Human Rights & Trafficking in Persons

15th Informal ASEM Seminar on Human Rights

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Human Rights & Trafficking in Persons
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Human trafficking is a global challenge which requires a multi-regional and multilateral response. The 15th Informal ASEM Seminar on Human Rights provided an opportune moment to discuss Human Rights and Trafficking in Persons in the ASEM framework. It is hoped that the joint recommendations, best practices and the different viewpoints that were shared by over 130 participants from across Asia and Europe will reach a wider audience through this publication, and contribute to the strengthening of a rights-based approach to counter human trafficking across Asia, Europe and beyond. For the Asia-Europe Foundation (ASEF), it has been an honour to be part of this process, and on behalf of all the co-organizers, I would like to express my sincere appreciation to everyone who facilitated this successful programme.

Our thanks must go first to government and civil society participants, who generously shared their experiences and expertise. The Seminar and its findings, identified in this publication, would not have been possible without their inputs and contributions. It is our sincere hope that the discussions in Montreux provided a fruitful basis for continued knowledge exchange and enhancing of networks between the two regions.

Our deep appreciation goes to the Federal Department of Foreign Affairs (FDFA) of Switzerland, which so generously and graciously hosted the 15th Informal ASEM Seminar on Human Rights. We would especially like to thank Federal Councillor and Head of FDFA, H.E. Mr. Didier Burkhalter, for his thoughtful welcome address. We also wish to thank other colleagues from FDFA: the ASEM Senior Official, Ambassador Johannes Matyassy and the ASEF Governor, Ambassador Thomas Kupfer, Mr. Thomas Meier-Nidecker and Ms. Valérie Wagner for their tireless preparation of the Seminar.

We are deeply grateful to all our speakers, Ambassador Madina Jarbussynova, Ambassador Michele Ramis, and Ms. Veronica Cody. Their informative addresses about the on-going global, regional and national efforts in implementing a rights-based approach set the tone for the seminar.

We were extremely fortunate to have had Dr. Anne Gallagher and Ms. Klara Skrivankova as the two main seminar rapporteurs. They provided a comprehensive background paper, which served as a strong foundation for the discussions. They also compiled the final Seminar Report for this publication. We also note with deep appreciation the work done by Dr. Julia Planitzer and Dr. Aurora Javate de Dios in preparing and presenting the discussions from their respective working groups.

We are also very thankful to have had four moderators, who are experts in their field, and who used their knowledge to skilfully facilitate their respective working group sessions. We thank Mr. Rafendi Djamin, Mr. Anders Lisborg, Dr. Miwa Yamada and Ms. Anniina Jokinen.

We would like to express sincere gratitude to our co-organizers, the Raoul Wallenberg Institute, the Ministry of Foreign and International Development of France, and the Department of Foreign Affairs of the Philippines, who together with the members of our Steering Committee, provided valuable support and advice to ensure a strong and relevant programme.

Finally, we also thank the seminar’s secretariat staff at the Asia-Europe Foundation (ASEF): Mr. Thierry Schwarz, Ms. Ratna Mathai-Luke, Ms. Rebecca Stetter and Ms. Ayesha Iskander. Their hard work and diligence brought this Seminar from the planning, through execution, to the ultimate publication of this volume.

Ambassador ZHANG Yan
Executive Director
Asia-Europe Foundation (ASEF)
Didier BURKHALTER, Federal Councillor, Head of the Federal Department of Foreign Affairs of Switzerland
(Welcome address delivered at the opening plenary of the 15th Informal ASEM Seminar on Human Rights)
Check against delivery

Madam Special Representative, Ladies and Gentlemen,

Welcome to Switzerland, welcome to Montreux. I am pleased to be with you today at the opening of the 15th Informal ASEM Seminar on Human Rights.

ASEM is an ideal platform for dialogue and cooperation. Political dialogue is essential to foster good relations between Asia and Europe. And discussing political, economic and cultural issues, with the aim of enhancing mutual understanding, is essential for fruitful cooperation. This is why Switzerland became a member of ASEM. And this is also why Switzerland advocates strengthening the role of ASEM as a forum where political questions can be discussed in a spirit of respect and equal partnership.

It is important that we speak and identify common ground, because Asia and Europe have grown closer together. Switzerland’s trade with Asia is a case in point: In 2000, about 12 per cent of our total trade was with Asia. Today, about 25 per cent of our goods (72 billion US dollars), are exported to or imported from Asia. And we expect this share to increase in the coming years.

We are therefore deepening our contractual network with our Asian partners. Switzerland was the first country in Continental Europe to conclude a free trade agreement with Japan in 2009 and with China in 2014. Through the European Free Trade Association (EFTA), we have agreements with three more countries in Asia and we are currently working on expanding our network further.

We have friendly relations with all Asian and Pacific countries, large and small, and we constantly aim to nourish and strengthen bilateral relations. This year, I travelled twice to Asia, visited six Asian countries and met with many Asian colleagues on the margins of international conferences, such as the ASEM Foreign Ministers’ Meeting in Luxembourg earlier this month.

This greater interdependence with Asia has also prompted Switzerland to increase its presence in important venues for regional cooperation, such as ASEM. We also aim to conclude a partnership with ASEAN. We want to engage with our Asian partners in dialogue not only on economic matters but also on political ones, for example on international security issues. I promoted the core idea of the Organization for Security and Co-operation in Europe (OSCE), that is to say using an inclusive, consensus-based and comprehensive approach to tackle challenges and crises in Europe and the Asia-Pacific region. Many of my colleagues agreed that it would be useful to strengthen the dialogue between Asia and Europe also on such issues.

Finally, Switzerland continues to stand in solidarity with its partners through its humanitarian assistance, development cooperation and human security efforts. We also offer our good offices to facilitate negotiations for peace processes and conflict resolutions. Switzerland has a genuine interest in the sustainable development and stability of the region, which in turn influence global stability.

The protection of human rights is the basis for global stability, peace and prosperity. Based on our long humanitarian tradition, Switzerland is committed to making a lasting and useful contribution in this field at the international level.
Switzerland therefore attaches particular importance to the Informal ASEM Seminar on Human Rights. This seminar reflects Swiss principles: It is based on the universality of human rights and human dignity, dialogue and bridge-building.

Strengthening human rights is a priority of Switzerland’s foreign policy, provided for by the Federal Constitution. Human rights violations, armed conflicts and political crises endanger human beings and impede social and economic prosperity.

Any environment that facilitates illicit financial flows, corruption and organized crime is a threat to human security. Human rights and the rule of law are the basis for economic growth, for sustainable development and hence for long-term stability and peace.

Switzerland is committed to dialogue and a culture of compromise, to political and social participation and to inclusive, democratic decision-making. Through dialogue and perseverance, we can find and develop viable political solutions for key international issues. This seminar fosters dialogue not only between Asia and Europe, but also between governments and civil society. This cooperation is essential to promote human rights and protect victims whose rights are being violated.

Thanks to its neutrality, impartiality and credibility, Switzerland can play the special role of a bridge builder. With its experience and expertise and its network of representations abroad, Switzerland is well placed to build bridges between ASEM member states and between various stakeholders. By searching for compromises and constructive, concrete and innovative solutions, Switzerland can act as a facilitator between different interests and values, and thereby contribute to the goal of building a more peaceful world.

These core values, the regional aspect and the concrete and informal nature of this seminar combine essential aspects for a long-term and sustainable Swiss engagement. I am therefore very pleased to announce that Switzerland will join the Informal ASEM Seminar on Human Rights as a partner. This offers new possibilities for cooperation and most importantly for promoting dialogue and building bridges between the ASEM member states and their various stakeholders. This partnership underlines Switzerland’s political commitment as an ASEM member state as well as its commitment in the field of human rights.

Human trafficking is a complex crime and constitutes a serious violation of human rights. Victims of human trafficking are robbed of their right to self-determination, and are trafficked and utilised as goods: they are deprived of their human dignity.

Human trafficking affects all countries in the world, be they countries of origin, transit or destination — or a combination of all three. We all face the same challenges: human trafficking takes various forms, mostly transnational in nature. Moreover, fighting human trafficking is a multidisciplinary task. It requires prosecuting traffickers and at the same time placing assistance to victims at the centre of our action.

This is why it is highly relevant and timely for us to exchange views and share lessons learned from promising practices and recent trends in individual countries and international standards in this area, including regional developments, such as the newly signed ASEAN Convention Against Trafficking in Persons (ACTIP). In bringing Asian and European governmental and non-governmental representatives together to increase cooperation, this seminar marks an important step in combatting human trafficking.

Let me outline the measures Switzerland has taken against human trafficking at the national and the international level:
• Switzerland is party to all the relevant international conventions in the field of human trafficking, both within the framework of the UN and the Council of Europe. At the same time, Switzerland amended its Criminal Code and other national legal provisions to bring them in line with international obligations. We have thereby established a solid basis to hold perpetrators to account and to protect the victims of human trafficking.

• In order to combat human trafficking effectively, it is essential to involve all stakeholders. In Switzerland this has been done since 2003, with the establishment of the Swiss “Coordination Unit against the Trafficking of Persons and Smuggling of Migrants”. As part of this coordination mechanism, we launched a national action plan against human trafficking in 2012. Under this national action plan, Switzerland’s measures against human trafficking are based on four pillars: prevention, prosecution, protection for the victims and strengthening of international partnerships.

At the international level, Switzerland is therefore engaged in migration dialogue with countries of origin and transit and is forming partnerships to better address the root causes of trafficking.

• For example, in cooperation with partner countries and international organizations we support projects in Western Balkan states that empower social groups that are vulnerable to trafficking and exploitation. These activities include efforts to ensure access to education and improve living conditions.

• Together with Romania we launched initiatives to improve mutual cooperation. This has led to an increased exchange of information between police services and specialised NGOs, better identification of the victims, and more successful efforts to hold perpetrators accountable.

I would also like to highlight two international initiatives at the multilateral level:

• First, during the Swiss presidency of the OSCE, we lent strong support to the initiative of the Special Representative and Coordinator for Combating Trafficking in Human Beings on how to prevent human trafficking for domestic servitude in diplomatic households. It is therefore significant that at the side event co-organized by Switzerland and the OSCE today in Montreux we launched a French-language version of a handbook for practitioners. Switzerland is working closely together with the OSCE and with other states that are committed to protecting domestic workers. We invite you all to join this initiative and make the most of this fruitful international exchange of experiences.

• Second, we intend to strengthen international provisions to fight human trafficking, in particular to clarify the international definition of trafficking in persons, which is a starting point for combating human trafficking. Switzerland has therefore launched an initiative as part of the Conference on the “UN Convention against Transnational Organized Crime”. This initiative is intended to provide clarification on the key elements of the international definition of trafficking in persons as well as guidance to practitioners for the implementation of the Trafficking Protocol to the UN Convention against Transnational Organized Crime.

Like many other countries Switzerland is committed to reinforcing the international fight against human trafficking.

Together we can make real progress in improving the situation on the ground and bringing about the necessary changes. Together we can improve the life of the victims and protect their human dignity.

I would like to thank you all for your participation in this seminar and your openness to dialogue. I wish you inspiring days in Montreux and I look forward to continuing our mutual cooperation.

Thank you.
THE OSCE’S VICTIM-CENTRED APPROACH TO COMBAT TRAFFICKING IN PERSONS

Madina JARBUSSYNOVA, Special Representative and Co-Ordinator for Combating Trafficking in Human Beings for the Organization for Security and Co-operation in Europe (OSCE)
(Keynote address delivered at the opening plenary of the 15th Informal ASEM Seminar on Human Rights)

I am delighted and deeply honoured to be here with you today in this beautiful city of Montreux to open this important seminar on human rights. I would like to express my sincere gratitude to the organizers for inviting me and to thank our Swiss hosts for their warm hospitality.

The topic of “Human Rights and Trafficking in Persons” is a pressing one given our common commitment to protect the most vulnerable among us, especially in the context of the ongoing humanitarian crises in and around Europe. In my presentation, I would like to share with you my views on the importance of a human rights based-approach to fighting trafficking and its implications.

The OSCE

Before I begin, allow me to say a few words about the OSCE and my mandate, for those of you who are not familiar with my organization. The OSCE is the world's largest regional security organization, comprising 57 states on a territory that stretches from Vancouver in Canada to Vladivostok in the Russian Federation. We trace our origins to the early 1970s, and the Helsinki Final Act of 1975 that created the Conference on Security and Co-operation in Europe, which later became the Organization for Security and Co-operation in Europe. The OSCE has expanded its mandate and geographical reach over time, and we welcomed our most recent participating State, Mongolia, in 2012. The OSCE and its participating States developed a substantial relationship with non-participating States. This year marks the 20th Anniversary of the OSCE Asian Partnership. Over the years, this Partnership with Afghanistan, Australia, Japan, the Republic of Korea and Thailand has become an integral part of the OSCE's work.

This year, my office contributed to two Asian initiatives outside the OSCE Asian Partnership: the regional workshop on “Anti-Trafficking in Persons for Foreign Service Posts in Europe” organized by the Philippines’ Department of Foreign Affairs and the ASEAN seminar on pan-European Human Rights Mechanisms.

The OSCE today is a dynamic forum for bridging diverging security perceptions on a wide range of critical issues, including: transnational threats and conflict prevention; mediation and post-conflict rehabilitation; fostering economic development and good governance; promoting democratic institutions and the full respect of fundamental freedoms.

Let me clarify that the OSCE has taken a broad and comprehensive approach to security that has encompassed complementary dimensions. The various aspects of security are viewed as interconnected and interdependent. The essence of this approach to security entails the idea that the protection of human rights and fundamental freedoms and economic and environmental governance are equally important for the sustainability of peace and security.

The position of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings was established in 2003 as a high-level mechanism to promote the implementation of the OSCE's standards on combating trafficking in human beings through constant dialogue and support to the 57 participating States. As highlighted by Minister Didier Burkhalter, I adopted, as well as my predecessors, a multidisciplinary approach to counter human trafficking.
The importance and the primacy of a human rights approach

Combating trafficking in human beings as defined by the UN Palermo Protocol is a relatively new area in the field of human rights work, although anti-trafficking action is deeply connected with the human rights discourse.

Let’s be clear from the beginning, a human rights-based approach to combating human trafficking is fundamental and indisputable! The question is not about why — and I am sure that we all agree about this — but rather how to ensure that a victim-centred and a human-rights based approach is implemented in an effective manner.

Addressing trafficking as a human rights violation implies a state obligation to put in place preventive and protective measures for persons at risk, as well as potential, presumed and actual victims. Moreover, a human rights approach that bolsters the social, economic, cultural and political rights of vulnerable and exploited persons can ultimately reduce and prevent exploitation and trafficking.

Most of the States in the OSCE region have endorsed, or have started to endorse, a cross-dimensional and human rights-based response to human trafficking. They have made significant achievements in criminalising this phenomenon within their legal systems, creating national co-ordinating structures to build synergies among relevant state and non-state stakeholders, establishing National Referral Mechanisms to better support trafficked people and a National Rapporteur or equivalent mechanism to monitor and report on combating trafficking in human beings as well as undertaking preventive actions designed to diminish vulnerability to trafficking. Unfortunately, the sad reality shows that it is not enough to prevent exploitation, support trafficked persons and to enable them to exercise their rights. Exploitation and the crime of trafficking are increasing and becoming more complex and harder to address.

Allow me to remind you of some figures from our international partners. Whereas the International Labour Organization (ILO) estimated in 2012 that globally, 20.9 million persons are victims of forced labour and human trafficking; only 40,000 persons were identified as such in the period from 2010 to 2012, according to the United Nations Office on Drugs and Crime's (UNODC) Global Report. The illicit profit generated by forced labour amounts to approximately 64.9 billion US dollars in the OSCE region alone! Our efforts remain clearly unsatisfactory.

The primacy of human rights in combating trafficking in human beings is reflected in numerous OSCE commitments adopted by consensus. In 2000, the OSCE Participating States adopted their first Ministerial Council Decision specifically addressing trafficking in human beings and the respect of the human rights of trafficked persons, and of people at risk of trafficking and re-trafficking. Since then, the OSCE has set the fight against this crime as a priority and has dedicated numerous Ministerial Council Decisions to this criminal phenomenon in all its forms including sexual exploitation, forced labour, forced criminality, domestic servitude and the removal of organs.

I am proud that my organization is a pioneer in advocating the human rights approach to countering human trafficking. The OSCE Action Plan to Combat Trafficking in Human Beings adopted in 2003 reiterates that “trafficking in human beings and other contemporary forms of slavery constitute an abhorrent violation of the dignity and rights of human beings.” This strategic document, which consists of advanced and detailed recommendations, forms the foundation of our action and our principal goal. This goal is stated succinctly in the Action Plan as “bringing to justice those responsible for this crime, and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach in rendering assistance to its victims.” Three years ago, we celebrated the 10th anniversary of the Action Plan and the OSCE participating States renewed their shared commitment to anti-trafficking by adopting the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later.
The 2003 Action Plan defines concretely the OSCE’s victim-centred approach through the concept of National Referral Mechanisms. This mechanism is a framework within which state actors fulfil their obligations to protect and promote the human rights of all trafficked persons. It aimed at ensuring the protection of rights of trafficked persons, their identification, support and empowerment through a comprehensive, multiagency and multidisciplinary approach. This concept, developed by OSCE’s Office of Human Rights (ODIHR) is now reflected in the EU directive (Para. 18) and the Council of Europe Convention (Chap. III) on trafficking in human beings.

As OSCE Special Representative, it is precisely my duty to prioritize the protection of human rights and the dignity of all potential victims of human trafficking, including among migrants and refugees.

**Implications of a human rights-based approach**

Again, the primacy of human rights has implications for all actors, including law enforcement, the judiciary and civil society organizations. It also means the establishment of a rule of law framework that recognises human rights and the implementation of effective legislation.

All vulnerable people should benefit from a multidisciplinary human rights approach, which includes their right to prompt medical attention upon contact with police authorities or social services, dedicated psycho-social care throughout the investigation and trial with ongoing review, access to legal representation and access to housing and job training services. In addition, victims of human trafficking, as holders of a special set of rights, require special attention. This set includes the right to be identified quickly and accurately; the right to immediate protection and support; the opportunity to decide whether and how to co-operate in the prosecution of their exploiters; the right not to be detained; the right to not be prosecuted for offences that relate directly to the fact of having been trafficked; the right to be returned home safely or to benefit from another solution if safe return is not possible; and the right to an effective remedy that reflects the harm committed against them. Let me reiterate that child victims of trafficking do have special needs that should be taken into account and the best interest of the child should remain paramount at all times.

While I continue to advocate for the unconditional implementation of the non-punishment principle, the current climate of exploitation highlights the need to create more opportunities for jobs and education, as well as safe and legal migration channels. In particular, destination countries have to strike a balance between the legitimate interest of safeguarding borders and the obligation to uphold the human rights of individuals on the move, especially those entitled to international protection. The principle of non-refoulement is of particular importance when dealing with the return of victims, as noted in OSCE/ODIHR’s Guiding Principles on Human Rights in the Return of Trafficked Persons published last year.

All States should set up effective national mechanisms to promptly identify and assist potential victims of trafficking, which could in turn provide crucial intelligence for dismantling the criminal networks involved. It is of great importance that, when examining situations involving irregular migrants, refugees and asylum seekers, due attention is paid to potential indicators of exploitation, notably the most distinctive element of human trafficking.

Yet, despite all our efforts, the identification of trafficked persons and the detection of cases remain indeed among the biggest global challenges, also considering that exploitation has become a systemic component of the globalised labour market and economy.
To conclude, I would like to stress that the complexity of migration flows is increasing every day. Competent authorities are encountering difficulties in drawing a clear line between smuggling, trafficking and movements of people seeking better lives or fleeing instability and persecution. The reality is that the phenomena of migration and human trafficking are always intertwined, and the progressive tightening of states’ immigration policies has contributed to boost the vulnerability of both migrants and refugees to exploitative practices.

People on the move face many dangers, including in the Ukrainian and Mediterranean context, ranging from crossing natural barriers such as seas, deserts and mountains during their perilous journeys, to man-made violence and exploitation.

The United Nations High Commissioner for Refugees (UNHCR) reports a total of 137,000 people who made the journey across the Mediterranean to Europe in the first half of 2015, which represents an 80 per cent increase for countries like Italy, Malta, Greece and Spain when compared to the same period of the previous year. And since June 2015, an additional 587,000 individuals crossed the Mediterranean, including 218,000 in October alone. Regrettably, the migration crisis across the Mediterranean is also characterised by a high rate of mortality. As of 30 October, the International Organization for Migration (IOM) recorded 3,349 dead/missing people who tried to cross the Mediterranean in 2015. April was the deadliest, with a record 1,308 fatalities.

To have a better idea of the situation in Ukraine, I visited the eastern regions of Ukraine in May and met with local authorities and internally displaced persons (IDPs). I was enlightened by the frank discussions I had with IDPs and inspired by the incredible work conducted by local NGOs. However, I remain gravely concerned about the huge number of IDPs and asylum seekers without access to any sort of assistance. Sadly, some of these people are becoming victims of human trafficking: in Kharkiv, local authorities identified 21 female victims of trafficking for sexual exploitation this year, and some of these are IDPs from Luhansk and Donetsk oblasts. Clearly, this is just the tip of the iceberg.

Not only Europe is affected by the migration and humanitarian crisis; Asia is also hit. The movement of people goes in both ways. According to recent information, citizens from Asian countries were found among the migrants crossing the OSCE region and exploited in domestic work. Recently, I was personally informed about cases of Ukrainian children trafficked to the Philippines who are expected to return home in the next few days.

Despite the undeniable “security challenges” posed by these mixed migration flows, it is the vulnerable human being who needs and deserves protection, and who should be at the centre of our discourse on migration and trafficking. I am convinced that policies to tackle the root causes of mass-movements, including conflict and poverty, and thus prevent precarious situations that may lead to trafficking, are in the long run more efficient than later resolving the challenges posed by irregular migration flows and organized criminal networks. We must join forces to tackle the vulnerability of those in greatest need and ensure their adequate protection and respect for their fundamental rights and freedoms.

Thank you for your attention.

**Endnotes:**

HUMAN RIGHTS ARE THE CORNERSTONE FOR ANTI-TRAFFICKING EFFORTS: RECOMMENDATIONS AND STRATEGIES FOR ASIA AND EUROPE

1. Introduction

Trafficking in persons is a serious crime and a grave violation of human rights under international law. It is a process through which an individual is brought (sometimes across international borders) into a situation of exploitation, where their labour or services are exploited for the benefit of others. Millions of women, men and children around the world are affected by human trafficking.

As the understanding of human trafficking improves and the international legal framework on trafficking develops, there is also a growing consensus internationally that the problem cannot be countered by any one country in isolation. Cross-border and bilateral efforts are increasingly complemented by responses co-ordinated regionally and internationally. Dialogue, the sharing of knowledge, and the exchange of information about strategies to overcome common challenges have all helped to give shape and substance to more effective counter trafficking responses.

To foster dialogue among stakeholders from Asia and Europe and in recognition of the importance of application of human rights perspective to anti-trafficking strategies, the 15th Informal ASEM Seminar on Human Rights, on the topic “human rights and trafficking in persons”, was organized by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (as delegated by the Ministry for Foreign Affairs of Sweden), the Ministry of Foreign Affairs and International Development of France, and the Department of Foreign Affairs of the Philippines, and hosted by Switzerland. It brought together over 130 government representatives and civil society experts, representing 49 ASEM Partners to discuss the application of a human rights-based approach in addressing human trafficking. The Seminar was opened by the head of the Swiss Federal Department of Foreign Affairs, Didier Burkhalter, who, in his remarks, stressed the need for increased international cooperation to combat trafficking in persons. Additional events at the Seminar included a side-event on “How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers” (organized by the Federal Department of Foreign Affairs of Switzerland and the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings). In addition, a panel discussion was organized on “Responsibility and accountability in anti-trafficking efforts” during the closing plenary session.

The Seminar convened four Working Groups for in-depth discussion on implementing the human rights approach to anti-trafficking strategies and programming. The Working Groups focused on the rights of trafficked persons and obligations of States in relation to four thematic areas: prevention of trafficking; protection and assistance to trafficked persons; access to justice; and international co-operation against trafficking.

The Seminar and Working Group discussions were informed by a background paper, authored by Anne Gallagher and Klara Skrivanova, that outlined and analysed relevant concepts and the applicable legal frameworks. The background paper also introduced several emerging issues of concern:

- The private sector: issues of due diligence, complicity, responsibility and accountability
- Trafficking and related exploitation of smuggled migrants
- Trafficking for forced criminal activities
- Challenges in measuring trafficking and assessing responses.
This report, compiled by Klara Skrivankova and Anne Gallagher, summarises and synthesises the seminar presentations, discussions and conclusions. The report includes the summary reports prepared by the four rapporteurs assigned to each of the Working Groups: Julia Planitzer (Working Group on Preventive Measures); Aurora Javate de Dios (Working Group on the Protection and Assistance of Trafficked Persons); Klara Skrivankova (Working Group on Access to Justice); and Anne Gallagher (Working Group on International Cooperation against Trafficking).

2. Key messages

The key messages, which emerged from the Working Group discussions, were shared with the ASEM Partners and addressed the following:

2.1. Scope of the problem and key response strategies

All forms of trafficking: Trafficking in human beings should be addressed in all its forms including sexual exploitation, labour exploitation, slavery, forced labour and services, removal of organs, forced criminality, and (domestic) servitude.

More and better information: Data is vital to the design, implementation and evaluation of anti-trafficking strategies. A cross-border referral mechanism is needed as is more information sharing. Since obtaining accurate data is difficult, national-level observatories on trafficking that collect case data need to be developed, as do other monitoring and evaluation mechanisms for more effective implementation of regional and international instruments.

Identification of victims: In order to optimise prevention, protection and identification, all stakeholders should be made aware of the definition of trafficking, including victims who are often unaware of their rights and may not recognise themselves as such. Victim identification is a continuous process in which the victim’s circumstances and needs should be considered; the process should protect the dignity of individuals, be child-friendly and gender-sensitive, taking into account that men and boys are also trafficked.

2.2 Preventing trafficking and protecting trafficked persons

Addressing root causes: States have a responsibility to act with due diligence in addressing the root causes of trafficking such as inequality, poverty, cultural and social acceptance of exploitation, gender-based discrimination, restrictive immigration policies and unfair labour practices, particularly for migrant workers.

Prevention through empowerment: Advocacy and awareness-raising are also important elements of prevention. Prevention linked to a human rights-based approach means the empowerment of those affected. This requires access to information, education, the labour market, and participation of victims in the development of prevention measures.
**Rights in return:** The situation and needs of victims should be considered at an individual level, before any repatriation or reintegration plans are finalised. Their dignity and privacy should be respected; their personal information should be kept confidential not only to protect their dignity and personal security (as well as their families) but also to improve their reintegration into society. **Return may not be an option for some** victims and alternatives, such as permanent and temporary residence permits, should be considered especially when victims are involved in legal proceedings. Extra efforts need to be made to protect children from detention, immediate deportation and forced return. For unaccompanied minors, family-tracing systems should be in place. It is important that States cooperate with civil society organizations to create an enabling environment for victims and those who support them.

**Private sector involvement:** The private sector has an important role to play in preventing trafficking, not least through upholding the human rights of workers. Companies should be required by national law to report on their efforts to secure trafficking-free supply chains and be encouraged to promote transparency in their supply chains and sub-contracting; this applies to public procurement as well. The UN Guiding Principles on Business and Human Rights, Global Compact as well as regional standards on protecting human rights within business operations should be applied with greater consistency. **Recruitment practices should be in line with core international labour standards.** The protection of workers in labour migration regimes has to be addressed and safe migration encouraged.

### 2.3 Access to justice and international cooperation against trafficking

**Why access to justice?** Trafficking in persons is both a crime and a violation of human rights. Hence, it must be tackled both from a human rights perspective and a criminal justice perspective, the two approaches being mutually reinforcing. Justice can come in various forms and there may be differences in what victims, justice agencies and the broader community perceive as “justice”. A rights-based approach to access to justice places victims’ needs at the centre — the victim should be the subject rather than an object of justice.

**Victim identification as a prerequisite for justice:** Victims should be quickly and accurately identified through a proactive and cooperative approach. Failure to identify victims quickly and accurately leads to a denial of their rights and prevents victims from accessing the justice to which they are entitled.

**Capacity development:** The skills and capacity to work with trafficking victims are lacking within the criminal justice system. **Capacity-building is needed at all levels** – for law enforcement to improve their ability to identify victims and prosecute traffickers; for the judiciary to be sensitive and aware of victims’ rights; for all criminal justice and victim support agencies to identify victim needs and provide appropriate assistance.

**International cooperation built on strong national responses:** Borders do not stop traffickers. Given the often transnational nature of trafficking, and the cost of non-cooperation between States to victims and to an effective criminal justice response, it is crucial to develop transnational and multi-stakeholder cooperation. However, while it can build more effective national response, international cooperation cannot substitute for coherent and effective national efforts. International commitments must be enhanced by national strategies; in fact, the quality of national responses determines the quality of international cooperation. **State agencies and NGOs must work together more effectively and consistently,** in order to improve the exchange of knowledge and victims’ access to remedies. They need to reach out to other sectors and communities. At the international level, review mechanisms should be utilised to assess the effectiveness of existing treaties and promote their implementation.
3. Recommendations

**International and regional instruments**

1. All ASEM States that have not yet done so should become party to the UN Trafficking Protocol and to other key instruments including the ILO Conventions on Forced Labour on Domestic Work and on Private Employment Agencies and the ASEAN Trafficking Convention.

2. All ASEM States should support the establishment and strengthening of monitoring and review mechanisms under the major anti-trafficking instruments, including the UN Trafficking Protocol, the ASEAN Trafficking Convention and European trafficking instruments including the Council of Europe Trafficking Convention, and the European Union Directive on Trafficking.

**National legislation and prosecution**

3. A strong legal framework at the national level is critical to an effective response to trafficking. States should take steps to implement existing legislation and ensure that any gaps or inconsistencies with international/regional standards are addressed. In this regard it is important to note that:

   a) Access to justice for victims is required both in the country of origin and in the country of destination;
   b) Insights and lessons from case law should be developed and shared amongst practitioners;
   c) Where a case can be prosecuted in more than one State, jurisdiction must be chosen with a view to maximise the chance of a positive prosecution outcome against exploiters and other high-level offenders;
   d) Mutual legal assistance should be requested and afforded to the fullest extent possible to promote effective prosecutions of exploiters and other high-level offenders;
   e) Coordinated efforts between various national agencies, including the judiciary and state security agencies such as the police and border control authorities, are required so as to effectively investigate trafficking cases and prosecute traffickers;
   f) National legislation should reflect the important role that civil society organizations play, in both preventing trafficking and in helping deliver justice for victims.

**Victim identification**

4. Victim identification requires a proactive effort on the part of the State. Responsibilities for various aspects of victim identification should be clearly delineated and the process should be carefully coordinated so as to ensure rapid and accurate identification of victims.

5. Victim identification requires specific skills and expertise and should include relevant actors from both the country of origin and the country of destination. Officials involved in victim identification (including law enforcement, social workers, psychologists, lawyers, and labour inspectors) and civil society actors should be properly trained and encouraged to collaborate in order to secure rapid and accurate identification.

