of debt-bondage. Rachel and Margarita were both held in debt-bondage.

*viii) servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery like conditions, (included in the Trafficking Protocol)*

Many women are trafficked into situations not strictly involving forced labour or slavery (by legal definition). For example, many women are trafficked into forced or servile marriages where no money changes hands; others are trafficked into situations where they are raped until pregnant and held against their will until they give birth. Other women are held as household servants and others may simply be held. Raya was not performing work or services for Azim; however, she was enticed to travel to Jordan and then held against her will.

Forced or compulsory labour is defined in international law as "all work or service, which is extracted from any person under the menace of any penalty and for which the said person has not offered herself voluntarily"<sup>21</sup>. Lui was held in forced labour.

The core element of trafficking is the coercive and abusive conditions into which the trafficker intends to place his/her victim. Forced labor, servitude and slavery are all crimes prohibited as human rights violations in international law. They cover all situations into which people are trafficked. The kind of business or service into which a person is trafficked does not decide whether or not trafficking occurred. People are trafficked into many types of jobs and situations, such as domestic, manual or industrial work in formal or informal sectors or marriage or other kinds of relationships. It is the coercive conditions/relations in these situations that constitute 'trafficking'.

It is clear from the Trafficking Protocol that, for trafficking to occur, a person is moved through the use of deception, coercion, etc., for the purpose of forced labour, slavery or servitude. The Protocol states the purpose broadly as "exploitation" without defining "exploitation" because the governments could not agree upon a definition. It then explains that forced labour, slavery and servitude are types of exploitation, making it clear that "exploitation" involves the deprivation of freedom and basic human rights. Adults working voluntarily in the sex industry and who are free to come and go and change their occupation are not deprived of those basic rights, although they, like many other types of workers, may be economically exploited. Those are 'sweatshop' conditions not necessarily amounting to forced labour or slavery, and should not be included in a definition of trafficking.

*ix) community other than the one in which such person lived at the time of the original deception, coercion or debt bondage. (concept included in the Trafficking Protocol)*

In the context of trafficking, victims are moved into foreign communities. They are cut off from their families and sometimes their language and, thus, rendered even more dependent upon the traffickers for food, shelter, information and 'protection' from authorities.

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<sup>21</sup> Article 2, ILO Convention No. 29 on Forced Labour (1930).

**To summarise:**

Trafficking is not about a case of sweatshop labour in which workers are underpaid, overworked and exposed to harsh conditions, but free to come and go and to change jobs. The rights of such sweatshop workers are violated under labour laws, and economic conditions may force them to remain at work, but they are not trafficked.

Trafficking involves the criminal manipulation of persons who want or need to migrate for a better life. It exists at the intersection of organised crime (small and large) and migration. Migrants are forced by restrictive and complicated immigration laws to rely upon third parties to help them travel. If they are lucky, the person is honest; if they are unlucky the person is a trafficker who will use all means necessary to ensure the submission of the victim to his/her will.

The UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, has recommended the essential elements of the HRS definition in her Trafficking Report. Boxed guides below are directly from this report.<sup>22</sup>

13. *Documentation and research shows that trafficking occurs for a myriad of exploitative purposes to which trafficking victims have not consented, including but not limited to forced and/or bonded labour, including within the sex trade, forced marriage and other slavery-like practices. It is the non-consensual and exploitative or servile nature of the purpose with which the definition concerns itself. The Special Rapporteur, thus, believes that an expansive definition of trafficking that encompasses the common elements of the trafficking process is necessary. The common elements are the brokering, accompanied by the exploitative or servile conditions of the work or relationship in which the trafficked person ends up, coupled with the lack of consent in arriving at that position. The structure of the trafficking definition must distinguish trafficking as a separate violation from its component parts.*

15. *The Special Rapporteur believes that the definition of trafficking should require that the movement or transport involved is such as to place the victim in an unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases trafficked women's marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination both by traffickers and by State officials such as the police, the courts, immigration officials, etc. Although the crossing of geographic or political borders is sometimes an aspect of trafficking, it is not a necessary prerequisite for these elements to be present. Trafficking occurs within, as well as across, national borders*

16. *Although numerous separate abuses are committed during the course of trafficking, which themselves violate both national and international law, it is the combination of the coerced transport and the coerced end practice that makes trafficking a distinct violation from its component parts. Without this linkage, trafficking would be legally indistinguishable from the individual activities of smuggling and forced labour or slavery-like practices, when in fact trafficking does differ substantively from its component parts. The transport of trafficked persons is inextricably linked to the end purpose of trafficking. Recruitment and transport in the trafficking context is undertaken with the intent to subject the victim of the coerced transport to additional violations in the form of forced labour or slavery-like practices.*

<sup>22</sup> *Supra* note 4.

17. In order to address the exigencies of modern manifestations of trafficking in women, the definition of trafficking focuses on “forced labour or slavery-like practices”, rather than narrowly focusing on prostitution or sexual exploitation. Documentation on trafficking patterns reveal that trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships. The common elements found in all of the trafficking patterns are: (i) the lack of consent; (ii) the brokering of human beings; (iii) the transport; and (iv) the exploitative or servile conditions of the work or relationship. Thus, any definition of trafficking must capture these elements.

### 3. Complexity of Issues

#### *a. Migration and smuggling is not trafficking in persons*

There are important fundamental differences between migration, smuggling and trafficking.

**Migration** is where a person moves from one country to another. It can be by legal or illegal means and it can be either voluntary (with the consent of the person migrating) or forced (without their consent), but usually it is voluntary. Displacement of persons and trafficking are examples of forced migration.

**Smuggling** is the transport of a person (with their consent) to another country through illegal means.

**Trafficking** is the core elements

- a) movement of a person
- b) with deception or coercion
- c) into a situation of forced labour, servitude or slavery-like practices.

Many trafficked persons voluntarily migrate but end up being trafficked. Migration with consent does not mean 'trafficking with consent'. 'Trafficking with consent' is a contradiction in terms, because no one ever consents to slavery-like, servitude or forced-labour conditions.

#### *b. Migrating for Sex Work is not trafficking*

##### *Case of Kafui<sup>23</sup>*

Kafui is 26 years old, a single mother from Togo. She has a secondary school certificate and worked as a clerk in Lome for 12 000 cfa (\$US20) per month. She worked as a street-based sex worker sometimes to make ends meet. She heard from a friend she could make \$US50 a week in Lagos, Nigeria working as a sex worker. Kafui decided to go with her friend, Jeannette who was a sex worker in Lagos. Jeannette introduced her to some clients.

Kafui could freely choose her clients and where and when she wanted to work. She sent money home to her family for the upkeep of her baby in care of her Aunt. After one year Kafui had saved 10 000 naira (\$US1000). She returned to Lome, and used this money to buy her own home there.

<sup>23</sup> Source: *Women's Consortium of Nigeria*.

Kafui was not trafficked from Togo to Nigeria. There was no deception or coercion upon her to travel or work as a sex worker in Lagos. Kafui was not working under abusive or in slavery-like conditions. She knew what kind of work she was going to do, she was free to come and go as she liked, free to select where she wanted to work and to choose clients. She also managed to save a lot of money. All of these indicators show that by the HRS definition, Kafui was not trafficked.

However, under the 1949 Convention (see page 17), Kafui is a 'victim of trafficking' simply because prostitution is involved. On the other hand, the 1949 Convention would not consider Lui, Shenaz and Raya, who suffered serious human rights violations, as victims of trafficking. Their traffickers would not be penalised under the Convention, while Jeannette, who assisted Kafui in migrating to Nigeria and finding employment would be prosecuted as a trafficker, even though Jeannette did not harm Kafui in any way. These illogical consequences illustrate the need for a new international convention against trafficking with a comprehensive definition of trafficking and a new rights-based approach to trafficking.

The definition and approach need to make a clear distinction between migrant sex worker cases like Kafui's, in which a person exercises her agency at all times and trafficking cases such as Margarita's, in which the person is deceived, forced to work against her will and held in slavery-like conditions.

### *c. Children as 'Trafficked Persons'*

Service providers, advocates, lawyers and authorities should recognise the need for different measures to address the difference between trafficked children and trafficked adults. Children have a different legal status and different needs, and thus justly often receive different types of rights' protection under national and international laws. They also have less capacity to exercise agency and need others to protect their rights. For these reasons, formulating remedies to address trafficking in children should be addressed separately from trafficking in adults.

Some governments and organisations address trafficking in women and children without regard for this distinction. This is problematic for women's and girls' rights in two ways:

- Women are treated as having the same legal capacity as children, and so are deprived of their internationally-recognised and protected rights. Such treatment reduces the status and rights of women to below that of men.
- It reaffirms the socially constructed role of women as persons whose independence, freedom and sexuality lies in the control of others (i.e. males).



## CHAPTER II

### CONTRIBUTING FACTORS, CONSEQUENCES AND RECOMMENDED GOVERNMENT RESPONSES

#### A. FACTORS CONTRIBUTING TO TRAFFICKING

The Special Rapporteur on Violence Against Women stated the following in regard to root causes of trafficking<sup>24</sup>:

*54. The root causes of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both women's migrations and trafficking in women. While such rights inevitable find expression in constitutions, laws and policies, women nevertheless continue to be denied full citizenship because Governments fail to protect and promote the rights of women... By failure to protect and promote women's civil, political, economic and social rights, Governments create situations in which trafficking flourishes.*

Analysing the various causes leading to trafficking helps us better understand and implement **preventive** measures to eliminate trafficking. The factors contributing to trafficking are varied and complex, differing from country to country. A good grasp of **why** trafficking occurs requires not only considering global and regional social and economic changes, but also an analysis at the local level, in places where the process of trafficking starts. This chapter will look at broad factors that contribute to trafficking throughout the world. The importance of each factor, however, depends upon local circumstances.

Trafficking occurs not only from developing to developed countries but also increasingly between and within developing countries. Often, people are trafficked from countries where there are economic, environmental or political problems, to countries or regions where the apparent quality of life for the average person is higher. Bear in mind, routes of trafficking are designed and manipulated by traffickers, thus it is an inaccurate overgeneralisation to say that people are always trafficked from undeveloped to more developed countries, as this is not always the case.

Frequently mentioned factors contributing to trafficking<sup>25</sup>:

- Poverty and unemployment
- Globalisation of the economy
- Feminisation of poverty and migration
- Development strategies e.g. tourism
- Armed conflict situation
- Gender-based discrimination
- Laws and policies on migration and migrant labour
- Laws and policies on prostitution
- Corruption of authorities
- High profits – involvement of organised crime
- Cultural and religious practices

<sup>24</sup> *Supra* note 4 at para 54.

<sup>25</sup> Wijers & Lap-Chew, *Trafficking in Women, Forced Labour and Slavery Like Practices in Marriage, Domestic Work and Prostitution*, STV, Utrecht 1997 at 87.

We will now examine some of these factors contributing to trafficking in persons. Poverty and unemployment are not discussed individually but are included as factors under economics and migration.

## 1. Economics - Economies in Transition

Globalisation is the process by which countries have moved, and are increasingly moving, towards a free and worldwide economy. It is reflected in the reduction or removal of trade barriers, assistance and encouragement of free movement of goods around the world and the deregulation and privatisation of economies. The effects of this process are manifold and complex; one effect is increasing unemployment. There is no doubt that the economic changes brought about through globalisation have had an impact on the growth of trafficking in recent years.

In many industries, globalisation has meant a ruthless pursuit of maximisation of profit for companies that want to be able to compete in the international market economy. This has caused a rapid growth of the informal labour sector such as street vending, and of unregulated work in factories, particularly in export processing zones. In most instances, workers have become more vulnerable and subject to abusive working conditions, because these marginalised and unregulated areas of work are not visible, and thus not subject to labour laws and regulation. Recent trends in globalisation have broken down the traditional family structure for many rural households. Each member of the family has become "a separate and independent unit of labour to be plugged into the modern labour market"<sup>26</sup>.

## 2. Migration and feminisation of migration

Economic reforms have been especially hard on women. More women are heading households, and bearing the financial burden of raising children. This is particularly the case in rural households where husbands are often gone most of the year to work in a town or city and frequently do not send any of the earnings home. At the same time, wages for men have decreased so where previously one income may have been enough to provide for a family, now two are required.

Consequently, some women seek work or opportunities to support their children or younger siblings; some migrate for marriage; other women migrate in order to escape situations of domestic violence. Due to limited education opportunities, work options for women are extremely limited, at home and abroad. Women, particularly migrant women from developing countries, often then find work as entertainers, sex workers, factory workers and domestic helpers. These are the few occupational options available to them, if they want to migrate for work. The other option is marriage. More often than not, marriage is the only way to obtain legal status in order to live and work in a foreign country.

More directly, restrictive legal channels for migration force people who move to take risks. They may require the assistance of an agent to help them find 'good jobs' abroad. This process is costly and can be dangerous. Unscrupulous agents and brokers may take advantage of their clients, work conditions and wages may not be what was promised or a large debt may be accumulated for the assisted migration and employment.

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<sup>26</sup> Sanghera, *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead*, UNICEF-ROSA and Save the Children Alliance, Delhi, 1999 at 4.

### 3. Gender-based discrimination

Gender-based discrimination is an all-pervasive reason why women and girls make up the majority of persons who are trafficked. Gender-based discrimination is shown by the low status of women, particularly in developing countries, the lack of education for girls, the expectation of women to perform certain roles and to be solely responsible for her children, and the discrimination against women in political participation, sexuality, religion, customs and social practices. Sexism is imbedded in all institutions of society in general, and particularly in the structure of the labour market and the job opportunities available for women. A feminist perspective to protect the rights of migrant and trafficked persons is important to ensure that responses do not work to further curb or endanger women's rights.

*Read the following case study and list the factors contributing to trafficking.*

#### *Case of Alma*

Alma is the third child of a family of five living in poverty in Peru . Her father is dead and her mother takes care of the children, does the housework and looks after a small vegetable garden from which she sells vegetables in the market to get by. Alma's older sister is married, and helps contribute to the family income working in the hacienda. Alma's older brother is a seasonal farm worker but most of the time he spends time playing cards in the village café with other unemployed youths, from the village. Alma has two younger brothers who are still in school.

Alma's parents worked very hard to send her eldest brother to school so he could work in the Free-Trade Zone and become the breadwinner for the family. The daughters were given less education and attention, since they were to be married off soon. The eldest brother was not interested in education or in working in a dirty polluted factory in the Free Trade Zone. Alma herself had to quit school, just before her graduation exam, to help her mother out. This was difficult for Alma as she had her own ambitions and aspirations in life, but at the same time she felt responsible to bring the family out of their suffering.

One day, an agent from a nearby electronic factory came to recruit young women. Alma was then 18 and she signed up for the job. The salary was \$3.50 per day, which was not much after transport and lunch. The work itself was tedious, hard on the eyes and stressful and would not lead to any better prospects. The work quota was raised every other month, so Alma had to keep working faster to keep up with the never-ending demand of the supervisor. She got headaches constantly and her supervisor watched over her, making her feel nervous and incompetent.

One day, her boss told her that she could be promoted to do office work instead. Alma was really delighted. Later, the boss told Alma and two other women that such clever and beautiful women like them should not be working in a factory. He said that he had a friend married to a Dutch woman who would like to open a South American restaurant in the Netherlands and they needed South American waitresses.

The costs of visas, papers and transportation was paid for in advance. Once she started to earn the salary of \$500 per month, the loan would be paid off soon. Food and lodging would be provided. Upon arriving in the Netherlands, Alma was taken to a bar and her passport and air-ticket were confiscated. She was forced to work from 2pm to 2am every day in the bar, she got a small commission from every drink that her client bought and for every sexual act. She had to pay exorbitant amounts for food and lodging, and for her original travel. The debts mounted and

Alma could save very little money.

Alma's case illustrates how interrelated the various economic causes that lead to trafficking are. The first causal factor is poverty, but the death of Alma's father put pressure on Alma to provide for her family, and limits her own chances of education and personal development. This shows the intersection of gender discrimination. The traditional male bias privileged her brother but did not demand the same level of responsibility from him as from the girls. These factors led Alma to the factory job where she joined other 'nimble fingered' and vulnerable young women. The difficult working conditions, low wages, an unreasonable quota and the long hours are directly linked to aggressive exploitation of young female workers by factory owners whose sole concern is to succeed financially in the new market economy.

These factors led Alma to accept the offer to work abroad. Alma's story shows how numerous factors combine to push people to take high risks abroad. Obviously there's no 'one' factor; one cannot isolate factors clearly from one another as 'X' caused 'Y'.

#### 4. Development strategies: Growth of entertainment sex industry

We have already considered the effect of development strategies such as industrialisation under globalisation. Undoubtedly, the promotion of sex tourism as a development strategy is also a contributing factor to trafficking for the purposes of prostitution. This is not to say sex tourism in itself means trafficking. There is a connection between the influx of relatively wealthy foreigners seeking sex with women from developing countries and the movement of women into the sex industry to meet that demand. However, much of that movement is voluntary thus not "trafficking".

Studies show that foreign sex tourism in these countries accounts for only a small percentage of growth of the sex industry and trafficking. The overwhelming majority of clients in those countries are local men and most girls or women who are trafficked come from poorer regions of the country, or poorer neighbouring countries.

In developed countries where women's economic status has improved, there are not enough women who want to work voluntarily in the sex industry. Consequently, migration for sex work has increased, but the fact that sex work is illegal for migrants in most countries increases the risk of trafficking for migrant sex workers.

#### 5. Laws and policies on migration

Despite the growing need for all forms of migrant labour, the immigration laws of countries of destination fail to satisfy the demand. There is a proven need for labour in certain sectors such as domestic work, entertainment, agricultural and garment industries because such work is often lowly paid or undesirable employment for citizens in developed countries. Hence, a massive contradiction exists between the need for labour and repressive migration policies. Women from developing countries travelling alone are especially targeted by immigration officials and are often refused visas and entry to other countries. The effect of repressive laws and policies on migration is to make people who are desperate to leave more likely to use agents and others to facilitate their migration, sometimes even using false documents and illegal modes of travel and entry.

*Case of Mon*

Mon is 18 years old from a poor family in a village in Northern Thailand. Village women who

worked in Japan returned with a lot of money and their families were living in better conditions. So when agents came to the village offering waitressing jobs in Japan, Mon decided to go.

She had to pay a 25 000 baht fee, which her family borrowed from the agent who charged 5% interest. In Bangkok, the agents helped Mon obtain a passport and visa without the required parental approval due to her young age.

Mon, another woman and the agent left by plane, and stopped in the Philippines. A Filipino man appeared at immigration who helped them enter the country. They needed Malaysian passports to enter Japan because Japanese immigration was very strict about Thai women entering Japan. Thus they had to enter Japan illegally, as "wives" of Malaysians.

Upon arrival, they were delivered to a Japanese man who told them they owed him 700,000 Baht and they had to call him 'Pa'. They were forced to work in a bar every day for long hours, forced to have sex with clients and had no freedom to leave the bar compound without supervision.

Mon was trafficked because she was unable to migrate legally. Japan's restrictive laws did not deter her from migrating. Her difficulty to obtain a passport may be a Government measure intended to prevent young women from being trafficked abroad. However, it clearly is an ineffective strategy as the traffickers were able to obtain a passport for Mon.

The illegality of the situation binds victims like Mon to the traffickers, who have found numerous ways to get around immigration obstacles. People like Mon are scared to report their living and working conditions to the authorities for fear of arrest and deportation. Although they are working under abusive conditions, their primary concern is still economic survival for themselves and their families. In this situation, people are less likely to leave of their own accord and become more dependent on traffickers.

## 6. Armed Conflict

In situations of armed conflict, although women are rarely engaged in active combat, they suffer from other effects of the conflict. Women are especially vulnerable to sexual abuse and forced domestic service by armed forces. As a result of wars and conflicts, many people become impoverished and displaced. They need to leave their homeland in order to survive and/or to support their families. The lack of viable legal means for migration means people have to take great risks in seeking jobs abroad. In many cases, this has led them into the hands of traffickers.

### *Case of Noi*

Noi is from a poor family in the Shan state of Burma. Burma operates under a military regime, the State Law and Order Restoration Council (SLORC) army. Forced labour is a common human rights abuse inflicted upon citizens by SLORC. However, the potential victim can avoid it if a porter fee is paid to the authorities. Poor people like Noi's family, however, do not have the money to pay such fees. Consequently, young women often are forced to work for SLORC and become victims of sexual abuse by SLORC soldiers. Many of Noi's friends were victims of this kind of rape.

Noi knew that she had to leave home if she was to find money to save her parents from forced labour, and also to save herself from becoming the victim of rape. She knew that she could work in Thailand as a prostitute to make money for her family. She decided to go to Thailand;

however, the agent who helped her reach Bangkok was a trafficker. Once in Bangkok, the trafficker forced Noi to work everyday, never paid her any money and did not let her leave the brothel.

In Noi's case, she knew the realities of staying in Burma, and this outweighed the risks of leaving and seeking work in Thailand. Trafficking can occur due to the desperation of the situation and the need to escape the dangers of armed conflict. Increasingly, instability and internal conflict (without necessarily the use of arms) is also a cause of trafficking, as people seek to leave their home country, and take many risks in order to do so.

In situations of armed conflict, sometimes trafficking results directly as a result of the conflict and the need to recruit new soldiers by force. The effects of armed conflict also impact upon women, who, due to the dangers and instability at home are often forced to take risks to move elsewhere and thus become vulnerable to traffickers.

#### *Case of Samuel*<sup>27</sup>

Samuel, a 14-year-old child living on the streets in Nairobi, Kenya was abducted at gunpoint one day from the street. He, with 45 other young boys were taken out of Nairobi to an unknown destination. Here they were kept in confinement for several days without food. Finally they were given food which was laced with drugs which had a sedative effect. In any case Samuel had no way of knowing how to return home or what to do. The boys were trained in the use of arms and weapons and eventually assimilated into the guerilla army fighting in the Democratic Republic of Congo. When surrounding state authorities captured Samuel and some of the other boys, they learnt their story of how they were forced to be child soldiers.

The forced abduction of child soldiers is a regular practice in African countries such as Kenya, Angola, Sudan and Uganda as well as undoubtedly in other regions of the world. The lack of willing recruits for guerilla groups results in kidnappings, such as in Samuel's case. Street children are easy targets, because their disappearance is not likely to be noticed or reported by anyone.

### 7. Corrupt Authorities

Corrupt authorities undoubtedly plays a part in facilitating the trafficking process. The UN Special Rapporteur on Violence Against Women notes trafficked women have reported high levels of Government participation and complicity.<sup>28</sup> Officials accept bribes from traffickers in return for allowing traffickers to cross borders, and authorities may be directly involved. For example, there are reports of direct involvement of both Burmese and Thai officials in the trafficking of Burmese women to Thailand. Women reported instances of being transported into Thailand by policemen in uniform, armed and often in police vehicles. Once in Thailand, police protect and are clients of the brothels.<sup>29</sup>

### 8. Religious and Cultural Practices

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<sup>27</sup> Source: *WILDAF Kenya*.

<sup>28</sup> Coomaraswamy, *Report submitted by the Special Rapporteur on Violence Against Women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution, U.N. Doc E/CN.4/1997/47*.

<sup>29</sup> *Ibid.*

Cultural and religious practices such as trokosi in Ghana or the similar devadasi and devaki in India and Nepal, show clearly how trafficking and slave-like practice can be institutionalised and accepted by a society as a normal cultural practice.

Trokosi is a cultural practice in Ghana that is a traditional form of slavery. 'Trokosi' means 'slave of a deity' and is the practice where a family becomes liable to provide trokosi for a priest when a family member commits a crime or a calamity strikes the family, such as a sudden death. The family gives a virgin girl-child (a member of the extended family) to a shrine where the girl is bonded to the shrine priest. The girl is forced to spend the rest of her life at the shrine, providing domestic and sexual services without any payment. Many girls become bonded to each shrine, so the priest has a 'harem' of girls. They are frequently punished by whipping or denial of food for offences such as refusal of sex, leaving the shrine without permission, running away and lateness.<sup>30</sup>

Trokosi was named a violation of women's human rights in 1997 and in 1999 was declared an illegal practice in Ghana. However traditionalists still maintain the practice and thousands of girls and women remain trokosi, devadasi and devaki today.

## **B. CONSEQUENCES OF TRAFFICKING**

### 1. Crimes Committed by Traffickers

Before we mention the crimes committed by traffickers, read the following cases and try to list the crimes committed in each case.

#### *The Case of Domitila*<sup>31</sup>

Domitila left her home and family in the Dominican Republic to accept a job as a housemaid in Spain. However the job as a maid was not what she was promised. On arrival, her employer took her passport and the return ticket away. Her employer warned Domitila if she did not obey her orders, she would call the police to deport her. Her employer made her work long hours every day till late at night and gave her hardly any food to eat. She forbade Domitila from having any contact with the neighbours, or neighbour's servants. She could not stay in touch with her family. Her employer never paid Domitila at all.

When Domitila became ill for several days, and in such terrible pain that she could not work, the employer got very angry. She drove Domitila for several hours and dumped her on the road. Domitila walked until she lost consciousness. She woke up in hospital. The police questioned her but Domitila had no papers, could not tell them where the house was located or the name of the family since she had never left the house and did not know the full name of the employer because she is illiterate.

#### *The Case of Delia*

Delia, from a small village in Southern Romania, was offered a short-term contract for a job in a flower shop in Germany by a friend, Matache. Matache promised to organise everything: passports, visas, and employment contract. Delia would earn 100 Deutsche marks per day, and be free to come home whenever she wanted. However, when they arrived in Germany, Matache

<sup>30</sup> Sources: Wiafe, "Slaves of tradition" *New Internationalist*, Vol.328, Oct 2000 at 8 and *All African Women for Peace*, South Africa in conjunction with *WILDAF Ghana*.

<sup>31</sup> Source: *Fundacion Esperanza, Colombia*.

gave her passport to a man who met them in exchange for some money. Delia realised what was happening, but when she tried to move away a gun was pulled on her. She was taken to a house and locked inside. When Delia tried to resist, she was raped and beaten by two men.

For some time, they forced Delia to have sex with several men per day, and forced her to use drugs. There were other women working in the house but they were not allowed to communicate with each other. All the women were forced to take contraceptive pills, and anyone who got pregnant was forced to have an abortion.

Traffickers commit serious crimes in the process of trafficking and especially at the workplace or site where the victim is being held in a forced labour, servitude or slavery-like condition. Those crimes include

- Assault and Battery
- Rape
- Torture
- Abduction
- Sale of human beings
- Unlawful detention
- Murder
- Deprivation of labour rights
- Fraud

All countries have laws against these crimes, thus all countries have some laws that can be used to prosecute traffickers. Some countries have specific legislation concerning trafficking, or at least concerning trafficking into prostitution, such as Thailand<sup>32</sup>, Ukraine<sup>33</sup> and the Netherlands<sup>34</sup>. Similarly countries such as India, Bangladesh, Malta, Portugal, Japan, Colombia, Peru, Nigeria and Sudan have specific provisions on trafficking in persons.

However, although all countries have laws concerning crimes committed by traffickers, and though some traffickers commit all of these crimes, few traffickers are ever prosecuted or punished for any of the crimes listed above. More commonly, traffickers are punished under migration-related laws that are less serious offences and carry less severe sentences. Additionally, traffickers who traffic women into the sex industry are prosecuted under laws relating to prostitution rather than laws relating to the real and serious harm done to victims.

As an example, until recently in the United States, "the majority if not all traffickers are prosecuted under the following laws"<sup>35</sup>:

- Racketeer Influenced and Corrupt Organisations Act
- Travel Act
- Conspiracy Act
- Alien Smuggling Act

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<sup>32</sup> *Measures in Prevention and Suppression of Trafficking in Women and Children Act (1997).*

<sup>33</sup> Article 124(1) *Criminal Code* on "trafficking in people".

<sup>34</sup> Article 250ter *Penal Code*.

<sup>35</sup> Jordan, "Prosecuting traffickers and protecting victims' rights in the United States", *GAATW Newsletter*, 1998 No 1, at 7.



- Mann Act (White Slave Traffic Act)
- Peonage and Slavery Act
- Kidnapping Act
- Child Sexual Exploitation Act

Though some of these laws are tough on traffickers and address the abuses suffered by victims (Peonage and Slavery Act, Kidnapping Act, Child Sexual Exploitation Act), others are more problematic because they only address trafficking into the sex industry, and conflate trafficking with prostitution (Alien Smuggling Act, Mann Act) and thus have a negative impact on voluntary sex workers.

In October 2000, a new trafficking law *HR 3244 Victims of Trafficking and Violence Protection Act of 2000*<sup>36</sup> was passed in the United States. This law has a broad definition of trafficking (i.e. not limited to the sex industry) and requires the elements of force, fraud or coercion. The new law contains numerous provisions strengthening prosecutions but also contains serious shortcomings regarding protections of trafficked persons who have not decided yet to become witnesses. Protections are almost exclusively available for witnesses<sup>37</sup>

has a strong focus on prosecutions, however at the time of print it was unknown exactly how the law will be implemented.

## 2. Human Rights Violations Committed by Governments

### *Case of Dinah*

*Dinah, a Cambodian woman moved to Thailand to work in a sewing factory, an agent promised her good wages and assured of the legality of work in Thailand. Upon arrival in Bangkok with the agent, she was taken to a factory where she was forced to work 12 hours every day except Sunday, was given no freedom to go outside and never received any wages. Dinah was 'rescued' during a police raid on a factory, but soon after at the police station was arrested for her illegal status (working without a permit). Her employer was arrested for the illegally low salary she paid the workers, but not for the abuses she inflicted upon them e.g. illegal confinement. During investigations, Dinah was not provided with a translator, which meant the investigation took longer. During this time she was held in a detention centre, slept on the floor and only received 2 meals per day. At the court hearing Dinah was found guilty of working without a permit. The fine was \$US100 but since she did not have money, she had to stay in jail for 3 months instead. Then she was sent to the detention centre for deportation. The court trial for the employer began after Dinah's deportation, so she had no ability to participate in the proceedings.*

The human rights of trafficked persons are violated extensively by governments. It is a common misunderstanding that traffickers harm victims and governments rescue and protect them. Although trafficked persons suffer serious criminal violations at the hands of traffickers, more often than not, once they are released from the slavery-like or forced labour conditions, they are subject to serious human rights violations at the hands of the government, as we can see in Dinah's case.

<sup>36</sup> See <http://thomas.loc.gov/cgi-bin/query/D?c106:14:./temp/~c10618YC36::>

<sup>37</sup> for an analysis of the U.S. legislation contact Ann Jordan of the International Human Rights Law Group, Washington D.C., at [annj@hrlawgroup.org](mailto:annj@hrlawgroup.org)

In cases like Dinah's, the trafficked person is treated more like a criminal than a victim, without any consideration to what the trafficked person has just been through. Research of GAATW and our partner organisations shows that it is in this area of treatment of trafficked persons where there is an urgent need for human rights protection for victims of trafficking. Treatment of trafficked persons is also where the direct human rights violations by the states are most visible, and we can more directly hold our governments accountable for the role they play in the trafficking in persons.

*a. Direct Accountability*

Trafficked persons are vulnerable to arrest, detention and deportation because destination countries are unwilling to recognise that they are victims of crimes. Destination countries view trafficked persons as undocumented migrants who entered illegally and/or worked illegally. Trafficked persons are particularly subject to arrest, detention and deportation if they were trafficked into the sex industry. Trafficked persons often do not have the chance to lodge complaints, seek damages, assess whether it is safe to return home, collect their belongings or apply for asylum.

*b. Indirect Accountability*

The following table illustrates the specific rights that are violated in the context of trafficking and for which governments can be held accountable, in their failure to eliminate gender discrimination, failure to punish traffickers and failure to address the needs and rights of trafficked persons who have escaped:

Criminal Violations <sup>38</sup>	Right	International Instrument
1. Torture, rape, beating, - physical can also be mental/ threat of violence, psychological	Right not to be tortured or submitted to cruel and/or degrading treatment	Art 5 UDHR Art 7 ICCPR CAT entire convention
	Right to be free from physical violence (rape, sexual assault, domestic violence, forced prostitution, trafficking)	Art 3 UDHR Art 6 ICCPR CEDAW entire convention especially Art 2,5,15 & 16.
2. Forced drug or substance abuse	Right to personal autonomy	Para 97 BPFA
	Right to enjoy psychological, physical and sexual health	Art 12 ICESCR
3. Threat of reprisals to family members back home	Right to personal autonomy	Art 12 UDHR
4. Forced abortion, no access to contraceptives; women's rights of reproduction and control of her body being denied	Right to personal autonomy	Para 97 BPFA
5. Deprivation of food, malnourishment, lack of access to medical and health services	Right to enjoy psychological, physical and sexual health	Art 25 UDHR Art 12 CDESCR

<sup>38</sup> Adapted from the *Human Rights Standards for the Treatment of Trafficked Persons*, *Supra* note 20.

6. Physical Confinement, confiscation of passport/identity papers, isolation (prohibited from engaging in social contact, interception of letters)	Freedom of choosing residence and moving within own country	Art 13(1) UDHR Art 12(1) ICCPR
7. Overwork, long hours, no rest	Right to work - freedom from forced labour	Art 8(3) ICCPR ILO Convention No 29 - entire convention
	Right to just and favourable conditions	Art 23(1)UDHR
8. bad conditions of work, poor health & safety measures	Right to safe and healthy working conditions	Art 23(1) UDHR Art 7 CDESCR Art 11(f) CEDAW
9. no payment, delayed payment,	Right to just and favourable remuneration	Art 23(3) UDHR
10. extraction of big fees, payment, debt-bondage	Freedom from slavery	Art 4 UDHR Art 8 ICCPR UNSC entire convention UNSCAS entire convention
	Right to be free of imprisonment for debt or failure to fulfill a contract obligation	Art 11 ICCPR
11. Violation of contract by employers	Right to equal pay for equal work	Art 23(2) UDHR

### List of abbreviations

UDHR: Universal Declaration of Human Rights  
 ICCPR: International Covenant on Civil and Political Rights  
 ICESCR: International Covenant on Economic, Social and Cultural Rights  
 BPPA: Beijing Platform for Action

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.  
 CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women  
 CRC: Convention on the Rights of the Child  
 ILO No 29: International Labour Organisation Convention No. 29 Concerning Forced Labour  
 ILO No 105: ILO No 29: International Labour Organisation Convention No. 105 Concerning Abolition of Forced Labour

UNSC: United Nations Slavery Convention  
 UNSCAS: Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery.

*We will take a closer look at these treaties and conventions in the next chapter on human rights obligations of states. However, please note, the **Beijing Platform for Action** is not a binding document in the same way a treaty is (described in Chapter I under UN system). The Beijing Platform for Action is a broad statement of principles and was consensually adopted by Governments as a **declaration** by the 1995 Fourth World Conference on Women in Beijing. It was*

*signed by governments and can be used as evidence of political commitment to enforce or further define human rights but it does not have the same status as a convention or a covenant.*

## **C. RECOMMENDED STATE RESPONSES: HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS (HRS)**

### **1. Where did the HRS come from?**

The idea of having international standards to protect the rights of trafficked persons was the result of a research project on trafficking in women in Thailand, which was completed and discussed in an International Workshop on Migration and Trafficking in Women in October 1994. The research revealed different forms of human rights violations that victims of trafficking encounter, particularly in the hands of governments.

During the workshop, it became clear that the 1949 Convention is inadequate to provide protection to trafficked persons. The Convention looks at the problem of trafficking in women only for prostitution and adopts the migration and crime control perspective as well as the moralist approach to abolish all prostitution. The need to protect the basic rights of trafficked persons was not the central concern of the Convention. Additionally, the rights of trafficked persons that are contained in a number of other international human rights conventions are not applied to trafficked persons, although they should be. Lastly, a clear definition of trafficking, which reflects the different purposes for which women are trafficked, is lacking.

Workshop participants agreed that a document drawing on the principles of international human rights and humanitarian law was necessary to provide guidelines for government action on the treatment of trafficked persons. The outcome of this initiative was the development of the Draft Standard Minimum Rules for the Treatment of Victims of Trafficking, Forced Labour and Slavery-Like Practices (SMR). The SMR was widely circulated and discussed among NGOs. Many people also gave comments and suggestions to improve the documents. The SMR was intended as a stand-alone document. However, the process of campaigning for adoption of the SMR through UN channels and then the follow up of adoption by States would be very slow.

In October 1998, GAATW organised a Working Group meeting to discuss the finalisation of the SMR. The Working Group evaluated, reviewed and proposed revisions to the content and languages of the SMR in light of extensive discussion of the ideas contained in the document and in response to various (legislative) proposals and developments around the issue. A working team was assigned the tasks of drafting a new document, incorporating these revisions.

The International Human Rights Law Group, Foundation Against Trafficking in Women (STV) and GAATW transformed the SMR into the HRS. The HRS is not a stand-alone document as such. Advocates campaign for its inclusion in new instruments and laws on trafficking or pull out particular provisions of the HRS for inclusion into relevant laws or instruments. For example, some aspects of the HRS are included into the UN Trafficking Protocol<sup>39</sup> and the new United States trafficking law.

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<sup>39</sup> For example, Article 2*bis* concerning the definition of trafficking in persons and Article 4 of the Protocol.

Some substantial changes were made in the development of the HRS, the most significant being a modified definition of trafficking. The original definition of trafficking was developed for the purpose of research, whereas the HRS definition has more of a legal focus. Another important distinction between the documents is the change in title. The Standard Minimum Rules for the Treatment of Victims of Trafficking suggests relief on a humanitarian basis. If governments do offer assistance on a humanitarian basis, they have the ability to decide whether or not to grant assistance on a case by case basis. The Human Right Standards for the Treatment of Trafficked Persons uses the language of human rights and removes the word “victim” to clearly identify trafficked persons as a category of people whose rights have been violated in the process of trafficking and whose rights must be protected by governments.