6. Victim identification can entail certain risks, including risks to the individuals involved. To that end, the following considerations are highlighted:
a) Victims should not be re-interviewed and thereby subject to potential re-traumatisation unless it is absolutely necessary. Ideally, a person of trust should support the victim throughout the process and advocate for their rights. In cases involving children, an independent advocate with a mandate to promote and protect the best interests of the child should always be appointed.

b) Each agency involved in victim identification and referral should ensure that specialists familiar with the causes and manifestations of trafficking are available.

c) Persons who may be victims of trafficking should, for purposes of protection and assistance, be treated as such, unless and until another determination is made. Likewise, presumed or identified victims who may be children should be treated as such pending formal age verification.

d) While acknowledging that smuggled migrants can also be victims of trafficking and vice-versa, it is also important to maintain a distinction between these two crime types. The emphasis of the distinction should be on the experience of abuse and exploitation suffered by victims, rather than the process or purpose of travel.

e) In accordance with international and regional standards, States should take steps to avoid criminalisation of confirmed and presumed victims of trafficking. This is especially important with regard to persons who have been compelled to violate immigration and labour laws in the course of their trafficking and those who have been trafficked into forced criminal activities. States should note the relevant provisions on non-criminalisation in regional instruments and implement the non-punishment principle at the national level.

Return and reintegration

7. The return of trafficking victims to their country of origin should be voluntary and safe; repatriation should be undertaken in a manner that ensures the protection of victims’ privacy and security. Return should only be compelled when other options are not available and where the country of origin is able to provide assurances of safety and support. Furthermore:

a) States should respect the principle of non-refoulement by not returning victims of trafficking to a situation where they may face persecution;

b) In all situations, the views and individual needs of the victim should be central; in the case of children, the best interests of the child should be the basis upon which all decisions about return and reintegration are made;

c) For cases where return is not possible, allocation of government funds for long-term assistance to trafficked victims should be prioritised. Resettlement and employment opportunities for victims, including access to the labour market, need to be developed further, possibly in partnership with the private sector.

Addressing corruption

8. Corruption and complicity in trafficking, especially within agencies handling trafficking issues, is a major problem that requires attention. ASEM Partners need to continue identifying practical solutions to tackle corruption, including the proactive identification of corrupt or complicit officials; strengthening financial investigation and asset confiscation capacities; and, within criminal justice agencies, establishing specialised units that are explicitly designed to minimise opportunities for corruption.
Involving the private sector

9. In line with the UN Guiding Principles on Business and Human Rights and the UN Global Compact Principles on Human Rights and Labour, the private sector has a key role to play — and indeed a responsibility to act in addressing and eliminating trafficking from business activities.

   a) Private companies should develop and follow codes of conduct designed to improve their due diligence measures in addressing trafficking. Monitoring and evaluation mechanisms must be in place to ensure compliance;
   b) States should develop a legal framework to enhance transparency in procurement and supply chain management and to regulate the liability of companies involved in, and benefiting from, trafficking. Transparency requirements should also apply to public procurement.

Regulating labour migration and recruitment

10. To enhance transparency of recruitment practices, employment agencies should be appropriately regulated, for example, by implementing licensing regimes that allow for entry requirements and the suspension of licences for bad practice. In addition:

   a) States should monitor the activities of private employment agencies and strengthen the role and oversight of public employment agencies in order to avoid exploitative practices and excessive fees;
   b) States should set minimum wage requirements as well as requirements for decent working conditions, including also through collective agreements, thereby ensuring legal protection from exploitation for all workers, including domestic workers;
   c) Labour migration policies (including bilateral and multilateral agreements) must be simplified and streamlined with a view to ensuring that safe and mutually beneficial labour migration is promoted;
   d) Information should be provided to prospective migrants on safe migration; easier access to legal migration will reduce the use of trafficking and smuggling channels.

Improving quality of data

11. Data is important in the development and evaluation of anti-trafficking efforts; it is also needed to support accurate and timely victim identification. To enhance information sharing, ASEM Partners should develop common standards and practices for data collection for national and international use; existing databases by Interpol could be utilised more effectively.

Strengthening international cooperation

12. International cooperation is vital for addressing human trafficking. States need to cooperate more consistently and effectively on migration policies, victim identification, return and reintegration, and transnational criminal justice responses (including the exchange of information and intelligence through both formal and informal processes). As far as possible, such cooperation should be used to develop common standards and approaches. Short-term and specifically targeted cooperation between States is important in resolving individual cases. However, to eliminate trafficking long-term sustainable cooperation is required and this in turn requires significant investments of time and resources.
4. Working group reports

4.1 Working Group on Preventive Measures

4.1.1. Introduction and prevention standards

Prevention of trafficking in human beings is generally understood as measures to stop trafficking from occurring. Preventive measures should address the causes of trafficking, including: 1) factors that increase the vulnerability of trafficked persons; 2) demand for goods and services produced by trafficked persons; 3) impunity of traffickers and their accomplices. One of the key principles of the human rights-based approach to trafficking is the adage, “Do no harm!” It requires that trafficking prevention measures shall not adversely affect the human rights and dignity of persons (UNOHCHR, 2002, Principle 3). Prevention activities that follow a human rights-based approach result in empowerment of those affected, including: Access to information; access to the labour market; guarantee of labour rights; and access to education. Participation of those affected by trafficking, in the development of prevention measures, is a key principle of empowerment.

States have a responsibility to act with due diligence which means that States have to take all reasonable and necessary steps to prevent trafficking. As the UN Special Rapporteur on Trafficking, pointed out, acting with due diligence concerning prevention means that the root causes such as inequality, restrictive immigration policies and unfair labour conditions, particularly for migrant workers have to be addressed. Preventive measures should be based on accurate data and target those most at risk of trafficking (UN General Assembly, 2015). Strengthening capacities of law enforcement to prosecute traffickers also forms part of an effective prevention strategy.

4.1.2 Cooperation on prevention of trafficking

Cooperation between States, inter-governmental and non-governmental organizations is important in implementing prevention measures. For example, the Trafficking Protocol requires States Parties to “include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society” in implementing prevention measures (Art. 9[3]). The recently adopted ASEAN Convention against Trafficking in Persons, Especially Women and Children stresses in Art. 11 the importance of cooperation with civil society for policies and programmes of prevention. The specialist trafficking treaties list a large variety of prevention measures such as research, information and media campaigns, social and economic initiatives, training programmes, taking measures to enable migration to take place legally and to reduce children’s vulnerability to trafficking (UN, 2000, Art. 9; Council of Europe, 2005, Art. 5).

4.1.3 Challenges in preventing trafficking in human beings

Participants identified a wide range of challenges and identified issues — for instance, lack of income, lack of access to education, poverty and domestic violence — that have to be taken into account in prevention measures. In order to prevent trafficking in persons over the Internet, participants discussed the role of the police and the need to strengthening the presence of police in cooperation with social workers in relevant fora or dialogue. Prevention should also address underlying attitudes that fuel trafficking, such as discrimination of marginalised groups and attitudes towards migrant workers. There was agreement among the participants that a major challenge is the lack of information and difficulties in having access to adequate information. Individuals are not informed about their rights; consequently, they do not invoke these rights. For example, information on safe migration is necessary and needs to be strengthened, but preventive measures should not discourage people from migrating.
4.1.4 Addressing demand

The UN Trafficking Protocol, the Council of Europe Trafficking Convention and the ASEAN Convention against Trafficking in Persons, Especially Women and Children include provisions that request States to implement measures to discourage demand. Demand can refer for example to employer demand for cheap labour or to consumer demand for the goods or services produced or provided by trafficked persons. The group discussed the demand for services provided by trafficked persons and the role of the private sector to discourage this demand.

In discussing the demand for cheap labour, participants raised the issue of work in the informal sector, in particular domestic work. Formalising the sector and defining minimum wage would be necessary in order to prevent exploitation in domestic work. Temporary jobs or jobs with seasonal character, or in certain sectors such as construction and apparel production, are seen to have a high risk of trafficking. Labour inspection was identified as an important way to monitor labour conditions. The capacities of labour inspectorates should be enhanced, however their mandate should not be linked to monitoring residence status.

It is essential that workers, in order to be able to improve labour standards and to claim their rights, are able to organize and, for example, form unions, regardless of their migration status or regardless the sector they work in. It was widely agreed that the role of recruitment agencies should be further examined. Participants raised the question of “how ‘ethical recruitment’ could look like” and pointed out that recruitment practices should be in line with core international labour standards; monitoring of practices of employment agencies is important. An example mentioned in the group was publishing a list of authorised recruitment agencies.

Participants discussed corporate responsibility to respect human rights and that States should require companies to report on efforts against trafficking in their supply chain in order to reach a “trafficking-free supply chain”1. Furthermore, it would be important to implement legislation to strengthen the liability of companies concerning trafficking and to strengthen accountability in supply chains at all tiers. Participants stressed the power of civil society in putting pressure on companies. Cooperation between business and governments is important and companies should be motivated to share their experiences concerning measures to prevent labour exploitation in the supply chain or in sub-contracted companies. This would raise awareness among the private sector and lead to a shift in business conduct.

In Europe, legal instruments such as the Council of Europe Trafficking Convention address demand also by including provisions criminalising “the use of services” of a victim with “the knowledge that the person is a victim of trafficking in human beings” (Council of Europe, 2005, Art. 19). Participants discussed their experiences in implementing this provision at national level concerning sexual exploitation showing that different legal models are implemented by European States. In order to assess the effectiveness of this provision so far, evaluation would be important.
4.1.5 Addressing vulnerabilities

1. Gender-based discrimination

Gender-based discrimination is considered an important factor that increases vulnerability of women and girls to trafficking. In some countries, girls and young women do not have equal access to education. As a consequence, economic opportunities for women are often limited. States need to proactively implement measures that empower girls and young women to counter stereotypical views on the role of women in society that prevent women from pursuing further education and other opportunities. Domestic violence was also identified as a factor contributing to vulnerability. Actions to achieve equal economic and social participation of women should be conducted at a community level, including community-based trainings in an informal setting. Following a human rights-based approach, participatory methods should be applied in the development and implementation of measures aimed at addressing gender discrimination.

2. Vulnerabilities of children

There was a general consensus that ensuring access to education for children — in particular for girls — is vital to prevent trafficking. Early drop-out from schools, in particular by girls, increases their vulnerability to trafficking. Participants described situations where recruiters would come to villages offering jobs and opportunities that seem to be out of reach due to lack of education and information. In many cases, these offers lead to exploitation. Participants identified issues concerning the identification of children who had been trafficked. For instance trafficked children who were forced to conduct criminal activities such as pick-pocketing, are often treated as criminals and not as victims by law enforcement. Ensuring the implementation of the principle of non-punishment in these cases is necessary (UNOHCHR, 2000, Principle 7). The principle of non-punishment means that trafficked persons should not be detained, charged or prosecuted for acts that they had been forced to do in the framework of trafficking.

Another issue raised was that trafficked children, who have been identified and accommodated in a shelter, tend to go missing. Participants noted that children who have not been registered at birth are at higher risk of being trafficked. The group stressed the importance of existing guidelines on protecting children in emergency situations, for example after natural disasters. Guidelines on responses in emergency situations also have to address the risk of trafficking in children. The group also considered that family-tracing systems should be in place.

The rights of children who are migrating have to be protected. Children on the move can be seen as criminals due to their migration status. This results in violations of their rights, including immediate deportation, forced return, or detention. When trafficked children are identified and returned to their country of origin, it is necessary to prevent re-trafficking. Therefore, programmes for livelihood options including skills training and access to employment need to be put in place.

4.1.6 Monitoring and evaluation

Measuring the extent of trafficking in persons and the evaluation of States’ responses is identified as challenge. For prevention, it would be essential to assess the impact of measures in order to identify good practices in prevention. Participants identified on the one hand, a lack of monitoring of compliance with national-level legislation and stressed for instance the limited mandate of labour inspectorates leading to unidentified trafficked persons. Civil society should be able to participate in developing, monitoring and evaluating preventive measures. On the other hand, participants widely agreed that monitoring of compliance with specialist trafficking treaties is highly relevant in order to achieve greater impact of measures against trafficking in persons. Participants identified as weaknesses that the UN Trafficking Protocol itself does not have a monitoring mechanism and civil society has a limited role in the monitoring process of the ASEAN Convention against Trafficking in Persons, Especially Women and Children.
4.1.7 Conclusions and recommendations

In relation to provision of information and addressing the underlying causes of trafficking, the Working Group recommends:

1. Access to information is a major gap in implementing prevention measures. States should make information more easily accessible, ensuring that information reaches, and is tailored to, relevant target groups, also at the community-level, and is provided in different languages. Information needs to be translated into action. Information needs a robust and sustainable structure, so that persons in need of support can be referred to an appropriate organization;

2. Information should be provided on safe migration, as easier access to legal migration channels will reduce the use of trafficking and smuggling channels. Preventive measures should not prevent migration;

3. States should implement measures that address underlying attitudes and human rights violations that lead to exploitation, such as discrimination of certain groups in society (such as minorities, undocumented migrant workers or stateless persons).

In relation to cooperation and partnerships to prevent trafficking and addressing demand, the Working Group recommends:

4. In order to achieve effective partnerships between governments and civil society, funding for the work of civil society needs to be ensured;

5. States should take into account the provision of the Council of Europe Trafficking Convention concerning the criminalisation of the use of services of a trafficked person. Additionally, it is recommended to evaluate the application and impact of this provision at national levels.

In relation to implementing labour and labour market regulation to protect vulnerable workers, the Working Group recommends:

6. States should strengthen the protection of vulnerable workers under labour laws. This includes the protection of all workers, regardless of their migration status and ensuring the possibility of workers to organize regardless of their legal status or sector of work;

7. For migrant domestic workers, States are recommended to formalise the sector, define minimum wage/collective agreements, thereby ensuring labour law protection for domestic workers;

8. To enhance transparency of recruitment practices, licensing of employment agencies should be regulated and include entry requirements and possibility of suspension of licences for bad practice;

9. States should monitor the activities of private employment agencies and strengthen the role of public employment agencies in order to avoid exploitative practices and excessive fees;

10. States should provide a legal framework to enhance transparency in procurement and supply chain management and to regulate the criminal and civil liability of companies, to achieve a trafficking-free supply chain. Public procurement also needs to be more transparent.

In relation to addressing vulnerabilities, especially of children, and ensuring that victims are not criminalised, the Working Group recommends:


11. In order to decrease vulnerability of children to be trafficked, equal access to education has to be ensured, in particular for girls in rural areas. The principle of the best interest of the child should be ensured in all actions against trafficking and rights of migrating children should be protected. In the context of identification of children, this means that where the age of a person is uncertain and when there are reasons to believe that the victim is a child, the person ought to be presumed a child;

12. States should enhance efforts to implement birth registration and family tracing systems;

13. Emergency responses after for example natural disasters have to tackle also the increased risk of children to be trafficked and therefore have to be linked with anti-trafficking policies;

14. States should enhance efforts to establish programmes for livelihood options including access to basic education, skills training, ensuring social protection and creating employment options at local level;

15. Further efforts to achieve gender equality are necessary. These measures should be implemented at community level and should be conducted with a human rights-based approach, in particular the design and implementation of such measures take into account the principle of community participation;

16. States should avoid the criminalisation of trafficking victims; especially of children and those who are compelled to commit criminal activities as a direct consequence of being trafficked. States should note the relevant provisions on non-criminalisation in regional instruments and ensure implementation of the non-punishment principle at the national level.

4.2 Working Group on Protection and Assistance of Trafficking Persons

The group discussion was divided into three themes:

- Identification and initial assistance;
- Return process and international collaboration; and
- Reintegration and long-term assistance.

4.2.1 Identification and initial assistance

Several key questions were raised, including: The challenges in the process of identification of victims and how to reach them in a timely manner in order to provide immediate protection and assistance; lack of protection of victims that are unidentified victims; and how countries can improve their system of identification of victims without criminalising them.

Identification is not an instant action, but a continuous process that should be based on assessment of evidence and information. Commonly, government agencies and NGOs do not collaborate sufficiently, thus limiting the exchange of knowledge as well as access to victims (victims are often suspicious of authorities). Participants noted that the identification process should also consider that a victim might feel anxious, guilty, ashamed, distrustful and dissociated from reality; she or he may be desperate and emotionally unstable and may still feel loyalty to her or his abuser. Trauma can have long-term impacts, and recovery is difficult, so sensitivity to the pace of victim’s recovery is essential. Some victims can only manage to take small steps back to normalcy which is why their preference must be considered — victims are key to their own healing and recovery. In such situations, trust-building is needed to get the cooperation of the victim. A reflection period may be allowed depending on the specific situation of the victim, in some cases for several months.
When identifying victims, it is important to avoid stereotyping. For instance, even though women and girls are often victims of sexual exploitation, boys and men are also victimised both for sexual and labour exploitation; identifying male victims of trafficking requires a different approach since most are reluctant to admit that they are victims. Also, trafficked victims must not be criminalised, including when they have been forced to perform criminal activities by their traffickers. This especially applies for those trafficked children who are forced to engage in petty crimes such as stealing, begging and, in many cases, selling drugs.

In order to optimise identification, protection and prevention, all stakeholders should be made aware of the definition of trafficking, including law enforcement agencies and must be provided adequate training on the definition of trafficking in persons and its various elements. Coupled with this is the need to understand the root causes of trafficking arising from poverty and economic deprivation as well as other aggravating factors which give rise to human trafficking — such as armed conflict and mass migration following natural disasters and climate change occurring in many countries today. In such circumstance, social disintegration and the absence of the rule of law provide a window of opportunity for traffickers to traffic vulnerable groups such as women and children.

### 4.2.2 Return process and international collaboration

The recovery and return processes for trafficked persons can be long and complex. It was noted the lack of resources to provide long-term assistance to victims is a major challenge, as is the need for capacity-building at all levels.

The decision on a victim’s return must be arrived at voluntarily, by the victim herself/himself. The individual should be provided with full and timely details of her/his repatriation. Cooperation between governments of destination and origin countries is essential to establish the terms of the return to ensure the safety and privacy of the returning victim and to prevent reprisals and re-trafficking. Partnerships — with NGOs that can assist the victim while she/he is in the destination State, and with NGOs that can provide support upon return — are essential to facilitate safe and successful return. As such, this may not always be feasible due to security and safety concerns. In such situations, other options need to be explored.

A common assumption is that victims should be repatriated and returned to live with their families. However, this may not be the option, for example, for victims whose families may have been involved in their trafficking. Hence, risks need to be asssed prior to any return, taking into account:

- Is the return voluntary or forced?
- Is the return safe?
- Are the rights of the victim protected? Will the prevention of retaliation by traffickers be ensured?
- How can we prevent discrimination and stigma upon return?
- Will the reintegration services of government and non-government organizations be available?
- Are there inter-governmental procedures to ensure safe and dignified return?

In the case of children who have been trafficked for illegal activities, the principle of the best interest of the child must always be applied. Children and adult victims of trafficking must not be treated as criminals and confined in detention centres. They need to be safeguarded in order to ensure their safety while their cases are being investigated and tried.

Appropriate support programmes in the country of origin that complement the assistance provided in the country of destination are also critical for the success of reintegration. These can include resettlement and provision of alternative employment as well as professional skills training and development. However, where there are real threats of retaliation and conditions are not adequate for the safe return of the victim, the victim should be given the option to stay in the destination country where the government may, under certain circumstances, provide temporary residence permits or temporary employment, or both.
Some participants noted that there is a need for more bilateral and multilateral arrangements to respect the human rights of refugees who are possible trafficking victims.

4.2.3 Reintegration and long-term assistance

What are the main challenges with regard to the reintegration process, and long-term and sustainable assistance? How do we ensure effective and successful reintegration, prevention of re-victimisation while empowering victims themselves?

Reintegration is a long process that requires the cooperation of the victims, government agencies and NGOs, the families and the community as a whole. Trafficking victims should return home without a “victim status” but they often experience a host of problems upon return which makes reintegration challenging. Aside from facing stigma and discrimination from the community, they may face the negative attitudes of family members who may subject them to verbal, psychological and emotional abuse. Educating the victim’s family, local officials and leaders of the community must therefore be part of the whole package of reintegration. However it is also important to be aware that some victims may prefer to be reintegrated without any attention being drawn to their situation. The needs and wishes of the victim must be prioritised at all times.

Empowering victims means providing them with options and making them aware about their rights. Healthcare facilities at rehabilitation centres must provide immediate psychological support and counselling, as well as general and specialised health services. Long-term assistance includes counselling, education and vocational training for income-generating activities in countries of origin in order to reduce the risk of re-victimisation.

4.2.4 Conclusions and recommendations

In relation to better identification of victims of trafficking, the Working Group recommends:

1. Awareness should be raised among law enforcement authorities about victim identification. Victims, especially those involved in forced criminality, are too often treated only as offenders;

2. In the identification process, a team of trained police, social workers, lawyers and NGOs should collaborate to identify the best possible approach. Such an approach should include the following principles:
   a) Avoid gender stereotyping — men and boys can be trafficking victims too so there is a need to develop specific approaches in dealing with the physical, emotional impacts of trafficking on them;
   b) Utilise gender-sensitive and child-friendly interview techniques; consider also the selection of an appropriate location for conducting the interviews;
   c) In the case of children, the best interest of the child should always be taken into account.

3. The identification process should avoid as far as possible repeated interviewing of the victims.

In relation to cooperation and capacity building to address trafficking, the Working Group recommends:

4. As borders do not stop traffickers, the response needs to be transnational and inclusive of all stakeholders. At the regional and international levels, a cross-border referral mechanism is needed, as is improved communication. In this regard, a National Observatory on Trafficking Cases that collects data needs to be developed;
5. Allocation of government funds/resources for long-term assistance to trafficked victims by governments should be prioritised; the issue of corruption in government agencies handling trafficking cases also needs to be addressed;

6. Governments and NGOs need to reach out to other actors such as national human rights institutions and also the local community on the issue of trafficking. In some cases, a Community Traffic Watch can help prevent trafficking at the community level.

**In relation to long-term assistance and safe return of victims, the Working Group recommends:**

7. States should develop specialists/focal points in each agency familiar with the root causes, definitions and the different contexts of trafficking such as migration, conflict, climate change; focal points can also help victims overcome language barriers.

8. Criminalisation and immediate deportation of victims should be avoided. The investigation and identification of the victim should also include an investigation in the home country of the victim. The verification process should be conducted through bilateral consultation between the country of origin and the country of destination.

9. Return and repatriation should be voluntary and safe with some degree of assurance from the home country that the conditions back home are safe for the victim; there should be monitoring of the victim’s welfare upon return;

10. Repatriation may not always be feasible due to security and safety concerns. In such situations, other options need to be explored such as the provision of temporary residence permits or even permanent settlement at a later time;

11. Employment opportunities and resettlement of victims, and refugees who are possible trafficked victims, need to be developed; cooperation and partnership with the private sector in providing employment opportunities for victims, should be explored;

12. The individual voice and needs of victims should be considered before any reintegration plans are finalised.

### 4.3 Working Group on Access to Justice

#### 4.3.1 Defining access to justice

Access to justice is one of the important channels through which the rights of victims are given effect as well as an avenue through which victims can experience justice being done, by ensuring that the perpetrators receive punishment commensurate to their crimes.

Access to justice is often understood too narrowly. The Working Group affirmed that justice comes in various forms, including:

- Successful prosecution of the trafficker;
- Enabling victims to engage actively with the criminal justice process as witnesses;
- Ensuring that victims are protected from traffickers;
- Formal acknowledgement by the authorities of the victims’ suffering;
- Ensuring that victims have access to remedies, including legal remedies.

The group also affirmed that the concept of access to justice in the trafficking context ought to be understood in broad terms.
Access to justice in practice means that the victim is at the centre of any process and that measures are taken to ensure that victims are the subjects rather than objects of justice.

It is also important to acknowledge that perspectives on justice differ. A victim might have a very different perspective on justice than, for example, society as a whole, or an authority.

### 4.3.2 Prerequisites and barriers to justice

In a majority of jurisdictions, some legislation and/or policies are in place to enable access to justice for trafficked persons. However, the existence of frameworks does not always guarantee that victims will be able to access justice and remedies in practice. There is a range of factors that may enable or hinder victims' access to justice and it is important that these are taken into account when designing anti-trafficking measures, but also when working with individual victims.

While perceptions of stakeholders on access to justice might differ, the Working Group stressed the importance to ensure that the needs and wishes of an individual victim are reflected. It is crucial that those who support victims, in particular civil society organizations, create an enabling environment for victims. Equally important is getting the timing right — both in terms making sure that the timing of the support takes into account victims' needs (in particular if victims are traumatised and their mental health is affected as a result of exploitation), while at the same time ensuring that key deadlines are not missed (such as limitations on timeframes within which compensation claims can be lodged).

The Working Group further highlighted that proper victim identification is a fundamental prerequisite for access to justice. Many trafficked persons are still not identified, or misidentified as irregular migrants, or criminalised for crimes that they were compelled to commit as a direct consequence of being trafficked. If trafficked persons are not recognised as victims of crime, there can be no effective access to justice.

Legislation is a particularly important precondition to ensuring access to justice. Where adequate laws are in place, implementation is key to enabling victims to access their rights and participate in criminal proceedings. However, where the legal framework is inadequate, the Working Group recommended law reform and the introduction of new provisions as necessary. Specifically, support provisions are key in creating an enabling environment by, for example, providing victims regular status in a country of origin or accommodation. Other areas where support to victims is critical to their ability to access justice are legal aid and advice. For example, where victims have to engage in complex court proceedings or fill out complicated forms to lodge their claims, they will need the support of qualified lawyers to do so. For example, in the EU, the Trafficking Directive provides victims with access to free legal aid.

Awareness about frameworks and the ability to apply them are crucial to giving victims access to justice. Practitioners within the criminal justice system need to understand the different systems and procedures and apply them to ensure that their obligations towards victims of trafficking are fulfilled. Adequate skills, but also capacity within the criminal justice system and the legal profession, are required as these will facilitate to access to justice. Corruption within systems as well as individual corrupt officials can also be a major hindrance to achieving justice for victims.

The Working Group recognised that some civil society organizations are able to provide highly specialist support, including legal advice. Nevertheless, many trafficking cases are very complex and require the involvement of expert lawyers to represent victims, alongside the support provided by civil society counsellors. In particular where compensation is being considered as a form of remedy for victims, the advice of lawyers is critical to identifying the most appropriate jurisdiction for lodging a claim or what source of law has a better chance to achieve the best result for a victim. For example, in some cases, compensation provisions in anti-trafficking legislation will provide a victim with high chances to obtain a remedy; in other cases, employment laws (and labour courts) can prove to be a more appropriate vehicle.
The Working Group agreed that lack of access to justice for victims of trafficking is closely linked to the general lack of a victims’ rights culture. This appears to be a problem across the board. While nascent steps are being taken, such as the process in the EU to develop a “victims’ rights package” (a combination of policy and legislative measures to ensure that every victim of crime has the same rights within the EU) — we are still far away from recognising victims of crime as rights bearers. It is equally important to highlight that victims of trafficking are victims of a serious crime.

The Working Group stressed that access to justice needs to be ensured in the country of origin as well as in the country of destination in international trafficking cases, as violations against a victim would have occurred at both ends.

4.3.3 Strategies and solutions

The Working Group emphasised the need to develop end-to-end anti-trafficking strategies that make access to justice central to any victim protection mechanism, but also recognise that access to justice for victims is a key element of successful prosecution of perpetrators. Access to justice for trafficked persons is central to a human approach, but ought to also be seen in the broader context of arrangements for victims of crime with the view to establish a victims’ rights culture.

The Working Group recommends focus on two key aspects of facilitating access to justice: a) creating an enabling environment for access to justice through support provisions for victims and capacity building for professionals; and b) implementing or enhancing policy and legislative frameworks in order to facilitate access to justice.

In relation to creating an enabling environment and building the capacity of professionals, the Working Group recommends that:

1. State should consider codifying a human rights approach in regulations/guidance for front-line professionals;

2. Law enforcement, judiciary, lawyers and other criminal justice practitioners should receive regular training about victims’ rights and the importance of access to justice;

3. Where possible, victims should be encouraged to participate in the legal process as witnesses; their participation should be on the basis of informed consent with safeguards protecting them from reprisals;

4. Public/private/criminal and civil law channels should be explored for claiming compensation;

5. Where possible, the jurisdiction where the chances of success are better should be chosen to lodge a claim;

6. Capacity of lawyers should be increased;

7. Jurisprudence should be developed and all available legal channels tested;

8. Practical solutions to bypass corrupt systems, such as the creation of specialist units, should be put in place.
In relation to implementing or enhancing policy and legislative frameworks in order to facilitate access to justice, the Working Group recommends that:

1. All available legislation be used to achieve justice/remedy – anti-trafficking laws are not the only resort;

2. Corruption within criminal justice systems is addressed and corrupt individuals brought to justice;

3. Policies should focus on the situation of abuse/exploitation rather than the process of travel to discern trafficking from smuggling;

4. States should implement different funding models to support litigation on behalf of victims (including public-private partnership models) to ensure availability of resources when and where needed;

5. Non-punishment provisions are introduced in national laws and in policy (ratification of ILO Convention 29 and its 2014 Protocol; ratification of the 2015 ASEAN Trafficking Convention);

6. States should work with other governments and stakeholders to create national, regional and local synergies;

7. Media are encouraged to report successful cases where traffickers have been brought to justice and stripped of assets to create a deterrent effect.

4.4 Working Group on International Cooperation Against Trafficking

4.4.1 Introduction and key issues

The Working Group affirmed the importance of international cooperation in responding effectively to trafficking in persons; a crime and human rights violation that is all too often transnational in both its commission and effect. Without international cooperation, victims will not receive the protection and rights to which they are entitled and traffickers will continue to enjoy high levels of impunity. International cooperation is also an essential aspect of preventing trafficking, through addressing vulnerabilities and the demand for the goods and services produced by trafficking.

International cooperation is particularly important between States. However other actors also have important roles to play in terms of cooperating with States and with each other. Civil society organizations; the private sector; and intergovernmental organizations must all be involved in different aspects of international cooperation.

While international cooperation can help to boost the quality of the national response to trafficking, effective cooperation must build on what exists at the national level. Political commitment to address trafficking, a robust legal and policy framework, and the existence of functioning systems and institutions (both government and non-governmental) are all national-level pre-requisites for effective international cooperation.
1. **Commitment to international cooperation**

States, the international community and others involved in responding to trafficking have repeatedly affirmed the importance of international cooperation and their commitment to its strengthening. For example:

1) One of the stated purposes of the *UN Trafficking Protocol* (2000) is to “promote cooperation among States Parties” in order to “prevent and combat trafficking in persons” and “protect and assist victims with full respect for their human rights”;

2) One of the stated purposes of the *Council of Europe Convention on Trafficking* (2005) is to promote international cooperation on action against trafficking in human beings. Enhancing cooperation between EU Member States and wider international cooperation are also major themes of the *European Trafficking Directive* (2011);

3) The newly adopted *ASEAN Trafficking Convention* (2015): “Recognise[s] that cooperation is imperative to the successful investigation, prosecution, and elimination of safe havens for the perpetrators and accomplices of trafficking in persons, and for the effective protection of, and assistance to, victims of trafficking.”