## 2. What are the HRS? Cases from the Field and the need for the HRS

*See Annex A for the complete version of the HRS. Cases from the field prepared by the Human Rights Caucus.<sup>40</sup>*

The Human Rights Caucus, which represents NGOs from all world regions, prepared a document discussing some cases from the field that are typical of the problems encountered by trafficked persons everywhere on a daily basis. The following cases are intended to illustrate the problems trafficked persons face due to the lack of recognition and protection of their human rights. They demonstrate the need for governments to adopt the HRS and to respect and ensure the human rights of trafficked persons, both as a matter of principle and as a matter of law enforcement.

*Read through each case study, and note what is the human rights violation/s (you can refer to Chapter 1 which has the list of international instruments and common human rights violated in trafficking) Before reading the commentary think about which specific provisions in the Human Rights Standards would remedy the problems illustrated by the case.*

### *a) The Need to Ensure Respect for the Principle of Non-discrimination (HRS 1 & 2)*

As part of an Eastern European country's policy to stop trafficking, border officials stop young single women (not young single men) upon their return home. Officials question them and, if they are found to have left the country either voluntarily and involuntarily without the correct documents or are suspected of having worked in the sex industry, a stamp is placed in their passports to prevent them from leaving the country legally for five years. This happened to A. who, as a victim of trafficking, had pressed charges against her traffickers. Upon her return home, she was questioned and threatened with imprisonment if she did not disclose what had happened to her. When it was revealed that she had been a victim of trafficking, the police stamped her passport. See HRS 1 and 2.

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<sup>40</sup> The Human Rights Caucus consists of the International Human Rights Law Group, Foundation Against Trafficking in Women, Global Alliance Against Traffic in Women, Asian Women's Human Rights Council, La Strada, Fundacion Esperanza, Ban Ying, Foundation for Women, KOK-German NGO Network against Trafficking in Women, Solomon Foundation, Women's Consortium of Nigeria and Women, Law and Development in Africa (Nigeria). It was formed primarily for lobbying on the Trafficking Protocol at the UN Crime Commission, Vienna.

HRS 1. Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on account of race, colour, gender, sexual orientation, age, language, religion, political or other opinion, cultural beliefs or practices, national ethnic or social origin, property, birth or other status,<sup>7</sup> including their status as victims of trafficking or having worked in the sex industry.

HRS 2. Cease enforcing and repeal all measures targeted at preventing or obstructing the voluntary movement of its citizens or legal residents within the country of residence,<sup>8</sup> into or out of the country upon the ground that the citizen or legal resident might become, might be, or has been a victim of trafficking.

A's case illustrates the risk of anti-trafficking measures being implemented in ways that unfairly restrict the freedom of movement of, in particular, of migrant women and alleged sex workers. This case demonstrates the need to ensure the non-discriminatory application and interpretation of anti-trafficking laws.

Another country's anti-trafficking measures have resulted in police forcibly confiscating the passports of alleged sex workers in order to prevent them from leaving the country and possibly being trafficked. Women who protested this illegal confiscation were threatened with arrest and prosecution under anti-prostitution laws.

*b) The Need for Safety (HRS 3-5, 12)*

During criminal investigations against traffickers, S, a witness and victim of trafficking, stayed at a secret women's shelter in Western Europe. Even though the shelter was secret the traffickers found her. She received anonymous postcards threatening to kill her two-year-old daughter (who she had left at home with her grandmother), if she dared to pursue the case. Her mother also received threatening telephone calls. When her mother went to the police for protection she was told that they would do nothing and that it was S's own fault for leaving her home. Without being able to rely on protection, S decided to withdraw her statement and not act as a witness. However, with the support of an NGO, she eventually convinced the authorities of the need to have her daughter join her in the women's shelter. She then felt safe enough to continue as a witness and as a result of her testimony three persons were convicted of trafficking. See HRS 3b and 4a.

The man who trafficked K to a Western European country was sentenced to three years in prison. Sometime after the trial, K's life was threatened by someone in nightly telephone calls and anonymous letters. Cars followed her and someone put a dead bird in her letterbox. The police told her that it could not be the trafficker because he had been jailed. However, after a year of non-stop harassment, K discovered that the information given to her had been incorrect. The trafficker had been released after his initial detention. When K realised the danger to which she had been exposed she had a complete nervous breakdown and had to be hospitalised. See HRS 12.

HRS 3. Ensure access to:

- a. the embassy or consulate of the country in which the trafficked is a citizen or, if there is no embassy or consulate, ensure access to a diplomatic representative of the State that takes charge of the country's interests or any national or international authority whose task it is protect such persons, and

b. non-governmental organizations that provide services and/or counselling to trafficked persons.

HRS 4. Provide protection to trafficked persons and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interests of the prosecution, including:

- a. Before, during and after all criminal, civil or other legal proceedings, measures to protect trafficked persons from intimidation, threats of reprisals and reprisals from traffickers and their associates, including reprisals from persons in positions of authority and, where necessary, provide similar protection to family members and friends of the trafficked persons.
- b. A change of identity, where necessary.
- c. Take into account the need for the safety of the trafficked person, family members and friends in decisions on the arrest, detention and terms of any form of release of the trafficker, and notify the trafficked person prior to the release from custody or detention of persons arrested for, or convicted of trafficking, abusing or exploiting the trafficked person.

HRS 12. Ensure that trial proceedings are not detrimental or prejudicial to the rights of the trafficked person and are consistent with the psychological and physical safety of trafficked persons and witnesses. At a minimum, states must ensure that:

- a. The burden of proof prior to and during any prosecution of a person alleged to be guilty of trafficking lies with the prosecution and not with the trafficked person.
- b. The prosecutor either calls at least one expert witness on the causes and consequences of trafficking and the effects of trafficking on victims or consults with such expert in preparation for the criminal proceedings.
- c. Methods of investigation, detection, gathering and interpretation of evidence minimise intrusion, do not degrade the victims or reflect gender-bias. For example, officials shall not use the personal history, the alleged 'character' or the current or previous occupation of the trafficked person against the trafficked person or cite them as a ground for disqualifying the trafficked person's complaint or for deciding not to prosecute the offenders.
- d. Defendants are not permitted to introduce as a defence evidence of the personal history, alleged 'character' or the current or previous occupation (e.g., as a prostitute or domestic worker) of the trafficked person.
- e. Trafficked persons subjected to, and witnesses of, sexual violence are permitted to present evidence in camera or by electronic or other special means, after taking into consideration all of the circumstances and hearing the views of the victim or witness.
- f. Trafficked persons are informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases.

g. The views and concerns of trafficked persons are allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.

Pressing charges and acting as a witness can have long-term consequences, including a high degree of risk to a trafficked person's own safety and that of his/her family. Successful prosecution depends on encouraging trafficked persons to report crimes committed against them and to act as witnesses. All trafficked persons must therefore be able to rely on the governments to protect their safety before they come forward to report and testify.

As in the case of K., trafficked persons often are not duly informed about the disposition of their case, including the arrest or release of the traffickers. This can have serious consequences for the trafficked person's safety.

*c) The Need for Fair Treatment, including No Detention or Imprisonment of Trafficked Person for Offences Related to Being a Victim of Trafficking (HRS 5,6,9,11,17)*

*Refer back to Dinah's case at the start of 2) Human Rights Violations by Governments (page 41) See HRS 5, 6, 9, 11 and 17.*

Following a year long investigation, North American police arrested 68 people, including more than 50 Asian women who had been trafficked and sold for between \$16-25,000 to brothels. The women were forced to work off a debt of more than \$40,000 each. All 68 persons, including the women, were criminally charged with being inmates of a brothel and 25 of the women were charged with the additional offence of violating the immigration law. The government did not inform the women of their rights, provide them with legal representation or translators, or provide them with legal assistance and social services. While the women were in detention, they were approached by brokers and loan sharks who offered to post their bail in exchange for accepting a new contract, which would of course add to their already existing debt. See HRS 5 and 6.

HRS 5. Provide all trafficked persons, as well as all persons who might be victims of trafficking (such as illegal migrants held in custody) with information about their legal rights and the procedures available for claiming compensation, restitution and recovery as a result of being trafficked.

HRS 6. Not detain, imprison or prosecute any trafficked person for offences related to being a victim of trafficking, including for lack of a valid visa (including a work visa), solicitation, prostitution, illegal stay and/or the use of a false visa or false travel or other documents; and not hold trafficked persons in a detention centre, jail or prison, at any time, prior to, during and after all civil, criminal or other legal proceedings.

HRS 9. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work) have the right to press criminal charges against traffickers and others who have exploited or abused them. In the case of a trafficker who has diplomatic immunity, states shall make a good faith effort to



obtain a waiver of immunity or, alternatively, shall expel the diplomat. States should adopt a mechanism for promptly informing trafficked persons of their rights to seek this and other forms of redress.<sup>19</sup>

HRS 11. Recognize that trafficking is often only one of the crimes committed against the trafficked person. In addition to charging defendants with the crime of trafficking, states should consider bringing charges, for example, of:

- a. Rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions) and kidnapping.
- b. Torture, cruel, inhuman or degrading treatment.
- c. Slavery or slavery-like practices, involuntary servitude, forced or compulsory labour.
- d. Debt bondage.
- e. Forced marriage, forced abortion, forced pregnancy.

HRS 17. Prevent immediate expulsion by staying any actions of deportation and provide resident status (including the right to work) for a period of six months initially, during which time the trafficked person can decide whether or not to initiate a civil action or to be a witness in a criminal action against the traffickers. If the trafficked person decides either to initiate a civil action or become a witness in a criminal action, or both, then the state shall provide the trafficked person with resident status (including the right to work) for the duration of such cases, including all appeals.

The Thai government had a responsibility to provide Dinah with access to her consulate, access to justice i.e. translator, free legal assistance; access to reparation (right to press charges for her lost wages); temporary resident status during trial proceedings instead of detention and therefore adequate and safe housing, access to health services, adequate financial support, opportunities for employment education and training. Prosecution of trafficked persons (e.g. for holding false documents) further victimises them. Many trafficked persons will not come forward to report crimes committed against them if they are at risk of prosecution for illegal entry and/or work.

Trafficked persons who are arrested while working in the sex industry are more likely to be detained in jail by the authorities. They not only risk arrest and detention under immigration laws, but also prosecution under anti-prostitution laws and frequently suffer greater mistreatment during detention than persons trafficked into other industries.

*d) The Need to Protect the Right to Privacy of Trafficked Persons (HRS 7)*

Twelve trafficked persons were returned home from Western to Eastern Europe. No one back home knew about their predicament and they hoped to be able to reintegrate into their society without anyone learning their story. However, when they arrived home, they found the train station overflowing with people from the press and television. Apparently, a government official in the Western European country had disclosed their travel information and consequently the media descended upon the 12 women for their story. Their stories are now common knowledge throughout their country, thereby crushing their hopes of returning to a normal life. See HRS 7.

A returned home after pressing charges against her traffickers in the country she was trafficked to. Upon her return, she did not tell anyone what had happened to her out of fear of being ostracised. Meanwhile, the authorities in the country where she had pressed charges wanted to question A again and so, with the assistance of the government of A's home country, the investigative judge, prosecutor and lawyers for the defendants traveled to A's village. The hearing was publicly announced (according to domestic law) and A was publicly questioned. As a result, the entire village learned about her predicament. One half year later, an NGO worker who had assisted her in the country of destination visited her and found that A. had not left her house since the humiliation of the public inquisition. She had virtually locked herself up in the dark out of shame. See HRS 4,7 and 12e.

HRS 7. Prohibit public disclosure of the names of persons trafficked into the sex industry and/or the use, by any person, of a person's history of being trafficked to discriminate or cause harm to any trafficked person or her or his family or friends in any way whatsoever, particularly with regard to the right to freedom of travel, marriage, or search for gainful employment.

Trafficked persons are confronted with many difficulties when attempting to reintegrate into their communities. This is particularly the situation for trafficked persons who have worked in the sex industry. The stigma associated with this work and the risk of prosecution under anti-prostitution laws are always problems for these trafficked persons. It is therefore imperative to respect the wish of trafficked persons to maintain their confidentiality and privacy.

*e) The Need for Access to Justice (HRS 9 - 13)*

N was trafficked from Asia to Europe in 1981. In 1988, after years of struggling to bring her traffickers to trial both in her country and in the country of destination, the person who had kept her in slavery-like conditions was sentenced to 2-1/2 years imprisonment by a court in the destination country. The man, however, who had recruited N in her home country, a chief prosecutor in the Court of Justice in N's village, was acquitted by the court in her home country with reference to N's alleged immoral character. As stated in the verdict: "considering her glaring immoral conduct manifested by her unusual inclination for illicit sex, she will have no qualms in fabricating situations to pursue her ends in bringing the accused to public ridicule."

What amazed the Court is why the authorities, "relied on the sole uncorroborated testimony of N. whose penchant for lying is so manifest and whose moral background is more than questionable (...) despite the declaration of the accused whose character is beyond reproach and whose public life remains unblemished." See HRS 12c and d, 13c.

Three women were trafficked into the sex industry and forced to work off a debt of US\$ 30,000 each. They were physically and mentally abused and the business owner kept all their earnings. In a letter to an NGO the women described their conditions as "we were her slaves, why they have to treat us like animals. Even cattle have time to rest after hard work but we don't. We are human beings and feel pain and misery like other beings". After having worked for six months the women had paid back only a small part of the debt. One night, they killed their boss because they felt it was the only way to end their slavery. The women were arrested and held in jail. The prosecutor argued that the women should be sentenced to life imprisonment for pre-meditated murder and robbery and that it was necessary to give the

women a severe penalty in order to prevent the escalation of crimes caused by foreigners. The women were not permitted by the court to argue that the conditions of slavery left them only one option to liberate themselves and to protect their lives. The prosecutor also argued that the women had known that they were to work as prostitutes, that they had worked in the sex industry before and therefore could not have been trafficked. Consequently, the women were sentenced to life imprisonment. Due to the efforts of NGOs the sentence was later mitigated to 10 years of imprisonment. Last year they were finally able to return home, after having fulfilled their 10 years sentence. See HRS 1 and 13.

HRS 9-12 set out in previous sections.

HRS 13. Ensure that, if a trafficked person is a defendant in a criminal case:

- a. She or he has the opportunity to raise a defence of duress or coercion and the same evidence is considered as a mitigating factor in sentencing, if convicted.
- b. In cases involving charges of having committed a crime against a trafficker(s), including homicide, she or he has an opportunity to plead self-defence and to present evidence of having been trafficked and the same evidence is considered as a mitigating factor in sentencing, if convicted.
- c. Trials involving migrant trafficked persons are conducted in accordance with these Standards, relevant provisions of Article 5 of the Vienna Convention on Consular Relations (VCCR) and the articles 16-19 of the ICPRWM. States providing assistance to their nationals under the VCCR shall act, at all times, in the best interests of, and consistent with the views of, the trafficked person.

Action to combat trafficking must be targeted at the offenders and not at those who are victims of such practices. As in rape cases, too often the victim is forced to stand trial instead of the offender, thus undermining trafficked persons belief in the ability of the legal system to bring about justice. Many women are deterred from reporting due to discriminatory treatment of migrant women, especially in the sex industry. Therefore, measures are needed to ensure fair treatment by the criminal justice system in order to encourage and assist trafficked persons to report to the authorities and to act as a witness.

Trials involving migrant trafficked persons are conducted in accordance with these Standards, relevant provisions of Article 5 of the Vienna Convention on Consular Relations (VCCR) and the articles 16-19 of the Migrant Workers Convention. States providing assistance to their nationals under the VCCR shall act, at all times, in the best interests of, and consistent with the views of, the trafficked person.

In cases where a trafficked person commits a crime against the traffickers, in order to protect her/himself, self-defense is often not recognised as a defence or a mitigating factor. In addition, trafficked persons who have been apprehended working in the sex industry are not likely to be believed, due to discrimination and bias against persons who have worked in the sex industry.

*f) The Need for Access to Private Action and Reparations (HRS 14-16)*

A was trafficked to Europe into the sex industry. After an attempt to escape her traffickers, she was severely beaten up. They had banged her head against the wall and broken her front teeth. After being held in forced labour for more than a year, she was arrested during a police

raid and pressed charges against the traffickers. Unfortunately the traffickers fled to another country and could not be extradited. A applied for compensation to a State Fund for Victims of Violent Crimes and was awarded a small amount to compensate for damages. Although it was just a small amount, it at least allowed her to pay for a dentist to restore her teeth. See HRS 14 and 15.

A group of 72 Asian citizens, most of them women, were trafficked to North America to work in a garment factory. They were confined to the factory, held in debt bondage and received no due wages. On their release, most of the workers had been held for a number of years. During the raid, the workers were arrested and taken to an immigration detention facility. With the support of an NGO, they were released on bail nine days after their arrest. The workers were granted temporary residence permits and six month work permits to allow them to remain in the country for the duration of the trials. With the assistance of lawyers and community groups, the workers filed a civil suit for damages against the employers, retailers and contractors who had benefited from their years of forced labour. This resulted in the workers receiving US\$ 1 million from seizure of the company's assets. Moreover, their employers were sentences to pay them US\$ 4.5 million for damages within 5 years. See HRS 14-16.

HRS 14. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work), have the right to bring a civil or other action against traffickers and others (including public officials and, when possible, persons having diplomatic immunity) who may have exploited or abused them, and have access to other legally enforceable forms of compensation (including lost wages), restitution and recovery for economic, physical and psychological damages. Non-wage compensation, restitution and recovery shall be proportionate to the gravity of the violations and resulting harm.

HRS 15. Confiscate all assets of convicted traffickers and disburse such assets in payment of all court orders for compensation (such as unpaid wages), restitution and recovery due to the trafficked person.

HRS 16. Ensure that the relevant authorities, upon the request of the trafficked person and/or her or his legal representative, make available to the requesting party(ies) all documents and other information in their possession or obtainable by them that is relevant to the determination of the trafficked person's claim for monetary damages, including compensation, restitution and recovery.

Trafficking in persons has major economic, emotional, psychological and physical consequences for the victims, which consequences are not accommodated by criminal investigation and prosecution of the offender. Adequate assistance and support as well as financial compensation serves not only to remove or redress the consequences, but also acts as a deterrent to traffickers by strengthening the position of trafficked persons.

*g) The Need for Resident Status (HRS 17- 20)*

H from Africa successfully brought a case against her European employers for assault after enduring years of malnourishment, physical abuse and exploitation, but was then served an order of deportation for overstaying her visa. Such cases do not encourage workers who, having escaped one nightmare, might enter another. See HRS 19.

M was trafficked to a western European country and forced to work off her debt. During a police raid she was arrested as an illegal alien and immediately deported. When she arrived at the airport back home, her traffickers were waiting for her. They forced her to go with them. Within three days, she was back in the country from which she had been deported and put back to work again, this time in a different town. See HRS 17.

HRS 17, 18 and 20 are set out in previous sections.

HRS 19. Provide trafficked persons with information and an opportunity to apply for permanent residence under national laws and international treaties. In considering applications for asylum, a trafficked person shall be permitted to introduce evidence supporting a claim that repatriation could seriously endanger her or his life, such as a high risk of reprisal by traffickers or persecution or harassment by the authorities. Guidelines recognising gender-based persecution as grounds for asylum should be followed.