2. **Key areas for international cooperation**

While international cooperation can enhance most aspects of the anti-trafficking response, several areas emerged as being especially critical in this regard. For example, it was agreed that criminal justice responses to trafficking would inevitably be incomplete without strong international cooperation — both informal (direct police to police cooperation and information sharing) and formal (through international agreements such as mutual legal assistance and extradition treaties). In this regard it is important to note that criminal justice responses are an essential aspect of securing victims’ access to justice.

Another important area for international cooperation is victim return and reintegration. Without strong relationships between States and other relevant actors in countries of origin and destination, safe return and effective reintegration will not be possible. This also holds true for the timely and accurate identification of non-national victims of trafficking. Other areas flagged as particularly relevant to international cooperation included:

1) Development of common standards and approaches;

2) Creation of positive incentives for States to follow standards and good practices;

3) Data collection and analysis and assessment of responses;

4) Prevention and addressing of root causes.

3. **Obstacles to international cooperation**

There are numerous practical, procedural and political factors that can impede cooperation between States – and between both State and non-State entities in different countries. These include communication difficulties arising from differences in language and culture, lack of a tradition of cooperation (either generally or in relation to the specific issue of trafficking in persons), and the absence of structures that can enable patterns of cooperation to emerge and be sustained.
Resources are also an important factor because the lack of resources (or inappropriately targeted resources) can prevent effective and sustained cooperation. Whether between victim support agencies in a country of destination and a country of origin, or between police forces in two or more countries, cooperation requires time, people and money. If international cooperation is not prioritised and adequately resourced, then it is unlikely to happen or, at best, will be limited and ad-hoc.

4.4.2 International cooperation in relation to emerging issues of concern

The Working Group addressed three of the four issues of concern raised in the background paper through the specific lens of international cooperation.

1. International cooperation in the private sector response to trafficking

The background paper noted the increasing attention that is being paid to the involvement of the private sector in trafficking-related exploitation. Such actors may themselves be directly involved in trafficking. An example would be a recruitment agency engaging in exploitative recruitment or a brothel or factory using the services of trafficked persons. However private sector involvement can also be less direct, as is the case where supply chains (labour or materials) of otherwise legitimate businesses are compromised by trafficking-related exploitation. However there is also growing understanding of the importance of involving the private sector in the development and implementation of effective responses. For example, private companies may develop procedures or protocols to ensure their supply chains are free of exploitation. They may also play a key role in funding the anti-trafficking work of civil society and other actors.

The Working Group stressed the need to ensure that international cooperation in relation to the private sector builds on the considerable body of work that has been undertaken outside the sphere of trafficking in persons. For example, through international cooperation involving States, international organizations, civil society actors and private sector actors, standards have been developed in the area of human rights and business that provide a strong foundation for engagement with the private sector on issues around trafficking. Critically, these standards have affirmed the responsibility of States under international law to act with due diligence in preventing trafficking, investigating and prosecuting traffickers, and assisting and protecting trafficked persons. Other standards developed through international and cross-sector cooperation govern the roles and responsibilities of business enterprises with respect to the treatment of migrant workers, including at the recruitment stage.

In relation to the development of standards, tools and strategies for use by business, the Working Group recommends:

1) International cooperation between relevant actors to further develop and particularise these standards to ensure their relevance to trafficking in persons;

2) Collaboration between relevant actors to identify opportunities for improving oversight of these standards and their effective implementation;

3) Identification of opportunities to bring together all relevant actors — including labour ministries, trade unions, employers’ organizations, business platforms, private recruitment agencies, etc. — in order to raise awareness, share experience and further develop common approaches and solutions involving both business and consumers. This may include sector-specific codes of conduct.
In relation to ensuring that States meet their legal obligation to prevent and respond effectively to trafficking in the private sector, the Working Group recommends:

1) States cooperate in international forums to review the relevant legal and policy framework and ensure it adequately addresses their obligations in this area. This may involve, for example, consideration of whether the obligation to prevent and respond to trafficking committed by private parties requires States to take measures to ensure transparency in supply chains; the elimination of any government involvement in trafficking via public procurement; and appropriate criminalisation of the knowledge or reckless use of the services of trafficked persons;

2) States consider concluding bilateral agreements with other relevant States aimed at codifying common standards and approaches with respect to matters such as recruitment and placement of migrant workers, and facilitating cooperation among relevant ministries and officials;

3) States review their laws, procedures and practices with a view to improving their capacity to exchange information and evidence across national borders aimed at identifying and addressing private sector involvement in trafficking.

In relation to raising awareness and increasing transparency, the Working Group recommends:

1) Civil society groups (and other actors as appropriate) cooperate at the international and regional levels to expose and analyse private sector involvement in trafficking and to develop specific proposals for addressing such involvement;

2) Civil society groups forge alliances across borders to support and engage in strategic litigation aimed specifically at securing legal accountability for private companies complicit in trafficking-related exploitation, and securing civil remedies for victims;

3) International organizations, States, civil society groups consider opportunities to cooperate in developing or expanding “black lists” of companies that have been identified as complicit in trafficking.

2. International cooperation in the context of trafficking and smuggling

The Working Group affirmed the finding of the background paper: that, in both Europe and Asia, the smuggling of migrants is increasingly intertwined with trafficking in persons — calling into question the division between these two practices that is maintained in international law, and raising concerns about how migrant smuggling that involves human trafficking should be identified and responded to. In this regard it is relevant to note that under international and most national laws, smuggled migrants, even those subject to hardship and abuse are not considered to be victims of crime. They have no apparent right to support and assistance, no right to seek remedies for the harms committed against them, no right to protection from further harm, and are often not granted any protection from immediate return. It is also relevant to reiterate that some States are moving beyond the criminalisation of smuggling to criminalise the act of being smuggled — that is, the migrants themselves.

The Working Group emphasised that trafficking and smuggling are indeed distinct crimes under international and national law and that there are dangers associated with characterising migrant smuggling as “trafficking”. Conversely, it is important to recognise the overlap that often occurs in practice. This requires careful attention to the differences between trafficking and smuggling while also ensuring that the vulnerability of smuggled migrants to trafficking and related exploitation is acknowledged.
Timely and accurate identification is critical to appropriate handling of the trafficking or migrant smuggling nexus. In this regard it is essential to note that all victims of all crimes (including victims of exploitative smuggling that may or may not constitute trafficking) have their rights to protection, assistance and justice upheld.

In relation to enforcement of the international legal framework, the Working Group recommends:

1) That the international community cooperate in ensuring wider acceptance and effective implementation of: (i) the principle that irregular migrants should not be criminalised for the sole fact of their irregular entry or stay; and (ii) the principle that persons recognised or presumed to be victims of trafficking should not be punished/criminalised for status offences including irregular entry, irregular stay or possession of fraudulent or incomplete documentation;

2) That States establish or strengthen monitoring mechanisms around the relevant international and regional instruments in order to ensure adequate monitoring, and that State obligations relating to both trafficking in persons and smuggling of migrants are recognised and upheld;

3) That States review their legal frameworks around both trafficking in persons and smuggling of migrants in order to ensure both crimes are sufficiently and clearly criminalised and differentiated, and that proportionate penalties are attached to the relevant offences;

4) That States and, where appropriate, their international organizations provide sufficient budgetary allocations to support monitoring and effective implementation of the legal framework around both trafficking and migrant smuggling and that they share information with each other on how this has been done and its impact.

In relation to data collection, the Working Group recommends:

1) That States, international organizations and other relevant bodies cooperate at all levels in collecting information that will provide better insight into the links, overlaps and differences between trafficking in persons and smuggling of migrants;

2) That international law enforcement and criminal justice agencies including INTERPOL, UNODC and EUROPOL commit to cooperating with each other in collecting evidence on the links between trafficking and smuggling networks. This work should be tightly focused and aimed at providing insight to enable the development of better policies and practical approaches;

3) That civil society organizations and others working with victims of trafficking be encouraged and supported to cooperate with one another in standardising tools and approaches aimed at securing better information on the profile and experiences of persons, with whom they are working, who may have been smuggled or trafficked. In relation to all such information collection exercises appropriate attention must be paid to relevant rules around privacy and data protection.

In relation to victim protection, the Working Group recommends:

1) That States and other relevant actors cooperate in developing the capacity of first responders/first points of notification to provide accurate and timely identification of victims of trafficking and exploitative smuggling and the provision of immediate protection and support;

2) That States and other relevant actors cooperate to develop common tools and approaches that will help to standardise and improve the quality of victim identification — for example through agreed and evidence-based indicators;
3) That States, international organizations and civil society work together to raise awareness around the rights to which all victims of crime (including victims of trafficking and exploitative smuggling) are entitled;

4) That States, international organizations and civil society work together to promote safe and non-exploitative migration.

3. International cooperation to address forced criminality

The Working Group affirmed the finding in the Background Paper that women, men and children trafficked across international borders or within a country are increasingly coerced into committing criminal activities. The range of crimes that they may be compelled to commit is broad and includes petty crime (such as pick-pocketing, shoplifting or distraction theft), and more serious offences (such as drug cultivation and distribution, and drug smuggling, as well as immigration fraud including through sham marriage). It was noted that the full scale of this phenomenon is not yet well appreciated and that national definitions and understandings still differ widely. The Working Group further noted that while there is increasing recognition of the phenomenon of trafficking for forced criminality, especially within Europe, its place within international, regional and national definitions of trafficking is still unclear.

In relation to promoting better understanding of this phenomenon and greater harmonisation of legal definitions and associated tools, the Working Group recommends:

1) That States, international organizations and civil society cooperate to ensure that the issue is brought to the attention of relevant forums including but not limited to the OSCE Alliance Against Trafficking in Persons (specifically its 2016 conference); the Working Group on Trafficking in Persons attached to the Conference of Parties to the Organized Crime Convention and its protocols; and the United Nations Commission on Crime Prevention & Criminal Justice;

2) That in these, and other forums, concerned States of Asia and Europe cooperate to consider development of jointly sponsored resolutions on forced criminality, which focus on using international cooperation to improve understanding and responses;

3) That international organizations cooperate with each other and with civil society and other relevant bodies in developing common indicators on forced criminality that may be used to improve national level identification of victims and improve both victim support and criminal justice responses.

In relation to legal, policy and regulatory frameworks, the Working Group recommends:

1) That States share with one another their experiences and promising practices in relation to forced criminality in the context of trafficking. International organizations, such as the UNODC, the European bodies concerned with trafficking and ASEAN may have an important role to play in facilitating this cooperation and disseminating the results;

2) That States, international organizations and civil society work together to promote greater acceptance of the principle of non-punishment for status offences and its applicability in many cases of trafficking for purposes of forced criminality;

3) That States, international organizations and civil society work together to promote greater understanding of this form of trafficking and of the rights of its victims. In this regard, international cooperation should be directed to raising awareness of (and through) diplomatic and consular missions, liaison officers, regional intergovernmental and civil society bodies, and education institutions;
4) That States consider concluding or revising their bilateral agreements and instruments on trafficking to better reflect the reality of trafficking for forced criminality and the particular challenges in relation to victim protection and support, and criminal justice responses that this form of trafficking will often raise.

5. Conclusion

Poverty, inequality, but also increasingly internal and international conflicts, create the conditions in which human trafficking flourishes. Understanding the causes and the context in which trafficking occurs, and the ability to distinguish trafficking from other related, but different crimes, such as migrant smuggling or labour exploitation, are key prerequisites to developing effective and appropriate responses.

The first important step for States in the process of countering trafficking is to accede to international conventions on human trafficking and related issues, such as forced labour, and to enact corresponding national laws. Furthermore, States should also take into account the impact that other laws, regulations and policies such as those relating to labour market, business behaviour along supply chains, and immigration can have in assisting and/or hindering anti-trafficking actions. However, legislation alone will not stop trafficking from occurring. The way laws are implemented, and whether policies are developed and realised in partnership with stakeholders, such as other governments and civil society, will be decisive to success in addressing the problem.

It has been accepted that trafficking in persons needs to be addressed simultaneously in a number of ways. An effective formula for anti-trafficking action ought to combine prevention measures with adequate and appropriate protection and assistance to those that have been trafficked, ensuring their access to justice and working with others across borders and continents.

Included in the obligation on the States is the duty to protect the rights of trafficked persons. The protection of the rights of trafficked persons and those at risk of human trafficking is the cornerstone of any effective anti-trafficking strategy. Empowerment of vulnerable at-risk groups will reduce their likelihood of being trafficked. Similarly, victims who are empowered and appropriately supported will feel safer and more able to cooperate with law enforcement in the prosecution of traffickers. States can further prevent trafficking for forced labour by strengthening access to decent work through regulating business operations, and introducing transparency requirements for anti-trafficking action undertaken by businesses in all tiers of their supply chains.

States, civil society, international organizations and the private sector all have a role to play in addressing trafficking in human beings. Collaboration is essential, not only internationally but also within States – in communities and regions. Working together, stakeholders can improve identification of victims, strengthen criminal justice responses and begin to tackle the contexts and causes in which trafficking occurs.

Endnote:

1. See “Benchmarks and indicators for ensuring trafficking-free supply chains” (United Nations General Assembly, 2013)
2. See, for example, the guidelines of the ASEAN Commission on Women and Children, Gender Sensitive Guidelines for Handling of Women Victims of Trafficking in Persons
BACKGROUND ON TRAFFICKING IN PERSONS: DEFINITIONS, LEGAL FRAMEWORKS, TRENDS AND ISSUES

1. Introduction: Definitions, trends and responses

Section 1 seeks to provide an overview of the phenomenon of trafficking in persons, and thereby to establish a solid foundation of knowledge and understanding upon which more detailed discussion of specific issues can be built. It addresses the following:

- How is trafficking understood and defined?
- How does trafficking happen, where and to whom?
- How have the international community, States and civil society responded to trafficking?

Section 1 concludes by addressing the linkages between human rights and trafficking, outlining a human rights response to trafficking and indicating how it differs from other kinds of responses to trafficking.

1.1 What is trafficking?

“Trafficking” in relation to human beings has been referred to in international legal agreements as early as the 1904 International Agreement for the Suppression of the White Slave Traffic. In that context, and up until the end of that century, the term was mostly understood as referring to the movement of women and girls across national borders for purposes of their sexual exploitation.

In December 2000, the international community adopted the United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) as part of a group of treaties dealing with transnational organized crime and its various manifestations. The Trafficking Protocol, as it has come to be known, set out the first-ever international legal definition of trafficking in persons:

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

It is important to note that the Trafficking Protocol defines trafficking in children (defined as persons under the age of 18 years) differently. In such cases, it is not necessary to show that force, deception or any other means were used. All that is required is to show a) an “action” such as recruitment, buying and selling, and b) that this action was for the specific purpose of exploitation. In other words, trafficking in children will exist as a matter of international law in situations where a child is subject to some act such as recruitment or transportation, for the purpose of their exploitation. This simplified definition, that removes the requirement to also show means such as force, fraud or coercion, is intended to make the identification of child victims of trafficking and the identification of their traffickers easier.
1.1.1 The elements of trafficking: Difference between adults and children

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<tr>
<th>KEY ELEMENT</th>
<th>UN TRAFFICKING PROTOCOL</th>
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<tbody>
<tr>
<td><strong>1. An action:</strong> What traffickers do</td>
<td><strong>Three elements must be present for a situation of trafficking in adults</strong></td>
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<td></td>
<td>Recruitment, transportation, transfer, harbouring or receipt of persons</td>
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<tr>
<td><strong>2. By means of:</strong> How they do it</td>
<td><strong>Two elements must be present for a situation of trafficking in children (persons under 18 years of age)</strong></td>
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<td>Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another</td>
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<td>(Not required)</td>
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<tr>
<td><strong>3. For the purpose of:</strong> Why they do it</td>
<td>Exploitation (including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)</td>
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1.1.2 Key features of the international legal definition

The key features of the international legal definition can be summarised as follows:

- **Internal and cross-border:** Trafficking can take place within a country (internal trafficking) as well as involve the movement of a victim from one country to another. Sometimes migrants who move safely from one country to another are subsequently trafficked within their country of destination.
- **Purposes and profiles of victims:** Trafficking can take place for a range of purposes, most often for labour exploitation and sexual exploitation. Women and girls, men and boys, can all be victims of trafficking.
- **Not just about movement:** The concept of trafficking in international law does not just refer to the process by which an individual is moved into a situation of exploitation — it extends to include the maintenance of that person in a situation of exploitation. Accordingly, it is not just the recruiter, broker or transporter who can be identified as a trafficker, but also the individual or entity involved in initiating or sustaining the exploitation.
- **The role of “consent”:** It is sometimes claimed that victims of trafficking consented to their exploitation. However, “consent” in such cases is invariably compromised through force, deception or other means. That is reflected in the legal definition of trafficking, which affirms that the “means” of trafficking in adults such as fraud or coercion operate to nullify consent.

1.1.3 Trafficking and related crimes

 Trafficking has been identified as a crime and is a human rights violation in its own right. However, trafficking often includes, encompasses or overlaps with other crimes such as forced labour, the commercial sexual exploitation of children, or the unlawful removal of organs. Trafficking can also overlap with another transnational crime — smuggling of migrants. This particular issue is subject to detailed examination in Section 2.3 below.
1.1.4 Indicators of trafficking

Indicators (or indications) of trafficking are the factors or signs that can be used to identify possible victims of trafficking. It is important to note the following with respect to indicators:

- Indicators are not definitive. Certain indicators may be present in some trafficking situations and not in others. Victims of trafficking cope with their experiences differently and it should not be assumed that any person will behave, appear or react in a particular way.
- Trafficking cases may not be apparent upon first contact. Until it is certain, the suspected or potential trafficked person should be treated as a victim of a crime.
- The presence of indicators does not mean that a case of trafficking has been established. If there are indications that someone is in a trafficking situation, this should immediately compel further investigation.

The following list of indicators, adapted from a publication produced jointly by the International Labour Organization (ILO) and the European Commission, gives some idea of the signs or “clues” that, on their own or in combination, might point to a situation of trafficking. However, establishing whether someone is a victim of trafficking — and indeed, whether a crime of trafficking has occurred — requires application of the definition set out in national law to the facts of a particular situation.

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<tr>
<th>INDICATORS OF TRAFFICKING IN PERSONS</th>
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<tr>
<td>The following indicators or indications of trafficking in persons have been adapted from the International Labour Organization / European Commission, Operational indicators of trafficking in human beings (2009).</td>
</tr>
</tbody>
</table>

1. **Examples of indicators that may point to deceptive recruitment**

   - The victim may be deceived about:
     - The nature of the job, location or employer
     - Working conditions
     - The content or legality of a work contract
     - Family reunification
     - Housing and living conditions
     - Legal documentation or obtaining legal migration status
     - Travel and recruitment conditions
     - Wages/earnings
     - Promises of marriage or adoption
     - Access to education opportunities
2. **Examples of indicators that may point to coercive recruitment (including transfer and transportation)**

- Violence against victims
- Abduction, forced marriage, forced adoption or selling of the victim
- Confiscation of documents
- Debt bondage
- Isolation, confinement or surveillance
- Threats of denunciation to authorities
- Threats of violence against the victim
- Threats to inform the victim's family, community or public about the victim's situation
- Violence or threat of violence against the victim's family
- Withholding of money

3. **Examples of indicators that may point to recruitment by abuse of vulnerability**

- Abuse of a difficult family situation
- Abuse of illegal status
- Abuse of lack of education (or local language)
- Abuse of lack of information
- Control by exploiters
- Economic reasons
- Inaccurate information about the law and/or attitude of authorities
- Family situation
- Personal situation
- Psychological and emotional dependency
- Relationship with authorities and/or legal status
- Abuse of cultural and/or religious beliefs
- Difficulties in the past
- Difficulty organising travel

4. **Examples of indicators that may point to exploitative conditions at work**

- Excessive working days or hours
- Poor living and/or working conditions
- Hazardous work
- Low or no salary
- No respect of labour laws or contract signed
- No social protection (contract, social insurance, etc.)
- Wage manipulation

5. **Examples of indicators that may point to coercion at destination**

- Confiscation of documents
- Debt bondage
- Isolation, confinement or surveillance
- Use of violence on victims
- Forced into illicit/criminal activities
- Forced tasks or clients
- Forced to act against peers
- Forced to lie to authorities, family, etc.
- Threat of denunciation to authorities
- Threat to impose even worse working conditions
- Threats of violence against victim
- Under strong influence of exploiters/others
- Violence on family (threats or effective)
- Withholding of wages
- Threats to inform family, community or public

6. **Examples of indicators that may point to abuse of vulnerability at destination**

- Dependency on exploiters
- Difficulty living in an unknown area
- Economic reasons
- Family situation
- Relationship with authorities/legal status
- Difficulties in the past
- Personal characteristics
1.2 How trafficking happens

The indicators set out above outline how trafficking can happen, and how a trafficking situation may be the result of a range of tactics and techniques. At the recruitment stage, traffickers use a variety of recruitment methods. Outright abduction or sale is sometimes reported, especially in situations of conflict, but this is not typical. Often there is deception in recruitment. Victims may be tricked into believing they are being recruited for legitimate employment, for example, or for marriage abroad. Sometimes the deception will not relate to the type of employment but rather to the conditions of work.

Traffickers will often seek to exercise control over a victim’s legal identity by confiscating the victim’s passport or official papers and isolating them physically, culturally and linguistically. Debt bondage and withholding of wages are widely used means of exercising control over trafficked persons and ensuring their continued profitability. Physical restraint, violence and intimidation aimed at establishing and maintaining control are frequently reported.

Women, men and children are trafficked in and through all regions of the world, though some are certainly more vulnerable than others. While our understanding of trafficking is far from complete, it is clear that certain factors help to shape the vulnerability of an individual, a social group, or a community to trafficking and related exploitation. Specific forms of trafficking-related vulnerabilities may include those related to poverty and inequality; to discrimination and violence against women; and to discrimination on the basis of race, ethnicity and caste. Importantly, factors that shape vulnerability to trafficking tend to have differential and disproportionate impact on groups already lacking power and status in society including women, children (particularly unaccompanied children), migrants (especially irregular migrants), refugees and the internally displaced.

It is widely accepted that human trafficking is an increasingly common feature of modern conflict — whether internal or international. Many of the elements known to increase individual and group vulnerability to trafficking — such as gender-based violence, discrimination and lack of economic opportunity — are exacerbated before, during and after conflict. Furthermore, conflict fuels the impunity, the breakdown of law and order, and the destruction of institutions and communities that foster the conditions within which trafficking will flourish, often well past the point at which hostilities cease.
The trafficking process

**Push Factors**
*Escape from:*
- Poverty
- Unemployment, underemployment
- Discrimination
- Physical, sexual or psychological violence
- Conflict/displacement

**Pull Factors**
*Demand for:*
- Unpaid/cheap labour
- Mines, agriculture, factories, fishing, domestic work
- Sex industry
- Others: Organs, crime, etc.

**The “means”**
- Force/coercion
- Fraud/deception
- Abuse of power
- Abuse of a position of vulnerability

**The “action”**
- Transporting
- Recruiting
- Buying/selling
- Harbouring

**For the purposes of exploitation:**
- Forced labour: Mining, agriculture, factories, fishing, hospitality
- Domestic servitude in private residences
- Adult and child prostitution and production of pornography
- Forced marriage or exploitation via adoption
- Street selling, street begging and forced criminality
- Recruitment into conflict (child soldiers, porters, etc.)
- Removal of organs
1.3 Statistics and case studies

Reliable information on trafficking prevalence is a challenge to obtain, as discussed in more detail in Section 3.4 below. Our understanding of trafficking patterns and trends is relatively stronger, although there remain significant gaps and weaknesses. For example, while the connection between trafficking and conflict is widely acknowledged, the extent to which trafficking forms part of modern conflict is still unclear. Similarly, the link between the two separate offences of migrant smuggling and trafficking in persons has been increasingly noted in the context of the current forced migration crisis affecting Europe. However, definitional ambiguities and a lack of strong information on what is actually happening to migrants make it difficult to flesh out these connections in detail and with certainty.

The following case studies, drawn from both Europe and Asia, are intended to give practical insight into the forms and manifestations of trafficking in these parts of the world. The case studies do not represent the full spectrum of trafficking-related harm. Rather, they have been selected for their capacity to illustrate the scope of that harm as well as to flag emerging trends.

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**Case 1: Trafficking in conflict: The case of the Rohingya in Southeast Asia**

The ethnic Rohingya in Myanmar have long faced discrimination and hardship, and many have been displaced to refugee camps within Myanmar. The worsening security situation has compelled large numbers to seek asylum in neighbouring countries such as Malaysia and Indonesia. On this often perilous journey, men, women and children are extremely vulnerable to being trafficked. Former trafficking camps have been uncovered along the Thai-Malaysia border, inciting a crackdown on human trafficking in Thailand. Rescued victims reported that camp conditions were dire — torture, sexual assault and death were routine.

Asylum seekers were deceived by smugglers and held at these trafficking camps while their captors extorted their families. If their families could not pay, they were sold directly into forced labour — primarily on Thai fishing vessels. There were also reports of Rohingya women who were forced to marry to secure their release from these camps, as their families could not afford the exorbitant fees imposed by the traffickers. It is estimated that hundreds of women and girls have been married off in this way to Rohingya men already settled in Malaysia. The extent to which they have consented to these marriages is blurred by their fears of sexual violence and threats of being sold for sex work from their captors.


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Case 2: Trafficking in the fishing industries of Asia and the Pacific

The trafficking of vulnerable migrant workers onto Thai fishing boats has been documented for at least the past decade, although recent investigative reports have done much to expose the extent to which forced and exploited labour is woven into the fabric of the Thai fishing industry. Workers from Myanmar, Cambodia and Indonesia are typically “sold” to boat owners by recruiters and brokers. They are then forced to pay off exorbitant debts before being able to keep any money for themselves. Reliable reports have documented horrific working and living conditions, including 20-hour workdays, physical and psychological abuse, and lack of food, adequate shelter and medical attention. Exploitation is not limited to fishing boats. Trafficked migrant workers, including children, have been rescued from Thai seafood processing factories. Strong evidence has emerged that the supply chains of major international corporations involved in the buying and selling of Thai seafood, including Costco and Walmart, have been compromised by forced and exploitative labour.

Such exploitation is not confined to Southeast Asia. Fishing is a major industry in New Zealand and a number of regulatory innovations have been developed to optimise harvesting of fish stocks in that country’s richly endowed exclusive economic zone (EEZ). One innovation is the “Foreign Charter Vessel”, a system whereby foreign vessels, complete with foreign crew, are chartered by New Zealand companies to fish the EEZ on their behalf, with the catch being transferred onshore for processing. Over the past decade, compelling evidence has emerged of forced and exploitative labour amounting to human trafficking on board Foreign Charter Vessels. While isolated cases dating back to the mid-1990s had previously been reported, the issue first came to international attention in August 2010 when the Republic of Korea-flagged vessel Oyang 70, sank in calm seas 700 km off the New Zealand coast. The rescue exposed horrific living and working conditions for the Indonesian crew, but not before five Indonesia fishermen and the Korean captain had died. Less than a year later, seven Indonesian fishermen abandoned the Korean-flagged fishing vessel Shin Ji and 32 abandoned the Oyang 75, another Korean-flagged vessel. All 39 Indonesians alleged abuse and under payment or non-payment of wages. Some also alleged physical abuse and sexual harassment.

Case 3: Trafficking in the Australian sex industry

According to the US State Department’s 2015 Trafficking in Persons Report, women migrants from Asia — and to a lesser extent, Eastern Europe and Africa — have been coerced into prostitution under circumstances that meet the national and international definition of trafficking in persons. Cases that have come to trial confirm that migrant women and girls have been held in captivity, subjected to physical and sexual violence, threats and intimidation, and controlled through unfair and illegal debt contracts. Some victims of trafficking for sexual exploitation and others who migrate to Australia for arranged marriages have been subjected to domestic servitude. A 2014 report of the Commonwealth Parliament confirmed the existence of trafficking in the Australian sex industry, noting that while these comprise the majority of cases coming to the attention of criminal justice agencies, there are increasing reports of trafficking for other purposes, including forced labour and forced marriage. Cases of trafficking for sexual exploitation have typically involved small crime groups using ethnic, family and business contacts in the country of origin to facilitate recruitment, movement and visa fraud.


Case 4: Exploitative recruitment in the Czech forestry industry

According to the ILO, trafficking of vulnerable workers through unscrupulous agents is one of the most common ways in which individuals are brought into a situation of forced labour.

A case that has come to the attention of media, trade unions and governments in Europe often involved large numbers of trafficked workers of different nationalities. In 2009, the media and NGOs in the Czech Republic reported about large-scale exploitation of migrants in the Czech forestry industry. Workers came from a number of countries, including Viet Nam, Slovakia, Ukraine, Mongolia, Romania and Bulgaria. They performed heavy manual labour in forestry. Lawyers and victim advocates involved in the case estimate that 1,500–2,000 trafficked persons were exploited over several years. The company that recruited the workers was a subcontractor of one of the largest forestry companies in the Czech Republic, which operated on a contract of the Czech government, the owner of the forests.

Deception was a key factor in this case. For example, Vietnamese workers were compelled by their recruiter to sign a “training contract” in Czech, which they did not understand and were deceived about the content of the contract. As a consequence, they were unaware that instead of a standard employment contract, they had signed a training contract and were “trainees”, not employees. This contract ostensibly entitled the employers to avoid paying workers beyond covering their basic accommodation and food needs. Workers were also subjected to threats, harassment and violence from the recruiters. By concluding “training” contracts that fell within the Ministry of Education, traffickers effectively obstructed investigations by the Ministry responsible for regulation of labour, thereby enabling the situation to continue.

Case 5: Trafficking for forced criminality in the United Kingdom

The principal purpose of trafficking is to generate profits from the exploitation of a person. If the type of activity for which an individual is exploited is itself illegal, then the risks to the victim increases as does the likelihood that perpetrators will not be brought to account for their crimes.

 Trafficking for forced criminality has been recognised as a growing problem in Europe. Children and adults are trafficked and coerced into various sorts of criminality, including shoplifting, pickpocketing, and theft of precious metal from railway lines. Some of the crimes that victims are forced to commit are serious and attract high prison sentences. Often these “crimes” involve drugs — cannabis cultivation, drug distribution or drug trafficking. Trafficking for forced criminality currently represents 4% of all cases of trafficking reported to Europol.

The most common form of forced criminality relates to cannabis cultivation, and victims are typically young Vietnamese men.

Fifteen-year-old Hai* grew up in a village in Vietnam and did not go to school. When his father died, Hai tried to make a living in the capital selling plastic bottles for recycling. A man approached him and said he could earn lots of money in Europe. Hai would have to raise several thousand dollars for an agent to take him. His mother took out a loan against their house and an uncle raised the rest.

After 14 months of travelling, Hai was dumped at a service station in England. He was met by another Vietnamese man called Cuong who drove them to Scotland. Upon arrival, Hai was told that he now owed more money for the trip, plus interest and would have to water cannabis plants to pay off his debt and be able to send money to his family. Hai asked why he could not work in a restaurant, as promised, but Cuong said this was his only option. Cuong left Hai alone in the house with instructions and locked the doors from the outside. Cuong returned to the house every few days with bits of food and water. Hai asked Cuong if he could go home but Cuong hit him and said if he leaves, the police would arrest and beat him. Three months later, the police raided the house. Hai was arrested and taken to custody. When asked questions, he was confused and too scared to tell them anything. A solicitor advised him to plead guilty. Hai was sentenced to 24 months in an adults’ prison and told he would be deported after he had served his sentence.