Many trafficked persons refrain from seeking help or reporting to the authorities for fear of deportation. Providing victims with a stay of deportation, temporary residence during criminal and civil proceedings and an opportunity to apply for a permanent residence removes the fear of the trafficked persons of immediate deportation. This serves two interests: first, the trafficked person is able to recover and take back control of his or her life and, second it enables the effective prosecution of traffickers by encouraging trafficked persons to report to the authorities and to act as witnesses.

*h) The Need for Assistance for Stateless Persons (HRS 20, 25)*

E. is ethnically Chinese, born in Burma but has lived in Thailand since she was a small child. All of her family live in Thailand She traveled to Taiwan to obtain work and after some months was arrested as an illegal immigrant. The only papers she had from Thailand had 'expired'. The Taiwanese authorities attempted to repatriate E. to Thailand, however the Thai government refused to issue official documents to ethnic Chinese minorities. Up till now, E. is still in detention in Taiwan because the Thai government refuses to issue the papers that will let her return.<sup>41</sup> See HRS 20 and 25.

HRS 20. If the state in which a trafficked person claims to be a citizen refuses for whatever reason to recognize the trafficked person's claim, consider whether, on the balance of probabilities, the trafficked person was born in and/or has spent most of her life in that country. In such event, the country in which the trafficked person is residing (legally or illegally) must provide the trafficked person with all the rights and privileges granted to other stateless persons contained in the UN Convention relating to the Status of Stateless Persons.

<sup>41</sup> Source: *Foundation for Women Thailand and ECPAT Taiwan*.

HRS 25. When and if the trafficked person returns to her or his home country, provide the funds necessary for the return and, where necessary, issue, or provide assistance in the issuance of, new identity papers.

There are many cases of "stateless persons" ethnic minorities who are denied citizenship rights in the country where they were born or have lived for most of their life. It is impossible for them to obtain legal identity papers that prove their nationality, thus if they do manage to leave their country of origin they have no proof of that nationality. Persons like E. may suffer indefinite detention in poor conditions in the country of destination. Otherwise, forced deportations to some countries may result in punishment and detention in home countries upon return or persecution by the State.

It is important for governments to assist in issuing new identity papers for all persons who in effect are citizens of that country. Otherwise the country of destination must provide stateless trafficked persons with all the rights and privileges contained in the UN Convention relating to the Status of Stateless Persons e.g. right to engage in wage earning employment, housing, public assistance etc.

*i) The Need for Health and Other Services (HRS 21- 24)*

Very few persons who are trafficked into domestic work will dare to press charges against their employers. Abuse within the home is notoriously difficult to prove, particularly when the abuser is wealthy and influential, and the person abused is isolated and poor. It is even more difficult in circumstances where the person abused has a problematic immigration status and risks deportation should they come to the attention of the authorities.

N, an Asian woman, escaped from her traffickers by jumping from the second floor of the building she was held in. As a result of her fall, her back was injured. Somebody took her to a hospital but they refused to help because she was an undocumented foreigner. She went to another hospital. At a third hospital, she received treatment. They told her that because she had received delayed treatment, she would remain disabled. The hospital contacted a local NGO that contacted an NGO in her home country. Together they managed to arrange for her return and medical care in her home country. N. is suing the hospital that refused to admit her. HRS 21 and 22.

K, who had been missing for several months, called her parents and told them how she had been abducted and forced to work in Europe. She had managed to escape for a few minutes to call and tell her parents the name of the town where she was staying. Her parents contacted a local NGO which in turn contacted the country's embassy and an NGO in the country where K. was being held. These agencies contacted the police who found the house where K. and two other women were being held captives. See HRS 21.

After their release, trafficked persons are in need of adequate assistance in order to regain control over their lives, press charges and file a civil suit for compensation.. The support given by NGOs to a group of Asian workers who had been trafficked into the garment industry in North America included:

- ★ Accompanying government officers during the raid to interpret and explain to the workers what was happening
- ★ Negotiating with immigration officials for reducing the bail,
- ★ Release from the immigration detention facility, and temporary residence and work permits

- ★ Raising bail and donations of money, food, clothing and toiletries
- ★ Finding housing after the release of the workers
- ★ Publicising the plight of the workers and conditions in other sweatshops
- ★ Screening companies who offered to hire the workers after they had received temporary work permits
- ★ Providing English language classes, instruction in daily living skills, such as opening bank accounts and using public transport
- ★ Participating in meetings of the workers and retailers about reform and accountability in the garment industry
- ★ Assisting the workers in filing civil law suits. See HRS 3b, 21, 22 and 24.

HRS 21. Promote and support the development of cooperation between trafficked persons, law enforcement agencies and non-governmental organizations capable of providing assistance to trafficked persons. All persons providing services (health, legal and other) should receive training to sensitise them to the rights and needs of trafficked persons and should be provided with guidelines to ensure proper and prompt aid.

HRS 22. Provide, on an equal basis with citizens of the State, adequate, confidential and affordable medical and psychological care.

HRS 23 is set out in a previous section.

HRS 24. During the period of temporary residence status, provide:

- a. Adequate and safe housing
- b. Access to all state-provided health and social services
- c. Counselling in the trafficked person's mother language
- d. Adequate financial support
- e. Opportunities for employment, education and training

In most cases, trafficked persons have no place to stay or means of earning a livelihood once they have escaped from the trafficker's control. They may not speak the local language or have any family or relatives who can take care of them in the place where they are stranded. Often, they have been subjected to physical violence, unsafe working conditions and are in urgent need of medical care. Adequate support, employment and educational opportunities enable trafficked victims to regain control over their lives and to improve their prospects.

*j) The Need for a Safe and Voluntary Return, including Reintegration Assistance, the Need for State Co-operation (HRS 25-26)*

M was assisted to the border of her country with the help of an NGO. The government of the country into which M. had been trafficked provided no money for her repatriation. She had no money because the traffickers had never paid her for her work and the authorities did not help her recover any money from the traffickers. Furthermore, the governments of the two countries had no agreement for the voluntary and safe return of trafficked persons. Under these conditions, the only thing the NGO could do was leave M. at the border with just enough money for a train ticket to her village. See HRS 25, 27 and 28.

Several women who had been trafficked and were working under debt bondage were arrested during a police raid. They were charged for working illegally. In addition to having to pay bail to get out of jail the women had to sign a bond to their Embassy in

order to pay for their return home. The women were then doubly in 'debt': to the traffickers as well as to the Embassy. The only option these women have to earn enough money to repay either debt is to work abroad. Since they are not able to migrate legally they will likely have to seek the assistance of a broker, thus rendering themselves vulnerable to the possibility of being trafficked once again. See HRS 25, 27, 28.

HRS 25. When and if the trafficked person returns to her or his home country, provide the funds necessary for the return and, where necessary, issue, or provide assistance in the issuance of, new identity papers.

HRS 26. Provide reintegration assistance and support programmes for trafficked persons who want to return or have returned to their home country or community in order to minimise the problems they face in reintegrating into their communities. Reintegration assistance is essential to prevent or overcome difficulties suffered as a result of rejection by families or communities, inability to find viable employment, and harassment, reprisals or persecution from the traffickers and/or the authorities. Reintegration programmes should include education, training for employment opportunities and practical assistance and should not stigmatise or victimise trafficked persons. All programmes must guarantee the confidentiality and the privacy of the trafficked person.

HRS 27. Cooperate through bilateral, regional, interregional and international mechanisms in the development of strategies and joint actions to prevent trafficking in persons, including cross-border cooperation in the prosecution of traffickers and the protection of the lives and rights of trafficked persons.

HRS 28. Coordinate the safe and voluntary repatriation of trafficked persons.

In most cases, trafficked persons have been deprived of the financial means to pay for return to their home country or community. They may also lack travel documents. Without money and papers, it is impossible to return to their home country or community. Trafficked persons who are able to return face multiple problems, including the risk of repeated trafficking. Reintegration services are essential to ending the cycle of trafficking.

### ***Conclusion***

Chapter I and II lay the foundations for addressing trafficking in women from a human rights perspective. Chapters I and II examined the phenomenon of trafficking within the human rights framework in order to understand the ways in which trafficked persons are subjected to serious human rights abuses and governments fail to protect and ensure the rights of trafficked persons. Numerous case studies illustrated what we mean by the concept of “trafficking in persons” and to give a definition that accurately describes the phenomenon. Now we can proceed to discuss different approaches to addressing trafficking, and think about rights-protective strategies that empower the persons they are supposed to help.



## CHAPTER III

### APPROACHES AND STRATEGIES: PRINCIPLES AND GUIDELINES

#### A. STRATEGIES

##### 1. Strategies at many levels and for diverse actors

Trafficking is a complex problem and has many harmful effects on trafficked persons and so action has to be taken at many levels: local, regional and international. Various strategies are also needed to address the specific problems at the different stages of the trafficking continuum, to be implemented by diverse "actors". These include<sup>42</sup>:

- The state and state agencies,
- NGOs and other "professional" intermediaries and advocates
- Local communities

Ultimately, the most important set of actors are the persons who have been or may be trafficked. They must be brought into the strategy if they wish to strengthen and equip themselves to be able to exercise their rights to freedom of movement and to work, without constraints of fear of victimisation. Lastly, distinctions should be made between strategies and actions that are aimed at structural changes in the medium or long term and those that are necessary for immediate relief and solutions in the short term.

In designing strategies and actions to prevent and redress these violations, we will also utilise the framework and "systems" of human rights instruments and institutions at all levels where action should and can be undertaken. Where these do not exist, new channels must be discovered or created.

##### 2. Current Strategies

###### **Approach vs strategy<sup>43</sup>**

An **approach** is a model to analyse one's (and others') positions and strategies. Approaches are based upon one's perception, definition of the issue or problem, which in turn arises from the analytical framework applied. A **strategy** is a plan on how to address the problem, which is characterised by different activities. One approach may employ different strategies. Different strategies also arise from different approaches.

Think of a road map of a city. Your destination is the city square. The approach is the direction from which you are coming (for e.g. north, south, east or west). The strategy is the road you take to get to the final destination.

Wijers and Lap-Chew, the researchers of the report *Trafficking in Women, Forced labour and Slavery-like Practices in Marriage, Domestic Work and Prostitution*<sup>44</sup>, mention six basic approaches to 'trafficking.' However, in this Handbook we will concentrate on the four approaches that are most clearly defined: trafficking as a moral problem, a problem

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<sup>42</sup> Local communities are significantly affected by the fact that malevolent recruiters have "targeted" them as sites for their deceptive and/or coercive activities.

<sup>43</sup> Wijers and Lap-Chew, *Supra* note 26.

<sup>44</sup> *Ibid.*

of (organised) crime, a migration problem and a labour problem. Wijers and Lap-Chew concluded that:

"Within all approaches two types of strategies can be distinguished. On the one hand there are the repressive strategies, such as:

- More restrictive immigration policies: i.e. "if we prohibit foreign women from travelling, from leaving or entering the country, they cannot become victims".
- More severe penalization: i.e. "if we make punishments heavy enough, people will be deterred".
- Stronger and more effective prosecution: i.e. "if we catch them more effectively, they will not get a chance to do it again".

Existing government policies are predominantly limited to these types of strategies, such as restrictive immigration policies and more stringent criminal action. Not only do those approaches have limited preventive effects, they also tend to eventually work against women instead of in their favour, e.g. by restricting women's freedom of movement or by using women as witnesses for combating organised crime in the interest of the state, without allowing them the corresponding protection. Significantly, repressive measures are the most obvious, easiest to implement and most appealing to governments in terms of correspondence to diverse state interests. Combating "trafficking in women" then comes to legitimise very different interests than those of the women.

On the other hand, there are the strategies against violence and abuse that rest upon a strengthening of the rights of women. This approach is mainly put forward by NGOs, next to a call for clearer criminal codes and stricter and non-discriminatory enforcement of existing laws, in combination with providing practical social, legal and medical support.

Acknowledging women's right to self-determination, NGOs take the needs, aspirations and interests of the women concerned as the basis for advocacy work and political campaigning. Participation of the women concerned is seen as essential to the development of effective change strategies. Support and lobby strategies are directed towards empowering women, enabling them to take back control over their lives, and towards facilitating their ability to speak up for their own rights. Repressive strategies are rejected, if the rights of the women involved are not at the same time clearly defined and protected. The aim is to ensure the rights of those involved, as women, as female migrants, as female migrants workers, as domestic workers, as sex workers and as wives. As long as those rights are not recognised and guaranteed, traffic in women, forced labour & slavery-like practices will continue to exist."<sup>45</sup>

### 3. Basic Principles for Human Rights Action: Participation and Self-representation

In general, strategies and actions that will work to assert and enhance the human rights of trafficked persons should adhere to the fundamental human rights principle of participation of the concerned persons in the action. In principle, truly human rights enhancing actions are those undertaken by the affected persons themselves, wherever possible. For example, in strategies concerning sex work, sex workers should be

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<sup>45</sup> *Id.* at 178.

empowered to speak for themselves on the issue of sex work, rather than advocates, however well-intentioned, representing them and their views. The participation and self-representation of sex workers in asserting their rights is essential if we are to truly operate from a human rights perspective.

Rights are theoretical and not real until a person (or persons) becomes conscious of her or his entitlement and is able to act to secure or exercise that right. The best strategies are thus those that enable the affected persons to express their own grievances, to undertake actions of their own design and on their own behalf and to organise, form alliances and obtain the necessary expertise and resources in order to act on their own behalf.

In these strategies, advocates and activists do not see the affected persons as victims who need help, but recognise the constraints of the situation, and act as facilitators for the affected person to act on her own behalf. In the words of a grassroots organiser:

“Do not give or use us to fish, teach us to fish for ourselves”

This does not mean that, at the initial stages, one cannot act as a channel for others who are in dire need, or advocate for the rights of others.

#### 4. International Principles

Internationally, self-representation strategies are shared by the two most important Offices in the UN system that have a mandate regarding trafficking in persons: the High Commissioner for Human Rights, Ms. Mary Robinson, and the Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy.

In her address to the International Abolitionists' Federation Conference on Trafficking in Women, Robinson enumerated 10 basic principles to consider in combatting trafficking<sup>46</sup>:

“In developing detailed responses to each stage of the trafficking cycle it is essential that we keep certain very basic policy principles in mind - guiding principles which can also provide us with a way of measuring the success of anti-trafficking initiatives. In the spirit of advancing the debate on trafficking to the level of the practical and the achievable, my office is in the process of formulating such principles which I would like to present to you for your consideration:

First: The protection of human rights and the dignity of trafficked persons and persons in prostitution must be given the highest priority.

Second, governments must accept responsibility for the problem of trafficking and for the development and implementation of appropriate responses. It is not enough to contend that trafficking is a private wrong - this is an injustice which involves and implicates us all.

Third: the definition of the term "trafficking" in laws, policies and programmes should not be restricted to sexual exploitation but should be extensive enough

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<sup>46</sup> Message from Mary Robinson, UNHCHR, at the International Abolition Federation Conference on Trafficking in Women, *Breakdown of Borders*, Copenhagen, 2 December 1999.

to cover other identified purposes without ambiguity, such as bonded or forced labour and other slavery-like practices.

Fourth: Traffickers and their collaborators must be prosecuted and adequately penalised - paying full attention to due process rights and without compromising the rights of the victims.

Fifth: Trafficked persons should not be criminalized for the coerced illegality of their entry or residence in countries of transit and destination, or for the coerced activities they perform as a consequence of their status as trafficked persons.

Sixth: Victims of trafficking including those with "irregular" immigration status should be granted protection and necessary physical and mental care by the authorities of the receiving country.

Seventh: Victims of trafficking should be provided legal and other assistance in the course of any criminal, civil and other actions against traffickers/exploiters. Government authorities should be encouraged to provide temporary or permanent residence permits and safe shelter during legal proceedings.

Eighth: The safe return of victims, instead of automatic repatriation, should be ensured, particularly in cases of organized criminal involvement.

Ninth: Women and children should not be treated the same in the identification, rescue and repatriation process. Children have special rights and special needs which must be recognized and protected.

And finally: Efforts must be made to address the root causes of trafficking, including poverty, inequality, discrimination and racism.”

In her first report to the Commission on Human Rights (CHR) on Trafficking in 1997<sup>47</sup>, Coomaraswamy, gave examples of government strategies that are not only ineffective in stopping exploitation of migrant women, but may actually harm women and increase their vulnerability to exploitation. For example, the Philippines and Bangladesh both had placed bans on women leaving as domestic workers, following reports of the bad treatment they received from employers. However, this did not stop recruitment agencies from seeking and finding other channels, albeit illegal ones, to take women abroad. This increased the dependency of women on these agencies, and thus also the danger of exploitation and abuse by them.

In her second report on trafficking,<sup>48</sup> Coomaraswamy again cautioned states to abandon their “paternalistic” actions, and instead to develop strategies that truly respect and strengthen the human rights of trafficked persons. Coomaraswamy offered a new rights-based definition of trafficking (see Chapter I) and criticised the 1949 Trafficking Convention as being unable to protect the rights of women. She explicitly recommended that States and the international community utilise the Human Rights Standards developed by GAATW, IHRIG and STV (Chapter II).

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<sup>47</sup> *Supra* note 29.

<sup>48</sup> *Supra* note 4.

"Non-governmental organizations have been instrumental in efforts to create new national and international standards on migration and trafficking. One of the most noteworthy products of a collaborative process by the Global Alliance against Traffic in Women, the Foundation against Trafficking in Women and the International Human Rights Law Group is the Human Rights Standards for the Treatment of Trafficked Persons (January 1999). "The Standards are drawn from international human rights instruments and formally-recognized international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices."<sup>49</sup> *The Special Rapporteur would encourage Governments to utilize the Human Rights Standards in creating new policies and laws. She would encourage the international community to do the same.*"<sup>50</sup>

## **B. DIFFERENT APPROACHES AND STRATEGIES**

As mentioned at the beginning of this Chapter, there are many ways to approach the problem, though four main approaches can be distinguished. The approach of any organisation or individual is based on its perception of the problem and definition of trafficking, which in turn arises from the analytical framework applied.

Within each of the four approaches, two kinds of strategies can be distinguished:

- **REPRESSIVE** strategies, aimed at
  - \* Suppressing 'undesirable' or 'dangerous' behaviour
  - \* Controlling the situation
  - \* Punishing the wrong-doer
  
- **EMPOWERING** strategies, aimed at
  - \* Respecting, protecting, restoring human rights of those affected
  - \* Supporting, assisting
  - \* Enabling, facilitating
  - \* Increasing agency of those involved (principle of self-determination/self-representation)
  - \* Eliminating root causes

The approaches themselves are inherently neither good nor bad. In the strategies adopted, we need to ensure the human rights perspective is adopted to empower trafficked persons. These tables can be useful in analysing one's own or others' positions and approaches, in order to model strategies that will have the most beneficial effects on the persons concerned.

### 1. The Moralistic approach

The moralistic (or abolitionist) approach to trafficking equates trafficking with prostitution and is mainly concerned with trafficking into the sex industry. This approach sees prostitution as morally deviant and inherently bad/wrong for the prostitute, the family and

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<sup>49</sup> *Supra* note 20 at 1.

<sup>50</sup> *Supra* note 4 at para 106.

the community. Some moralists may regard women who work in prostitution as “fallen” or “misguided”, others see the institution of prostitution itself as the social evil, and women working in prostitution as helpless (but still deviant) victims. In either case, a clear line is drawn between good and bad, or victimised women, even for those who may regard prostitution as a “necessary evil”. Such an approach maintains the social stigma on prostitution, viewing women in prostitution as bad and/or victims, and maintains that all prostitution is “forced” at the very least through poverty or other circumstances, if not explicitly through the activities of trafficking agents. Repressive moralist strategies are basically concerned with keeping people out of prostitution, and ultimately with the elimination of prostitution altogether, but as the following table shows, even with a moral approach one can adopt empowering strategies:

**Repressive strategies:**

- \* Suppress prostitution
- \* Deny all agency of women, all are victims;
- \* Criminalise all those involved, including men who go to prostitutes
- \* Carry out raids on brothels
- \* Make more anti-prostitution ("anti-trafficking") laws
- \* Carry out rescue and rehabilitation programmes unilaterally

**Empowering strategies:**

- \* understand and accept sex work as legitimate occupation
- \* carry out information and education work on the rights of sex workers
- \* recognise the agency of women and girls
- \* strengthen political and civil rights of those in sex work
- \* increase range of choices of women in prostitution, by increasing access to resources, training, jobs
- \* mobilise and organise sex workers for self-representation and participation at all levels - policy formation, working conditions, social environment, etc.
- \*

**Possible consequences / results:**

- |                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>- isolation, stigmatisation, marginalization of women</li> <li>- greater dependence on third-party "protectors"</li> <li>- greater risk of violence and abuse</li> <li>- encourages corruption and abuse by law-enforcers</li> </ul> | <ul style="list-style-type: none"> <li>+ growth of self-esteem of sex workers</li> <li>+ increase of autonomy</li> <li>+ safer and better working conditions</li> <li>+ participation in community/society,</li> <li>+ de-isolation and de-marginalisation</li> <li>+ break down stigmatisation</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. Crime control approach

The crime control approach focuses on the criminality, the illegal aspects of the acts which constitute the crime of trafficking. Adherents believe that adopting stronger legislation can curb trafficking in persons because it would mean more effective detection and prosecution of traffickers and increase the penalties for trafficking. The crime control approach addresses trafficking and smuggling of persons simultaneously. It holds that harsher punishments will discourage traffickers and smugglers from operating and stricter border controls will make it more difficult for traffickers and smugglers to transport persons to the end destination.

The principal concern of the repressive crime control strategy is to stop crime, not violation and exploitation of women, whose interests are thus secondary, or presumed to be generally served by stopping the criminals.

All those involved are deemed to be parties to the crime – including trafficked persons who may have entered the country illegally or worked illegally. Like any other undocumented immigrants, they are placed in detention, prosecuted and then deported. The crime control approach is especially harsh on women (trafficked) in the sex industry. In many countries, activities related to prostitution are criminalised, such as soliciting for clients and being present in a brothel, and all those found in such situations are prosecuted, in order to discourage others. The table shows how empowering strategies can sometimes be more effective in crime control.

**Repressive strategies:**

- \* apply criminal laws and sensitise judicial system
- \* focus on detecting and prosecuting "criminals" involved (who are they?)
- \* institute heavier punishments on "crimes" connected to the sex industry

**Empowering strategies:**

- \* help women to understand their rights - civil and in criminal processes
- \* set up comprehensive victim assistance programmes, including legal support
- \* organise for self-protection / defence
- \* carry out class action lawsuits

**Possible consequences / results:**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>– focus is on "combating crime"</li> <li>– interests of victims are secondary; they are interesting only as witnesses for the prosecution</li> <li>– re-victimisation of women by the judicial system, which is generally not sympathetic to women/prostitutes/migrants</li> <li>– fear of detection drives traffickers underground, and the victims as well, so that they are inaccessible for social and support services</li> </ul> | <ul style="list-style-type: none"> <li>+ supports the interests of victims</li> <li>+ growth in self-confidence</li> <li>+ brings cases out of the individual sphere and informs and politicises public</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

3. (Illegal) Migration approach

The migration approach focuses on the problems created by “irregular” or “illegal” migration, either for work or other purposes. The concern is to regulate migration, in order to reduce the presence of undocumented migrants. It is usually countries who wish to protect their borders that take this approach. Current laws in many countries criminalise trafficked persons by treating them primarily as undocumented immigrants, or illegal workers. The following table shows that empowering and giving migrants due rights reduces the power of middlepersons and risk of trafficking.

**Repressive strategies:**

- \* stop illegal migration
- \* ban agencies/agents/"traffickers"
- \* prohibit women and girls from migrating
- \* stricter border controls
- \* stricter immigration / visa regulations
- \* punishment and immediate deportation of

**Empowering strategies:**

- \* create possibilities for legal migration for all kinds of work, including sex work
- \* make immigration procedures simpler and transparent
- \* respect rights of migrants irrespective of legal status

illegal migrants

- \* acknowledge and give just remuneration for work done by migrant women
- \* accord independent residence status for (immigrant)partners of nationals / resident immigrants

**Possible consequences / results:**

- places women in the hands of "traffickers"
- encourages corruption and abuse by border police, immigration officials etc.
- strengthens the role and power of 'middlemen'
- + widens choices for work sites for migrant workers
- + strengthens rights of migrants
- + reduces the power of the middle-persons and "traffickers"

4. Labour approach

This approach is concerned about the labour market, and the problems that arise from domestic unemployment and policies regarding migrant workers. It is also concerned about the protection of workers' rights and working conditions, which raises the question of which categories of work should be recognised as such, and consequently the legal protections which should be accorded to the workers in these sectors. The following table shows that repressive policies against migrant workers facilitates exploitations and creates illegality.

**Repressive strategies:**

- \* protection of home labour market
- \* restriction of work sectors for migrants – especially prohibition of prostitution for migrant women
- \* stricter recruitment regulations for the permitted sectors
- \* non-recognition of "informal sectors" (domestic work, prostitution), thus no legal protections for these workers
- \* criminalisation of undocumented migrant workers and their employers

**Empowering strategies:**

- \* recognise the need for and contribution of migrant workers, esp. women, in the globalised economy, including in the sex and service industries
- \* regularise worker status and rights of migrant women in all sectors, institute and enforce legal protections
- \* ensure safe and just working conditions in all sectors
- \* carry out civil and worker rights education among women migrant workers of all sectors
- \* facilitate organisation of women migrant workers in all sectors for self-representation and advocacy

**Possible consequences / results:**

- creates and perpetuates illegality
- encourages corruption
- strengthens role and power of the agents and increases dependency of migrants on third party mediation
- facilitates exploitation of workers in "informal sectors" e.g. domestic work and prostitution
- + women migrant workers have stronger (legal) status and rights
- + reduces role of middlemen and corrupt officials and unjust employers
- + higher efficiency and productivity, gain for the host country
- + justice for women migrant workers



Not exclusive

*These approaches have been described separately in order to clarify the main focus of each. In practice, people usually do not act exclusively from one or the other approach, but from a mixture of approaches, although one of them may be predominant. When the predominant approach is clear, it is easier to understand the goals and actions being taken and how to influence the strategy, if and when necessary.*

## **C. RIGHTS-BASED STRATEGIES TO ADDRESS TRAFFICKING**

Strategies to address trafficking can be subsumed under three categories:

- Prevention of Trafficking
- Prosecution of Traffickers and
- Protection of Human Rights of Trafficked Persons

Boxed quotes below are taken from the Special Rapporteur's Trafficking Report.<sup>51</sup>

### 1. Prevention of Trafficking

*80. Any remedy or strategy proposed to combat trafficking and provide assistance to victims of trafficking must be assessed in terms of whether and how it promotes and provides protection for the human rights of women. It has been pointed out that even seemingly harmless mechanisms of prevention, such as education campaigns, may be problematic if they aid in the immobilisation of women or the entrenchment of harmful or disempowering stereotypes. While anti-trafficking campaigns may merely seek to warn women of the potential dangers of trafficking, they may also serve to further restrict women's free movement.*

*a. Do we want to prevent women and girls from leaving their villages?*

No. Women and children have the right to leave their villages if they wish to for work, marriage or adventure.

*b. Do we want to prevent migration?*

No. Strategies aimed at preventing migration will make people more vulnerable to taking alternative steps than legal migration, thus increasing the risk of trafficking and exploitation.

Strategies aimed solely at preventing *illegal* migration will not solve the problem of trafficking, as we have already explained, trafficking happens through both legal and illegal channels. Furthermore, strategies adopted to prevent illegal migration may actually cause further harm to undocumented migrants including those who have been trafficked. The costs of facilitated undocumented migration increase with the risk of being caught, the danger of travel and increased exploitation is likely, as undocumented migrants are less visible and driven further underground. We want more opportunities for legal migration and human rights protection for undocumented workers, including those who are trafficked.

*c. Or do we want to prevent the deception, coercion and violence?*

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<sup>51</sup> *Supra* note 4.

Yes. In the human rights approach, we seek to “prevent” the violation of rights, to ensure that all women have access to information about their rights and to enable all women to exercise their human rights.

In the long run, real “prevention” will be through the enactment and enforcement of laws, policies and practices that improve women's status and enable women to exercise all their human rights, including the right to inherit and own property and the right to work under fair and just conditions and to receive appropriate wages etc. This involves improvement in economic, legal and social systems, action for justice and democracy within and between states.

In the short and middle term, a prevention strategy must include:

- human rights education for all persons, especially women and children;
- advocacy for development of economic opportunities , including opportunities for legal migration for work;
- elimination of discrimination of women in all spheres, especially in the labour market
  - reform of restrictive immigration policies and laws and creation of legal channels of labour migration for women.

In general, there should be an assessment of present trafficking prevention strategies in the light of human rights principles described above.

## 2. Prosecution of Traffickers

*85. Although the clandestine nature of trafficking limits the capacity of victims seeking assistance when needed, the mere discovery by the State of the trafficked woman does not ensure that the woman's rights will be protected. Even when the State pursues a criminal case, there is no guarantee of legal protection or prosecution (...)*

Empowering strategies will lead to more effective investigation and successful prosecution of traffickers. Women who understand their rights and are protected from retaliation and prosecutions will cooperate in investigations.

Often trafficked persons receive protection if they agree to act as witnesses for the prosecution of traffickers, however if they do not act as witnesses, they remain unprotected. In any case, the protection witnesses do receive is often limited to the trial process, and following the trial the need for protection of personal safety is often even more pronounced, though rarely addressed.

## 3. Protection of human rights of trafficked persons

*60. In the absence of strong measures to protect and promote the rights of women, trafficking thrives. When women do not have rights or when such rights are trampled upon by policies and practices of the Government, including policies that relinquish the traditional powers of the State to non-State corporate entities, socially vulnerable groups, including women, are made more vulnerable. In the absence of equal opportunities for education, shelter, food, employment, relief from unpaid domestic and reproductive labour, access to structures of formal State power, and freedom from violence, women will continue to be trafficked. Policies and practices that further curtail women's rights and freedom, such as those that restrict women's movement and limit safe and legal modes of immigration, serve only to entrench trafficking. Therefore, the responsibility for the existence and perseverance of trafficking rests squarely with the State. The State is ultimately responsible for protecting and promoting the rights and freedoms of all women.*

Trafficked persons must be protected not only from retaliation by the traffickers, but also from revictimisation by governments, including the judicial system itself. However, remember protection of trafficked persons in itself is not the same as protection of their human rights.

*88. There is a need to move from a paradigm of rescue, rehabilitation and deportation to an approach which is designed to protect and promote women's human rights, in both countries of origin and countries of destination. Although some women may be traumatised by their experiences and may, on a case-by-case basis, desire counselling and support services, overwhelmingly it is not "rehabilitation" that women need. Rather, they may need support and sustainable incomes. The Special Rapporteur call on Governments to move away from paternalistic approaches that seek to "protect" innocent women to more holistic approaches that seek to protect and promote human rights of all women, including their civil, political, economic and social rights.*

At the regional level, governments and regional bodies must interpret and apply regional human rights instruments to trafficked persons and engage in regional cooperation to locate and prosecute traffickers.

At the international level, countries must recognise the rights of all migrant workers, including sex workers, and apply all international human rights law to trafficked persons, as well as cooperate to locate and prosecute traffickers.

The next chapter will examine specific strategies which NGOs can apply in prevention, prosecution and protection of rights of trafficked persons, whilst at all times maintaining the human rights perspective.

## CHAPTER IV NGO STRATEGIES

### A. NGO STRATEGIES AT MANY LEVELS AND FOR DIVERSE ACTORS

This chapter offers practical suggestions on how to develop and implement different kinds of human rights-strategies. These strategies will necessarily involve action to influence and use the UN instruments and mechanisms introduced in Chapter I. Suggestions are also offered as to how different organisations and advocates can apply the principles of the Human Rights Standards in their field of work.

As shown in the previous chapter, the complex problem of trafficking requires action to address all the different aspects.

Strategies can be formulated for the following kinds of activities:

- a. Providing services to trafficked persons
- b. Research and documentation into various aspects ( for example, legislation and its effects, practices of recruiters and agents, specific needs of trafficked persons in different regions, places)
- c. Information and education (for specific professional and affected groups as well as for the general public, in order to sensitise people to the problems and create understanding of the human rights issues involved.)
- d. Advocacy (at all levels, to bring about necessary structural and policy changes that will strengthen/protect rights of migrant workers).

Some examples of possible activities at different levels:

	Local/National	Regional	International
a. services provision	<ul style="list-style-type: none"> <li>- set up shelter for victims of trafficking</li> <li>- counselling</li> <li>- information about migration</li> <li>- family support</li> <li>- legal services</li> <li>- comprehensive health care</li> </ul>	<ul style="list-style-type: none"> <li>- assist trafficked persons during repatriation process</li> <li>- welcome and initiate new migrants</li> </ul>	<ul style="list-style-type: none"> <li>- support local NGOs in the process of repatriation and reintegration</li> <li>- welcome and initiate new migrants</li> </ul>
b. research/ documentation	<ul style="list-style-type: none"> <li>- document cases at immigrant detention centre</li> <li>- mapping of villages in border areas</li> <li>- research on working and living conditions of migrant</li> </ul>	<ul style="list-style-type: none"> <li>- research on migrants' repatriation and reintegration programmes between countries of origin/transit and destination</li> </ul>	<ul style="list-style-type: none"> <li>- coordinate comparative analysis of impact of trafficking, immigration, labour and prostitution laws on trafficked persons</li> </ul>

	workers especially in unregulated sectors.		
c. information/ education	<ul style="list-style-type: none"> <li>- meet with officials and share selected information about cases with them</li> <li>- provide gender sensitivity or human rights training</li> <li>- organise migration information campaign in villages in countries of origin</li> </ul>	<ul style="list-style-type: none"> <li>- send information or documentation to regional mechanisms e.g. European, American or African Commissions</li> <li>- conduct regional human rights trainings for NGOs and relevant agencies</li> </ul>	<ul style="list-style-type: none"> <li>- send information or documentation to international mechanisms e.g. Special Rapporteur on violence against women, Special Rapporteur on Human Rights of Migrants, Commission on Human Rights, CEDAW</li> <li>- coordinate international campaign to raise awareness about NGOs in countries of destination</li> </ul>
d. advocacy	<ul style="list-style-type: none"> <li>- public demonstration</li> <li>- letter-writing to government</li> <li>- lobby government on existing laws, policies and practices</li> </ul>	<ul style="list-style-type: none"> <li>- lobby at regional conferences such as meetings of regional UN agencies, ASEAN, SAARC, EU, OAS, OAU</li> <li>- campaigns/action alerts</li> </ul>	<ul style="list-style-type: none"> <li>- lobby relevant bodies of the UN and international bodies such as ILO, World Bank</li> <li>- petition action</li> </ul>

*For further examples concerning these areas but within an Asian context refer to Human Rights In Practice: A Guide to Assist Trafficked Women and Children, GAATW, Bangkok, 1999. This book focuses on services and assistance for trafficked persons but also contains chapters on research and documentation, information campaign and advocacy. For further information on conducting research on trafficking, refer to GAATW's forthcoming Feminist Participatory Action Research Report to be published in 2001)*

## **B. A GUIDE TO INVESTIGATING AND REPORTING VIOLATIONS OF HUMAN RIGHTS IN THE CONTEXT OF TRAFFICKING**

One of the basic requirements for a successful strategy is that it is built upon complete and reliable information, which in turn forms the basis of recommended actions and solutions.

The following is a shorthand guide to conducting investigations into and reporting about human rights violations, including those occurring in the context of trafficking. It is adapted from Chapter 6 of *Women's Human Rights Step by Step: A Practical Guide to using International Human Rights Law and mechanisms to defend women's human rights*<sup>52</sup>.

NGOs can use the following as a checklist when planning and conducting investigations into general situations or individual cases. One needs to adapt it of course to suit the local contexts.

#### 4. Preparation.

Step 1 Set investigation objectives

- Focus of investigation
- Consultation with those involved/affected

Step 2 Identify the violation

Step 3 Identify key actors

Step 4 Create an information checklist

Step 5 Identify likely sources of information

Step 6 Agree on a research methodology

- e.g. GAATW feminist participatory action research (FPAR) methodology  
(*forthcoming on GAATW website*)

Step 7 Make logistical and other arrangements

- identify and obtain necessary resources
- select fact finders (think of the criteria for selection)
- select interpreters
- establish security measures

#### 5. Fieldwork/Investigation

Step 1 Decide on the type of evidence/information to be gathered, observing the following criteria:

- document evidence from all sides
- double-check the facts
- represent only what can be verified and acknowledge limits of the research
- be specific

Step 2 Establish the parameters for interviews

Step 3 Conduct the interviews, observing the following guidelines:

- be prepared, clear about objectives, etc.,
- be informed, and sensitive to the context, especially emotional/psychological and security aspects

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<sup>52</sup> Women, Law and Development International and Human Rights Watch, Women's Rights Project, *Women's Human Rights Step by Step: A Practical Guide to using International Human Rights Law and mechanisms to defend women's human rights*, WLD International, Washington D.C., 1997. This book is a very useful resource for those undertaking human rights action. It can be ordered by contacting *Women, Law and Development International*:  
1350 Connecticut Avenue, NW  
Suite 407  
Washington DC 20036 -1701 USA  
Telephone: 1 202 463 7477  
Fax: 1 202 463 7480  
Email: wld@wld.org  
Or viewed and obtained via the website of WLDI: [www.wld.org](http://www.wld.org)

- be courteous
  - Step 4 Gather secondary data
6. Follow-up and Analysis
- Step 1 Show that there is a protected right (cite relevant legislation, treaties)
  - Step 2 Show that a women's human rights violation occurred
  - Step 3 Clearly demonstrate state responsibility
  - Step 4 Identify and evaluate potential solutions
  - Step 5 Report the findings
    - i. Writing a report, observing the following elements:
      - detail the information/evidence collected
      - use various sources of evidence (and specify these)
      - make a clear human rights argument/analysis
      - include conclusions and recommendations
      - include the government's response or failure to respond
      - send final report to those interviewed, and all others concerned
    - ii. Using the Media
      - identify potentially interested journalists
      - send key journalists advance copies of the report
      - issue a press release, with summary and key findings
      - hold a press conference
    - iii. On-going monitoring and Follow up

## C. A GUIDE TO BUILDING AN ADVOCACY STRATEGY

The following section of this chapter is based on Chapters 5 and 7 of the guide, *Women's Human Rights Step by Step*<sup>53</sup>. Boxed sections are taken directly from the guide.