Most cases of trafficking for forced criminality are identified only after the victim has been prosecuted, despite European and international law providing for the non-punishment of victims. Both the EU Directive and the Council of Europe Convention contain provisions to prevent the prosecution of victims for crimes they have committed as a consequence of being trafficked. The Organization for Security and Co-operation in Europe (OSCE) also drafted guidance for States on the implementation of non-punishment for victims of trafficking.


* not his real name
1.4 Responses to trafficking

While trafficking has been around for many years, coordinated responses are much more recent. These have largely resulted from an improved understanding of the nature and extent of trafficking and growing consensus around what is required to address trafficking effectively. This section provides a summary overview of responses at the international, regional (Asia and Europe) and national levels. It is not exhaustive, but provides information on — and insight into — key developments and trends.

1.4.1 The emergence of international responses to trafficking

The issue of trafficking in persons only properly arrived on the international agenda in the mid-1990s as information emerged about the cross-border exploitation of girls and young women in Southeast Asia and Eastern Europe. At that time, there was no accepted definition of “trafficking”; no understanding that men and boys could also be victims; and no conception that the purposes of exploitation could be as varied as the potential for profit. While trafficking had been addressed previously in agreements between States, this had always been in the much narrower context of the movement of women and girls across national borders for profit.

By the late 1990s, the international community had commenced work on a new treaty on trafficking with a particular focus on organized criminal aspects that would eventually address these gaps. That work culminated in December 2000 with the adoption of the Convention on Transnational Organized Crime and its Protocols. Critically, the UN Trafficking Protocol also set out the first-ever international legal definition of trafficking in persons — one that, as described above, embodied a much more comprehensive understanding of who can be trafficked, how and why.

Like its parent instrument (the Organized Crime Convention), the Trafficking Protocol was never intended to be a human rights treaty. Its core obligations primarily relate to criminalisation, punishment, border controls, and cooperation in investigations and prosecutions. Human rights and refugee law are affirmed as being applicable, and victims are acknowledged as holders of certain entitlements, but the relevant provisions are vague on details and generally “optional” in the shaping of the obligation. However, as described in more detail in the next section, progress since the Protocol has contributed substantially to filling some of its gaps and fleshing out the substantive content of the most important primary rules, including those that relate to the rights of victims and the assistance and protection they should be provided.

Adoption of the Trafficking Protocol proved to be a critical impetus for other parts of the international system to take up the issue of trafficking in a serious and systematic way. Until then, attention had been piecemeal and sporadic. For example, despite explicit references to trafficking in two of the mainstream human rights treaties (Convention on the Rights of the Child and Convention on the Elimination of all Forms of Discrimination against Women) and highly relevant provisions in others (e.g., the prohibition on slavery, servitude and forced labour in the International Covenant on Civil and Political Rights), trafficking was rarely identified or discussed within the international human rights system. This has changed substantially in recent years; trafficking and related exploitation are issues now commonly raised by UN treaty bodies in their consideration of States parties reports; through the Universal Periodic Review Mechanisms; and by a number of UN special procedures dealing with issues as diverse as migrants rights, slavery-like practices and violence against women.
Two key developments within the international human rights system that followed the adoption of the Trafficking Protocol deserve special consideration. The first of these was the elaboration of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, which emerged from the OHCHR in 2002. In her report transmitting this document to the Economic and Social Council, the High Commissioner explained that the development of the OHCHR Principles and Guidelines was a direct response to the clear need for practical, rights-based policy guidance on the issue. As shown in the following section, the Principles and Guidelines have proved to be vital in helping shape understanding of States’ duties with regard to preventing and responding to trafficking.

In 2004, the United Nations Commission on Human Rights (the predecessor to the current Human Rights Council) decided to create a Special Rapporteur “whose mandate will focus on the human rights aspects of the victims of trafficking in persons, especially women and children.” In the same decision, the Commission invited the Special Rapporteur to submit annual reports including recommendations on measures required to uphold and protect the human rights of the victims. The Special Rapporteur was further requested to respond effectively to reliable information on possible human rights violations with a view to protecting the human rights of actual or potential victims of trafficking and to cooperate fully with other relevant special rapporteurs, United Nations bodies, regional organizations and victims and their representatives. In carrying out this mandate, the Special Rapporteurs (there have been three) have visited dozens of countries and conducted in-depth studies of issues ranging from trafficking in supply chains, to the right of victims to access remedies.

In a report marking 10 years of the mandate, the then Special Rapporteur highlighted the role played by this mechanism in ensuring that human rights retain their rightful place at the centre of the international response to trafficking. She noted that the role has been particularly important in light of the fact that the key international treaty on trafficking was established outside the human rights system. States and partners surveyed as part of the preparation for the 10-year report affirmed the mandate’s positive impact on their work as well as on the anti-trafficking sector as a whole. They drew particular attention to the mandate’s contribution to standard setting; to mainstreaming human rights into anti-trafficking discourse; and to drawing attention to emerging and lesser-known forms of trafficking.a

The wider international system has also been a source of important guidance on the legal framework around trafficking, as well as a source of information and insight on specific issues, patterns and trends. For example, the United Nations High Commissioner for Refugees (UNHCR) has developed guidelines on trafficking in the context of asylum seekers and has also published reports on this aspect. The United Nations Children’s Fund (UNICEF) has developed guidelines on the identification and treatment of child victims of trafficking and has undertaken important research into how trafficking affects children. The United Nations Office on Drugs and Crime (UNODC), the guardians of the Trafficking Protocol, have initiated research into new and less understood forms of trafficking; developed training and resource materials for specialist responders; and also contributed to improved understanding of the legal framework through studies into definitional concepts. The ILO has undertaken critical work on the links between trafficking and forced labour. The ILO has also contributed directly to the legal framework around trafficking through its 2014 adoption of the Protocol to the Forced Labour Convention that explicitly identifies the link between trafficking and forced labour and affirms the obligations of States with regard to prevention, protection and prosecution. (See text box below)
2014 Protocol to the Forced Labour Convention

ILO Protocol 29, which was adopted in 2014, updates the widely ratified ILO Forced Labour Convention of 1930 by addressing gaps in its implementation and reaffirming the obligation of States to take effective measures to prevent and eliminate forced labour in all its forms. The new treaty reaffirms the definition of forced labour contained in Convention 29 (“all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”) and provides specific guidance to States Parties on effective measures to prevent and eliminate all forms of forced labour. It directly addresses trafficking in persons and is intended to reinforce and complement other international instruments such as the UN Trafficking Protocol. Obligations under ILO Protocol 29 include:

- Developing comprehensive national policies and action plans for the effective and sustained suppression of forced labour;
- Providing victims with protection and effective access to remedies, such as compensation, irrespective of their presence or legal status in the territory;
- Sanctioning perpetrators;
- Strengthening and applying labour laws and policies to all sectors, as well as inspection services;
- Supporting due diligence by both the public and private sectors to prevent and respond to risks of forced labour; and
- International cooperation between and among States.

The new Protocol is accompanied by Recommendation 2013, adopted at the same time which, while not a legal instrument, provides detailed technical and practical guidance to States on the effective implementation of the 1930 Forced Labour Convention and ILO Protocol 29 and in the areas of prevention, protection, and access to justice and remedies, such as compensation, enforcement, and international cooperation.

1.4.2 Regional responses

The international responses to trafficking in persons outlined above have paved the way — and in turn been influenced by — responses at the regional level. The following short summary focuses on highlights from both Europe and Asia.

1.4.2.1 Regional response to trafficking: Europe

The Trafficking Protocol provided both the impetus and the foundation for a European response to trafficking. While anti-trafficking initiatives, mainly targeted at trafficking in women for sexual exploitation, date back to the 1990s, such as the Hague Ministerial Declaration⁴, it was not until the passage of the Protocol that coherent and comprehensive policies and legislation — at both regional and national levels — began to be introduced.

<table>
<thead>
<tr>
<th>European instruments relevant to trafficking</th>
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<tr>
<td>Council of Europe Convention on Action against Trafficking in Human Beings (2005)</td>
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<tr>
<td>European Union Directive on preventing and Combating Trafficking in Human Beings and Protecting its Victims (2011)</td>
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The three institutions that lead the development of anti-trafficking programmes and legislation in Europe are the European Union (28 Member States), the Council of Europe (47 Member States) and the Organization for Security and Co-operation in Europe (57 participating States).

The Council of Europe Convention on Action Against Trafficking in Human Beings (CoE Convention) of 2005 was the first international instrument to set binding requirements on States to provide protection and assistance for victims. Using the same definition as the Trafficking Protocol and the prevention-protection-prosecution-partnership framework, the CoE Convention strengthened the impact of the Protocol in the region by reaffirming its key provisions and introducing binding provisions in crucial areas. As of October 2015, 43 countries have ratified the convention and one non-member State country, Belarus, has acceded. The CoE Convention is open to all countries.

Unlike the Trafficking Protocol, the CoE Convention is explicitly presented as a human rights instrument that places the rights of the victims at the centre of the anti-trafficking response. The Convention’s binding victim protection provisions include:

- Identification and assistance to victims of trafficking
- Recovery and reflection period
- Residence permit
- Compensation and legal redress

All States parties undertake to introduce legislation to comply with the provisions of the CoE Convention. A Group of Experts on Action against Trafficking in Human Beings (GRETA) is mandated by the Convention to monitor its implementation in all Member States.

The European Union (EU) has the power to issue legislation that, once passed, creates an obligation on Member States to transpose it into their national laws. EU law is also directly applicable in national courts of all the Member States and supersedes national laws. In the 1990s and early 2000s, the EU issued several declarations and recommendations on trafficking, but it was not until 2002 that a first legal instrument — the Council Framework Decision 2002/629/JHA of 19 July 2002, on combating trafficking in human beings — was passed. This was followed by the developments of legislation and policy and culminated in the passage of the Directive of the European Parliament and the Council 2011/36/EC on preventing and combating trafficking in human beings and protecting its victims. The Directive is a criminal law instrument but strongly emphasises victim protection. It also extended the Trafficking Protocol definition by including, as additional forms of exploitation, forced begging and forced criminal activities. As stated in Art 2.3 “Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.” As a result of the 2011 Directive, all EU Member States have in place anti-trafficking legislation and systems for protection of victims.

In addition to legislation, the EU has an overarching anti-trafficking policy — the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. EU trafficking policy is led by the EU Anti-Trafficking Coordinator, a position established in 2011. Several funding streams finance projects by NGOs and government authorities across the EU.

The OSCE has been involved in counter-trafficking programmes for over 15 years. Through its regional offices across Europe, including the whole of the former Soviet Union, the OSCE supports and finances work in countries to develop action plans, train police and set up a protection system. The OSCE has also developed the concept of a national referral mechanism, a system through which a State delivers assistance to victims, discharging its obligation to protect trafficked persons. The term “national referral mechanism” is now common across Europe and most countries have set up these systems for victims’ assistance.
Unlike the Council of Europe or the EU, the OSCE does not have the mandate to create laws. However, participating States agree on political commitments in a range of areas including trafficking. A Special Representative and Coordinator for Combatting Trafficking in Human Beings oversees OSCE’s anti-trafficking work.

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<th>European anti-trafficking mechanisms</th>
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<tr>
<td>GRETA: A group of experts on action against trafficking in human beings formed under the mandate of the CoE Convention. The group is responsible for monitoring the implementation of the Convention by the States and publish regular country reports evaluating the progress in implementation on national level.</td>
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<tr>
<td>OSCE Special Representative: A mandate with the responsibility to assist participating States in their efforts to counter trafficking, in particular the implementation of anti-trafficking policies.</td>
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<tr>
<td>European Union Anti-Trafficking Coordinator: A mandate with the responsibility for co-ordination of anti-trafficking actions across the EU institutions and Member States. The co-ordinator oversees implementation of EU policies in this area and leads on development of new responses.</td>
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1.4.2.2 Regional response to trafficking: Asia

In comparison to Europe, the response to trafficking in Asia has been more fragmented, reflecting the scope and diversity of this region and the absence of unifying institutions. Apart from a treaty on trafficking that addresses only the cross-border trafficking of women and girls for sexual exploitation, adopted by the South Asian Association for Regional Cooperation (SAARC) in 2002, most regional or sub-regional action has taken place within Southeast Asia, principally through the Association of Southeast Asian Nations (ASEAN). However, as the second table below shows, countries of this region have also developed important bilateral agreements aimed at coordinating their responses in relation to critical issues, such as victim identification and repatriation.

<table>
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<tr>
<th>ASEAN instruments relevant to trafficking</th>
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<tr>
<td>2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children</td>
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<tr>
<td>2004 Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (by the Coordinated Mekong Ministerial Initiative Against Trafficking, or COMMIT)</td>
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<tr>
<td>ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007</td>
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<tr>
<td>ACWC Gender Sensitive Guidelines for Handling of Women Victims of Trafficking in Persons</td>
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<tr>
<td>ACWC Guidelines on Victim Protection and Support</td>
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<tr>
<td>ASEAN Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking in Persons</td>
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### 1.4.2.3 Bilateral instruments between ASEAN Member States

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<th>Thailand</th>
<th>Viet Nam</th>
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<tr>
<td>Cambodia</td>
<td>MOU on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003)</td>
<td>Agreement on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking (2005)</td>
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<tr>
<td>Myanmar</td>
<td>MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children (2009)</td>
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<tr>
<td>Thailand</td>
<td></td>
<td>Agreement on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children, and Assisting Victims of Trafficking (2008)</td>
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ASEAN, through its Senior Officials Meeting on Transnational Crime (SOMTC), has also undertaken important work in developing model training curricula and other resources aimed primarily at criminal justice professionals including judges, prosecutors, specialist investigators and law enforcement officials. A full description of available resources is provided in the 2011 ASEAN publication, *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region.*

### 1.4.3 National responses

Developments at the international and regional levels have paved the way for comprehensive national responses to trafficking in the form of laws, policies and practices. While it is not possible to provide a full overview of national responses within the scope of this report, the following paragraphs seek to highlight key developments and challenges. Additional information on national responses, including examples of promising practices, is provided in Section 2 below.

**The legal framework:** Prior to the adoption of the UN Trafficking Protocol in 2000, very few countries criminalised what is now understood to be “trafficking in persons”, although many had prohibited a range of practices associated with trafficking including slavery, enforced prostitution, child sexual exploitation and forced labour. Today, most countries in the world, including most countries of Europe and Asia, now have a specialist trafficking law or detailed provisions within a broader law (such as the national criminal code) defining and criminalising trafficking and providing at least some rights and protections for victims.

**The policy framework:** Numerous countries have adopted policies, such as national plans of action, aimed at identifying priorities around the trafficking response and allocating responsibilities. Sometimes policy instruments address a specific aspect of the trafficking response, for example, in relation to prevention or victim identification. Some countries have entered into bilateral (non-treaty) agreements with others. These agreements are often concluded between countries of origin and destination and seek to promote coordination and collaboration between the two countries on issues of common concern, such as repatriation.
Identification of victims: Unfortunately, trafficked persons have long been misidentified, as illegal migrants or illegal workers for example, and summarily deported. Many countries have recognised the need to establish protocols and procedures to ensure victims are quickly and accurately identified, leading to a gradual increase in the number of formal identifications. However, the numbers are still very low. For example, it has been reported that in 2014 only 44,462 victims of trafficking were identified worldwide. Approximately 75% of these were victims of trafficking for sexual exploitation, with the remainder being victims of trafficking for forced labour. Given the clandestine and illicit nature of trafficking, this number likely represents only a small fraction of the total number of persons currently in a situation of exploitation that would qualify as “trafficking”.

Protection and support for victims: As noted above, the legal framework around trafficking in many countries now includes at least minimum protections for victims. Some countries have made considerable progress in developing the systems and mechanisms — and allocating necessary funding — to ensure that victims do indeed receive appropriate protection and support. However, progress in this area has been uneven. In some countries, victims can benefit from a potentially wide range of entitlements to shelter, psychological support, residence and work rights in the country of destination, and access to compensation. In other countries, such entitlements, even if they exist in law, are not available in practice.

Criminal justice responses: Trafficking has been criminalised in most countries and many have sought to strengthen the criminal justice response through, for example, the training of officials, the establishment of specialist investigative bodies and even the creation of special courts to hear trafficking cases. Despite considerable advances, traffickers continue to operate with impunity in all parts of the world and victims rarely secure the justice they are entitled to. In 2014, there were only 10,051 prosecutions for trafficking offences and a mere 418 of these were for trafficking for forced labour. Considerably less than half of these cases resulted in a conviction.

2. The legal framework: Key rights and obligations

This section seeks to summarise the main areas of international and regional agreement around important aspects of the response to trafficking with a particular emphasis on rights (the legal entitlements of individuals, most especially trafficked persons) and obligations (the legal requirements of States).

Section 2 has two objectives. Firstly, to provide the reader with a solid understanding of victim entitlements and what is required of States under international and regional law — drawing on primary rules as well as supplementary sources. Secondly, to show how the relevant rights and obligations can be or are being implemented in practice.

Following a brief introduction to the legal framework around trafficking, four key areas are considered: victim protection and assistance; legal status and access to justice, including remedies; prevention; and return and reintegration. Examples of positive developments or good practice are included under each sub-heading.

It is essential to note at the outset, the critical importance of international cooperation as a foundational principle for the legal framework — and one that helps in understanding and applying that framework. It is indeed possible for trafficking to take place within the borders of a single country — and for the impact of that trafficking to be limited only to that country. But this is not the usual situation. The impetus for States to work together on the issue of trafficking came from the realisation that in most cases, there is a strong cross-border or international element. Victims are exploited in a country that is not their own; traffickers and their accomplices operate across national borders; witnesses and evidence of trafficking crimes are located in multiple jurisdictions; and the impact of a single trafficking situation is felt in different countries. Even in cases of internal trafficking, the products or services produced through exploitation may well benefit the markets and consumers of another. Cooperation between countries in addressing trafficking is therefore much more than a preferred approach: it is an operational necessity.
Another important preliminary point relates to the concept of a human rights-based approach to trafficking. Concerns about the importance of human rights and risks of their marginalisation have led to repeated calls for a “human rights-based approach” to trafficking. The OHCHR “Commentary on the Trafficking Principles and Guidelines” describes such an approach as a conceptual framework that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. A human rights-based approach to the issue of trafficking requires careful consideration of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States’ obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking.

Under a human rights-based approach, every aspect of the national, regional and international response to trafficking as it relates to this issue is anchored in the rights and obligations established by international human rights law. The lessons learnt in developing and applying a human rights-based approach in other areas, such as development, provide important insights into the main features of the approach and how it can be applied to trafficking. The key points that can be drawn from these experiences include the following:

- As policies and programmes are formulated, their main objective should be to promote and protect rights;
- A human rights-based approach identifies rights-holders (for example, trafficked persons and individuals at risk of being trafficked), their entitlements and the corresponding duty-bearers (usually States) and their obligations;
- A human rights-based approach works towards strengthening the capacities of rights-holders to secure their rights and of duty-bearers to meet their obligations; and
- Core principles and standards derived from international human rights law (such as equality and non-discrimination, universality of all rights, and the rule of law) should guide all aspects of the response at all stages.

These points provide the foundation for how the legal framework around trafficking is understood and explained below.

### 2.1. Introduction to the legal framework

The legal framework around trafficking comprises a dense network of international, regional and national instruments. As trafficking is a complex issue that can be (and has been) considered from a number of different perspectives, the range of relevant treaties is very wide.

#### 2.1.1 Specialist trafficking treaties

As noted in Section 1, there are now several contemporary treaties adopted in the past 15 years that deal specifically and exclusively with the issue of trafficking. These are set out in the box below. Provisions of the first three instruments in particular provide critical substance to the international legal framework around trafficking.
Specialist treaties on trafficking in persons


Council of Europe Convention on Action Against Trafficking in Persons, 2005 (Council of Europe Trafficking Convention)


South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention)

ASEAN Convention on Trafficking in Persons, Especially Women and Children, 2015 (2015 ACTIP)

Internationally, the most important instrument is the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, referred to in this report as the Trafficking Protocol. The Protocol’s significance lies in the fact that its structure and substantive provisions (including, critically, the first-ever international legal definition of trafficking) have provided the template for much of what has followed. The following tables summarise that structure and the key provisions.

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KEY PROVISIONS / OBLIGATIONS OF STATES PARTIES TO THE TRAFFICKING PROTOCOL

The purposes of the Trafficking Protocol are:

To prevent and combat trafficking in persons, paying particular attention to women and children;
To assist the victims of such trafficking, with full respect for their human rights; and
To promote cooperation among States Parties in order to meet those objectives.  

Article 2

The key obligations of States Parties to the Trafficking Protocol are:

To criminalise “trafficking in persons” as defined in the Protocol and to impose penalties, which take into account the grave nature of that offence.  

Article 5

To protect, to the extent possible under domestic law, the privacy and identity of victims of trafficking in persons and to consider the provision of a range of social services to enable their recovery from trauma caused by their experiences.  

Article 6

To ensure that the legal system contains measures that offer victims the possibility of obtaining compensation.  

Article 6

To consider allowing victims to remain in their territory, whether permanently or temporarily, taking into account humanitarian and compassionate factors.  

Article 7

To accept the return of any victims of trafficking who are their nationals, or who had permanent residence in their territory at the time of entry to the receiving State. When returning a victim, due regard must be taken of their safety, with the return preferably being voluntary.  

Article 8

To establish policies, programmes and other measures to prevent and combat trafficking and protect victims of trafficking from re-victimisation.  

Article 9

To provide and/or strengthen training for officials in the recognition and prevention of trafficking, including human rights awareness training.  

Article 10

To strengthen such border controls as might be necessary to prevent trafficking, without prejudice to other international obligations allowing the free movements of people.  

Article 11

2.1.2 Human rights instruments

Trafficking was an issue for human rights well before it became the subject of modern specialist treaties. Two mainstream international human rights treaties make specific reference to trafficking:

- **Convention on the Elimination of All Forms of Discrimination against Women**: Article 6 requires States Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women.

- **Convention on the Rights of the Child**: Article 32 prohibits trafficking in children for any purpose as well as the sexual exploitation of children and forced or exploitative labour. This Convention also contains important protections for children who have been trafficked, including the requirement that the best interests of the child be prioritised in relation to all decisions and actions.

Treaties dealing with slavery and the slave trade, forced labour, child labour, migrant workers and persons with disabilities, as well as more general treaties dealing with civil and political rights or economic, social and cultural rights, are all applicable to trafficking. Major crime control treaties, such as the United Nations Organized Crime Convention and the United Nations Corruption Convention, are highly relevant to States’ obligations with regard to trafficking, as is the Statute of the International Criminal Court, which identifies trafficking (and related conduct such as sexual enslavement) directed against a civilian population in situations of international or internal armed conflict as a war crime and a crime against humanity.
Rights most relevant to trafficking

- The prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status;
- The right to life
- The right to liberty and security
- The right not to be submitted to slavery, servitude, forced labour, or bonded labour
- The right not to be subjected to torture, and/or cruel, inhuman, degrading treatment or punishment
- The right to just and favourable conditions of work
- The right to be free from gender-based violence
- The right to associate freely
- The right to freedom of movement
- The right to the highest attainable standard of physical and mental health
- The right to an adequate standard of living
- The right to special protection for children.

Source: OHCHR, “Human Rights and Human Trafficking — Fact Sheet No. 36” (2014)

2.1.3 “Soft Law” relevant to trafficking

The international legal framework around trafficking includes other accepted sources of international law, such as custom, general principles and the decisions of international tribunals. In relation to custom for example, the prohibition on slavery is widely recognised to be a part of customary international law, binding on all States — even those that are not party to one or more of the treaties that specifically prohibit slavery. It is now generally accepted that certain egregious manifestations of trafficking cross the line into slavery — and in such situations, that prohibition will be directly applicable. An example of a judgment of an international tribunal that has helped to establish the international legal framework around trafficking is Rantsev v Cyprus and Russia, which was decided by the European Court of Human Rights in 2009 and which is referred to at various points below.

The legal framework also embraces instruments that are not strictly law — for example guidelines, non-treaty agreements between States, resolutions of international bodies such as the United Nations General Assembly, etc. Two important examples are:

Recommended Principles and Guidelines on Human Rights and Human Trafficking: The “Trafficking Principles and Guidelines” were developed by the United Nations OHCHR in 2002 to provide practical, human rights-based policy guidance grounded in established rules of international law. They have exercised a major influence over how the relationship between trafficking and human rights is understood and what a “rights-based approach” to trafficking could look like. A number of important principles first articulated in the “Trafficking Principles and Guidelines” (such as the principle that victims of trafficking should not be detained or prosecuted for status offences) have now become accepted at the national, regional and international levels as forming part of a State’s obligations with regard to their response to trafficking. In 2010, the OHCHR issued a detailed commentary to the “Trafficking Principles and Guidelines”.

Commentary to the Council of Europe Convention on Trafficking: When it was adopted in 2005, the text of the Council of Europe Convention was accompanied by a detailed commentary. This commentary provides valuable insight into the intention of the drafters and also into the substantive content of key obligations set out in the Convention itself.
Other instruments that contribute to our understanding of the legal framework are included in the text box below. Note that these “soft law” sources do not directly impose obligations on States, nor do they confer rights on individuals or groups. However, some can form part of the international legal framework, for example, by helping to identify or confirm a particular legal trend or even by contributing to the development of customary international law in relation to a particular aspect of trafficking. The example given above in connection to the United Nations “Recommended Principles and Guidelines” is a case in point. Soft law can also provide insight into the substantive content of more general legal norms that are contained in treaties. For example, the Trafficking Protocol requires States to take some measures to provide victims of trafficking with access to remedies. Soft law materials such as the commentary to the Council of Europe Trafficking Convention, as well as reports of the UN Special Rapporteur on Trafficking, are key resources in determining the actions required by States to fulfil this particular obligation.

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<td>• OSCE Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (2013)</td>
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2.1.4 Understanding and interpreting obligations

Most of the international and regional instruments setting out rights and obligations with regard to trafficking provide broad rules and principles, rather than details. The substantive content of these rights and obligations is therefore not completely settled. For example, as discussed in more detail immediately below, international law clearly imposes on States an obligation to protect and support victims of trafficking. However, the scope and nature of that obligation is still being determined. Important progress has been made: Interpretive texts attached to the major trafficking treaties (such as the Legislative Guide to the Organized Crime Convention and its Protocols and the Commentary to the Council of Europe Trafficking Convention) have helped flesh out what the obligation of protection and support actually entails. Other non-treaty sources, such as the Trafficking Principles and Guidelines and its Commentary, have helped enormously by explaining, in detail, what a particular rule or principle requires in terms of actual practice.

Another important source of guidance and authority with regard to the international legal framework around trafficking, are the bodies that have been established with the express purpose of supporting effective implementation of that framework. At the international level, these include the Working Group on Trafficking in Persons set up under the Conference of Parties to the Organized Crime Convention (the parent instrument of the Trafficking Protocol). Within the international human rights system, the United Nations Special Rapporteur on Trafficking in Persons, established by the predecessor to the Human Rights Council has provided much-needed insight into how particular rules — such as the obligation to provide access to remedies for victims of trafficking — are to be interpreted and applied in practice. The Special Rapporteur on the Rights of Migrants and the Special Rapporteur on Contemporary Forms of Slavery have also made important contributions to our understanding of both rights and obligations. Particularly over the past several years, the international human rights treaty bodies have also begun to address trafficking more regularly and systematically in their consideration of States Parties reports, thereby helping shed light on how States can best implement their obligations in this area.

At the regional level, implementation of the Council of Europe Trafficking Convention has been strongly supported by the existence of a dedicated group of experts (GRETA) who undertake detailed examination of the situation in each State Party and identify ways in which implementation of the provisions of the Convention can be strengthened. The European Court of Human Rights has also, on occasion, provided judgments that flesh out the substantive content of key provisions of that instrument.

2.2 Victim protection and assistance

The rules around victim protection and assistance cover a wide area and are constantly evolving. This section identifies the most critical issues around victim protection and assistance — noting core standards and highlighting, where possible, national and regional developments or practices that provide insight into how a particular principle or obligation can be pursued or realised.

2.2.1 Victim identification

Too often, victims of trafficking are often not identified and, as a result, are simply invisible. When victims of trafficking do come to official attention, they may be misidentified as illegal or smuggled migrants. This is significant because, as explained in the UN Recommended Principles and Guidelines and the commentary to the Council of Europe Trafficking Convention, if a trafficked person is not identified at all, or is incorrectly identified as a criminal or as an irregular or smuggled migrant, then this will directly affect the ability of that person to access the rights to which she or he is entitled.
The compounded harm of identification failure

Failing to recognise a person as a potential victim of trafficking may not only violate that person’s rights and cause harm but also hamper opportunities to deal with trafficking offenders through interdiction, investigation and prosecutions.

The problems are compounded if such a person is treated as a criminal. Building trust is essential to gaining the cooperation of a victim. Arrest and detention will cause serious setback or destroy any chance of building that trust.

Victims are obviously a very significant source of evidence but if their basic needs are not taken care of, they are a source that may quickly disappear. Thus treating a trafficked victim purely as a source of evidence is a short-term approach likely to fail.


States are therefore required to take positive steps to identify victims of trafficking accurately and in a timely manner. That obligation is implied in all legal instruments that provide for victim protection and support. Certain soft law instruments, such as the Trafficking Principles and Guidelines, identify a range of practical steps that should be taken to ensure that victims of trafficking are quickly and accurately identified. These include the preparation of written identification tools such as checklists, guidelines and procedures that can be used to support identification; and the training of relevant officials (police, border guards, immigration officials, labour inspectors, etc.) for the accurate identification and correct application of agreed guidelines and procedures. As noted in the text box below, special and additional considerations apply in respect of the identification of child victims.

Identifying child victims: Presumption of age

In a case where the age of a victim is uncertain and there are reasons to believe the victim is a child, a State Party may, to the extent possible under its domestic law, treat the victim as a child in accordance with the Convention on the Rights of the Child until his or her age is verified. (Legislative Guide to the Trafficking Protocol, Part 2, para 65)

States Parties are to presume the victim is a child if there are reasons for believing that is so and if there is uncertainty about their age. The individual presumed to be a child victim of trafficking is to be given special protection measures in accordance with their rights as defined, in particular, in the Convention on the Rights of the Child. (European Trafficking Convention, Article 10. Explanatory Report to the European Trafficking Convention, para 136)

Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child. Pending verification of the victim's age, she or he is to be treated as a child and to be accorded all stipulated special protection measures. (UNICEF Guidelines, Guideline 3.1.2)
Good practice in relation to victim identification

Asia — Agreement between Lao PDR and Viet Nam on Identification Criteria

In 2010, the Governments of Lao PDR and Viet Nam entered into a Memorandum of Understanding (MOU) to strengthen bilateral cooperation in combating trafficking in persons and protecting victims. Unlike other bilateral or regional MOUs among ASEAN Member States, this MOU specifically outlines the mutually agreed bases upon which to identify victims of trafficking as well as procedures for the safe and timely repatriation of victims. The MOU provides that victim identification is to be based on the following sources:

(a) Evidence and materials provided by the two Parties;
(b) Statement and evidence provided by the victims;
(c) Screening results gained by Lao Ministry of Public Security and Vietnamese Public Security Forces and Vietnamese Border Guard Force;
(d) Statements given by the person conducting trafficking in persons;
(e) Information provided by relevant international organizations and governmental organizations;
(f) Information from other sources.