### Critical Components of the Advocacy Process in Action:

1. Knowledge of the issue
  - Clarity about the human rights violation
  - Analysis of the political and legal context
  - Cases articulated
  - Remedy selected
  - Strategy designed
2. Leadership & Organization
  - Ability to identify and initiate advocacy effort
  - Ability to inspire and attract interest
  - Ability to manage process
  - Ability to mobilize support
3. Strategy
  - Clear Objectives and Demands
  - Activities organized
  - Plan of Action and schedule
4. Communication and Education
  - Message reaches public
  - Message reaches policy makers

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<sup>53</sup> *Ibid.*

- Necessary training and skills obtained
  - Political alliances formed
5. Mobilization and Action
- Plan implemented
  - Legal and political action undertaken
  - Interested and affected groups take action to secure change
  - Process monitored/evaluated
6. Progress towards Goal
- Achievement of Objectives
7. Design, Implementation and Evaluation

The different steps in building an advocacy strategy, incorporating the above components, are:

- a. Choose the issue
- b. Research the human rights issue and explore solutions
- c. Set Objectives and Demands
- d. Design the strategy
- e. Educate the public and gain support
- f. Secure required resources
- g. Mobilize for action and implement the strategy
- h. Evaluate the advocacy effort

*a. Choose the Issue*

**The first step in the advocacy process is to choose an issue. Organizers should satisfactorily answer or resolve these questions:**

- Is the issue a women's human rights issue?
- Does it affect only a few women or many?
- Will the resolution of the issue have an impact on only a few or on many?
- Does the issue have potential to educate a wide audience and engage them in support activities?
- Will the issue contribute to amplifying the understanding of women's human rights, expand the scope of state responsibility or enhance the effectiveness of the human rights system?

***Example:***

Developing an advocacy strategy to address trafficking in persons.

Trafficking in persons is a women's human rights issue, and affects an increasing number of women, who are taking the option of migrating for work in foreign countries. Chapters I and II of this Handbook describe the multiple forms of human rights violations committed against women at all stages of the trafficking process. The direct or indirect causes of these violations are also those arising from situations where women and girls do not enjoy the most fundamental rights, which should be the birthright of every person.

Many organisations and individuals are working in the context and the interfaces of migration, labour and human rights, proving that that trafficking in persons is a systematic reality in most societies and in all regions of the world. Advocacy action on this issue is therefore necessary; in order to collect and disseminate information, which will clarify the issues, as well as promote respect for the human rights of those caught in this nexus.

*b. Research the Issue and Explore Solutions*



**The next set of questions the organizers of an advocacy effort must resolve relate to the nature and extent of the human rights issue they have chosen**

- Is there a protected right that is being violated?
- What is the nature of the violation?
- How will the violation be proven? Are there documented cases that can be used to demonstrate the violation?
- Who is the violator? Can the state be shown directly or indirectly to be responsible for the violation?
- Is the rights issue clearly defined in the constitution, in human rights treaties or through common practice?
- Do national laws conform to international human rights standards? If so, why are they being violated?
- Does the public understand that the issue involved violation of human rights? Does the public tolerate the existence of the abuse or just not know about it?
- Have violations been challenged through courts or national level human rights mechanisms? Is it possible to use these for this case/issue?
- What is the probability of satisfactory resolution at the national level?
- Is there the possibility of using international mechanisms to address the issue? Is there direct access to these mechanisms or is it necessary to put pressure in other ways?
- What kind of remedies do these mechanisms offer and what is the probability of satisfactory resolution at the international level?
- For each of the mechanisms considered, what are the advantages and disadvantages of using them? Is there a direct role for advocates and what is the likelihood of advocates contributing significantly to the resolution of the issue?

***Example:***

It is clear that all the human rights that are violated in the process of trafficking are contained in the various international and regional treaties that governments have signed. The activities that need to be done under this step are:

- i. A thorough analysis of the local situation, based on actual local cases, including a study of the national laws and policies in the country, to determine:
  - whether the specific human rights violations identified as those related to trafficking are clearly articulated, and in which national laws, policies, etc.,
  - whether there are stipulations in these laws which contradict human rights principles. These contradictions can be highlighted, and illustrated by recounting concrete local cases.
  - whether there have been court cases or any other kinds of investigations into such cases, what the outcomes of prosecution or investigations are
  - whether there are any provisions for support of victims during such processes
- ii. Investigation of which instruments and mechanisms can be used at regional and international levels (see later in this chapter).
- iii. For all levels, it would be useful to collect examples of advocacy actions carried out in the past, or in other regions, paying attention to specific details about objectives, strategies employed and their results, as well as an evaluation of why a particular strategy was successful or not.

*c. Set Objectives and Demands*

**The next step in the process is to decide definitively what the strategy will be about and what the strategy will achieve.**

- What is possible to achieve with this issue?
- Are the advocacy objectives related to expanding the understanding of the rights involved or assuring the application of the rights?
- Does some practice need to be stopped or does some positive action need ~ be taken to comply with human rights standards?
- Is there a demand on the government? What exactly and specifically must it do? What will constitute satisfactory action?
- Is there an objective to pursue at the national level? Does it involve legislative reform or litigation?
- Is there an objective to pursue at the international level? Does it involve a remedy provided by one of the official human rights mechanisms or some alternative approach?
- Is it possible to spell out both final and interim objectives?

***Example:***

It will be most effective to determine a concrete local objective, around which an advocacy strategy at both national and international levels can be built. The best would be action around actual cases of trafficking, where any number of solutions need to be found. For example it could include safe shelters and different kinds of support for trafficked persons, legal obstacles such as imminent deportation, non-recognition by the judicial authorities of the seriousness of the case, resources for maintenance and temporary residence permits for persons whose cases are under investigation. In general, concrete local objectives may be any one or more of the following:

- To review and seek amendment or abolition of specific legislation, policies or practices that obstruct the proper investigation into cases of trafficking and proper handling of the trafficked person
- To obtain a (temporary) residence permit for a person
- To organize access to safe shelters
- To stop deportations that are unsafe, involuntary or that would violate international human rights standards

The demands will depend on the objectives; in any case they should be "realistic" i.e. there should be a good probability of success. The best strategy is to formulate long-term demands and immediate/short term demands. Achieving the latter will be the measure of the success of the immediate action. These "small" or "step-by-step" successes will be a motivating force for advocates, allies and other supporters. They also serve as pointers towards the greater (end) objective.

For example, in a situation where migrants without proper papers are usually immediately deported, one end objective might be *to achieve legal working and residence permits for all migrant women workers*. However, an achievable short-term objective, with a realistic chance of success, could be *to achieve temporary working and residence permits for those whose cases are under investigation or who fear persecution when they return to their countries*.

*d. Design the Strategy*

**With clarity about the issue, the possible solutions and the objective the advocacy effort will pursue, the next step is to lay out the strategy, that is, the type and sequence of actions that must be undertaken to achieve the goals. Again, a set of questions must be resolved as a precondition to assembling a strong, potentially effective approach.**

Given the goals and demands of the initiative, will the strategy rely heavily on legal actions? If so, what is the sequence of actions that need to be taken? Who is taking on the legal work? The NGO, an international human rights group or someone else?

- Does additional research need to be done? Who will do it?
- Does the strategy involve legislative work? Does a legislative proposal need to be drafted? How (by what process and by whom) will it be drafted and presented to the appropriate legislative body? Who will follow up with it?
- What will be done to educate the public about the issue, the litigation or the legislation?
- At what point will lobbying be needed? When will the public be drawn in?
- Will the strategy be primarily an awareness raising campaign? What methods and approaches will be used? Will there be a full-blown media campaign? Will there be face-to-face educational work with communities and potentially interested groups?
- Whatever the goal and actions devised as a strategy, is there a clear division of roles and responsibilities among the participants? Who will take charge of each aspect of the strategy?
- Are all aspects of the strategy covered and are the different skills/expertise of the groups being used appropriately and efficiently? Do participants understand and agree on the co-ordination of roles and activities and on how information is to be shared?
- Are all the activities spelled out in sequence on a calendar of events, charting the targets and long-range and interim goals to be achieved?

*e. Educate the Public and Gain Support*

**In addition to the general plan, special attention should be paid to public education and constituency (support base) building. To do this effectively, organisers need to do a thorough analysis of who is involved at various levels, who can be won over and what kind of information or participation they need.**

- Who are the advocacy initiative's potential allies? Supporters? Opponents?
- Where are they found? In institutions, communities, professional associations, in public places etc.<sup>7</sup>
- Who/what are the main targets? What can be done to educate it/them?
- What means will be used to educate and organise support? Will the media, symposia, marches, protests, hearings etc. be used?
- Will a "launch" be used as a significant occasion for publicity?
- What will be done to gain supporters and maximise their influence?
- What will be done to neutralise the influence of opponents?
- Are there different messages for different audiences? How will the media be managed?
- What will be done on an on-going basis to keep pressure on the violator, disseminate crucial information about the issue and invite people to help?

Steps *d.* and *e.* are integral to the whole strategy.

**Example:**

"Laying out the strategy" means to determine:

- i. which activities will be undertaken, and who these activities are directed at
- ii. who will carry out these activities, and in which time scale for each activity
- iii. who are the (real and potential) allies and supporters of this campaign
- iv. in which sector of the society/community are more allies/supporters needed, and how to achieve this
- v. if necessary, how to work collaboratively with others - NGOs, professionals, on specific aspects of the campaign, for example, with lawyers or jurists on legal aspects; with social workers on service aspects, and others on educational aspects.
- vi. 'Public education', 'awareness-raising', 'creating sensitivity' are all terms which are used to denote activities that lead to clarity and understanding about the issues at hand. Knowledge and understanding which leads to solidarity and action is the essence of human rights education, which in turn, is an integral part of any advocacy strategy.

*The following 3 steps of the advocacy strategy speak for themselves, especially steps f. and g., and can be used as a guide to complete the process.*

*f. Secure Required Resources*

**It is also a good idea to assess the resource needs of the initiative and determine when and under what conditions it is useful to begin.**

- How much will the advocacy initiative cost? Media? Meetings? Consultants?
- Besides the organizers and direct participants in the initiative, are there others who can provide volunteer or pro bono assistance?
- Are the human and material resources needed to carry out the strategy available?
- Which of these still need to be assembled before implementation starts?
- If financial resources are needed, how can they be acquired? Is it possible to begin without the full amount needed or will it be better to wait until all the resources are available before commencing?
- Do any of the persons involved require training in aspects of women's human rights relevant to the advocacy effort or in other skills, e.g. mobilization? How will this be done?
- What other preparation is needed for the participants or any of the principles involved? Training in fact-finding, etc?

*g. Mobilise for Action and Implement the Strategy*

**Once the plans and resources are in place, the only thing left to do is to implement the strategies**

*h. Evaluate the Advocacy Effort*

**Both during the course of the advocacy effort and at the end, advocacy strategies require ongoing monitoring of their progress and effectiveness. The purpose of monitoring is to enable the organizers of the advocacy initiative to decide whether they need to modify the strategy or to strengthen particular aspects of it. Any aspect of the initiative is open to assessment and adjustment. Some of the questions that might be addressed are:**

- What is the state of progress toward the goals?

- Are the plans working well or do they need adjustment?
- What's working; what's not?
- Is the information being received and disseminated accurate? Is the information reaching its target?
- Is the issue being kept sufficiently alive and visible to keep pressure on the violator?
- How is the violator responding?
- Is there any backlash to the advocacy effort that has developed? Are opponents organizing to counter it?
- Are the targeted decision-makers becoming sympathetic to the demands?
- What was the final result and what does it mean for women or survivors of human rights violations?
- How did their involvement assist the outcome of the advocacy initiative?

## **D. CONCRETE ACTIONS: SOME SUGGESTIONS**

### *1. Local Level*

On the local level many important actions need to be carried out in relation to trafficking. Networking among NGOs addressing trafficking, forming alliances with migrants, sex workers and domestic workers organisations are some key actions that should be taken. Also important, particularly in the context of this Handbook is utilising the HRS at the local level. We provide some suggestions as to how NGOs and professionals in various civil services can apply the HRS principles and provisions from Chapter II in their own daily work.

Advocating for the application of the HRS is a useful strategy. When different services and government agencies that deal with trafficked persons demonstrate how it is possible to approach and offer services to trafficked persons with respect for their rights, governments will find it more difficult to ignore their responsibilities. Professionals in these service agencies, whether government or non-government, are also in very good positions to recommend and work for concrete changes in policies, legislation and structures. These changes will create more channels to provide support services to trafficked persons that respect and even promote human rights.

Some of the relevant service agencies and other service providers who can be approached to cooperate in this effort are:

- a. Welfare departments and social workers
- b. Health/medical institutions – specialists, doctors, nurses other health professionals
- c. Judiciary / Legal institutions – private lawyers, government prosecutors, judges
- d. Law enforcement personnel - police (civil, immigration)
- e. NGO advocates - women's organisations, human and civil rights activists and others.

#### *a. Welfare Departments and Social Workers could:*

- provide counselling, psychological therapy/help
- provide or locate safe shelters in order to prevent trafficked persons (who are not criminals) from being held in detention centres

- provide a living allowance or social security benefits during period of stay in the country
- help look for, or create programmes /opportunities for employment
- organise vocational training or education, including language learning to facilitate possibilities of finding work
- provide a general orientation of the society in which the trafficked person is a stranger : legal system, cultural practices, travel information, political system etc.
- facilitate contacts, when desired, with community groups or NGOs, e.g. women organisations, civic organisations etc. or own community groups in the host country
- provide guidance and legal advisors in dealings with Court proceedings
- undertake proper preparation for an eventual return to her own country, in accordance with the wishes of the person concerned; especially regarding communications with agencies and other persons, including family members, in the country of origin.
- facilitate the application for longer-term stay visa or work permit, if the trafficked person cannot return to his/her own country or prefers to stay on in the host country
- facilitate the integration into the host country should he/she decide to stay on e.g. housing, application for eventual citizenship, loans, job placement
- facilitate the application for a stay visa and obtaining the right of citizenship for children born in the host country

*b. Health/medical institutions – specialists, doctors, nurses other health professionals could:*

- set up "One-Stop Service" stations in hospitals providing initial medical examinations, first instance counselling, police reporting and referrals to psychological therapy, physio-therapy, welfare and service provisions in a co-ordinated way that help minimise the trauma of trafficked persons
- provide a system of medical treatment not linked to the police for trafficked persons who do not want to contact the police
- adopt a multi-disciplinary approach to health care and remedy that holds the needs of the client, and not the needs of the bureaucracy, central in the service provided
- provide accessible medical care and help for migrant clients , regardless of their immigration status or the type of work in which they are engaged
- maintain strict confidentiality of clients' medical condition. Information should not be divulged to other parties, including the police or court in either host or country of origin, unless with the consent of the client
- make available medical/health information (in their own languages) so that clients, especially migrant clients, can gain control over their own bodies and health

*c. Judiciary / Legal institutions - private lawyers, government prosecutors, judges could:*

- guarantee that trafficked persons are not discriminated against by the legal system, on any grounds such as country of origin, religion, race, gender, sexual orientation, occupation as sex worker etc.
- prevent re-victimisation of trafficked persons in the course of seeking legal help, such as re-victimisation through:
  - repeated cross-examinations;

- violation of her privacy, through publicity of the case, or disclosure of her identity to the media;
- prejudice by judges and prosecutor on her case due to her nationality, race, gender, or type of work she is engaged in
- in cases against the trafficker, ensure that the prosecution collects and presents all evidence supporting the victim's claim of being trafficked and the judge makes it clear that there can never be a defence of consent in cases where slavery, forced labour or servitude are involved
- ensure that professional interpretation and translation services are provided throughout judicial processes
- undertake procedures for obtaining just compensation including restitution of wages earned; this could be financed from assets confiscated from traffickers
- ensure that clients are always accompanied by a social worker or other supporter who is familiar with her cultural background and language, and with the court proceedings
- ensure that clients are informed about the proceedings of the trial at all time so that they are able to maintain control, and can make their own decisions on the options available
- respect confidentiality and emotional well being of clients, by making it possible for them to testify within chambers, without the presence of the accused

*d. Law enforcement personnel - police (civil, immigration) could:*

- deepen knowledge and understanding of personnel on the issue of “trafficking”, in order to educate them on how to distinguish between criminals and victims, and how to respect the rights of victims in all cases
- sharpen sensitivity on such issues as violence against women, women’s rights and the perspective of migrant workers in order to decrease the possibility of law enforcement officers colluding with traffickers and other criminals who prey on women
- study and advise officials on ways in which law reform can lessen the power some laws give to law enforcement officials to abuse and harass vulnerable people, particularly migrant workers and trafficked persons; some options would include decriminalising prostitution and accepting it as legitimate work
- facilitate voluntary, humane and safe repatriation of migrants

*e. NGO advocates: women’s organisations, human and civil rights activists, others could:*

- set up privately-run, safe shelters, which could serve as models for state-run institutions
- organize referral services for and facilitate professional counseling and therapy services
- organize and facilitate peer contacts and support
- investigate, and make possible, employment for clients
- plan and implement advocacy actions to convince governments of their responsibility to make available all the above
- design and run gender, sensitivity and human rights trainings for personnel in at least all the sectors mentioned above

*f. Media personnel – journalists, editors, programme-makers could:*

- conduct thorough research on the cases under investigation and reporting in order to report accurately, particularly about trafficked persons
- be aware of the possible dangers of indiscriminate publicity to the people concerned
- avoid sensationalising cases, respect the privacy and confidentiality of persons involved and not reinforce negative stereotypes of women, migrants, sex workers and victims of trafficking
- play an important role in helping to educate and form public opinion on these issues, and in general promote understanding and respect of human rights, through the manner and substance of their work

## 2. Regional level

### *Looking for mechanisms/NGO alliances*

This Handbook has a broad international focus, but it is important to remember that regional mechanisms are very useful for NGOs also. Regional mechanisms applicable to trafficking vary widely from region to region. In some regions, such as Europe, strong regional mechanisms on trafficking are being considered or developed. In some countries, there are special projects or programmes set up by governments or IGOs to deal with trafficking. New projects may be planned, or in regions where little trafficking specific action exists, NGOs can lobby for action. In all cases, it is very important for NGOs to be involved and to give input into governmental and UN involvement at the regional level.

The aim of this section is to act only as an introduction or a guide for further action by NGOs at the regional level. It lists the mechanisms and organisations that NGOs should contact to determine the governmental and UN level action on trafficking in their region. Only sample provisions are taken from the relevant regional Conventions. Advocates are encouraged to read their regional Convention or mechanism thoroughly for a full understanding of how it can be used in relation to trafficking. Websites are listed so that you can find out more about the mechanisms that apply for your region.

#### *a. Governmental mechanisms*

This section draws from Chapter 3, Regional Human Rights Systems, of *Women's Human Rights Step by Step*<sup>54</sup>. Readers are also encouraged to refer to that resource for more information on regional human rights mechanisms in the context of women's rights.

##### *i. Europe*

Instrument	Sample provisions relevant to trafficking
European Convention on Human Rights <sup>55</sup>	<ul style="list-style-type: none"> <li>- Freedom from torture or inhuman or degrading treatment</li> <li>- Freedom from slavery, servitude or forced labour</li> <li>- Right to liberty and security of person</li> </ul>
European Social Charter <sup>56</sup>	<ul style="list-style-type: none"> <li>- Right of migrant workers and their families to protection and assistance</li> </ul>

<sup>54</sup> See page \*\* for full reference.



	-	Right to work
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment <sup>57</sup>	-	Freedom from torture or inhuman or degrading treatment or punishment

Europe has many intergovernmental regional mechanisms for the protection of human rights. These include:

- European Commission on Human Rights

Once domestic remedies are exhausted, NGOs and individuals can file complaints/petitions concerning violations of the European Convention.

- European Court on Human Rights

This considers individual and inter-state complaints concerning the European Convention and complaints concerning the European Social Charter. For the Charter however, complaints must be made through employers' or trade union organisations.

- European Committee on Prevention of Torture

Every citizen of the Council of Europe can invoke the European Convention on Torture whether or not they themselves are the victim of the torture, inhuman or degrading treatment or punishment. Thus an activist could bring a complaint to the Committee on behalf of a trafficked person who is not European.

- Organisation on Security and Cooperation in Europe (OSCE)

Individuals and NGOs can submit information to the OSCE's monitoring and reporting mechanisms. The OSCE mechanisms may be especially useful when trafficking occurs in situations of armed conflict.

In 2000, the OSCE has launched a Regional Plan of Action to combat trafficking in Member States. This Plan of Action focuses on need to prosecute traffickers under national laws and to evaluate the legal framework available to combat trafficking in persons in terms of identifying gaps and inconsistencies in existing legislation. In its policy principles, human rights is a core consideration of any action under the Plan of Action i.e. in terms of assistance, prosecution etc.

- European Union

EU citizens can bring legal cases to the European Court of Justice. Complaints calling for investigations or policy actions can be made to relevant EU bodies.

In 1997 the EU released The Hague Ministerial Declaration on European Guidelines or Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation.<sup>55</sup> The Guidelines focused on cooperation of governments and UN agencies, and action in the field of prevention, investigation and prosecution, and assistance and support at the national and European level.

- European Parliament

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<sup>56</sup> <http://www.coe.fr/eng/legaltxt/35e.htm>

<sup>57</sup> <http://www.penlex.org.uk/pages/eurocpt.html>

<sup>55</sup> Ministerial Conference under the Presidency of the European Union, The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, DCE/ 97-429, The Hague, 24-26 April

EU citizens can file written petitions to Parliament on any matter within the Union, which may subsequently be investigated and reported.

*ii. North and South America*

Instrument	Sample relevant provisions to trafficking
American Convention for Human Rights <sup>58</sup>	- freedom from slavery, forced labour, involuntary servitude
American Declaration on the Rights and Duties of Man <sup>59</sup>	- right to work under proper conditions and reasonable remuneration - right to leisure time
InterAmerican Convention for the Prevention, Eradication and Punishment of Violence Against Women <sup>60</sup>	- right to be free from violence - violence against women includes trafficking in persons and forced prostitution

*NB: The Convention and Declaration are now read in light of the Violence Against Women Convention.*

- The InterAmerican Commission on Human Rights

Individuals can make complaints to the Commission concerning violations of the American Convention for Human Rights and/or the American Declaration once domestic remedies have been exhausted. The Commission also does its own monitoring of countries, in which advocates can submit information about human rights abuses.

- The InterAmerican Court of Human Rights

Once cases have been accepted through the InterAmerican Commission, they can be brought before the InterAmerican Court for resolution.

- The InterAmerican Commission on Women

Advocates can submit cases to this Commission concerning cases of violence against women.

*iii. Africa*

Instrument	Sample provisions relevant to trafficking
African Charter on Human and Peoples' Rights <sup>61</sup>	- Freedom from slavery, torture, cruel, inhuman or degrading punishment and treatment - Right to liberty

- African Commission

Once domestic remedies are exhausted, a complaint can be made to the African Commission on Human and Peoples' Rights. Complaints are made against States by individuals, groups or other States concerning an issue/s of the Charter. Advocates could also bring trafficking as an issue to the African Commission and request a monitoring and reporting-based inquiry.

<sup>58</sup> <http://www.tufts.edu/departments/fletcher/multi/texts/BH547.txt>

<sup>59</sup> <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>

<sup>60</sup> <http://www.oas.org/cim/English/Convention%20Violence%20Against%20Women.htm>

<sup>61</sup> <http://www2.unimaas.nl/~ala/en/legal/africancharter.htm>

Remember, under regional human rights mechanisms in Europe, America and Africa, the regional body is the “last” resort, once all other domestic options have been exhausted. The process is often a slow one. It may take a year or more for a remedy. If you make a complaint, check if the country that the complaint is about is a Party to the regional treaty. Sometimes, complaints may still be brought against or concerning a non-signatory country however the procedure is usually different.

*iv. Asia*

No equivalent regional human rights mechanism exists in Asia. However, two sub-regional mechanisms are working on trafficking:

- South Asia Association for Regional Cooperation (SAARC)

SAARC has been negotiating a draft Convention of Trafficking in Women and Children to address trafficking in South Asian countries. Negotiations have been problematic as the draft Convention presently only covers women and children, covers trafficking for the purposes of prostitution only and makes no distinction between voluntary, non-coercive prostitution and forced prostitution. The same problems plagued the 1949 Trafficking Convention and led to the failure of that Convention.

NGOs in South Asia have formed networks to lobby for improvements to the draft Convention. They have held parallel Peoples' SAARC Forums at the annual SAARC summit meetings through which NGOs can lobby for changes and raise public awareness of trafficking and related issues.

- Asian Regional Initiative Against Trafficking (ARIAT)

ARIAT declared a Regional Plan of Action for 23 countries in the Asia-Pacific region in Manila at its first meeting in Manila in March 2000. The Plan of Action encourages countries to cooperate with one another and with civil society at all levels in the strategic areas of prevention, protection, prosecution, rehabilitation and reintegration. These areas are considered in a very broad way and we have yet to see how the Plan will be implemented. For further information on implementation of the ARIAT Regional Plan of Action, one should contact the US Embassy in the Philippines or the Philippines Foreign Affairs department, as these two governments were the co-hosts of the initial ARIAT meeting.

*b. United Nations Organisations with regional activities*

All of the following organisations have regional offices in each region. Some also have country offices. Websites are listed so additional and more specific information can be found.

*i. UNIFEM<sup>62</sup>*

The United Nations Development Fund for Women (UNIFEM) provides financial support and technical assistance to innovative programmes promoting women’s human rights and issues related to women’s empowerment and gender equality. UNIFEM works primarily at the country level but is moving towards regional programmes in which individual country projects are linked in terms of a common focus and approach adapted to national situations and capacities. At the regional level, UNIFEM undertakes advocacy as well as sponsoring action-research in area of trafficking in women.

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<sup>62</sup> <http://www.unifem.undp.org>

*ii. UNESCO*<sup>63</sup>

One of the aims of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is to promote human rights and fundamental freedoms. UNESCO takes action in international standard setting, in the preparation and adoption of international instruments and statutory recommendations. From time to time it prepares meetings and reports around the issues of trafficking and slavery-like practices. UNESCO has "official" relations with about 600 NGOs worldwide, and about 1 200 NGOs cooperate with UNESCO on projects on an occasional basis.

*iii. UNICEF*<sup>64</sup>

The United Nations Development Fund for Children (UNICEF) looks at child labour and sexual exploitation of children as a gross violation of children's rights. It has regional and country-level projects on trafficking. UNICEF works closely with other UN agencies such as the OHCHR, Committee on the Rights of the Child, ILO and the UN Special Rapporteur on the Sale of Children, Child Prostitution and Pornography in its projects on trafficking. In the areas of child labour and child sexual exploitation, UNICEF holds regular consultations with NGOs to discuss research findings, programme implementation findings and to develop complementary policies and programmes. For example, in West Africa UNICEF has been networking regularly with NGOs on child trafficking.

*iv. UNDP*<sup>65</sup>

The United Nations Development Programme (UNDP) has projects on trafficking under its focus areas of gender and HIV/AIDS in some regions. For example, in South East Asia UNDP has initiated an inter-country project between six countries "Trafficking in Women and Children in the Mekong Sub-Region"<sup>66</sup> under its Gender Division. Under a UNDP HIV and Development project in South Asia, trafficking and related issues are key areas of focus. In Europe, a regional Programme to support Gender and Development also focuses on trafficking in women. In each of these programmes there is partnership with relevant NGOs in the region.

*c. International Governmental Organisations with regional activities*

*i. ILO*<sup>67</sup>

At a regional level, the International Labour Organisation has many projects related to trafficking. ILO conducts activities such as research and advocacy on issues such as trafficking and child labour, at the sub-regional level. Most of these are implemented through national governmental organisations, and ILO coordinates the subregional aspect. In Asia, ILO-IPEC (International Programme on the Elimination of Child Labour) has just

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<sup>63</sup> <http://www.unesco.org>

<sup>64</sup> <http://www.unicef.org>

<sup>65</sup> <http://www.undp.org>

<sup>66</sup> Participating countries are Thailand, Vietnam, Burma, Cambodia, Laos and China (Yunnan Province).

<sup>67</sup> <http://www.ilo.org>

launched a five-country<sup>68</sup> project to reduce trafficking in the Mekong region. This three-year project includes research, advocacy and action strategies specifically addressing the areas of prevention and reintegration. NGOs are involved with ILO regional programmes in terms of regular consultation on projects, the opportunity to give feedback and in the implementation of some activities.

*ii. IOM<sup>69</sup>*

The International Organisation for Migration has many regional activities and programmes that concentrate specifically on trafficking and involve the cooperation of NGOs. Their regional trafficking activities include:

- conducting seminars and foras on a regional level to provide a forum for discussion on trafficking amongst governments, NGOs and other international organisations
- information gathering and research
- technical cooperation and capacity building for government authorities. Sometimes IOM enlist NGO assistance in providing this type of training to authorities.
- Information dissemination and campaigns in countries of origin
- Voluntary return and reintegration activities
- Protection and assistance such as counseling, legal aid and medical support health in coordination with NGOs.

### **NGO Action**

NGOs have formed alliances to combat trafficking and they often work with UN agencies and intergovernmental organisations. Generally, they are able to:

- Act as intermediaries between donors, governments and NGOs to facilitate funding to support NGO projects on trafficking
- Engage and collaborate with NGOs in their trafficking projects. NGOs may become partners in the project or carry out trainings or conduct field-research for a UN project. NGOs may be invited to be part of a Working Group that provides technical support and advice in managing the project. For example, GAATW is a member of the UN Working Group for the UN Trafficking in Women and Children in the Mekong Subregion Project.
- Facilitate partnerships amongst NGOs working on trafficking, governments and IGOs.
- Capacity building of organisations and networks in research, human rights or related areas.
- Strengthen local organisations and support community-based initiatives.
- Give political and financial support to the issue of trafficking in women.
- Access to information, a knowledge base on trafficking and human rights in the context of national, regional and international levels.
- Provide access to international mechanisms.

*Advocates and activists can:*

- *refer to the websites and consider the activities of these agencies in their country or region*
- *contact the agencies for information or support in trafficking projects*
- *ask to become involved in existing UN projects on trafficking*

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<sup>68</sup> Participating countries are Thailand, Vietnam, Cambodia, Laos and China (Yunnan Province).

<sup>69</sup> <http://www.iom.int>

- *in collaborating on UN or IGO projects, act as a watchdog to ensure human rights principles are being maintained*
- *inform UN agencies about the work of your organisation, the services you offer and your recommendations on what they need to do to better protect the rights of trafficked persons in your region*
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### 3. International level:

#### *a. Utilising the UN Instruments and mechanisms*

##### *UN Mechanisms : Enforcement and Monitoring*

The role of the UN is to set standards and norms for the international community, and to facilitate the transformation of rhetoric into action<sup>70</sup>. The UN system provides the skeleton, but it is up to members of civil society to actively flesh out that skeleton. As emphasised by the Special Rapporteur on Violence Against Women, the role of NGOs in that process of international standard setting is integral.<sup>71</sup>

In general, the UN mechanisms undertake the following steps:

- investigating and reviewing cases by human rights experts
- communication with governments to hear its side
- determining whether a human rights violation has been committed and if the government is legally responsible.

Activists and advocates can collect information and document cases and submit all their information to the members of the Committee or Working Group or to the relevant Rapporteurs; they can also try to meet with the investigating experts or their assistants personally, in order to discuss arguments.

The following are the UN mechanisms most relevant for action against trafficking:

##### *i. Treaty-based (convention-based) mechanisms*

- *Convention on the Elimination of Discrimination against Women*
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons attached to the Convention Against Transnational Organised Crime*
- *Convention on the Suppression of Trafficking and the Exploitation of the Prostitution of Others (1949)*
- *Convention on the Protection of All Migrant Workers and their Families (1990)* [put in different colour because will need explanatory note]

##### *ii. Extra-conventional mechanisms*

- *Office of the High Commissioner for Human Rights (OHCHR)*
  - *Commission on Human Rights*
    - *Special Rapporteur on Violence against Women*
    - *Special Rapporteur on Human Rights of Migrants*

<sup>70</sup> International Services for Human Rights, *Women's Rights in the UN*, Geneva, 1995, at 2.

<sup>71</sup> *Ibid.* quoting *Human Rights Defender*, Human Rights Centre of the University of New South Wales, Vol. 3, No. 6, 1994 at 3-4.

- *Sub-Committee on Prevention of Discrimination and Protection of Minorities*
  - *Working Group on Contemporary Forms of Slavery*
- *UN Specialised Agencies*
  - *International Labour Organisation (ILO)*

*i. Treaty-based mechanisms*

- ◆ *CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) 1979)*

CEDAW, or the Women's Convention is a broad non-discrimination treaty in relation to women. It is structured to commit governments to remove obstacles and provide conditions for women to exercise all their human rights in all fields. Article 6 of the Women's Convention follows the language of the 1949 Trafficking Convention:

"State parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

Recommendation No. 19 of CEDAW concerns violence against women. The Recommendation defines gender-based violence against women to be violence as discrimination that is directed against a woman because she is a woman, or that affects women disproportionately<sup>72</sup>. In regard to Article 6 of CEDAW, Recommendation No. 19 identifies poverty, unemployment and armed conflict as causal factors of trafficking and exploitation of prostitution of women<sup>73</sup>. Trafficking can occur for the purposes of prostitution, sex tourism, domestic labour and organised marriage<sup>74</sup>.

Despite Recommendation No. 19, the Committee that monitors the Women's Convention largely requires governments to answer questions about prostitution and the rights of women in that context. State Parties to CEDAW must provide reports every four years. The Committee on the Elimination of Discrimination against Women considers progress of State Parties in implementing the Convention. The Committee reports on its activities annually to ECOSOC and to the General Assembly. It makes suggestions and general recommendations based on its examination of reports from State Parties. National and regional NGOs may be involved in the preparation of a State's report and can urge the government to submit its report on time. NGOs can also submit shadow reports (parallel to the country reports with supplementary information) for consideration by the Committee, and NGOs can attend as observers.

- *Optional Protocol to CEDAW*

The Optional Protocol to CEDAW enables individuals or groups of individuals to submit written individual complaints to CEDAW. However, the complaint can only concern countries that are a party to the Protocol and as yet, only 23 countries have signed the Optional Protocol<sup>75</sup>. Complaints cannot be anonymous. All domestic remedies must have been exhausted and the complaint cannot have

<sup>72</sup> Article 6 General Recommendation No. 19 (Eleventh Session, 1992)

<sup>73</sup> Article 14-16.

<sup>74</sup> Article 14.

<sup>75</sup> For latest information on ratification of the Optional Protocol go to <http://www.unhchr.ch/html/menu3/b/treaty8b.htm>

been or be examined under another international investigation or settlement before the Committee will consider the complaint. The complaint must be compatible with the provisions of the Convention, hence in regard to trafficking, a complaint could be brought in relation to Article 6 (the trafficking article) and/or other relevant articles under CEDAW mentioned in Chapter I.

If the Committee admits a complaint, they will examine it and take further action. They may require a State to provide additional information, under some circumstances the Committee may make a confidential investigation and/or visit the State Party. Findings or recommendations are transmitted to the State Party concerned who then may respond, and the State may be asked to provide the Committee with details of remedial efforts taken following an inquiry. Due to its newness, it is hard to gauge the effectiveness of this strategy. Though at present it is limited due to the low number of ratifications in the future, this may become a very useful UN mechanism.

### ***NGO Action***

*Activists and advocates can*

- *make their own assessment of the state of human rights for women in their countries*
- *produce shadow reports which give the true picture (namely, from the women's experiences) and reality of women's migration and the process of trafficking*
- *help trafficked women to submit complaints under the Optional Protocol procedure.*
- *If their State is not a signatory to the Optional Protocol, lobby the government to sign the Optional Protocol to CEDAW.*

◆ *Protocol to Prevent, Suppress and Punish Trafficking in Persons attached to the Convention Against Transnational Organised Crime*<sup>76</sup>

The Convention Against Transnational Organised Crime and the Trafficking Protocol are focussed on crime control. Their strong law enforcement provisions will help governments organise and share information about organised crime, increasing governments' ability to find and prosecute traffickers. The stated purposes of the Trafficking Protocol are<sup>77</sup>:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist victims of trafficking in persons, with full respect to their human rights; and
- (c) To promote and facilitate cooperation among States Parties on these objectives.

All of the provisions of the Convention apply to the Trafficking Protocol. The two instruments together contain numerous provisions to protect and assist trafficked persons who agree to become witnesses. However, they do almost nothing to protect the rights of trafficked persons who do not become witnesses. In fact, the law enforcement provisions of the Protocol are mandatory state obligations while the protection and assistance provisions in the Protocol are discretionary. Governments that sign the Protocol "shall consider measures" or "shall endeavour to" provide protections and assistance "in appropriate cases". It is unfortunate that the protections provisions are so weak but governments were almost unanimous in their opposition to mandatory language.

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<sup>76</sup> At the time of print, the Protocol was not still not in its final version. However, it should be available from <http://www.uncjin.org/Documents/documents.html> (check this!)

<sup>77</sup> Article 1.



The Trafficking Protocol will be opened for signature in December 2000 and it will come into force once 40 countries have ratified it. [then there will be a Committee monitoring mechanism. Committee to the Convention on Transnational Organised Crime? State Parties will be expected to submit reports...?? How often?? Must read Convention when out... refer to UN docts website...]