Europe — The Council of the Baltic Sea States Model Memorandum of Understanding

The Council of the Baltic Sea States, a regional organization formed of 11 States of the Baltic Sea region, runs a Task Force against Trafficking in Human Beings. In 2011, the Task Force reviewed collaboration procedures among stakeholders addressing trafficking in the member States. Following that review, the Task Force developed a model MOU to assist its member States in improving collaboration between law enforcement and specialised service providers, most particularly in the area of victim identification. The model provides a template agreement that can be adapted for use in the individual member States. The model is designed to:

- Foster common understanding of objectives, procedures and roles;
- Build trust and confidence;
- Improve transparency and reduce bureaucracy;
- Establish recognised limitations;
- Provide an objective frame of reference to measure progress;
- Reinforce accountability on both sides.


2.2.2 Victim referral

The identification of victims must be followed by prompt referral to appropriate services. Failure to refer victims quickly and correctly contributes to inappropriate treatment, such as placement in immigration detention or withholding services that victims need and are entitled to receive. Experience has shown that prompt and appropriate referrals do not happen automatically. They require planning, coordination and close cooperation between public and private agencies.
National referral mechanism (NRM)

A National Referral Mechanism (NRM) is a coordination framework that brings together State and civil society agencies working on trafficking. At the core of every NRM is the process of locating and identifying likely (or “presumed”) victims of trafficking. This process includes all the different organizations involved in an NRM, which should cooperate to ensure that victims are offered assistance through referral to specialised services.

The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and set benchmarks to assess whether goals are being met.

The structure of an NRM will vary in each country; however, NRMs should be designed to formalise cooperation among government agencies, as well as between government and non-governmental groups dealing with trafficked persons.


Bulgarian national referral mechanism (NRM) for support of trafficked persons

In 2011, Animus Association, a Bulgarian NGO, initiated the development of a system for identification and assistance of trafficked persons. With the Dutch Government, a working group was set up composed of NGOs, the National Commission for Combating Trafficking in Human Beings, police, relevant ministries and international organizations. Using the OSCE/ODIHR NRM model, the working group developed a co-operative framework with clearly assigned roles and responsibilities.

The NRM comprises the following elements:

- “Institutional framework” — all roles and functions of all NRM participants are clearly defined;
- “Key principles” — all NRM participants follow same rules and principles when working with trafficked persons;
- “Standard operating procedures” — descriptive steps to be followed in facilitating support to trafficked persons.

The NRM also includes common criteria for identification and common standards for service provision that are followed by all participants.

Many countries have experienced problems in their referral systems — both internally and across borders — when referral is required to ensure the safe return and reintegration of a victim. A recent study of practice in Southeast Asia identified the following issues in national referrals:

- Lack of referral and cooperation between anti-trafficking organizations and institutions within a country, which can result in trafficked persons being under-assisted or receiving low-quality services.
- Lack of referral between anti-trafficking organizations and more general assistance organizations within a country, which means alternative assistance options for trafficked persons are not identified, leading to duplication of services and wasting of resources.

### 2.2.3 Provision of immediate protection

As noted in the Commentary to the Trafficking Principles and Guidelines, victims who break free from their traffickers often find themselves in situations of great insecurity and vulnerability. They may be physically injured as well as physically and/or emotionally traumatised. They may fear retaliation. They are likely to have few, if any, means of subsistence. Furthermore, the harm experienced by victims of trafficking does not necessarily cease when they come to the attention of national authorities. Mistreatment by public officials may result in a continuation of an exploitative situation or the emergence of a new one. The harm already done to victims can be compounded by failures to provide medical and other forms of support — or by linking the provision of such services to an obligation of cooperation that victims may not be willing or able to meet.

The first and most immediate obligation of the State in which a victim, or suspected victim, of trafficking is located is to ensure that this person is protected from further exploitation and harm. What this actually means in practice will depend on the circumstances of each case. Certainly States are required to take reasonable measures to this end. That obligation will require:

- Moving the trafficked person out of the place of exploitation to a place of safety;
- Attention to the immediate medical needs of the trafficked person;
- Risk assessment to determine whether the trafficked person is under a particular risk of intimidation or retaliation;
- Apply similar measures to others who could potentially be harmed or intimidated by traffickers and their accomplices, such as family members.

### The obligation to remove from risk of harm

In an important judgment, the European Court of Human Rights affirmed that if State authorities were aware, or ought to have been aware, of a risk of trafficking, then a failure to take appropriate measures within the scope of their powers to remove the individual from that situation or risk is a violation of that person’s rights.

**Source:** Rantsev v Cyprus and Russia (para 286).
2.2.4 Provision of immediate care and support

The State in which a trafficked person is located is also required to provide that person with adequate physical and psychological care to meet at least the individual's immediate needs. The scope and nature of the obligation on States to provide care and support of victims of trafficking will depend on many factors because the legal basis for such support is very wide. Article 6 of the Trafficking Protocol, for example, sets out a range of support measures that States Parties are required to consider implementing including:

- Appropriate housing;
- Counselling and information, particularly regarding their legal rights, in a language that the victims of trafficking can understand;
- Medical, psychological and material assistance; and
- Employment, educational and training opportunities.

The Council of Europe Trafficking Convention and the 2011 EU Directive both specify a number of similar and additional obligatory measures including:

- Attending to victims with special needs (e.g., victims who are pregnant, disabled, etc.);
- Reflection and recovery period of at least 30 days to enable victims to take an informed decision on whether to cooperate with authorities;
- Renewable residence permit where the victims stay, is necessary: a) owing to their personal circumstances or b) to facilitate their cooperation in criminal proceedings;
- Assistance to have victims' rights and interests presented and considered in criminal proceedings against offenders.

Human rights law is another important source of obligation in this area, for example by prohibiting discrimination on the basis of sex or national origin in the provision of care and support. Human rights law also provides critical guidance with regard to the treatment of trafficked children, requiring, for example, that the overarching rule of “the best interests of the child”, as protected in the Convention on the Rights of the Child, must guide decision-making about support.
Key principles and entitlements related to protection and support of trafficked children

- The trafficked child **should not be criminalised** in any way and should not be liable for prosecution for any status-related offences.
- The trafficked child should **never be placed in a law enforcement detention** facility, such as a police cell, prison or special detention centre for children. Any decision relating to the detention of children should be made **case by case and in their best interests**. Any detention of a child victim of trafficking should, in all cases, be for the shortest possible time and subject to independent oversight and review.
- Care and support should be made available to trafficked children as a right. It should **never be conditional** on their cooperation with criminal justice agencies.
- Children should **not be coerced** into receiving care and protection, including medical assistance and testing, unless it can be demonstrated, case by case, that this is in their best interests.
- Every child under the jurisdiction or control of a State is entitled to **care and protection on an equal basis**. This means that non-national child victims of trafficking are to enjoy the same rights as national or resident children.
- **The views of child victims** of trafficking should be respected and given due weight and they should be **provided with information** about their situation and entitlements.
- There should be **no arbitrary interference with the child's privacy**. States should ensure that the identity, or details allowing the identification, of a child victim of trafficking are not made public, save in exceptional circumstances.
- States should provide for representation of an identified (or presumed) child victim of trafficking by a **legal guardian**, organization or authority, for example to ensure that the child’s best interests remain the paramount consideration in all actions or decisions; to ensure all necessary assistance, support and protection are provided; to be present during any engagement with criminal justice authorities; to facilitate referral to appropriate services; and to assist in identifying and implementing a durable solution.
- Measures should be in place to assist child victims of trafficking to **participate, safely and meaningfully, in court processes**. These may include regularisation of legal status; provision of information, legal assistance and legal representation; and taking steps to minimise any trauma that such participation could cause, for instance by providing alternatives to direct testimony.

**Sources:** Convention on the Rights of the Child, European Trafficking Convention, Recommended Principles and Guidelines, and UNICEF Guidelines. Table adapted from OHCHR, “Human Rights and Human Trafficking — Fact Sheet No. 36 (2014)"

### 2.2.5 No conditions or coercion in the provision of protection and support

The provision of protection and support has been widely acknowledged to be a non-negotiable right of the victim, meaning that it is a right that should be recognised and implemented irrespective of that person's capacity or willingness to cooperate with criminal justice authorities. Unfortunately, the linking of assistance and protection to cooperation with criminal justice agencies is prevalent in all regions of the world. In some countries, the legal and regulatory frameworks explicitly condition any form of support on cooperation. But even where non-conditional assistance is guaranteed in law, victims still tend to be pressured into providing information and testimony in this way. There is growing recognition that separating protection and support from victim cooperation is a fundamental part of a human rights-based approach to trafficking.
A human rights-based approach further requires that the provision of care and support be both informed and non-coercive. For example, victims of trafficking should receive information on their entitlements so they can make an informed decision about what to do. Victims should also be able to refuse care and support. They should not be forced into accepting or receiving assistance.

**Consensual provision of protection and assistance to victims**

In relation to all assistance measures provided for in that instrument, States Parties are required to ensure the relevant services “are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and rights of children in terms of accommodation, education and appropriate health care.”

(European Trafficking Convention, Article 12; 2011 EU Trafficking Directive, Article 11.5)

In relation to health care and counselling, “trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases including HIV/AIDS.”

(Trafficking Principles and Guidelines, Guideline 6)

**2.2.6 Protection of the right to privacy**

The right to privacy is an important aspect of protecting victims from further harm. Failure to protect privacy can increase the danger of intimidation and retaliation by traffickers or their accomplices. It can cause humiliation and hurt to victims and compromise their recovery. The key provisions relating to the right to privacy for victims of trafficking are set out in the text box below. These provisions confirm that protection of privacy should be extended to all trafficked persons unless there are reasonable grounds justifying interference with such privacy — such as consideration of the rights of accused persons to a fair trial.

**The right to privacy**

A State Party is to protect the privacy and identity of victims of trafficking “in appropriate cases and to the extent possible under its domestic law.”

(Trafficking Protocol, Article 6)

States Parties are required to “protect the private life and identity of victims.”

(European Trafficking Convention, Article 11)

“There should be no public disclosure of the identity of trafficking victims and their privacy should be respected to the extent possible, while taking into account the right of an accused person to a fair trial.”

(Trafficking Principles and Guidelines, Guideline 6)
2.3. Legal status and access to justice including remedies

The needs of victims of trafficking extend well beyond immediate protection and support. Many victims will lack the status to be able to stay legally in the country in which they have been identified; many will not be in a position to make difficult decisions — for example, about whether they will participate in the prosecution of their exploiters. Often, victims of trafficking will require legal and other assistance to ensure that they can access justice — for example, to enable them to make good decisions about participating in prosecutions and to realise their right to a remedy. (Note that remedies are only briefly dealt with below as they are subject to more detailed consideration in the following section). Ensuring victims’ access to justice also extends to ensuring that they are not penalised for their trafficking — for example, by being prosecuted for illegal entry or illegal work or detained in shelters.

2.3.1 Temporary residence permits and reflection periods

Victims of trafficking who are unlawfully within a country face special dangers and vulnerabilities as a result of their legal status. For example, they may be unable to access important sources of subsistence and support including housing and work opportunities. They may be vulnerable to further exploitation as well as intimidation and retaliation. They risk being prevented from participating effectively and meaningfully in legal proceedings against traffickers. Without regularisation of their status, victims also risk being detained in immigration facilities or shelters. In addition, they are liable to deportation at any time. Victims who are deported often face the risk of being re-trafficked by the same traffickers or others. The International Organization for Migration (IOM) has estimated that at least 20% of returned victims are re-trafficked.\(^\text{13}\)

International law and policy recognises that victims of trafficking may receive regularisation for a number of reasons and in a number of different ways, including through:

- Granting of a reflection and recovery period during which non-conditional support is given with the aim of providing victims with time and space to decide on their options, including whether they will cooperate with criminal justice agencies in the prosecution of their exploiters;
- Granting of a temporary residence permit linked to (usually criminal) proceedings against traffickers; such visas usually require victim cooperation and terminate once legal proceedings are completed;
- Granting of a temporary residence permit on social or humanitarian grounds that may be related to, for example, respect for the principle of non-refoulement (discussed further below), inability to guarantee a secure return, and risk of re-trafficking; and
- Granting of international protection or refugee status in situations where victims meet the conditions of international refugee law, for example in cases where female victims of trafficking for sexual exploitation from a country can be recognised as a member of a particular social group under the 1951 Refugee Convention who, if returned, faces the risk of persecution on the basis of her membership of that group.
Granting temporary stay for victims of trafficking

Council of Europe Trafficking Convention

- Art. 13 requires Member States to grant victims, at minimum, a 30-day reflection and recovery period, during which the victim cannot be forcibly removed from the territory of the State and take an informed decision whether or not to cooperate with competent authorities.
- Art. 14 requires Member States to grant victims a renewable residence permit if their stay is necessary owing to their personal circumstances or because of their participation in criminal proceedings.


- Provides for the possibility of third country nationals who are victims of trafficking and who are cooperating with national authorities to receive a temporary residence permit.

Good practice in Europe: Duration of reflection period

European legislation (EU Council Directive 2004/81/EC) stipulates a reflection period of 30 days. However, practice has established that a reflection period of 30 days is not a sufficient recovery period for the person to sufficiently make important decisions about what to do next.

In 2004, the EU Group of Experts on Human Trafficking recommended in their report that “the reflection period should be for not less than three months.” Following the recommendation, a number of European countries have legislated for a reflection period longer than the minimum required period of 30 days:

- United Kingdom – 45 days
- Czech Republic – 60 days
- Germany – 90 days
- Netherlands – 90 days
- Italy – 6 months
- Norway – 6 months
2.3.2 Legal assistance and involvement

Trafficked persons have an important role to play, and a legitimate interest, in legal proceedings against their exploiters. A human rights-based approach to trafficking requires that all efforts be made to ensure victims are able to participate in legal proceedings freely, safely, and on the basis of full information. Victim involvement in legal proceedings can take a number of different forms. Individuals who have been trafficked may provide evidence against their exploiters, either through written statements or in person, as part of a trial. Trafficked persons may also be called upon to provide a victim statement about the impact of the offence that could become part of a sentencing hearing. In civil proceedings against their exploiters, trafficked persons may be applicants and/or witnesses. Even for a trafficked person who is unwilling or unable to testify, she or he still has a legitimate interest in relevant legal proceedings.

Victims of trafficking who are involved — or potentially involved — in legal proceedings have special needs and vulnerabilities that must be addressed. Obligations that flow from this are in addition to the protection, assistance and support obligations mandated for all trafficked persons as discussed above. For example:

- Trafficked persons should be provided with legal and other assistance in relation to any court or administrative proceedings in a language they understand. This should include keeping victims informed as to the scope, timing and progress of proceedings and the outcome of their cases.
- Trafficked persons have a right to be present and have their views known during any legal proceedings.

<table>
<thead>
<tr>
<th>Trafficked persons as victims of crime and as witnesses</th>
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</thead>
<tbody>
<tr>
<td>The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:</td>
</tr>
<tr>
<td>(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;</td>
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<tr>
<td>(b) Allowing the views and concerns of victims 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;</td>
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<tr>
<td>(c) Providing proper assistance to victims throughout the legal process;</td>
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<tr>
<td>(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; and</td>
</tr>
<tr>
<td>(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.</td>
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2.3.3 Access to remedies

Remedies play a critical role in the international legal response to trafficking by confirming trafficked persons as victims of crime and of human rights abuse. In the context of trafficking, the obligation to provide remedies and the right to access remedies normally arise from a State’s obligations under human rights law or under one or more of the specialist trafficking treaties.

The right to a remedy is affirmed in treaties and other legal and non-legal instruments that deal specifically with trafficking. For example, the Trafficking Protocol requires States Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered. As shown in the text box below, the Council of Europe Trafficking Convention is much more explicit and detailed on the issue.

**Remedies in the Council of Europe Trafficking Convention**

The Council of Europe Convention on Action Against Trafficking in Human Beings (or European Trafficking Convention) takes a much more comprehensive approach than the Trafficking Protocol regarding victim compensation and legal redress. The provision on remedies commences with a requirement that victims be provided with information on relevant judicial and administrative proceedings (Article 15[1], relating, *inter alia*, to possibilities for obtaining compensation and regularisation of immigration status) as well as access to legal assistance (Article 15[2]). The Explanatory Report that accompanies the Convention highlights the crucial link between legal status and remedies, noting that: “it would be very difficult for [victims] to obtain compensation if they were unable to remain in the country where the proceedings take place.”

The Convention confirms that victims have a right to monetary compensation from convicted traffickers in respect of both material injury (such as the cost of medical treatment) and non-material injury (such as emotional suffering) (Article 15[3]). The Explanatory Report notes that a victim’s right to compensation consists in a claim against the perpetrator of harm. If criminal courts are not empowered to determine civil liability towards victims, “it must be possible for victims to submit their claims to civil courts with jurisdiction in the matter and powers to award damages with interest.”

The Convention confronts the reality that the State will not always be able to enforce compensation orders against traffickers. It thereby requires States Parties to take steps to guarantee the compensation of victims. The means of guaranteeing compensation are not mandated, although the Convention suggests several examples including the establishment of a special fund or initiatives aimed at social assistance or reintegration of victims (Article 15[4]). The possibility of State compensation schemes being funded by the seized proceeds of trafficking is specifically noted.
Specialist trafficking treaties do not specifically identify the standard of remedy to be provided although the requirement in the Trafficking Principles and Guidelines that victims be given access to “adequate and appropriate” remedies is widely accepted. The Trafficking Principles and Guidelines also provide limited guidance on what the standard might mean in practice — referring to “fair and adequate remedies”, which may be criminal, civil or administrative in nature and which “include the means for as full rehabilitation as possible.” The Basic Principles and Guidelines on the Right to a Remedy (an important soft law instrument that applies to victims of crime and serious violations of human rights) are clear that remedies or reparation should be proportionate to the gravity of harm suffered.

Both the form and extent of remedies required will depend on the nature and circumstances of the violation as well as the content of the relevant primary obligation (the rule that was breached and that gave rise to the right to a remedy in the first place). However, in all cases, international law dictates that the form of remedy should reflect and advance the obligation on the offending State to, as far as possible, wipe out the consequences of the breach and re-establish the situation that existed prior to its occurrence. Remedies can involve a range of measures including:

- **Restitution**, which includes material, judicial or other measures aimed at restoring the situation that existed prior to the violation, such as releasing a victim from detention or returning their stolen property.
- **Rehabilitation**, which recognises a need to ensure that the person who has suffered violation of their human rights has his or her status and position “restored” in the eyes of the law as well as of the wider community. Rehabilitation can include the provision of medical and psychological care as well as legal and social services.
- **Compensation** — discussed further below — is the most common form of remedy and is payable for damage caused by an internationally wrongful act to the extent that such damage is economically assessable and not able to be made good by restitution. In the case of trafficking, an adequate and appropriate remedy under this heading could include: compensation payable for physical and psychological harm; lost opportunities; loss of earnings; moral damage; and medical, legal or other costs incurred as a result of the violation.

The right to a remedy is often not effectively available to trafficked persons because they frequently lack information on the possibilities and processes for obtaining remedies. A right of access to effective remedies means that, in addition to making such remedies available under criminal or civil law, States should ensure that victims are provided with information and assistance that will enable them to actually secure the compensation or restitution to which they are entitled. In the context of trafficking, an additional and important co-requisite for realising the right to a remedy is the presence of the victim in the country where the remedy is being sought. This may require the regularisation of their legal status. The non-criminalisation of victims and non-detention, both considered below, are also critical in terms of ensuring victims can access their right to a remedy promptly and effectively.
Compensation for trafficked persons

Compensation is one form of effective remedy that trafficked persons are entitled to. Compensation serves a multitude of purposes in anti-trafficking measures: restorative, punitive, and preventative.

The restorative function of compensation lies in its contribution to victims’ recovery. The restorative function of justice is to assist victims to overcome what they have been through. Enabling victims to access compensation recognizes their right to a remedy, acknowledges their suffering and makes them the subject of justice rather than an object of it. Furthermore, victims who receive financial compensation and thus achieve financial autonomy are in a stronger position to support themselves, stay safe and contribute to preventing their re-trafficking.

Requirement to pay compensation to victims as a part of the punishment of traffickers ordered by a court carries more than just a punitive value. Depriving traffickers of assets obtained through trafficking and exploitation constitutes a deterrent, which can prevent others from engaging in trafficking in first place.

Compensation for trafficked persons can be sought for:

- General damages — these include non-material aspects of the harm a victim has suffered, such as physical or emotional pain and suffering;
- Special damages — compensation for the material losses that are quantifiable, such as medical expenses, monetary losses, lost earnings and unpaid wages.

In cases of trafficking for sexual exploitation, physical injuries and losses are clear and well understood. Consequently, most cases in which victims were able to obtain compensation involved trafficking for sexual exploitation.

The abuse that those trafficked for forced labour suffered is often more subtle, involving psychological coercion, threats and deception. Yet, the damaging effect and trauma that arises from this sort of treatment, such as the loss of dignity or mental health illnesses as a result of pressure and fear, can be equally debilitating.

It is important to emphasise that all trafficked persons, regardless of the form of exploitation they were subject to, or the length of their trafficking experience, are entitled to access compensation under international law.

2.3.4 No criminalisation of trafficked persons

In countries of transit and destination, trafficked persons are often arrested, detained, charged and even prosecuted for unlawful activities such as entering and/or working illegally or engaging in prostitution. For example, they may not have the correct immigration or work papers; their identity documents may be forged or confiscated; and the exploitative activities demanded of a trafficked person, such as prostitution, soliciting or begging may be illegal within the country of destination. Criminalisation of trafficked persons is commonplace, even in situations where it would appear obvious that the victim was an unwilling participant in the illegal act. Such criminalisation is often tied to a related failure to identify the victim correctly. In other words, trafficked persons are detained and subsequently charged, not as victims of trafficking, but as smuggled or irregular migrants, or undocumented migrant workers. Countries of origin sometimes directly criminalise victims upon their return, penalising them for unlawful or unauthorised departure. Criminalisation and detention of victims of trafficking is often linked to a denial of victims’ rights, for example, through premature deportation that denies victims their right to participate in legal proceedings or their right of access to an effective remedy.

There is a growing international agreement that, in the words of the Trafficking Principles and Guidelines, “trafficked persons [should not be] prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.” For example, Article 26 of the European Trafficking Convention requires States Parties, in accordance with the basic principles of their legal systems, to “provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.” While the Trafficking Protocol does not specifically address the issue of prosecution for status-related offences, the CTOC Working Group on Trafficking (the body established to provide recommendations on the effective implementation of the Protocol) has affirmed that “States parties should ... consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.” Human rights treaty bodies as well as resolutions of both the General Assembly and the Human Rights Council have confirmed the importance of the non-criminalisation principle.

Note that the principle of non-criminalisation of victims of trafficking for status offences can also be relevant to the separate issue of victims being trafficked for purposes of committing criminal activities, such as petty theft or cannabis cultivation. That form of trafficking-related exploitation is considered in more detail in Section 3, below.

2.3.5 No detention of trafficked persons

International law defines detention as the condition of “any person deprived of personal liberty except as a result of conviction for an offence” (UNGA Res. 43/173). The term can therefore cover a wide range of situations in which victims of trafficking are held in prisons, police lock-ups, immigration detention facilities, shelters, child welfare facilities, and hospitals.

In the context of trafficking, detention most commonly occurs under the following circumstances:

- The victim is not correctly identified and is detained as an irregular/undocumented migrant pending deportation;
- The victim is identified correctly but is unwilling or unable to cooperate in criminal investigations (or her/his cooperation is not considered useful) and is sent to immigration detention pending deportation;
- The victim, correctly or incorrectly identified, is detained as a result of her or his engagement in illegal activities, such as prostitution or unauthorised work; and
• The victim is identified correctly and is placed in a shelter or other welfare facility from which she or he is unable to leave. Common justifications offered for this form of detention include the need to provide shelter and support; the need to protect victims from further harm; and the need to secure victim cooperation in investigation and prosecution of traffickers.

Both the UN Trafficking Protocol and the Council of Europe Trafficking Convention do not refer specifically to the issue of detention of victims of trafficking. However, the UN Trafficking Principles and Guidelines confirm that the detention of victims without clear and individualised justification is inappropriate and possibly also illegal. Under their provisions, States are required to ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody (Guidelines 2.6 and 6.1). The Commentary to this instrument (pp. 135–136) confirms that under international human rights law, the risk of detention being characterised as unlawful or arbitrary detention is high if it can be shown that such detention meets one or more of the following criteria:

• The detention is not specifically provided for in law or is imposed contrary to law;
• The detention is provided for — or imposed in — a discriminatory manner (e.g., only applicable to women and girls/children);
• The detention is imposed for a prolonged, unspecified or indefinite period;
• The detention is unjust, unpredictable and/or disproportionate; and
• The detention is not subject to judicial or administrative review which can confirm its legality and that it continues to be necessary in the circumstances, allowing the possibility for release where no grounds for its continuation exist.

2.4. Prevention of trafficking

In the context of trafficking in persons, prevention refers to positive measures to stop future acts of trafficking from occurring. Policies and activities identified as “prevention” are generally those considered to be addressing the causes of trafficking. These are generally agreed to be the factors that (i) increase vulnerability of victims and potential victims; (ii) create or sustain demand for the goods and services produced by trafficked persons; and (iii) create or sustain an environment within which traffickers and their accomplices can operate with impunity. Each of these prevention goals is considered separately below.

2.4.1 International and regional standards around prevention

In relation to all violations of human rights, international law confirms that States bear responsibility for taking action to prevent the occurrence of such a violation. The standard implied in this obligation is one of due diligence: the State is required to take “all reasonable and necessary measures” to prevent a given event from occurring. A decision on what is “reasonable and necessary” in this context will require consideration of the facts of the case and surrounding circumstances, including the capacities of the State. For example, the obligations of a country of origin with respect to preventing trafficking will be qualitatively different to those of a country of destination. The key trafficking treaties confirm an obligation of prevention, as do “soft law” sources including resolutions and policy documents of UN bodies and regional intergovernmental organizations and the work of the human rights treaty bodies and special procedures.
Prevention obligations in the specialist trafficking treaties

The UN Trafficking Protocol (Article 9) requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons. States Parties are further required to:

- Endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons (Art. 9[2]).
- To cooperate with non-governmental organizations and other elements of civil society on prevention policies and programmes (Art. 9[3]).
- Take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity (Art. 9[4]).
- Adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (Art. 9[5]).

The Council of Europe Trafficking Convention and the 2011 EU Directive, in addition to the measures contained in the UN Trafficking Protocol, require States Parties to:

- Take measures to enable migration to take place legally, in particular through dissemination of information (Art. 5[4] Council of Europe Convention).
- Promote regular training for officials likely to come into contact with victims and potential victims, including frontline police officers (Art. 18[3] EU Directive).

The following summary of prevention approaches and strategies is drawn directly from the OHCHR’s “Human Rights and Human Trafficking — Fact Sheet No. 36”, supplemented by additional information of particular relevance to the practice of preventing trafficking in Asia and Europe. It follows the typology identified in the UN Trafficking Principles and Guidelines — preventing trafficking through addressing vulnerability; preventing trafficking through addressing demand; and preventing trafficking through addressing corruption and complicity.

2.4.2 Prevention through addressing vulnerability to trafficking

While our understanding of trafficking is far from complete, it is clear that certain factors help to shape the vulnerability of an individual, a social group, or a community to trafficking and related exploitation. These factors include poverty and inequality as well as human rights violations such as discrimination and gender-based violence — all of which contribute to creating economic deprivation and social conditions that limit individual choice and make it easier for traffickers and exploiters to operate. Factors that shape vulnerability to trafficking tend to impact differently and disproportionately on groups that already lack power and status in society including women, children, migrants (especially irregular migrants), refugees and the internally displaced.
Vulnerabilities to trafficking can be short or long-term, specific or general, procedural, political, economic, or structural. Understanding the nature of particular vulnerabilities can help to ensure that responses are targeted, appropriate, and effective. An example of a short-term, specific vulnerability that has been repeatedly recognised, including by several human rights treaty bodies, is one caused by a lack of information about safe migration options and the dangers associated with trafficking. This vulnerability could be addressed through initiatives aimed at raising awareness of potential migrants including those who could be trafficked, with appropriate precautions and advice on how to avoid falling under the control of traffickers. Poverty and lack of access to avenues for safe, legal and non-exploitative migration are much more complex contributions to vulnerability that will require long-term and more comprehensive approaches to their effective resolution.

A human rights-based approach to trafficking recognises that empowering vulnerable people through guaranteeing their human rights will reduce their susceptibility to being trafficked and exploited. Such an approach requires consideration of the reasons why some people are trafficked and others are not; why some people are prepared to take dangerous migration decisions and others are not; and why some people are more readily exploited than others and in different ways. An understanding of vulnerability to trafficking should result in prevention measures that are realistic, effective and respectful of human rights. It should also contribute to more effective treatment of victims through, for example, better-informed support measures and reintegration programs.

**Vulnerability related to poverty and inequality:** The limits that poverty places on life choices can lead to individuals taking risks and making decisions about their life and their future in a way that they would never have done if their basic capabilities were being met. Inequality is an additional factor contributing to vulnerability. Inequality can relate to wealth, income and opportunity. Inequalities that impact upon trafficking exist within as well as between countries. In short, trafficking inevitably involves the movement of individuals from regions and countries of relatively less wealth, income and opportunity to regions and countries of relatively greater wealth, income and opportunities.

**Poverty and vulnerability to trafficking**

It is widely recognised that improvement of economic and social conditions in countries of origin and measures to deal with extreme poverty would be the most effective way of preventing trafficking. Among social and economic initiatives, improved training and more employment opportunities for people liable to be traffickers’ prime targets would undoubtedly help to prevent trafficking in human beings.

**Source:** Explanatory Report to the European Trafficking Convention

Addressing poverty and inequality must be a priority for all countries, and for the intergovernmental organizations that represent them and promote their interests. While this is a broad and long-term goal that goes well beyond the specific issue of trafficking, there are certain steps that could be taken in this direction to specifically address those aspects of poverty and inequality that are most directly relevant to trafficking, including:

- improved education opportunities, especially for women and children;
- improved access to credit, finance, and productive resources, especially for women; and
- legal and social measures to ensure rights in employment, including a minimum wage that enables an adequate standard of living.
Vulnerability related to discrimination and violence against women: Major human rights instruments, both international and regional, prohibit discrimination on a number of grounds including race, sex, language, religion, property, birth, nationality, ethnic or social origin, or other status. Discrimination can be linked to trafficking in a number of ways. It is no coincidence that those most likely to be trafficked (irregular migrants, stateless persons, non-citizens and asylum seekers, members of minority groups) are especially susceptible to discrimination and intolerance, based on their race, ethnicity, religion and other distinguishing factors. Some groups, such as migrant women and girls, are vulnerable to intersectional and multiple discriminations. In addition to increasing the risk of trafficking, discriminatory attitudes, perceptions and practices contribute to shaping and fuelling the demand for trafficking.

Racial and gender-based discrimination in the recognition and application of economic and social rights is also a critical factor in rendering persons more susceptible than others to trafficking. In both these cases, the impact of discrimination results in fewer and poorer life choices. It is the lack of genuine choice that can in turn, render women and girls more vulnerable than men, and certain nationalities and races more vulnerable to being trafficked in certain situations — where they are minorities, or where they are living in conditions of poverty, or instability after conflict or political transition.

Importantly, while trafficking itself is a form of violence against women, violence directed against, or primarily affecting, women can also be a factor increasing vulnerability to trafficking. For example, women may accept dangerous migration arrangements in order to escape the consequences of entrenched gender discrimination including family violence and lack of security against such violence. Women may also be more vulnerable than men to coercion and force at the recruitment stage, increasing their susceptibility to being trafficked in the first place. States, particularly countries of origin, can address increases in vulnerability to trafficking-related discrimination and violence against women through a range of practical measures that could include provision of safe shelter for women experiencing violence including medical, psychological and legal facilities. Longer-term measures that seek to address the social, cultural and structural causes of violence are also important. These may include: reforming legislation that either discriminates against women or fails to address violence against women; ensuring the prompt investigation and prosecution of complaints related to violence against women; providing access to effective remedies for gender-based violence; and implementing education initiatives aimed at educating the public and relevant officials about violence against women.

Special vulnerabilities of children, including unaccompanied and separated children: International law recognises that children, because of their reliance on others for security and wellbeing, are vulnerable to trafficking and related exploitation. In recognition of this vulnerability, international law accords children special rights of care and protection. Appropriate responses to child vulnerability must be built on a genuine understanding of that vulnerability — specifically, why some children are trafficked and others are not.

All measures taken to reduce the vulnerability of children to trafficking should aim to improve their situation — rather than to just prevent children from taking decisions such as migration for work which, while undesirable, especially for young children, may not necessarily be exploitative or lead to trafficking. It is also important to accept that children are not a homogeneous group: older children have different needs, expectations and vulnerabilities than younger children; girls and boys can be similarly disaggregated.
**Actions to reduce the vulnerability of children to trafficking**

- Ensure that appropriate legal documentation (including for birth, citizenship and marriage) is in place and available;
- Tighten passport and visa regulations in relation to children, particularly unaccompanied minors and minors accompanied but not by an immediate family member;
- Improve children’s access to educational opportunities and increase the level of school attendance, in particular by girls;
- Protect children from violence including family and sexual violence;
- Combat discrimination against girls;
- Raise public awareness of the unlawful nature and effects of child trafficking and exploitation.

Adapted from: OHCHR, **Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking** (2010)

**Vulnerability in conflict and post-conflict situations:** Trafficking is a feature of armed conflict as well as of post-conflict situations. During conflict, individuals may be abducted or otherwise trafficked by military or armed groups to provide labour, military and sexual services. Even after a cessation of hostilities, civilian populations may be under extreme economic or other pressure to move and thereby are particularly vulnerable to threats, coercion and deception. War and post-war economies are often built on criminal activities, which can quickly be expanded to include trafficking. Weak or dysfunctional criminal justice systems ensure that traffickers and their accomplices can operate with impunity. Violent and lawless war zones often become source, transit or destination points for victims of trafficking. The presence of international military or peacekeeping forces can present an additional threat of trafficking and related exploitation, with women and girls being at particular risk. International law and policy requires action to address the particular vulnerabilities of individuals caught up in conflict. To the extent that the situation, its cause or its consequences have a gender dimension, it is essential to ensure that responses integrate an appropriate gender perspective.

**2.4.3 Prevention through addressing demand**

 Trafficking feeds into a global market that seeks cheap, unregulated and exploitable labour and the goods and services that such labour can produce. It is this realisation that has prompted calls for States and others to consider demand as part of the problem of trafficking and to acknowledge demand reduction as an important part of any comprehensive approach to prevention.

When considering the issue of demand, it is important to acknowledge that this issue is a difficult and sometimes controversial one. The lack of common understanding about what “demand” actually means, further complicates matters. For example, when used in connection with trafficking, demand can refer to quite different things: for example, employer demand for cheap and exploitable labour; consumer demand for the goods or services produced or provided by trafficked persons; and even demand generated by exploiters and others involved in the trafficking process such as recruiters, brokers and transporters who rely on trafficking and victims of trafficking to generate income. A distinction can also be made between the demand itself, and the causes and factors that can shape demand. Of course, demand cannot be considered separately from supply — not least because supply may well generate its own demand. For example, the availability of a cheap and exploitable domestic labour force can itself contribute to generating demand for exploitative domestic labour at a level that may not otherwise have existed. Similarly, some argue that demand for prostitution fuels the market for persons trafficked into prostitution.
International treaty law requires States to take at least some measures to discourage the demand that fosters trafficking-related exploitation. However, it does not provide a great deal of specific guidance about how this should be done. Provisions relating to demand are very general and it is difficult to isolate specific actions. For example, the Trafficking Protocol requires States Parties to “adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.” A similar provision is contained in the European Trafficking Convention, along with a list of minimum measures that are to be taken by States Parties to that instrument.

Several of the UN human rights treaty bodies and Special Procedures have taken up this issue, in particular on the need to raise public awareness of the unlawful and exploitative nature of human trafficking. International and regional policy documents provide further confirmation of a growing understanding of the need for States to consider demand as a root cause of trafficking and a key factor in any effective prevention strategy. However, once again, there is a lack of specificity about how demand can or should actually be addressed in practice.

It is helpful to consider how human rights can contribute to fleshing out the substantive content of the obligation to address demand. Certainly, a human rights-based approach to demand must meet the generally accepted requirements of such an approach: it must be normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The following text box provides guidance on the various rights-based considerations that should underpin such an approach to addressing demand.

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**Focus and scope**

- The obligation to address demand rests primarily with countries within which the exploitation takes place because it is within these countries that both consumer and employer demand is principally generated.
- The links between demand and supply noted above also imply certain obligations on countries of origin.
- Demand reduction required under international law is not restricted to demand for exploitative sexual services but encompasses demand for the full range of exploitative practices identified in the international definition of trafficking.
- States are not precluded by international law from regulating prostitution as they consider appropriate subject, of course, to their obligation to protect and promote the human rights of all persons within their jurisdiction.

**Demand and discrimination**

- Demand in the context of trafficking is often shaped by discriminatory attitudes (including cultural attitudes) and beliefs. Women may be preferred for certain forms of exploitation because they are perceived as weak and less likely to assert themselves or claim the rights to which they are entitled. Certain ethnic or racial groups may be targeted for trafficking-related exploitation on the basis of racist or culturally discriminatory assumptions relating to, for example, their sexuality, servility or work capacities.
- Demand for prostitution supplied through trafficking may reflect discriminatory attitudes and beliefs based on both race and gender.
- Rights-based strategies to address demand should focus on addressing discriminatory attitudes and beliefs; particularly those directed against women and migrants.
The role of the State

- States are able to shape demand for the goods and services produced by trafficking through laws and policies on a range of matters including immigration, employment, welfare and economic development. For example, failure to provide legislative protection to certain individuals such as domestic workers, “entertainers”, or migrant workers creates an environment that encourages demand.
- Laws and policies that institutionalise discrimination can also shape demand as can a failure on the part of the State to effectively challenge discriminatory social attitudes, practices and beliefs.
- A failure on the part of the State to effectively investigate, prosecute and punish trafficking and related exploitation can contribute to demand generated by traffickers and exploiters by maintaining trafficking as a low-risk, high-profit crime.
- State failure to protect the rights of certain persons including women, children, and migrants can further contribute to constructing demand by exacerbating vulnerability, and thereby, exploitability.
- Poor or inadequately implemented labour standards are a major incentive for trafficking.

The importance of labour protection

- Poor or inadequately enforced labour standards in countries of destination sustain a demand for trafficked labour. Demand for trafficked persons’ labour or services is absent or markedly less where workers are organized and where labour standards regarding wages, working hours and conditions, and health and safety are monitored and enforced.
- Rights-based strategies to address demand for cheap and controllable labour should therefore aim to secure adequate labour protection, including through properly monitored regulatory frameworks, for all persons including migrants and those working in the informal economy.

Non-violation of established rights

- Human rights-based strategies to address trafficking-related demand must not compromise established rights, in particular, the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers.

Adapted from: OHCHR, Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010)

2.4.4 Prevention through addressing corruption in trafficking

In many situations of trafficking, particularly those that are widespread and serious, there will be some level of direct or indirect involvement of public officials. Direct involvement refers to situations whereby public officials are directly engaged as part of the trafficking process — as recruiters, brokers or exploiters, for example. There are also many types of less direct official involvement (some examples are provided in the text box below). Public sector complicity in trafficking, whether direct or indirect, undermines confidence in the rule of law and the fair operation of the criminal justice process. It fuels demand for illegal markets such as trafficking and facilitates the efforts of organized criminal groups to obstruct justice; exacerbates victim vulnerability; and renders almost impossible the full discharge of a State’s obligation to investigate and prosecute trafficking cases with due diligence.
Examples of trafficking-related corruption and complicity

- Law enforcement officials accepting favours in exchange for protection from investigation or prosecution or otherwise using the services of victims of trafficking;
- Border officials accepting bribes or inducements to permit the passage of persons who may be trafficked;
- Labour inspectorates or health and safety officials accepting bribes to certify dangerous or illegal workplaces;
- Law enforcement or other public officials (including international peacekeeping or international military personnel) maintaining commercial interests in businesses using the services of trafficked persons such as brothels; and
- Criminal justice officials, including prosecutors and judges, accepting bribes to dispose of trafficking cases in a particular way.

States have an obligation to identify and respond adequately to trafficking-related corruption and complicity — an obligation that should be seen as part of the broader duty to prevent trafficking. The Organized Crime Convention, for example, acknowledges the strong link between organized criminal activities such as trafficking and corruption. It requires States to take strong measures to criminalise all forms of corrupt practices and ensure their laws are harmonised so as to facilitate cooperation. States Parties are required to adopt measures designed to promote integrity and to prevent and punish corruption of public officials. They must also take measures to ensure effective action by domestic authorities in the prevention, detection and punishment of corruption of public officials including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions. The provisions of this Convention affirm the much more specific obligations of the UN Convention Against Corruption.

Other specialist trafficking treaties, including the European Trafficking Convention and the EU Trafficking Directive, recognise public sector complicity in trafficking as an aggravated offence warranting relatively harsher penalties. Many international and regional policy documents confirm the link between trafficking and corruption and the need for States to respond effectively. For example, the General Assembly has sought to protect trafficked persons against further harm by calling upon governments to penalise persons in authority found guilty of sexually assaulting victims of trafficking in their custody. This issue has also been addressed in the recent OECD publication, Guiding Principles on Combating Corruption Related to Trafficking in Persons (2015).

What does the duty to respond to trafficking-related corruption and complicity actually mean in practice? The relevant legal standard in this case, as in all others, is due diligence: the State must be able to show that it has taken, and is continuing to take, every reasonable step to prevent, identify and respond to such practices. The UN Human Rights Committee has usefully spelled out the steps that should be taken to deal with violations of human rights involving public officials that are highly relevant to trafficking-related violations:

*In order to combat impunity, stringent measures should be adopted to ensure that all allegations of human rights violations are promptly and impartially investigated, that the perpetrators are prosecuted, that appropriate punishment is imposed on those convicted and that the victims are adequately compensated. The permanent removal of officials convicted of serious offences and the suspension of those against whom allegations of such offences are being investigated should be ensured.*

Additional actions that may be required of States to meet the due diligence standard include:
• Ensuring that the legal framework provides appropriate measures for the identification, investigation and prosecution of trafficking-related offences including those committed by or with the complicity of public officials;

• Ensuring that the involvement of public officials in trafficking or related offences is grounds for an aggravated offence attracting relatively harsh penalties;

• Ensuring that procedures are in place for the effective investigation of complaints of trafficking involving or implicating public officials. These procedures should aim to ensure accountability, maintain public confidence and alleviate legitimate concerns. Accordingly, the investigation should commence promptly and be conducted with expedition. It must not be a mere formality but must be one that is capable of leading to identification and punishment of culprits. The investigation must be independent and public. There must be meaningful measures to establish the truth of a victim’s allegations or to obtain corroborating evidence.

2.5. Return and reintegration

In addition to being arrested and detained, trafficked persons are routinely deported from countries of transit and destination. Deportation to the country of origin or to a third country can have serious consequences for victims — they may be subject to punishment from national authorities for unauthorised departure or other alleged offences; they may face social isolation or stigmatisation and be rejected by their families and communities; they may be subject to violence and intimidation from traffickers — particularly if they have cooperated with criminal justice agencies or owe money that cannot be repaid. Those who are forcibly repatriated, particularly without the benefit of supported reintegration, may be at significant risk of re-trafficking.

2.5.1 Safe and preferably voluntary return

International law supports a standard of “safe and preferably voluntary return” for trafficked persons, supplemented by a number of important additional obligations on countries of destination and countries of origin respectively.

Treaty provisions on return of trafficked persons

• All States Parties to conduct return “with due regard for the safety of the person and for the status of any related legal proceedings” (Trafficking Protocol) or “with due regard for the rights, safety and dignity” of the victim and for the status of any related legal proceedings (European Trafficking Convention);

• Countries of destination to ensure that such return “shall preferably be voluntary” (Trafficking Protocol, European Trafficking Convention);

• Countries of origin to accept the return of a trafficked national or resident without undue delay and with due regard for their safety (Trafficking Protocol) or to facilitate and accept the return of a trafficked national or resident “with due regard for the rights, safety and dignity” of the victim and without undue delay (European Trafficking Convention);

• Countries of origin to cooperate in return, including through verification of victim nationality or residence and issuing of necessary travel documents (Trafficking Protocol, European Trafficking Convention);

• All States Parties “to protect victims of trafficking ... especially women and children, from re-victimization” (Article 9[1][b]);

• Countries of destination not to return child victims of trafficking “if there is an indication, following a risk and security assessment, that such return would not be in the best interests of the child” (European Trafficking Convention).
The obligation to provide safe and, as far as possible, voluntary return implies that the repatriating State will conduct pre-return risk assessments. Such assessments are especially important in the case of children. Risk assessments must be conducted by trained professionals. They should preferably be undertaken on an individual basis and take into account the particular circumstances of each case. The way in which a person was trafficked; the extent to which they have cooperated in the prosecution of their exploiters; whether or not they owe money to traffickers; their age; their gender and their family situation; their physical and psychological condition; and the capacity of the country of return to provide effective protection are all important factors that should contribute to a consideration of whether safe return is possible. In conducting pre-return risk assessments, it is important to consider whether internal re-location is a viable and realistic option in the country or region of origin. Decisions around return should not be based on unverifiable or highly generalised situation reports produced by governments, intergovernmental bodies or non-governmental organizations.

2.5.2 An entitlement to return

International human rights law is clear on the point that all victims of trafficking, whether children and adults, who are not residents of the country in which they find themselves, are entitled to return to their country of origin. This right places an obligation on the part of the country of origin to receive its returning nationals without undue or unreasonable delay. In the case of trafficking, this is likely to involve the country of origin quickly conducting checks in order to verify whether the victim is a national or does indeed hold a right of permanent residence and, if so, ensuring that the individual is in possession of the papers required to travel to and re-enter its territory.

The right to return also implies an obligation on the country of destination to permit those victims who wish to return to do so — again without undue or unreasonable delay. Detention of trafficked persons in shelters, prisons or immigration detention facilities, discussed in the previous section, is one way in which the right to return can be interfered with. Compelling victims to remain for the duration of lengthy criminal proceedings can also constitute interference with the right of return. In respect of each individual case, the State preventing the return must be able to show that its actions are in accordance with law and are not arbitrary or unreasonable. The obligation on States to consider the best interests of the child (discussed above) will also be a major consideration when it comes to upholding this important right in relation to child victims.

2.5.3 Due process and the principle of non-refoulement

The return of trafficked persons cannot operate to violate their established rights (see further the discussion below). This includes the right to due process. Repatriation that is not voluntary effectively amounts to expulsion from a State. International human rights law rejects arbitrary expulsion and is clear on the point that any alien lawfully within the country can only be expelled in accordance with the law. An alien lawfully present is entitled to present reasons why she or he should not be expelled and these reasons must be reviewed by the competent authority.

For trafficked persons who are not lawfully within the country, substantive and procedural guarantees against expulsion are much less clear and States generally retain a considerable degree of discretion in deciding whether and when to remove unlawful immigrants. However, one of the most important protections, potentially applicable to all non-citizens, relates to the principle of non-refoulement. Under this principle, States are prevented from returning an individual to a country where there is a serious risk that she or he will be subject to persecution or abuse. The principle of non-refoulement is well established in international law and the importance of protecting this principle in the context of measures to deal with trafficking is also widely accepted. Human rights treaty bodies and regional human rights courts have also confirmed that return which risks torture or cruel, inhuman or degrading treatment or punishment is contrary to international law.
The prohibition on 
refoulement
 has traditionally been applied with reference to risks of persecution that come from States and its agencies or officials. More recently, there has been some recognition that the prohibition might also apply in certain situations where the fear of persecution comes from non-State actors and the relevant State is unable to provide appropriate or effective protection. Such circumstances may well arise in the context of a trafficking case, where the country of origin is unable to offer protection against, for example, reprisals or re-trafficking by criminal groups.

2.5.4 Right to remain during legal proceedings

As discussed above, international treaty law, including both the Trafficking Protocol and the European Trafficking Convention, oblige countries of destination to conduct return “with due regard for ... the status of any related legal proceedings.” States should therefore be careful to ensure that the return of trafficked persons does not jeopardise the initiation and/or successful completion of any legal proceedings involving or implicating the victim.

Such proceedings include those related to compensation. The presence of the trafficked person in the country in which remedies are being sought is often a practical — and sometimes a legal — requirement for that person to secure remedial action. In some countries, civil action to recover damages cannot commence until criminal proceedings have been concluded. Repatriation that does not take account of the victim’s right of access to remedies will inevitably obstruct the free and effective exercise of that right. At the very least, there should be a deferral of deportation, accompanied by a temporary regularisation of legal status until the victim has been able to participate in the relevant legal proceedings.

2.5.5 Alternatives to repatriation

In some cases, repatriation of the victim to her or his country of origin, even in the longer term, will not be the preferred course of action. This may be due to on-going risks to victim safety and security. It may also be due to humanitarian considerations that relate, for example, to the victim’s health or the links and relationships that she or he has established in the destination country. While the Trafficking Protocol does not address this issue directly, other legal and policy instruments, such as the European Trafficking Convention and the EU Directive, by recognising the possibility of temporary visas and even permanent residency, do not automatically assume that repatriation is the immediate or even ultimate outcome of a trafficking event. In some cases, allowing the person to remain permanently in the territory of a destination country will constitute an effective remedy.

The obligations of States with respect to alternatives to repatriation will very much depend on the specific situation. For example, States may be required to provide alternatives to repatriation in situations where return would pose unacceptable risks to the victim and/or the victim’s family. In relation to child victims of trafficking, local and third country integration may be appropriate options for a durable solution in cases where return to the country of origin is not in the child’s best interests. The Committee on the Rights of the Child has affirmed that repatriation is not an option “if it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental human rights of the child.”

If integration into a society of the destination is deemed the appropriate option for a trafficked person, the victims ought to be provided with the assistance and support necessary to ensure successful integration. This should include, at minimum, provision of adequate housing, assistance in obtaining all the required registration and identification documents and support to access the labour market.
**Key principles on return of victims of trafficking**

All persons have the right to leave any country, including their own.

All persons have the right to return to their country, or if they have no nationality or are stateless, to the country where they had the right of permanent residence at the time of entry into the receiving country, and to which return is possible.

Measures to restrict the departure of trafficked persons, including where such restrictions are in place to combat trafficking, must meet the tests of legality, necessity, proportionality and non-discrimination.

Requiring that victims remain in the destination country for the duration of criminal proceedings interferes with the right of return. Restrictions imposed by States in this respect must be in accordance with the law and not arbitrary or unreasonable.

The country of origin and country of destination are to permit victims of trafficking who wish to return to their country of origin to do so without undue or unreasonable delay.

The return of trafficked persons should preferably be voluntary. For a return to be voluntary, the person must be able to make a free and informed choice, including through the availability of complete, accurate and objective information on the situation in the country of origin.

Voluntary return implies the absence of coercive measures that would compel the person to return to the country of origin or to stay in the destination country.

In addition to being based on an informed choice, a voluntary return should not be subject to undue or unreasonable delays.

The entire return process must at all times be safe and conducted with due regard for the rights and dignity of the person being returned and the status of legal proceedings.

Forced return is permissible only when it has been established that the proposed return is safe and that it does not interfere with the rights of the person being returned, including the right to be protected from the risk of being subjected to re-trafficking, persecution, torture or inhuman or degrading treatment or punishment, and hence does not necessitate any additional protection measures.

“Safe” refers to both the process and the outcome of return. It imposes an obligation on the returning State to individually assess and manage risks associated with return, including the different risks faced by men and women, persons of different ages and those belonging to certain groups (including minorities), to ensure that the process of return is safe and dignified, and to monitor both the process and outcome of return to assess and ensure the safety of the trafficked person.

Returning States must conduct individualised and gender-sensitive risk assessments prior to the return of trafficked persons, to establish that they are not in danger of re-trafficking, persecution or torture, inhuman or degrading treatment or punishment.
Risk assessments should also take into account the safety of victims’ family members, as well as their potential involvement in trafficking. At a minimum, risk assessments should address: the risk of reprisals by the traffickers against the trafficked person and/or her/his family; the risk of being harassed, arrested, detained or prosecuted by the authorities; the social position of trafficked persons upon return; the availability of and actual access to social assistance programs for victims of trafficking; and the situation of the children of trafficked persons.

In cases of trafficking in children, the solution that is in the child’s best interests must be determined in consultation with the child. This includes considerations of different alternatives, including the child’s integration in the society of the destination country, voluntary repatriation to and re-integration in her/his country or place of origin or resettlement, and integration in a third country. A risk assessment must be conducted to verify that family reunification is in the best interests of the child.


### 2.5.6 Reintegration of victims

Supported reintegration is a critical aspect of safe repatriation. Victims of trafficking who are provided with reintegration assistance are much less likely to be re-trafficked. They may also, depending on the nature and quality of support provided, be less vulnerable to intimidation, retaliation, social isolation and stigmatisation due to their past experience of being trafficked. Supported reintegration is a right owed to trafficked persons by virtue of their status as victims of crime and victims of human rights violations. It must be accompanied by respect for the repatriated individuals’ rights including their right to privacy and the right not to be discriminated against.

The importance of cooperation between countries in securing successful and supported repatriation of victims of trafficking is recognised in relevant regional treaties as well as in key international and regional policy documents. Successful reintegration requires cooperation between repatriating and receiving countries and should involve NGOs in both countries. In some cases, it will be necessary for a victim returning back to their country to be accompanied by a social worker who will ensure that person’s wellbeing throughout the journey and their safe receipt by an NGO in the country of destination.
3. Emerging issues of concern

The following addresses selected issues related to trafficking in persons that are of current interest and concern.

3.1 The private sector: Issues of due diligence, complicity, responsibility and accountability

Increasing attention is being paid to the involvement of the private sector in both contributing to and combating trafficking-related exploitation. While States are required to perform due diligence to prevent and respond to the violations committed by private individuals including corporations, the private sector also has legal and ethical responsibilities to address trafficking-related exploitation. Trafficking in persons is linked to the private sector in two principal ways. First, private sector actors can be directly involved in trafficking. For example, taxi services may be used to transport victims of trafficking; legitimate and illegitimate businesses (such as brothels and factories) may seek and use the services of trafficked persons to improve their profits. Second, the supply chains of otherwise legitimate businesses can be compromised by trafficking-related exploitation. For example, as in the case of the fishing industry cited in Section 1, a large retailer in the United States may be selling fish products that have been caught or packed by trafficked workers.

It is widely accepted that private sector actors, including corporations, are under an ethical and legal duty to take all necessary actions to limit the adverse impacts of their operations on human rights. Under the laws of many countries, businesses can be held criminally liable for acts of negligence that lead to harm; for failing to prevent further harm; and for any direct involvement in human trafficking or other unlawful forms of exploitation.

3.1.1 Due diligence in international law

States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.


States will not be legally responsible under international law for what are termed “purely private harms”. However, international law does impose an obligation on States to address violations committed by private actors; to prevent and protect victims from such abuses; to punish perpetrators; and to provide remedies to victims.

The relevant standard against which a State’s actions (or inaction) are to be measured is that of “due diligence”. Under this standard, a State is obliged to exercise a measure of care in preventing and responding to the acts of private entities that interfere with established human rights. Failure to take whatever means are reasonably available to prevent an anticipated abuse or violation by a private individual or entity — or to respond appropriately to a harm already committed — will therefore invoke the responsibility of the State. The scope of the due diligence obligation will depend on the relevant primary rule. In the case of trafficking, for example, it will extend to all individuals within the territory of the State or under its effective control, including citizens and non-citizens, individuals trafficked for all forms of trafficking, regardless of whether the State is one of origin, transit and/or destination. The international legal responsibility invoked by a failure to prevent or respond appropriately to a violation committed by a private entity requires the State at fault to provide the victim with access to an effective remedy (see Section 2)\(^1\).
## INSTRUMENT
### ILO 2014 Forced Labour Protocol Art. 2
- States Parties are obligated to prevent forced labour, including through “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.”
- Status: Binding for States Parties

### European Court of Human Rights
- Established in the case of Rantsev v. Cyprus and Russia (2010) the standard of “positive obligations” where a State can be held responsible for private acts of human trafficking.
- Status: Jurisprudence binding on Council of Europe Members

### UN Trafficking Protocol Art. 6(6)/UN Organized Crime Convention Art. 25(2)
- States are required to undertake the prevention, protection, and prosecution of trafficking in persons by private individuals, including providing the possibility for victims to access compensation.
- Status: Binding for States Parties

### UN Human Rights Committee General Comment No. 31
- States must protect individuals “not just against violations of Covenant rights by [State] agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.”
- Status: Soft law

### The Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 19
- “[U]nder general international law and human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”
- Status: Soft law

### UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 2
- “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.”
- Status: Soft law

Regulation of business is one of the ways through which States exercise due diligence to protect human rights and prevent human trafficking and exploitation. States can, for example, undertake to license certain industries, such as recruitment and employment agencies; enforce compliance with the law through workplace inspections; and impose administrative sanctions for non-compliance and criminal liability for serious violations.

In the Philippines, for example, the Philippine Overseas Employment Administration regularly publishes a list of recruitment agencies whose licenses have been revoked for violations of law or unethical practices. By doing so, the Government seeks to prevent the exploitation of migrant workers abroad by unscrupulous agents.

Increasingly, States and regional bodies are enacting legislation requiring businesses to report their efforts to address and prevent human rights violations in their supply chains in general, or even to disclose their anti-trafficking efforts in particular. While the number of countries with legislation in this area is limited, the potential implications of disclosure legislation are global. For example, some European and American companies bound by transparency legislation have introduced contractual requirements on their suppliers in Asia to comply with human rights standards, including a ban on child and forced labour.
### EXAMPLES OF TRANSPARENCY LEGISLATION

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<th>COUNTRY / REGION</th>
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| **Europe**  
EU Directive 2013/34 on disclosure of non-financial and diversity information | Businesses domiciled in the EU with 500 or more employees are required to annually report on non-financial performance of their business, including on social and employee matters and human rights. |
| **United Kingdom**  
Modern Slavery Act 2014  
Art. 54 Transparency in supply chains | All commercial organizations carrying on business in the UK with a total turnover of GBP36m or more will be required to complete a slavery and trafficking statement for each financial year of the organization. This applies to both goods and services. |
| **California, United States**  
Transparency in Supply Chains Act of 2010 | Every retail seller and manufacturer doing business in this State and having annual worldwide gross receipts that exceed one hundred million dollars (USD100,000,000) shall disclose its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale. |

### 3.1.2 Accountability of the private sector

All corporations and businesses are required to comply with applicable laws in relation to all aspects of their operations. For businesses that operate internationally, certain laws (such as those that relate to bribery and other corrupt practices) may apply extraterritorially, thereby binding them irrespective of which country they actually operate in. In this regard, it is relevant to note that European legislation provides for extraterritorial liability for the involvement in trafficking abroad of legal persons domiciled in an EU country.\(^{18}\)

Furthermore, there is growing acceptance of the principle that businesses have a responsibility to respect human rights; to ensure that their operations do not adversely affect the human rights of others; and to address any negative impact on human rights linked to their operations. These responsibilities have been articulated in detail in the United Nations Guiding Principles on Business and Human Rights, which were prepared by the UN Special Representative on Business and Human Rights and endorsed by the Human Rights Council in 2011.

In an accompanying interpretive guide, the Guiding Principles are presented as “the global standard of practice that is now expected of all States and businesses with regard to business and human rights.” In relation to their legal status, the interpretive guide explains that “while they do not by themselves constitute a legally binding document, the Guiding Principles elaborate on the implications of existing standards and practices for States and businesses, and include points covered variously in international and domestic law.”\(^{19}\)
The Guiding Principles carefully define and explain the responsibility that businesses have to respect human rights, such as the key principle 13:

The responsibility to respect human rights requires that business enterprises:

1. **Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
2. **Seek to prevent to mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

The responsibility applies to any business, regardless of their sector of operation, size or ownership structures. The Guiding Principles recommend that businesses comply with their responsibility to respect human rights by developing policies and implementing management structures that embed understanding of human rights, risks and establish clear procedures for addressing situations of violation.

With regard to human trafficking this means that businesses need to understand what human trafficking is; how it relates to the sector in which they operate; and ensure that they take steps to address the risk. The Guiding Principles also encourage businesses to report on what they are doing to protect human rights and address concerns. In some jurisdictions, human rights reporting, and reporting on human trafficking in particular, is now a legal obligation for businesses (see text box above).

It is important that businesses understand that the risks of trafficking are both external (e.g., traffickers using the facilities of the business such as hotels, or transportation) and internal (e.g., trafficking occurs directly within their operations or in their supply chains — such as temporary workers abused by agents). Different approaches will be required to address these risks. While the external risk of trafficking can be addressed through codes of conduct and zero tolerance policies, the internal risk will require changes in management procedures, including hiring and procurement practices. Businesses should also consider working with others within the same industry, NGOs and governments to effectively address the risk of human trafficking in their supply chains.

Below are examples of multi-agency initiatives taken to address trafficking in children in the tourism industry and trafficking for labour exploitation in food production and agricultural industries.
Code of conduct for the protection of children from sexual exploitation in travel and tourism

In 1998, child rights NGO ECPAT (End Child Prostitution and Trafficking) partnered with the tourism sector to launch an initiative to address child sexual exploitation and child trafficking in tourism destinations.

Businesses that operate in the tourism industry, such as hotels, airlines, travel agents, that commit to the Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism must:

• Establish a corporate ethics policy against commercial sexual exploitation of children
• Train personnel in countries of origin and travel destinations
• Introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children
• Provide information to travellers through catalogues, brochures, in-flight films, ticket-slips, websites, etc.
• Provide information to local “key persons” at destinations
• Report annually

Since its introduction, the code has been implemented in over 40 countries and its signatories include major hotel chains and tour operators.