#### *NGO Action*

##### *Activists and advocates can*

- *Lobby governments to sign the Convention and the Protocol. Despite its extremely weak protections provisions, we should encourage our governments to sign the Convention and the Protocol in order to ensure that as many governments as possible agree to cooperate on information exchange about organized crime and to extradite traffickers for prosecution.*
  - *Draw attention to the shortcomings of the Protocol, in terms of lack of human rights protection for trafficked persons.*
  - *Once governments sign the Protocol, lobby their governments to adopt domestic laws for better protection for the rights of trafficked persons in line with the Human Rights Standards (see Annex 1).*
- ◆ *Convention on the Suppression of Trafficking and the Exploitation of the Prostitution of Others (1949)*

As explained in chapter I, this Convention is extremely problematic. The Special Rapporteur on Violence against Women, in her capacity as also one of the mechanisms of the UN, has, in her last report to the CHR, delivered a strong official critique of this Convention as a human rights instrument, and called for a new modern instrument which will promote the rights of women.

#### *NGO Action*

- *NGOs can use the 2000 report of the Special Rapporteur on Violence Against Women in an advocacy strategy to realize a new international instrument which will in time replace the 1949 Convention.*

- ◆ *Convention on the Protection of All Migrant Workers and their Families (1990)*

As mentioned in Chapter 1, despite the strong protection this Convention offers for migrants' human rights, only fourteen countries have ratified the Convention to date, therefore it has no enforcement mechanism. When the Migrant Workers Convention is ratified by 20 countries then a Committee will be set up to review implementation of the Convention. Those countries who have ratified the treaty will be obliged to report to the Committee within a year of ratification, and after that every five years. The report should deal with the legislative, judicial, administrative and other measures the government has taken to protect the rights mentioned in the Convention.<sup>78</sup>

#### *NGO Action*

*NGOs can lobby their governments to sign the Migrants Workers Convention. The countries that have signed to date are Azerbaijan, Bosnia and Herzegovina, Cape Verde,*

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<sup>78</sup> Ravindran, *Human Rights Praxis: A Resource Book for Study, Action and Reflection*, Asian Forum for Human Rights and Development [FORUM-Asia], Bangkok, 1998 at 213.

*Colombia, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka and Uganda.*

*ii. Extra-Conventional Mechanisms*

◆ *Office of the High Commissioner for Human Rights (OHCHR)*

The OHCHR is based in Geneva. Although most of the mechanisms relevant to trafficking fall under divisions below the OHCHR, in March 1999 the OHCHR itself established the OHCHR Trafficking Programme to ensure the integration of human rights into international, regional and national anti-trafficking initiatives. The programme emphasises developing legal standards and policy guidelines from the human rights perspective.

For example, the OHCHR organised a UN Asia-Pacific Seminar of Experts on Trafficking and Human Rights of Migrants, in preparation for the World Conference on Racism. Several NGO representatives were invited to act as experts, and thus had the opportunity to make presentations to governments concerning trafficking. These NGOs were also able to give significant input into the draft Recommendations as the outcome of that meeting, which will go to the 2001 World Conference. The OHCHR is keen to build alliances with NGOs active on the trafficking issue, and aims to act as a catalyst and support the work of others.

***NGO Action***

*NGOs can*

- *contact the Secretariat of the OHCHR in order to find out how to be involved in regional or international aspects of the Programme, especially future meetings and how they can participate in activities of the OHCHR:*

*OHCHR Secretariat.*

*Palais des Nations*

*1211 Geneva 10*

*Switzerland*

*Tel: 0041 22 917 9000*

*Fax: 0041 22 917 0213*

*Email: [secrethchr@unog.ch](mailto:secrethchr@unog.ch)*

*Website: [www.unhcr.ch](http://www.unhcr.ch)*

◆ *Commission on Human Rights*

The Commission on Human Rights falls under the OHCHR alongside the SubCommittee on Prevention of Discrimination and Protection of Minorities. The Commission meets in March every year in Geneva. Under the Commission, Working Groups and Special Rapporteurs are given mandate to investigate certain areas of human rights violation. The most useful mechanism under the Commission on Human Rights with regard to trafficking is the Special Rapporteurs.

- *Special Rapporteurs*

Special Rapporteurs are expert individuals appointed by the High Commissioner for Human Rights. They examine, monitor and publicly report on human rights situations in specific countries or territories (country mandate) or on specific issues of human rights violations worldwide (thematic mandate).<sup>79</sup> Special

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<sup>79</sup> <http://www.unhcr.ch/html/menu2/xtraconv.htm>

Rapporteurs produce annual reports on their theme area or aspects of their theme area to the Commission on Human Rights. 2 of the thematic mandate special rapporteurs are especially relevant to trafficking, the Special Rapporteur on Violence Against Women and the Special Rapporteur on Human Rights of Migrants.

*The Special Rapporteur on Violence Against Women* is Ms Radhika Coomaraswamy, based in Sri Lanka. She devoted her 2000 report to "trafficking in women, women's migration and violence against women"<sup>80</sup>, as referred to already in Chapter I. You can download the report from the website [unhchr.ch/huridocda.nst](http://unhchr.ch/huridocda.nst). It is a comprehensive analysis of trafficking and migration from the human rights perspective, and provides clear recommendations from action at the national and international level. NGOs could use the Special Rapporteur's report as a tool to identify human rights-based strategies and programmes to address trafficking, and to analyse governmental responses to the problem.

*The Special Rapporteur on Human Rights of Migrants* is Ms Gabriela Rodriguez Pizarro, based in Costa Rica. She examines human rights violations of migrants and makes recommendations at all levels concerning how to prevent and remedy such violations. Her mandate includes a gender perspective to give special attention to violence against migrant women. Her mandate is also particularly concerned with the obstacles and difficulties for the return of undocumented migrants or migrants in an irregular situation. Thus she may be especially interested in information from NGOs concerning repatriation and reintegration strategies for trafficked persons.

### **NGO Action**

*Activists and advocates can*

- *submit relevant research and information to Special Rapporteurs*
- *collect as many concrete cases as possible of human rights violations of trafficked persons for submission*
- *lobby own government to invite the Special Rapporteur to make a country visit and conduct a fact-finding mission*
- *if the Special Rapporteur does visit your country, arrange for your organisation, or a group of NGOs to meet her and discuss your issues*
- *submit information to*

*Special Rapporteur on Violence Against Women  
or Special Rapporteur on Human Rights of  
Migrants*

*Centre for Human Rights*

*United Nations Office*

*Palais des Nations*

*CH-1211 Geneva 10*

*Switzerland*

*Tel: 41 22 917 1234*

*Fax: 41 22 917 0123*

*Email:*

*Special Rapporteur on Violence Against Women:*

[radhika@sri.lanka.net](mailto:radhika@sri.lanka.net)

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<sup>80</sup> *Supra* note 4.

*Special Rapporteur on Human Rights of  
Migrants: [sway.hchr@unog.ch](mailto:sway.hchr@unog.ch),  
[pespiniella.hchr@unog.ch](mailto:pespiniella.hchr@unog.ch)*

**An example of how NGOs can help Special Rapporteurs:**

In 1996, GAATW and STV prepared an international report on trafficking in women forced labour and slavery-like practices in marriage, domestic labour and prostitution<sup>81</sup> (see extract in Chapter III). This international report was presented to the Special Rapporteur on Violence Against Women, Radhika Coomaraswamy in October 1996. Trafficking and forced prostitution were issues included in Coomaraswamy's third report (on the topic of violence against women in the community), presented to the Commission on Human Rights in March 1997. In fact, Coomaraswamy referred to the information collected in the report, amongst other sources, in her analysis on contemporary manifestations on trafficking in women.

◆ *Working Group on Contemporary Forms of Slavery*

The Working Group reports to the SubCommittee on Prevention of Discrimination and Protection of Minorities. The 5 member Working Group meets once a year in June in Geneva and its mandate is to review developments in the field of slavery and slavery-like practices in all their contemporary manifestations, including trafficking in persons. The Working Group attempts to monitor application of the slavery conventions and each annual meeting focuses on a specific theme. In 1999 the Working Group considered trafficking of women into the global sex industry. The 2001 meeting of the Working Group will again focus on trafficking in persons.

This Working Group has a mandate to review action on trafficking by State Parties to the 1949 Trafficking Convention. However, although the Working Group is empowered to receive and publicly review information on trafficking, it lacks the power to take any action on the reports<sup>82</sup>. In this way, the Working Group is generally regarded an ineffective body for action of trafficking. Furthermore, past reports of the Working Group on trafficking have not centred on the protection of human rights of trafficked persons, but supported adoption of repressive strategies such as increased ratification of the 1949 Trafficking Convention.

Related to the Working Group is the **UN Voluntary Trust Fund on Contemporary Forms of Slavery**. This fund provides travel and project grants to NGOs dealing with issues of contemporary forms of slavery. Funds are approved for NGOs to travel to the sessions of the Working Group, or to NGOs who can contribute to a deeper knowledge of the Working Group on the issues related to contemporary forms of slavery.

***NGO Action***

*Activists and advocates can*

- *gather and submit information relevant to the yearly theme of the Working Group*

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<sup>81</sup> *Supra* note 26.

<sup>82</sup> *Supra* note 4 at para 26.

- attend the Working Group meetings and participate<sup>83</sup> in preceding NGO seminars. These seminars are frequently held before the meeting to raise awareness of Working Group members on the particular thematic issue of that meeting. Thus NGOs can present information and make recommendations directly to Working Group members.
- apply to the UN Voluntary Trust Fund on Contemporary Forms of Slavery for travel and project grants. For more information contact:
  - Office of the High Commissioner for Human Rights
  - Support Services Branch/Trust Funds Unit
  - CH-1211 Geneva 10
  - Tel: (41-22) 9179 164, 9179 145 or 9179 266
  - Fax: (41-22) 9179 017
  - Email: [ortado-rosich.hchr@unog.ch](mailto:ortado-rosich.hchr@unog.ch) or [dpremont.hchr@unog.ch](mailto:dpremont.hchr@unog.ch)
- find out more information about how to write to Special Rapporteurs and Working Groups from <[http://www.unhchr.ch/html/menu2/8/ex\\_conv.htm](http://www.unhchr.ch/html/menu2/8/ex_conv.htm)

- ◆ UN Specialised Agencies
- International Labour Organisation

The ILO has a formal but independent relationship with the UN. It has a tripartite structure of governments, trade union representatives and business representatives. ILO conventions set standards relating to working conditions and worker rights. In Chapter I we discussed ILO Conventions No. 29, 105 and 182 as most relevant in the context of trafficking.

Countries become parties to ILO Conventions in the same way they become parties to regular UN conventions. The ILO Committee of Experts on the Application of the Conventions and Recommendations examines reports submitted by Governments on compliance with the conventions that they have ratified. If the Committee feels a government has not fully complied with convention standards, it will make comments directly to the government and employers' and workers' organisations, or detailed observations in cases involving more serious or long-standing cases. Observations are published in the Committee's report.

### **NGO Action**

*Activists and advocates can*<sup>84</sup>

- collaborate with trade unions and employee's organisations
- provide parallel information on State Reports and submit them through trade unions or employers organisations for submission to the Committee of Experts.
- Attend the annual International Labour Conference in June in Geneva as observers, but with the possibility of consulting with delegates

### **b. Campaign for Endorsement and Implementation of the Human Rights Standards for the Treatment of Trafficked Persons (HRS) and a new rights-based modern instrument**

The above suggestions for NGO activities can be undertaken separately, for those who wish to or for those who are only able to undertake activities at one level, whether local/national, regional or international. NGOs can also undertake activities at all those

<sup>83</sup> NGOs are required to have ECOSOC status for participation in the Working Group meeting.

<sup>84</sup> *Supra* note 71 at 32.

levels. Such a comprehensive programme can take the form of a campaign for endorsement and implementation of the HRS and for a new international instrument to replace the 1949 Trafficking Convention.

This Campaign comprises the following components:

- ❑ Education on the human rights issues involved
- ❑ Investigation and
- ❑ Analysis of actual local conditions to identify obstacles to implementation of the HRS
- ❑ Action to remove these obstacles, and to implement the HRS

The action plan is a general framework, indicating the aims of action to be undertaken at different levels. Details of the action plan and its implementation can be worked out by implementing groups at local and national levels, as an exercise.

The general objectives of the HRS Campaign are:

National/Local levels:

- Education on the rights of trafficked persons, using the HRS, this Handbook and the Reports of the Special Rapporteur on Violence Against Women as basic resource materials.
- Endorsement and implementation of the HRS by relevant government and civil agencies (see ‘Utilising the HRS at local/national levels’ above).

International/Regional levels:

- A new rights-based instrument to replace the 1949 Convention (long-term), based on the critique of the Special Rapporteur on Violence against Women in her 2000 Report and the shortcomings of the new Anti-Trafficking Protocol.

At the various action levels, the following activities are proposed:

With the women concerned, with their families, in basic communities:

- Organise study sessions on the HRS,
- Obtain the opinions of the participants on the local obstacles to implementation of the HRS and ways to overcome these obstacles
- Work out together a plan to identify and approach significant persons (like a village head, a teacher, a doctor) who are sympathetic to the principles underlying the HRS, so that they can participate in the campaign.

Nationally, referring to the Report and the recommendations of the Special Rapporteur on Violence Against Women:

- Send the HRS to the relevant government authorities, and professional associations of lawyers, social workers, medical personnel, law enforcement officers, immigration officers, human rights organisations
- Ask for a meeting to discuss the possibilities of implementation of the HRS
- Identify the obstacles to implementation, and ways to overcome the obstacles
- Identify significant supportive persons, and engage their co-operation

At a regional level,

- Identify regional professional associations of health workers, social workers, lawyers, law enforcement officers, as well as regional human rights mechanisms
- Introduce HRS to them, and ask for their co-operation in influencing national associations
- Obtain feed-back as to obstacles for the implementation of the HRS and ways of removing these obstacles, and action suggestions

Internationally,

- Intensify lobby activities at relevant fora, (see ‘Regional mechanisms’ and ‘UN mechanisms’) like CHR, CSW, Crime Commission (Anti-Trafficking Protocol-check this when P comes out that this is relevant mechanism!), Working Group Contemporary Forms of Slavery, ILO, IOM.
- Send HRS and Campaign proposal to all members of these organs and ask for a response as to the obstacles to implementing the HRS, drawing attention to the shortcomings of the Anti-Trafficking Protocol.
- Keep regularly in touch with the Special Rapporteur on Violence Against Women and Special Rapporteur on Human Rights of Migrants and their assistants, by sending news items and other relevant resources to them.

### ***Conclusion***

This Chapter sought to concretise the concepts found in preceding Chapters in order to provide practical recommendations at all levels on how to adopt human rights-based strategies in the context of trafficking. The step by step guides act as a checklist of considerations to remember in designing research and advocacy strategies on trafficking. This Chapter acts as a guide to further resources and other useful organisations related to trafficking and human rights.

Readers can contact the following organisations in each region for more information about regional mechanisms and appropriate strategies to address trafficking from the human rights perspective.

#### **Africa**

Bisi Olateru-Olagbegi  
 Women's Consortium of Nigeria  
 13 Okesuna St, off Igobosere Rd,  
 Lagos  
 Nigeria  
 Email: [bisi@rcl.nig.com](mailto:bisi@rcl.nig.com)  
 Tel: 234 263 5331  
 Tel/Fax: 234 263 5300

#### **Asia-Pacific**

GAATW  
 PO Box 36, BangkokNoi Post Office  
 Bangkok 10700  
 Thailand  
 Email: [gaatw@gaatw.org](mailto:gaatw@gaatw.org)  
 Tel: 662 864 1427/8  
 Fax: 662 864 1637

**Europe**

Elaine Pearson  
Anti-Slavery International  
Thomas Clarkson House, The Stableyard, Broomgrove Rd,  
London SW9 9TL  
England  
Email: [e.pearson@antislavery.org](mailto:e.pearson@antislavery.org)  
Tel: 44 207 501 8920  
Fax: 44 207 738 4110

**Latin America**

Fanny Polania  
Fundacion Esperanza  
Calle 70 # 11-30  
Bogota  
Colombia  
Email: [colombial@andinet.com](mailto:colombial@andinet.com)  
Tel: 571 212 3710 or 212 2010  
Fax: 571 545 4911

**North America**

Ann Jordan  
International Human Rights Law Group  
1200 18th Street., NW  
Washington D.C. 20036  
U.S.A.  
Email: [annj@hrlawgroup.org](mailto:annj@hrlawgroup.org)  
Tel: 1 202 822 4600  
Fax: 1 202 822 4606

Readers can contact GAATW if they have further questions regarding more specific actions and projects to combat trafficking from the human rights perspective.



## Appendix A: Human Rights Standards for the Treatment of Trafficked Persons

## Appendix B: List of Bibliographic Resources

Asian Forum for Human Rights and Development (Forum-Asia), *Handbook on Fact-Finding and Documentation of Human Rights Violations*, Forum-Asia, Bangkok, 1994.

Centre for Human Rights, *Human Rights Fact Sheet No. 10 The Rights of the Child*, United Nations, Geneva, 1990.

Centre for the Study of Human Rights, *Women and Human Rights: The Basic Documents*, Columbia University, New York, 1978.

Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective: 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.*

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Foundation Against Trafficking in Women (STV) *International Report Project on Trafficking in Women: Latin America and Caribbean Region*, 1996.

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Global Alliance Against Traffic in Women, *Human Rights in Practice*, Bangkok, 1999.

Hannum, *Guide to International Human Rights Practice*, University of Pennsylvania Press, Philadelphia, 1992.

International Human Rights Law Group, Global International Services for Human Rights, *Women's Rights in the UN*, Geneva, 1995.

International Women's Tribune Centre, *Rights of Women: A Guide to the Most Important United Nations Treaties on Women's Human Rights*, IWCC, New York, 1998.

Miller and Stewart (Chair and Rapporteur), 'Report from the Roundtable on the Meaning of "Traffic in Persons": A Human Rights Perspective', *Women's Rights Law Reporter*, 20.1:11, Rutgers University, 1998.

Nowak (ed.), *World Conference on Human Rights*, Ludwig Boltzmann Institute of Human Rights, Vienna, 1994.

Ravindran, *Human Rights Praxis: A Resource Book for Study, Action and Reflection*, Asian Forum for Human Rights and Development [FORUM-Asia], Bangkok, 1998.

Stewart (Rapporteur), *Report from the Roundtable on the Meaning of "Traffic in Persons": A Human Rights Perspective*, International Human Rights Law Group, Washington D.C., 1998.

Wijers & Lap-Chew Trafficking in Women, *Forced Labour and Slavery Like Practices in Marriage, Domestic Work and Prostitution*, STV, Utrecht, 1997.

Women, Law and Development International and Human Rights Watch, Women's Rights Project, *Women's Human Rights Step by Step: A Practical Guide to using International Human Rights Law and mechanisms to defend women's human rights*, WLD International, Washington D.C., 1997.

Women's Rehabilitation Centre and CEDNA, *Advocacy Against Trafficking in Women Training Manual*, WOREC, Kathmandu, 1999.

Appendix C: list of useful web resources on trafficking

If readers do not have access to the internet, they can contact GAATW for these resources.

GAATW  
PO Box 36, BangkokNoi Post Office  
Bangkok 10700  
Thailand  
Email: [gaatw@gaatw.org](mailto:gaatw@gaatw.org)  
Tel: 662 864 1427/8  
Fax: 662 864 1637