Stronger Together — Initiative to tackle hidden labour exploitation

In 2013, the British Association of Labour providers, in partnership with industry bodies involved in food production, major retailers, government agencies and NGOs, launched an educational campaign to address labour abuses and trafficking in the food production, agriculture and horticulture sectors in the UK.

The initiative provides guidance, resources and training for employers, labour providers and workers to help reduce exploitation by joint working. In partnership with NGOs, the project delivers regular trainings on human trafficking to HR managers, farmers and other operational staff. In addition to training, it also provides tools for the identification of exploitation, including templates of surveys and interviews to identify potential exploitation of temporary workers by labour brokers. Employers are also encouraged to use the tools developed by the initiative, such as multi-lingual posters, to give workers information about their rights and provide them with contacts to places where they can access help. Partnership with the Gangmasters Licensing Authority also provides direct link to enforcement in case of any abuses identified.

Sources: Association of Labour Providers, Stronger Together Initiative: http://stronger2gether.org/

3.1.3 The obligation on States to hold business to account

International law establishes an obligation on the States to hold businesses (legal persons) criminally liable for their involvement in human trafficking. This liability covers both situations, where a business is the instigator of human trafficking and where human trafficking happens in part of that business (e.g., through supply chains), but with the complicity of the main business.

European legislation, specifically the EU Trafficking Directive and the Council of Europe Trafficking Convention clarify that criminal liability of legal persons applies not only in circumstances where a business is directly involved, but also in situations where the lack of supervision enabled trafficking to occur.
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| EU Trafficking Directive, Art. 5 | Member States are under obligation to ensure that legal persons can be held liable for trafficking offences referred committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:  
   a) a power of representation of the legal person;  
   b) an authority to take decisions on behalf of the legal person; or  
   c) an authority to exercise control within the legal person. | Binding for all EU Member States |
| Council of Europe Trafficking Convention Art.22 (Corporate liability) | Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:  
   a) power of representation of the legal person;  
   b) an authority to take decisions on behalf of the legal person;  
   c) an authority to exercise control within the legal person. | Binding for all signatory States |
| UN Organized Crime Convention Art. 10(1) | Each State Party is required to adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with the Convention itself. | Binding for signatory States and applies to crime offences covered by the protocols to the Convention, including the Trafficking Protocol |
| ILO 2014 Forced Labour Protocol, Art. 2 (e) | The measures to be taken by States Parties for the prevention of forced or compulsory labour shall include: supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour. | Binding for signatory States |
3.1.4 Challenges to application of the criminal liability of legal persons

Proving criminal liability of a company for human trafficking is very complicated. Law enforcement agencies often lack the knowledge, skills and resources to penetrate and document complex business structures and financial and other relationships. Such difficulties are particularly acute in cases of trafficking for labour exploitation where long chains of formal and informal recruiters and agents can be involved. Consequently, and perhaps also because of a lack of political will and adequate resources, there are only very few instances in which a company has been successfully prosecuted for involvement in human trafficking. One of the rare examples is cited below. In that case, not only was the company found to be legally responsible for the abuse of workers and prosecuted accordingly, but the joint liability of the main company was also established.
Case study — Corporate liability for human trafficking and remedies for victims

In 2012, a court in Ghent, Belgium, held a company liable for abetting trafficking in persons for the purposes of labour exploitation, although the company had no direct legal relationship with the exploited workers.

In 2007, dozens of workers were recruited in Bulgaria, Moldova, Romania and Kazakhstan to work in Belgium by a German company, Kronos Sanitärservice GMBH, owned by a German national of Kazakh origin. Workers were first transported to Germany, where they were registered for residency, and subsequently posted to work in Belgium under the EU transnational provision of services legislation (known as posting of workers).

In Belgium, the workers were tasked with cleaning toilet facilities for a chain of motorway restaurants owned by N.V. Carestel Motorway Services that contacted Kronos to provide these services. Kronos required workers to work seven days a week for a continuous periods of several weeks; they worked from 7am until 10pm without breaks and were under full control of the contractor. Their wages were withheld and they were told that they would be paid only if they stayed until the end of the contract period. Accommodation provided to the workers was sub-standard and they were regularly threatened.

Considering the case, the court of Ghent extended the liability for trafficking to Carestel arguing that the abuse of workers by Kronos would not have been possible without Carestel “deliberately ignoring malpractices.” The judge has further established Carestel to be an accomplice in the exploitation, because of their failure to end the contract after they became aware of the exploitative situation faced by workers.


In July 2015, Signal International agreed to apologise and pay damages to former employees to resolve human trafficking lawsuits.

In the aftermath of Hurricane Katrina, Signal recruited around 500 workers in India and brought them to the United States on guest worker visas. The Indian welders and pipefitters were to repair damaged oil-rigs. They paid over USD20,000 to a labour recruiter in India to get the jobs and also to an American who promised to obtain permanent visas. However, the workers were misled. They were brought to the US on a temporary visa and found themselves in squalid housing conditions for which Signal charged them over USD1,000 a month.

In 2011, the Southern Poverty Law Center filed a class-action lawsuit on behalf of the Indian workers against Signal. Despite almost being thrown out by a federal judge who refused to allow it to proceed as a class action, the case was salvaged by law firms who agreed to represent individual workers on a pro bono basis. In July 2015, six months after a jury ruled that Signal and other defendants should pay USD15 million in damages to the workers, the company filed for bankruptcy. Following that, it agreed to pay the 232 former Signal employees between USD20m and USD22m to resolve the human trafficking lawsuits.

3.2. Trafficking and related exploitation of smuggled migrants

In Europe and Asia, the smuggling of migrants is increasingly intertwined with trafficking in persons — calling into question the division between these two practices that is maintained in international law and raising questions about how migrant smuggling that involves human trafficking should be identified and responded to.

3.2.1 The growth in exploitative migrant smuggling

For the millions of people who want to, or are forced to, move, international migration has become increasingly expensive and hazardous. This is not surprising. Contemporary migration regimes deliberately aim to restrict the ability of individuals to secure legal access to preferred destinations; that forces migrants, including refugees who are compelled and have a legal right to seek asylum, into the arms of those who are able to help them circumvent ever-increasing controls. Migrant smuggling — the business of moving people across borders for profit — is reported to be one of the fastest growing and most lucrative forms of organized criminal activity. Smugglers crowd their human cargo into shipping containers and on to boats and trucks. As discussed further below, many arrive safely and consider the investment well spent. But criminality and excessive profiteering routinely places lives and wellbeing at serious risk. Each year thousands of smuggled migrants drown trying to get into Europe across the Mediterranean: cast adrift on unseaworthy vessels once they had paid for their passage. Similar stories are told of those trying to get into Australia from transit points in Indonesia, and into Malaysia and Indonesia from Myanmar.

As smuggling becomes the “new normal” in irregular migration, there is growing evidence that that smugglers are increasingly taking on the role of trafficker: using their clients for extortion, compelling them into situations of sexual enslavement, selling them for forced labour. Even when they have paid off their smugglers, migrants can remain in debt to those who funded their trip, making them highly vulnerable to exploitation in the country of destination. This presents legal, policy and practical dilemmas, considered further below.

3.2.2 A legal and policy distinction between smuggling and trafficking

At the level of law and policy, migrant smuggling and trafficking in persons are considered to be distinct and separate issues. That distinction dates back to December 2000, when States agreed to the establishment of an international legal regime around trafficking and migrant smuggling within the context of a broader cooperation agreement on transnational organized crime (see Section 1, above). Until then, the terms had been used interchangeably, along with “migrant trafficking” and other variants. With the adoption of separate legal instruments on trafficking in persons and smuggling of migrants, the international community affirmed, for the first time, the elements that comprise both phenomena and critically, the distinctions between them.

The term “migrant smuggling” refers to the unauthorised movement of individuals across national borders for the financial or other benefit of the smuggler. This definition, which was agreed in the context of establishing a uniform criminal offence, deliberately excludes those who are helping to move people purely for humanitarian reasons. But it remains sufficiently broad to apply to a wide range of facilitators of irregular migration including recruiters, organizers, transporters and providers of fraudulent travel and identity documents. The identity of the smuggled migrant is not relevant: the cross-border movement of refugees is still considered ‘smuggling’ when it involves a financial or other reward.

Trafficking in persons can be distinguished from migrant smuggling on a number of grounds but the most important is purpose: migrant smuggling seeks to facilitate a person’s illegal movement for profit; trafficking seeks their exploitation. In a classic migrant smuggling situation the relationship between the smuggled migrant and his or her facilitator ends when the journey is completed. In cases of trafficking, both profit and purpose are directly tied to the exploitation of the migrant’s labour.
### TRAFFICKING IN PERSONS — MIGRANT SMUGGLING
### COMPARISON OF THE CORE ELEMENTS

<table>
<thead>
<tr>
<th>FEATURE</th>
<th>TRAFFICKING</th>
<th>MIGRANT SMUGGLING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal definition</strong></td>
<td>“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purposes of exploitation.”</td>
<td>“[T]he procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.”</td>
</tr>
<tr>
<td><strong>Purpose of the movement</strong></td>
<td>Exploitation of the individual's sexuality/labour for profit</td>
<td>Movement for profit</td>
</tr>
<tr>
<td><strong>Nature and quality of consent</strong></td>
<td>Consent for movement may be present but true consent nullified by force, coercion, deception, etc.</td>
<td>Consent for movement clearly present</td>
</tr>
<tr>
<td><strong>Nature of the relationship between the individual and the facilitator</strong></td>
<td>Victim-exploiter Long-term relationship extending beyond the movement phase (although initial facilitator may be a link in the chain, there is continuity in the individual's relationship with the trafficker/s)</td>
<td>Buyer-supplier Short-term relationship Terminates upon completion of movement</td>
</tr>
<tr>
<td><strong>The profit element</strong></td>
<td>Major profit source is the exploitation</td>
<td>Sole profit source is the movement</td>
</tr>
<tr>
<td><strong>Violence and intimidation</strong></td>
<td>Characteristic of trafficking and generally necessary to maintain victim in exploitative situation</td>
<td>Incidental to movement (if present at all)</td>
</tr>
<tr>
<td><strong>Autonomy and freedom</strong></td>
<td>Severely compromised</td>
<td>Generally not severely compromised except to extent required for successful movement</td>
</tr>
<tr>
<td><strong>Geographical dimension</strong></td>
<td>Trafficking can occur internally or across international borders</td>
<td>Migrant smuggling must involve the illegal crossing of an international border</td>
</tr>
</tbody>
</table>

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### 3.2.3 Challenges to the distinction between smuggling and trafficking

It has become increasingly apparent that current legal concepts and structures around trafficking and smuggling are poorly suited to capturing the complexity of what is happening. As noted above, an increasing number of smuggled migrants are ending up in situations of trafficking-related exploitation. For all smuggled migrants, the clandestine nature of their journey; the sometimes unscrupulous and corrupt conduct of their facilitators and collaborators; and, most critically, the extent to which some States will go to prevent their departure, transit or arrival, all operate to create or exacerbate serious risks to personal security and wellbeing. In such cases, the maintenance of a distinction between those who are treated as commodities and exploited and harmed incidentally (smuggled migrants) and those who are deliberately subjected to exploitation and harm (trafficked persons) begins to look increasingly unrealistic and unfair.
The blurring of the lines between smuggling and trafficking distinction has significant implications for States and the individuals concerned. Under international and most national laws, smuggled migrants, even those subject to hardship and abuse, are not considered to be victims of crime. They have no apparent right to support and assistance; no right to seek remedies for the harms committed against them; no right to protection from further harm and, with only a marginal exception, are not granted any protection from immediate return.

Increasingly, States are moving beyond the criminalisation of smuggling to criminalise the act of being smuggled — that is, the migrants themselves. This stands in stark contrast to persons identified as having been trafficked, who under national and international laws are entitled — at least in theory — to a raft of rights related to protection, assistance, compensation, protection from criminalisation, safe return and reintegration.

**The increasing slippage between trafficking and migrant smuggling**

In October 2013, an overcrowded fishing boat, carrying smuggled migrants from war-torn regions of Sub-Saharan Africa to the Italian coast, was set on fire to draw the attention of rescuers. Over a hundred passengers were rescued after the vessel capsized, but more than 360 women, men and children perished. It was alleged that vessels in the area ignored distress signals and failed to come to the rescue of drowning passengers, perhaps fearing prosecution for abetting migrant smuggling. Investigations revealed that some of the passengers had been subject to severe, trafficking-related exploitation and that many had been forced to pay smugglers for their freedom from a detention centre in Libya and the onward journey to Europe.


Unfortunately, these very different legal regimes can create perverse incentives for States to avoid identifying smuggled migrants as victims of trafficking, even when signs of trafficking are present or easily discoverable. While precise information is impossible to obtain, it appears that few (if any) of the hundreds of thousands of smuggled migrants who have entered Europe in the most recent wave of 2015 have been screened for trafficking. Even when highly credible allegations of trafficking of smuggled migrants are made, this rarely translates into the application of a different standard of treatment. For example, while many smuggled Rohingya refugees from Myanmar have been subjected to severe, trafficking-related exploitation including being sold into forced labour, countries of destination including Malaysia and Thailand have not taken these persons into their well-structured trafficking victims assistance programs.

**3.2.4 Dangerous conflation of smuggling and trafficking**

Other, quite different risks arise when trafficking and smuggling are conflated for purposes that are not necessarily related to advancing human rights and protecting the vulnerable. For example, it has been noted that during the 2015 European refugee crisis, senior government leaders and public officials regularly referred to trafficking in relation to situations that appeared to be migrant smuggling. As the head of a major human rights organization, Anti-Slavery International, recently noted:
The conflation of smuggling and trafficking conveniently obfuscates the issue and buys political breathing space. It is a classic public relations move by those faced with evidence of their complicity in human rights abuses — or in this case, arguably, a preventable atrocity. When faced with such horror, it is easier to make grand statements blaming migrant deaths on evil traffickers than to seek the causes and identify proper responses.23

Identifying a situation as one of trafficking can also be used to give political legitimacy to responses that may be politically unpalatable if directed against facilitators of irregular migration, especially when those involved are refugees with a valid claim to seek and receive asylum from persecution. For example, the language of ‘trafficking’ and ‘slave traders’ may be used to justify military action against smugglers and their vessels.

3.2.5 Addressing the smuggling/trafficking dynamic

Despite a growing awareness of the scale and seriousness of exploitation in facilitated migration, the international response to migrant smuggling has been desultory and inconsistent. While new international rules around migrant smuggling acknowledge the possibility of harm and the need to preserve the human rights of migrants, this has done little to dispel the widespread perception that smuggling is a crime against the State, and that smuggled migrants are complicit in their own misfortune and thereby not “victims” deserving of protection and support. As noted above, protections that should, in theory, be available to smuggled migrants who have suffered exploitation — including those provided under human trafficking laws — are rarely acknowledged or applied.

The number of people who want — or are forced — to move shows no sign of slowing and will most probably increase, at least over the short to medium term. Most of this migration will be facilitated by smugglers and, based on current trends, it is likely that the blurring of lines between smuggling and trafficking will continue. Under these circumstances it is essential that the international community and concerned States work to ameliorate the greatest harms and injustices caused by exploitation in migration. For example, much more could and should be done on the broader issue of migrants’ rights. States that reap the incalculable benefits of low cost migrant labour, that generate the demand being met by migrants, should not be able to get away so easily with defending and maintaining a system that deprives them of even the most basic legal and social protections.

International action against trafficking in persons provides perhaps the most valuable opportunity to redress the current protection gaps. While not all exploitation directed at migrants can be rightly characterised as “trafficking”, a great deal of the debt bondage, forced labour, and abuse of migrants that has been documented over recent years does indeed reach the required threshold of seriousness. As this background paper has amply demonstrated, the tools now available to deal with trafficking in persons are considerable. They include strong international and national legal frameworks, dedicated criminal justice institutions, powerful oversight and reporting mechanisms, and a vigorous civil society. These must all be directed toward exposing exploitation in migration and securing a stronger, more effective response.
3.3. Trafficking for forced criminal activities

The purposes of trafficking are as varied as the potential for profit and new forms of trafficking are emerging in both Asia and Europe. In Europe, in particular, there is growing evidence of trafficking for purposes of exploitation through criminal activities. This often results in the victim being prosecuted for the crime for which they have been trafficked, while their exploiters enjoy impunity. Forced criminality of victims raises questions about how this form of human trafficking should be identified and responded to.

3.3.1 The extent of forced criminal exploitation

Women, men and children trafficked across international borders or within a country are increasingly coerced into committing criminal activities. The range of crimes that they may be compelled to commit is broad and includes petty crime (such as pick-pocketing, shoplifting or distraction theft) and more serious offences (such as drug cultivation and distribution and drug smuggling).

Coercing others to commit crime, brings traffickers significant profit at a very low risk as it is the victims who are most likely to be arrested and prosecuted. Commonly, the police apprehend a victim committing the actual crime, which makes it straightforward to evidence and prosecute the unlawful act. Against this backdrop, the serious crime against the victim — trafficking — is often overlooked.

European institutions and civil society increasingly pay attention to this problem as they repeatedly encounter cases of victims convicted of crimes. Approximately 4% of the cases of trafficking identified in the European Union and reported to the Europol\(^\text{24}\) focal point on human trafficking, concern trafficking for forced criminality and begging. However, as with the overall extent of trafficking, the real number of those trafficked for forced criminality is likely to be much higher. A research study in the UK identified that in the period from 2012 to 2014, at least 159 victims of trafficking from Viet Nam were prosecuted for forced labour in cannabis factories. The prosecutions went ahead despite indicators of trafficking being present in these cases.\(^\text{25}\)

3.3.2 Forms of forced criminality

Trafficking for forced criminality takes a variety of forms. The most prevalent types of forced criminality recorded in the past 10 years in Europe involved women, children and men trafficked for the purposes of:

- Theft (e.g., pick-pocketing; shoplifting; occasional burglary; distraction theft at ATMs; precious metal theft from railway lines; charity bag theft)
- Sham marriages (an EU national woman is compelled to marry a third country national thereby committing an offence of facilitating illegal entry)
- Drug production or cultivation (usually cannabis factories, but recent reports also describe methamphetamine production)
- Drug distribution (usually young men who are forced by their traffickers to sell drugs on the streets)
- Production and distribution of counterfeit goods (e.g., DVDs, clothes or cigarettes)
- Benefit fraud (victims are coerced into fraudulently claiming benefits such as child welfare benefits — with all monies going directly to the trafficker. This form of exploitation typically involves victims who are concurrently being exploited in other ways).
- Drug trafficking (typically transportation of illicit drugs across international borders)
- Begging (which is criminalised in some countries but not in all instances)
The above list is by no means exhaustive. Experience has shown that traffickers are skilled in adapting and refining their business models, constantly inventing new ways of exploiting their victims in order to generate further profit. For example, an increasing amount of cases has been reported across Europe, of traffickers stealing the identity of a victim. This involves the abuse of the victim’s personal data, identity documents, and signature in order to fraudulently obtain loans or credit. As a consequence, the victim is left with liabilities they are not aware of.

3.3.3 Forced criminality in the definition of trafficking

Trafficking for forced criminality is not referred to in the Trafficking Protocol or in the Council of Europe Trafficking Convention, likely because States were not aware of this form of exploitation at the time of drafting. However, in relation to both instruments the list of exploitative purposes is explicitly non-exhaustive and States retain the freedom to include other exploitative purposes such as forced criminality. In addition, forced criminality may be integrated into the Protocol and Council of Europe definition of trafficking through being characterised as a form of forced labour. This is the position taken by the ILO, which has affirmed that forced labour is not confined to labour in regular industries but encompasses any activity that is exacted under the menace of any penalty and for which the individual has not offered him or herself voluntarily. This includes criminal activity and begging.26

An improved information position on trafficking for forced criminality guided development of the 2011 EU Trafficking Directive, which identifies the exploitation element of the definition of trafficking as follows:

Art. 3(3): Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs

3.3.4 Forced criminality and the principle of non-punishment for status offences

To provide a safeguard against prosecution of victims who may have been compelled to commit crimes as a consequence of trafficking, the international community has developed a principle of non-prosecution or non-punishment for status offences. While this principle is not part of the Trafficking Protocol, it was first introduced via the 2002 United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking. It subsequently entered into international treaty law via in the Council of Europe Trafficking Convention, the EU Trafficking Directive and the 2014 ILO Forced Labour Protocol.

The principle of non-punishment for status offences is based on a premise that trafficked persons may, in the course of their trafficking or as a consequence of their trafficking, commit administrative and criminal offences for which they should not be held legally responsible. This is not a new principle but rather draws on long-established principles common to all legal systems around concepts such as criminal responsibility and duress.
NON-PROSECUTION / PUNISHMENT PROVISION IN INTERNATIONAL LAW

<table>
<thead>
<tr>
<th>INSTRUMENT</th>
<th>NON-PUNISHMENT DEFINED</th>
<th>APPLICATION</th>
</tr>
</thead>
</table>
| Council of Europe Trafficking Convention        | Art. 26: Non-punishment provision  
Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. | Binding for States Parties                        |
| EU Trafficking Directive                         | Art. 8: Non-prosecution or non-application of penalties to the victim  
Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2. | Binding for all EU Member States                  |
| ILO 2014 Forced Labour Protocol                  | Art. 4(2): Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities, which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour. | Binding for States Parties                        |

There is debate about the appropriate interpretation and transposition of the non-punishment provision on national level. While some countries have introduced a non-prosecution/non-punishment provision in their anti-trafficking legislation in connection with status offences, others have incorporated the principle into policies or guidelines. Often, States provide guidance to prosecutors and other parts of the criminal justice system on when discretion to not prosecute or punish should properly be exercised in cases of trafficking.

EXAMPLE OF NATIONAL APPLICATION OF THE PUNISHMENT PROVISION

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>NON-PUNISHMENT IMPLEMENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moldova</td>
<td>Articles 165 &amp; 32 of the anti-trafficking law provides for exemption of trafficked persons from liability for criminal and administrative offences committed in connection with their trafficked status.</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Prosecution Code 18.2: In appropriate cases, a prosecutor should consider a credible claim that a defendant or intended defendant is a victim of trafficking. If such a claim is found, a prosecutor should appropriately deal with the case bearing in mind that the person is a victim of trafficking. In this regard, reference can be made to applicable international standards and practices concerning victims of trafficking.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Modern Slavery Act 2014 Article 45 provides for a statutory defence that can be raised if a person is compelled to do something by another person or circumstances and the compulsion is attributable to trafficking, slavery, forced labour or servitude.</td>
</tr>
</tbody>
</table>
It is important to note that the principle of non-prosecution/non-punishment for status offences does not grant victims of trafficking \textit{blanket immunity} for any and all crimes they may have committed before, during or after their trafficking experience. Indeed, it would be both unnecessary and dangerous to grant persons identified as victims of trafficking some kind of special defence or immunity from prosecution without tying this to the fact and situation of their trafficking.

What would be the parameters of such a defence or immunity? Within what time frame would it operate? What steps would be taken to address the potential consequences of such a law (e.g., increased use of victims of trafficking for the commission of serious offences)? Persons who are or have been trafficked can and do commit serious crimes. They may kill their employers/exploiters. More commonly they may traffic/exploit others. Practitioners, for example, report cases of women who become recruiters for their traffickers in order to lessen the abuse they are exposed to. In such cases it is necessary for national criminal justice authorities to make a full and fair assessment of the situation and to consider, for example, whether the fact of trafficking is a mitigating, rather than an exculpatory factor.

In conclusion, it is essential that the principle of non-prosecution/non-punishment is interpreted and applied in such a way as to ensure that its intention is preserved. Victims of trafficking do not have blanket immunity from prosecution, but they should not be punished for crimes they were compelled to commit in the course of or as a direct consequence of their trafficking.

\textbf{3.3.5 Challenges to application of the non-punishment provision}

The application of the non-punishment provision in Europe is not without challenges. In assessing the use of the provisions by member States, the Council of Europe\textsuperscript{27} identified a significant lack of awareness about the provision amongst competent authorities. In addition, the confusion over the positive obligation of the police to act on an allegation of crime, and the application of the non-punishment provision at the same time, is also an issue.

In order for the law enforcement agencies to identify a victim of trafficking for forced criminality, they need to be seeing \textit{the crime behind the crime}. This requires, first, familiarity with the indicators of trafficking, second, awareness of the fact that trafficking can occur for the purposes of criminal exploitation and finally the knowledge about the non-punishment provision.
Miscarriages of justice — Prosecution of victims trafficked for forced criminality

In the past few years, a number of cases with claims of wrongful prosecutions were brought to courts of high instance in the UK by persons trafficked for forced criminality. In 2013, the High Court of England and Wales Criminal Division ruled in L, HVN, THN, T V R. The judgment concerned four unrelated cases, three involving Vietnamese children that were trafficked for cannabis cultivation and one involving a West African woman trafficked for sexual exploitation. All four victims were prosecuted for criminal offence and convicted, the three children for cannabis cultivation, the adult for passport offences. In all four cases, the High Court quashed the original convictions.

The significance of this judgment is in that it provides guidance to courts as how the interests of those who may be victims of trafficking, and are involved in criminal activities should be handled by courts and how to approach such cases in criminal proceedings. The judgment also made reference to international law, namely the Council of Europe Convention and the EU Trafficking Directive.

In the judgment, the Lord Chief Justice explained the very essence of trafficking for forced criminality:

The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals.


3.4. Challenges in measuring trafficking and assessing responses

Intergovernmental organizations, individual countries and private bodies are increasingly engaged in measuring the trafficking phenomenon and assessing the response of States. Advocates assert that such efforts are essential: data on where trafficking is happening, and to whom, provides the critical evidence required to develop relevant and effective interventions. And assessing State responses helps to encourage greater attention to trafficking and related abuses. But critics question methods and methodologies, also calling into question the overall strategic value of trying to quantify trafficking and trafficking responses and the focus of these efforts.
3.4.1 Measuring trafficking

As noted in Section 1 of this background paper, our understanding of trafficking prevalence, patterns and trends is imperfect and incomplete. This is unsurprising. Trafficking is a covert activity involving marginalised individuals and “hidden populations”. Many of those who have been or are being exploited will never be identified or counted. It is therefore necessary to extrapolate from the very little reliable information and data that is available. But even here, the obstacles are considerable. Most particularly, there are still questions around what is being counted when trafficking statistics are produced. For example, while the United Nations Office on Drugs and Crime relies on the definition of trafficking set out in the Trafficking Protocol when compiling its Global Report on Trafficking in Persons, the information in that report comes directly from States, not all of which will be providing data in strict accordance with that definition. The International Labour Organization has undertaken Important and groundbreaking work in measuring the extent of forced labour, using the international legal definition first set out in the 1930 Forced Labour Convention. But while forced labour and trafficking will often overlap, the two concepts are not identical in law or in practice.

The annual US Trafficking in Persons Report (TIP Report), discussed further below, uses a definition established under US national law that is different, in several important respects, to the one set out in the Trafficking Protocol. Early TIP Reports cited global figures that were later questioned by the US Government Accountability Office, which noted that: “the accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies”29. The TIP Report no longer provides global or even country estimates of prevalence, rather restricting its hard data to numbers of victims identified and traffickers prosecuted and convicted.

Other efforts from outside government are even more problematic in terms of being able to extrapolate across data sets. For example, the Global Slavery Index, which has been produced twice to date (2013 and 2014) is measuring what it calls “modern slavery”, a term that does not exist in national law; it is defined by the authors of the report and has been defined differently between one report and the next. The methodology used by the Index to measure the prevalence of modern slavery and the number of slaves as a percentage of the total (national) population has been strongly criticised.30

Similar issues have been highlighted in Europe. Eurostat, the European Union’s statistics agency, collects data from EU Member States and several associated States across a range of indicators including the number of victims of trafficking that have been identified. According to Eurostat, 30,146 victims were registered in the 28 EU Member States between the period 2010–2012. However, the accuracy of this figure is weakened by differences in how individual States formally identify (and register) victims. In the UK, for example, each potential victim who is referred to the national system for identification (the National Referral Mechanism) will be noted as a potential victim for purposes of the Eurostat figures — although it is only subsequently that a conclusive determination is made by the competent authorities as to whether or not the individual is indeed a victim of trafficking. By contrast, in other countries such as Romania, a person is only identified as a victim of trafficking if there are criminal proceedings against a perpetrator. Inevitably, data collected across the EU can only be interpreted as a sample of the problem, not the real extent of it.

3.4.2 Assessing the response of States

Attempts to measure the nature and extent of trafficking have gone hand in hand with efforts to assess the response of States. In some cases, this is done with reference to a specific legal instrument. For example, within the European system, States Parties to the Council of Europe Convention are subject to a rigorous oversight mechanism that includes country assessment visits. While the Trafficking Protocol itself does not include a compliance mechanism, other international bodies (including the UN’s Human Rights Council, treaty bodies, the Special Rapporteur on trafficking in persons and other mechanisms) regularly draw attention to obligations under the Protocol. ILO supervisory bodies are also involved in assessment of State responses and the role of the ILO in this area is likely to grow with the recent adoption of new instruments on domestic servitude and forced labour.
The most high profile and influential assessment of State responses to trafficking is provided by the annual TIP Reports. The relevant statute requires the State Department to produce annual Reports describing “the nature and extent of severe forms of trafficking in persons” and assessing governmental efforts across the world to combat such trafficking against criteria established by US law. The Report establishes a system of rankings based on three tiers. Tier One is for countries in full compliance with the minimum standards, Tier Two for countries making an effort but not yet fully compliant, and Tier Three for those countries that were failing on both counts. An additional category, “Tier Two Watch List,” applies to countries that, owing to the severity of the problem or failure to provide evidence of progress, are considered to be on the lower edge of the Tier Two classification. Tier Two Watch List countries are subject to special scrutiny and, in the absence of a special presidential exemption, are downgraded to Tier Three after two consecutive years on the Watch List. The President is authorised to deny the provision of non-humanitarian, non-trade-related assistance to any Tier Three country. In addition, such countries will risk US opposition to their seeking and obtaining funds from multilateral financial institutions, including the World Bank and the International Monetary Fund (IMF).

The TIP Reports have been justifiably criticised on many grounds. For example, they fail to properly acknowledge that anti-trafficking responses can sometimes have terrible costs in terms of human rights. Examples include detention of trafficked persons in shelters; their prosecution for illegal entry or illegal work; denial of protection and support to victims who will not or cannot cooperate with criminal justice authorities; and being forced to return to a situation of danger. The pressure on governments to demonstrate their anti-trafficking commitment through increased prosecutions has also resulted in unsafe convictions and the imposition of penalties that are disproportionate to the offence. And while the reliability of individual country assessments has improved over the years, there is still a strong correlation between the US government’s attitude towards a particular country and the ranking allocated to it. 31

Despite these and other significant weaknesses, there is little doubt that the TIP Reports have helped to raise the profile of trafficking as an issue of international concern; contributed to improved understanding about the nature and extent of trafficking; and provided strong political impetus for more effective responses. The reports have also helped to reinforce the core provisions of the international legal framework around trafficking; for example in relation to whether States have criminalised trafficking, whether they are prosecuting and appropriately punishing offenders, and whether they are cooperating with each other to that end. Country assessments also routinely consider how the State under review treats victims of trafficking in both law and practice — focusing on issues as diverse as detention of victims in shelters, to protection of trafficked persons who are cooperating in the prosecution of their exploiters.

**EFFORTS TO MEASURE TRAFFICKING AND ASSESS RESPONSES**

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>METHODOLOGY/OUTCOME, ETC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Global Report on Trafficking in persons</td>
<td>Measurement: Measures no. of trafficking laws; no. of investigations, prosecutions and convictions; no. of identified victims; no. of sheltered victims.</td>
</tr>
<tr>
<td></td>
<td>Assessment of responses Trend analysis but no critical assessment</td>
</tr>
</tbody>
</table>
| International Labour Organization Various publications | **Measurement:** Various initiatives over the past decade to measure prevalence of forced labour in targeted areas or within targeted populations  
- In 2012 developed guidelines for qualitative surveys on forced labour and a global estimate of forced labour (20.9 million)  
- In 2014 estimated illegal profits from forced labour (USD 150 billion) |
| --- | --- |
| EUROSTAT Trafficking in Human Beings | **Measurement:**  
Produced in 2013 and 2014 (the latter covering 2010–2012)  
**Measurement:** Using data received from States, provides statistics on no. and profile (including gender, citizenship, form of exploitation) of identified victims; no. and profile of suspected and prosecuted traffickers; no. of final decisions; court judgments and convictions. |
| Group of Experts on Action against Trafficking in Human Beings Country reports | **Measurement:** Independent monitoring mechanism established under the Council of Europe Trafficking Convention  
**Assessment:** Conducts country visits and other activities to assess implementation of the Convention by States parties. Publishes country reports detailing findings including recommendations for improvement. |
| United States of America Trafficking in Persons Report | **Measurement:**  
Produced annually since 2001  
**Measurement:** Provided estimates of global prevalence from 2001–2008. Then cited ILO data on forced labour to extrapolate trafficking prevalence. Currently only provides data on no. of prosecutions and convictions; no. of identified victims; no. of investigations (all disaggregated into labour trafficking and (presumably) trafficking for sexual exploitation.  
**Assessment:** Uses information provided by States as well as other sources to assess response of States to trafficking against criteria established by US law. States are assigned one of four grades with the lowest grade attracting sanctions. |
| Private sector measurements and assessments Various reports (examples) | **Example of global assessment: Global Slavery Index:**  
Produced in 2014, 2015 (Walk Free Foundation)  
**Measurement:** Estimates prevalence of “modern slavery” in each country and no. of slaves as a percentage of total population.  
**Assessment:** asks “how are governments tackling modern slavery?” using a set of indicators developed by an “expert working group”.  
**Example of sector assessment:** Verite, *Forced Labour in the Production of Electronic Goods in Malaysia* (2014)  
**Measurement:** uses ILO tools to establish prevalence of forced labour in the sector. |
3.4.3 Towards the future

Efforts to measure the nature and extent of trafficking — and to assess the quality and effectiveness of responses — are important and deserve to be encouraged. But it is essential to remain alert to the many pitfalls. For example, experience teaches us that reliable, replicable data on the prevalence of trafficking is extremely difficult to secure and that extrapolating from thin or poor quality data sets does not address the underlying problems. Assessing the performance of States is an equally important and fraught endeavour, particularly when responsibility for such assessment is placed in the hands of individual States or private bodies whose understanding of what is required for an effective response may be unclear or not in full accordance with international norms.

Recent developments — such as specialist research into specific issues or industries — hold the promise of more and better information that will help in determining the nature and scope of the problem as well as evaluating the quality and impact of responses. For example, a recent detailed study of Malaysia’s electronics industry was able to secure the qualitative and quantitative information necessary to understand the extent to which exploitation has become part of this sector including estimates of prevalence.32 The work was not undertaken in a vacuum. Rather, researchers utilised methods and assessment tools produced by the ILO for the specific purpose of guiding prevalence measurement in relation to forced labour. A report from the same organization on labour brokerage and trafficking of Nepali workers to the Middle East provided a similar level of forensic detail on how such exploitation occurs, such as who is being targeted and who is responsible.33 Exploitation in the global fishing industry has now been taken up by the United States Government and international organizations, but only after researchers and advocates did much of the hard work documenting the horrific abuses involved and mapping the factors that facilitate and sustain exploitation.34

Endnotes:


2 It was this conception of trafficking that was enshrined in the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which remained the major international legal agreement on this subject up to the adoption of the Trafficking Protocol.


7 This table and the following are both excerpted from the forthcoming publication of the ASEAN Committee on the Promotion and the Protection of the Rights of Women and Children (ACWC), “Baseline Assessment Report on Laws, Policies and Practices within ASEAN Member States Relating to the identification and Treatment of Victims of Trafficking, Especially Women and Children” (forthcoming, 2016).


10 Ibid.

Rebecca Surtees, After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked persons in the Greater Mekong Sub-region (Bangkok: Nexus Institute/UNIAP, 2013).


Ibid.


EU Trafficking Directive, Article 10


Adapted from ASEAN Training Curriculum on Trafficking in Persons (2011).

The exception is provided by EU Directive 2004/81/EC, which defines the conditions for granting residence permits to third-country nationals who are victims of trafficking or who have been subject to migrant smuggling and who are cooperating authorities. However, the Directive does not mandate the issuing of such permits and it is only very rarely applied for the benefit of smuggled migrants. In the first 10 years since the passage of the law, only ten EU Member States made use of the provisions for smuggled migrants. See Communication from the Commission to the Council and the European Parliament on the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. European Commission, 2014.

Aidan McQuade, “Migrant crisis: smuggling or trafficking? Politicians don’t seem to know,” The Guardian, April 22, 2015.

Presentation by Europol Focal at a conference on trafficking for forced criminality in the Hague, June 17, 2014.


http://www.coe.int/t/dghl/monitoring/trafficking/Docs/SeminarsConf/Presentations_workshop/Presentation_P.Nestorova.asp


See further, Anne T. Gallagher, “The Trafficking Watchlist May be Flawed, but it’s the Best Measure We Have,” The Guardian, June 27, 2014.


Verite, Labour Brokerage and Trafficking of Nepali Migrant Workers (n.d.)

See Section 1 case study
PROTECTING THE RIGHTS OF TRAFFICKED PERSONS: ASEM’S JOINT RESPONSIBILITIES AND MUTUAL OBLIGATIONS

Michèle RAMIS, Ambassador at Large against Organized Crime, Ministry of Foreign Affairs and International Development of France
(Concluding address delivered at the closing plenary of the 15th Informal ASEM Seminar on Human Rights)

Excellencies, dear delegates and representatives of civil society,

At the end of the 15th Informal ASEM Seminar in which we addressed the different aspects of Trafficking in Human Beings (THB), both from a human rights perspective and also from a criminal, political and social angle, I have been impressed by the quality of the participation of delegates, both from governments and civil society, which has been outstanding. I try to draw conclusions from our discussions.

The informal dialogue on human rights that our two regions have launched since 1997, in the ASEM framework, provides us with a forum for improving mutual understanding and cooperation on issues of common concern. And trafficking in human beings is without a doubt a common concern.

I wish to congratulate the Asia-Europe Foundation (ASEF), the organizers and the sponsors of this seminar for having made this event possible and for the excellent preparation of this meeting. I also wish to thank the host country, Switzerland, for its hospitality and for having offered to the participants in the seminar such a beautiful place to meet and such wonderful working conditions. We welcome the fact that Switzerland expressed its wish to join the Seminar series as a partner.

We have conducted rich discussions, in a friendly and constructive atmosphere. The keynote address, the different interventions and the four workshops have generated fruitful debates which will inspire us for our future actions. These debates will without doubt strengthen our partnership in combating the terrible scourge of trafficking in human beings, one of the most unacceptable violation of human rights and human dignity.

I have been working for many years on trafficking in human beings and this is such a complex phenomenon that every day I learn more on this topic. I must acknowledge that during the discussions over the past three days, I learnt a lot from you, listening to your messages and testimonies, exchanging views, and comparing situations; we all have benefited from each other’s expertise.

Asia and Europe face a diversity of situations regarding trafficking in human beings, but we have strong common interests and our two regions are closely interlinked, since Asia and Europe are regions of origin, of transit and of destination.

 Trafficking in human beings is a violation of human rights. At the same time, it is a part of organized crime and it is a criminal activity that yields high profits for criminal networks. We therefore have to address this problem from both perspectives and ensure that the two approaches are mutually reinforcing.

What is the scourge we are facing?

Every year, over 2.5 million people, especially women and children, are recruited and exploited all over the world as victims of sexual exploitation, forced labour and other forms of exploitation such as removal of organs, forced criminality, forced begging, forced marriages etc.
Financially speaking, trafficking in human beings is the third most profitable form of trafficking, after drug trafficking and counterfeit, representing at least 32 billion dollars a year. This is why this scourge is so hard to tackle.

 Trafficking in human beings is in essence a transnational phenomenon and it benefits from the globalisation of the economy. It is evolving, and as new forms of exploitation appear, changes in distribution occur. We observe, for example, a decrease in detected cases of sexual exploitation (53% in 2013) whereas detected cases of forced labour increased (to 40%). How should we interpret that – as a result of our efforts and mobilization against sexual exploitation? Or as an effect of economic globalisation on working conditions?

The migrant and refugee crisis is creating a new context and new challenges for legal frameworks: confusion is often made between trafficking in human beings and smuggling of migrants since both phenomena imply displacement of persons and have the same root causes (such as poverty, lack of opportunities, instability, and civil wars). Even if we speak in strictly legal terms, of there being two different forms of trafficking, it is sometimes not easy to distinguish concrete causes for each category; what we know is that the vulnerability of migrants exposes them to the risk of being trafficked.

Forced criminality, especially concerning children, is also new challenge since victims of this trafficking are also at the same time offenders. How can we then protect them and make sure that the principle of non-punishment is complied with?

What about the response of the international community?

The response of the international community against trafficking in human beings has been, since the beginning of the 20th century, increasingly stronger and more comprehensive. Since the abolition of slavery in 1815, no effort has been spared to prohibit and counter the different forms of trafficking, with legal instruments that increasingly became more binding, and these efforts have taken into account the effects of globalisation and the need for increased victim protection.

We have built a legal architecture against sexual exploitation and forced labour. But it was not enough. A major step forward was achieved with the adoption of 2000 Palermo UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which addressed for the first time trafficking in all its aspects, with a broad definition.

Since the entry into force of the UN Palermo protocol in 2003, we have made enormous progress – to date, 95% of States have criminalised trafficking and statistics of convictions are increasing. The number of States parties to the Protocol is also progressing (as of November 2015, there are 168 States parties).

Beside universal instruments, regional conventions are of utmost importance – the SAARC Convention and the anti-trafficking Convention adopted by ASEAN in November 2015, which is a very positive development, fully complement the UN instruments at the regional level. The Council of Europe convention on Trafficking in Persons, a human rights-oriented instrument, has defined a strong protection regime for victims of trafficking. The EU directive has further strengthened the legal framework in EU Member States.

Apart from legally binding instruments, we also can speak of political commitments, such as the UN Global Plan of Action against Trafficking adopted by the UN General Assembly in 2010. This Plan of Action promotes an integrated approach of trafficking based on the “4 Ps”: prevention, protection, prosecution, partnership. This approach provides guidance to tackle such a complex phenomenon. And I noticed that the themes of our four working groups have been organized according this pattern.
We are therefore making good progress.

Nevertheless, what are the obstacles to further progress?

Our debates, especially in the working groups, identified a range of obstacles:

- Corruption
- Cultural and social acceptance: we know that in most of the cases, victims have been put in to criminal networks by families or with the complicity of parents, for economic reasons
- Psychological hold on victims: many victims are not able to get out of trafficking situations voluntarily because of fear or of shame. They are sometimes even not conscious that they are victims and may refuse the authorities’ protection, especially children;
- Lack of capacities: from a criminal law perspective, trafficking in human beings is not easy to prosecute. This is an offence of a complex nature, which requires elements that are sometimes difficult to establish, especially the purpose of exploitation.
- Lack of reliable data
- Lack of identification of victims
- Importance of profits: trafficking in human beings generates high criminal profits and is therefore difficult to eradicate
- Existence of a demand for services of exploited persons

What efforts should be intensified?

During our debates, a large number of recommendations were made and were presented at the closing plenary as the result of the working group discussions. I will not repeat them but I would like to underline the cross-cutting proposals that were put forward:

- Need for advocacy and raising awareness in order to uphold recognition of the gravity of trafficking. Trafficking is still invisible, underestimated or ignored, and we should increase the knowledge of the phenomenon within practitioners, civil society and public opinion. In this regard, the role of media is essential;
- Promoting partnerships and international cooperation. I’m referring to all forms of cooperation, from coordination of policies, judicial cooperation, cooperation between polices, technical assistance, exchange of good practices and to lessons learned. All actors must cooperate against such a complex and transnational issue: between States of origin and of destination, international organizations, private sector, and civil society. NGOs in particular are allies to face these violations; due to their expertise, they play a crucial role for the prevention and detection of trafficking and the protection of victims. I wish to pay tribute to the fantastic work they are realising in conjunction with governments and I’m glad that they are well-represented in this meeting;
- Following the money, tracking, seizing and confiscating criminal assets of traffickers;
- Reducing the demand by all means;
- Avoiding a sole law-enforcement approach. Placing the victims at the center of the process and focus on their protection, possess a consciousness of their rights, including to compensation;
- Avoiding confusion between trafficked and smuggled persons in order to preserve the rights of both categories;
- Adopting a gender-based dimension. Let’s be reminded that 70% of trafficking victims are women and girls;
- Taking into account vulnerability of children and prioritizing protection and repression of children trafficking;
• **Ratifying and fully implementing legal instruments.** The Palermo Protocol is still not universal (25 States have still not ratified it), along with some of the ILO conventions and protocols, especially the ILO Protocol of 2014 to the Forced Labour Convention, 1930. In recognition of the importance of review mechanisms that can assess the effectiveness of conventions and identify the needs for technical assistance, it would be crucial having a review mechanism for Palermo Convention and protocols.

• **Enhancing international commitments by national strategies.** In this regard, if you allow me, I will refer briefly to the situation of my country, France, which is seriously affected by trafficking in human beings, especially for the purpose of sexual exploitation and the exploitation of children. As with other Member States of the EU, France is at the same time a transit zone and a region of destination. We have strengthened our legal framework at different levels:
  ○ By strengthening our penal legislation, on the basis of the EU directive;
  ○ By creating a national coordination unit, responsible for the implementation of our policies by different administrations since trafficking in human beings is a cross-disciplinary issue;
  ○ By elaborating a national strategy: our national action plan against trafficking is based on three pillars – the identification and protection of victims; the repression and dismantling of criminal networks; and the implementation of a full range public policy against trafficking in human beings involving all national actors.

To conclude, I would say that fighting against trafficking in human beings requires an integrated approach, from a multidisciplinary perspective, aiming at reducing both demand and, if you allow me to use this word, “supply” for all forms of trafficking. We have achieved big advances since the beginning of 21st century but there is still a lot to be done.

Let’s congratulate ourselves for the dialogue undertaken between our two regions. Together, we can make universality of human rights a reality, while respecting our cultural identities.
## ANNEX 1: LIST OF ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACWC</td>
<td>ASEAN Committee on the Promotion and the Protection of the Rights of Women and Children</td>
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<tr>
<td>AMMTC</td>
<td>ASEAN Ministerial Meeting on Transnational Crime</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>ASEANAPOL</td>
<td>ASEAN Chiefs of National Police</td>
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<tr>
<td>ASEF</td>
<td>Asia-Europe Foundation</td>
</tr>
<tr>
<td>ATM</td>
<td>Automated Teller Machine</td>
</tr>
<tr>
<td>CEDAW</td>
<td>The Convention on the Elimination on all Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>COMMIT</td>
<td>The Coordinated Mekong Ministerial Initiative Against Trafficking</td>
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<tr>
<td>COTC</td>
<td>United Nations Convention against Transnational Organized Crime</td>
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<tr>
<td>ECPAT</td>
<td>End Child Prostitution and Trafficking</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUROPOL</td>
<td>European Police Office</td>
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<tr>
<td>GRETA</td>
<td>Group of Experts on Action against Trafficking in Human Beings</td>
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<tr>
<td>HRC</td>
<td>United Nations Human Rights Council</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>ITUC</td>
<td>International Trade Union Confederation</td>
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<tr>
<td>MLAT</td>
<td>Mutual Legal Assistance</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>NRM</td>
<td>National Referral Mechanism</td>
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<tr>
<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<tr>
<td>RACE</td>
<td>Response Against Trafficking for Forced Criminal Exploitation</td>
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<tr>
<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
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<tr>
<td>SOMTC</td>
<td>Senior Officials Meeting on Transnational Crime</td>
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<tr>
<td>TIP</td>
<td>Trafficking in Persons</td>
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<tr>
<td>TU</td>
<td>Trade Union</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNHCR</td>
<td>Office of the United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNIAP</td>
<td>The United Nations Inter-Agency Project on Human Trafficking</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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ANNEX 2: SEMINAR PROGRAMME

Day 1 – Tuesday, 24 November 2015

Venue: Montreux Fairmont Palace

11:00 - 12:30  High-Level Side Event: How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers
Venue: Salon de Congress

Co-organized by the Swiss Federal Department of Foreign Affairs and the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Official Welcome
Venue: Salle de Congress

Chair: Thierry SCHWARZ, Director, Political and Economic Department, Asia-Europe Foundation (ASEF)

16:00 - 16:45  Opening Speech on Behalf of the Host, Switzerland
Didier BURKHALTER, Federal Councillor, Head of the Federal Department of Foreign Affairs, FDFA (15 min)

Opening Speech on Behalf of the Organizers
Veronica CODY, on the behalf of Myria VASSILIADOU, EU Anti-Trafficking Coordinator (15 min)

Guest Speaker
Madina JARBUSSYNOVA, OSCE Special Representative and Coordinator to Combat Trafficking in Human Beings (15 min)

16:45 - 17:20  Joint presentation of Background Paper by Main Rapporteurs
(40 min)

Anne T. GALLAGHER, Independent Scholar and Legal Advisor to the United Nations and ASEAN
Klara SKRIVANKOVA, Anti-Slavery International

17:20 - 18:00  Open Plenary Discussion

19:00 - 20:30  Welcome Reception
Day 2 – Wednesday, 25 November 2015

Venue: Montreux Fairmont Palace

Simultaneous Working Groups

09:00 - 18:00  **Working Group 1: Preventive Measures**  
Rapporteur: Julia PLANITZER (Ludwig Boltzmann Institute)  
Moderator: Rafendi DJAMIN (Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights)

**Working Group 2: Protection and Assistance of Trafficked Persons**  
Rapporteur: Aurora JAVATE de DIOS (Miriam College)  
Moderator: Anders LISBORG (Danish Centre against Human Trafficking)

**Working Group 3: Access to Justice**  
Rapporteur: Klara SKRIVANKOVA (Anti-Slavery International)  
Moderator: Miwa YAMADA (Institute of Developing Economies)

**Working Group 4: International Cooperation Against Trafficking**  
Rapporteur: Anne T. GALLAGHER (Independent Scholar and Legal Advisor to the United Nations and ASEAN)  
Moderator: Anniina JOKINEN (Council of the Baltic Sea States)
## Closing Plenary – Morning session

**Venue:** Salle de Congress

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>09:30 - 10:30</td>
<td>Chair: Henri PLAGNOL, Conseil d’Etat</td>
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<tr>
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<td>Rapporteurs’ Summary on Each Working Group</td>
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<td></td>
<td><strong>Working Group 1: Preventive Measures</strong></td>
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<tr>
<td></td>
<td>Presentation – Julia PLANITZER (15 min)</td>
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<td></td>
<td><strong>Working Group 2: Protection and Assistance of Trafficked Persons</strong></td>
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<td></td>
<td>Presentation – Aurora JAVATE de DIOS (15 min)</td>
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<td><strong>Working Group 3: Access to Justice</strong></td>
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<td></td>
<td>Presentation – Klara SKRIVANKOVA (15 min)</td>
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<td></td>
<td><strong>Working Group 4: International Cooperation Against Trafficking</strong></td>
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<td></td>
<td>Presentation – Anne T. GALLAGHER (15 min)</td>
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<tr>
<td>10:30 - 11:40</td>
<td>Q&amp;A Discussion</td>
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## Closing Plenary – Afternoon session

**Venue:** Salle de Congress

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tr>
<td>13:00 - 15:00</td>
<td>Chair: Rolf RING, Deputy Director, Raoul Wallenberg Institute</td>
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<td>Panel: Responsibility and accountability in anti-trafficking efforts</td>
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<td>Speakers:</td>
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<td>• Alix NASRI, <em>International Labour Organization</em></td>
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<td>• Jong Chul KIM, <em>Advocates for Public Interest Law</em></td>
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<td>• Bandana PATTANAIK, <em>Global Alliance Against Traffic in Women</em></td>
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<td>Q&amp;A discussion</td>
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<tr>
<td>15:00 - 15:30</td>
<td>Concluding Remarks</td>
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<td>Michèle RAMIS, <em>Ambassador-at-large on organized crime, French Ministry of Foreign Affairs and International Development</em></td>
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<td>ZHANG Yan, <em>Executive Director, Asia-Europe Foundation (ASEF)</em></td>
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ANNEX 3: CONCEPT PAPER

Introduction

Projected to be a USD 150 billion industry, the trafficking of human beings is considered to be the fastest-growing illegal enterprise in the 21st century, coming in second after drug trafficking as the most widespread form of global organized crime. Given its nature, finding precise statistics on human trafficking is difficult, but it is estimated that out of the 29.8 million people living in modern slavery worldwide, at any given time 2.4 million people are trapped in a trafficking situation.

Recognising that trafficking in persons is a gross violation of human rights, there have been calls to place the protection and promotion of the rights of trafficked persons at the forefront of all anti-trafficking measures. As the 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking stated, “violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the core of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”

The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern. Comprising of 53 Partners, its leaders have acknowledged the importance of addressing human trafficking; however, the issue is mainly posited in a security rubric. As part of their cooperation on migration management, human trafficking and irregular migration have been discussed at different ASEM conferences of the Directors-General of immigration and management of migratory flows.

The 15th Informal ASEM Seminar on Human Rights will be applying a human rights-based approach to address human trafficking in the ASEM framework, in 2015.

Background

While international efforts to combat modern-day trafficking in persons date back to the beginning of the 20th century, there are four international treaties that specifically address trafficking — namely, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation and Prostitution of Others; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the 1989 Convention on the Rights of the Child (CRC); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which entered into force in 2003 (Palermo Protocol).
The Palermo Protocol, which is one of three protocols supporting the 2000 United Nations Convention on Transnational Organized Crime (UNTOC), promotes international cooperation on counter-trafficking, criminalising trafficking and punishing the traffickers, and to protect and assist the victims of trafficking “with full respect for their human rights”.\(^\text{11}\) As per Article 3 of the Protocol, human trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”\(^\text{12}\)

As of 2014, 154 countries have ratified the Palermo Protocol.

Having a clear and suitable definition for human trafficking is crucial for the development of policies and programmes to counter trafficking and rescue trafficking victims, and the Palermo Protocol is a significant step forward in being the first international legally-binding instrument with an agreed definition of trafficking. However, not all countries have fully adopted the definition of trafficking as per the Protocol, and instead follow their own definitions of trafficking. This often leads to ambiguity in terms such as “trafficking”, “smuggling”, “sexual exploitation”, “illegal migration” and “forced labour”, which can affect how interventions are carried out.

In 2004, the UN appointed a Special Rapporteur (SR) on trafficking in persons, especially women and children, to focus on the human rights aspects of the victims of trafficking in persons and to submit regular recommendations on measures required to protect the human rights of victims.\(^\text{13}\) In 2010, the UN adopted the Global Plan of Action to Combat Trafficking in Persons with its “4 Ps” approach of preventing trafficking in persons; protecting and assisting the victims; prosecuting the traffickers; and building partnerships.

**Regional efforts to counter trafficking in persons**

As per the 2012 ILO report, long-distance trafficking (where victims come from regions different from the destination region) accounts for about 24 per cent of all trafficking flows. The majority of trafficked victims are trafficked within the region of origin. Countries in South and East Asia and the Pacific, as well as in Africa, Eastern Europe and Central Asia, detect almost exclusively victims from within the region, whereas several countries in the Middle East, North America, Western and Central Europe have a relatively high proportion of victims from other regions or sub-regions. Countries of Western and Central Europe reported the greatest variety of origins and the greatest distances spanned by trafficking flows. Nevertheless, between 2007 and 2010, 64 per cent of victims detected were trafficked from Western and Central European countries.\(^\text{14}\)

**Europe**

In March 2011, the European Union (EU) adopted its new Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU) which is the first act at the EU level to address human trafficking “in a comprehensive and integrated way, focusing equally on the protection of victims, the prosecution of traffickers and the prevention of the phenomenon in the first place”.\(^\text{15}\) The following year, the five-year EU Strategy towards the Eradication of Trafficking in Human Beings was adopted.\(^\text{16}\)
As part of its strategy on anti-trafficking, the EU has published data on human trafficking for the first time — out of the 30,146 victims who were registered in the 28 EU Member States over the three years (2010–2012), 80 per cent were female and 16 per cent were children; 69 per cent of registered victims were trafficked for sexual exploitation; and 65 per cent of all registered victims were EU citizens. Directive 2011/36/EU was to be transposed into national law by April 6, 2013 but as of February 2014, only 20 Member States have complied to date. The European Commission has appointed an EU anti-trafficking coordinator to ensure the consistent implementation of the Directive and the Strategy.

In 2013, the Commission also published the EU rights of trafficking victims, which provides clear and consistent information on the protected rights of victims. Ranging from (emergency) assistance and health care to labour rights, to access to legal counsel and information on how to claim compensation, the document provides an overview of the rights available to victims based on the EU’s Charter of Fundamental Rights, the different EU directives, framework decisions and case law from the European Court of Human Rights (ECtHR).

In addition to the EU, the Council of Europe (CoE) and the Organization of Security and Co-operation in Europe (OSCE) have also been active in creating action plans and monitoring mechanisms to counter human trafficking. The Council of Europe Convention on Action Against Trafficking in Human Beings, which entered into force in 2008, is considered an important step towards the creation of regional standards in Europe to promote and protect the human rights of trafficked people. The CoE Convention takes a victim-oriented perspective to anti-trafficking and Article 5(3) requires State Parties to promote a human rights-based, multidisciplinary approach in the development and implementation of policies and programmes. The Convention specifically set up a monitoring mechanism to monitor compliance with the Convention’s articles. Forty-two European States have signed the Convention so far.

**Asia**

As per the ILO, more than 99 per cent of the victims detected in South and East Asia are trafficked either domestically or within the region (i.e., from South Asia and East Asia); about 47 per cent of registered victims were exploited for forced labour while 44 per cent were trafficked for sexual exploitation; domestic labour trafficking is also widely reported in region.\(^{18}\) The majority of the victims are women, although this varies across the region.\(^{19}\) While intra-regional trafficking is high, Asia is also a significant origin area for inter-regional trafficking. East Asians were detected in 64 countries worldwide, often in relatively large numbers. South Asian victims were also detected in a number of different destination countries.\(^{20}\)

Regional efforts against human trafficking have also been widespread across Asia. Since the 1990s, the Association of Southeast Asian Nations (ASEAN) has been active in building regional consensus on addressing human trafficking.\(^{21}\) The 1999 ASEAN Plan of Action to Combat Transnational Crime, although not binding, was the first ASEAN regional instrument that required the criminalisation of human trafficking under members’ domestic law.\(^{22}\)

The 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children is the first ASEAN Declaration that specifically addresses the trafficking of women and children. At the same time, ASEAN adopted the Treaty on Mutual Legal Assistance (MLAT), which is the first binding regional instrument amongst ASEAN members, to investigate and prosecute human traffickers. Although not originally categorised as an ASEAN instrument, all members, except one, have signed and ratified the MLAT. More recent ASEAN instruments such as the 2007 Declaration on the Protection and Promotion of the Rights of Migrant Workers and the 2010 Master Plan on ASEAN Connectivity also reiterate the importance of curbing trafficking, especially of women and children.
Although MOUs have been signed between the different ASEAN members at the bilateral level, the lack of a regional institutional mechanism and the different development and economic gaps and different legal systems of the ASEAN member states means that counter-trafficking measures remain weak. The focus has also remained on the identification of perpetrators rather than on victim assistance and protection. ASEAN is working on building a Convention on Trafficking in Persons (ACTIP) and a Regional Action Plan.

All 10 ASEAN members also participate in the larger Bali Process, a voluntary and non-binding process with 48 members, which seeks to raise regional awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and develop strategies and practical cooperation in response.

Another sub-regional grouping, the South Asian Association for Regional Cooperation (SAARC), signed a Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. While the Convention goes a long way towards building a regional effort to combat human trafficking in South Asia, the implementation of anti-trafficking laws remains weak, and the narrowed focus on sexual exploitation means that the opportunity to combat forced labour regionally remains unaddressed and the identification and assistance of male victims of trafficking, low.

With rapid developments in technology, anti-trafficking measures have also had to address cybercrime and cyber-trafficking. In 2011, the EU passed a Directive (2011/92/EU) on combating the sexual exploitation of children online and child pornography; and in 2013 set up a dedicated European Cybercrime Centre with Europol. In Asia too, cyber-trafficking is being addressed — in 2011, the Philippines successfully prosecuted its first case of cyber-sex trafficking and in 2014, ASEAN held its first Senior Officials Meeting on Transnational Crime (SOMTC). Through the Virtual Global Taskforce, inter-regional cooperation has led to the dismantling of several child abuse websites and networks.

A human rights-based approach to counter trafficking in persons

The framework for almost all of the international and regional anti-trafficking instruments draws upon international human rights principles and treaties — the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights note that “no-one shall be held in slavery and servitude”. The ASEAN Human Rights Declaration also notes that “no person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons...” The rights to life, liberty and security, physical and mental health, freedom of movement, just and favourable working conditions are some of the rights violated of trafficking victims. The Committee against Torture also recognises the prohibition of torture as a relevant standard for the human rights violations of trafficking victims. Although the importance to apply a victim-centred, human rights-based approach is noted, because human trafficking is a crime, the focus of anti-trafficking interventions thus far has mainly been on law enforcement. For instance, the Palermo Protocol is an additional protocol to the UNTOC, indicating its institutional anchorage (which combats organized crime).
Gender-sensitive approach

Narrowly defined anti-trafficking approaches that equate trafficking solely with the sex trade tend to marginalise trafficking victims in other sectors, and by criminalising prostitution as a means to reduce or eradicate trafficking, end up prosecuting trafficked persons as well. Such approaches in practice do not always distinguish between consensual adult sex work and sexual exploitation (even though the protocol does); victims may be afraid to approach the authorities for fear of criminal charges. Furthermore, by focusing on sexual exploitation for prostitution, the sexual exploitation and abuse of persons trapped in other forms of forced labour is overlooked. Similarly, trafficking definitions that only identify women and children as victims can miss out on male victims who, comprising up to 15 per cent of total trafficked persons, are equally susceptible to abuse and in equal need of assistance and protection (male trafficking figures are disproportionately higher in labour bondage whereas for sex trafficking, women are more trafficked). A gender-sensitive response to human trafficking is required to ensure that all victims are treated with fairness and equal respect — both men and women are equally involved in trafficking as victims, perpetrators and advocates; counter-trafficking strategies must be targeted at all genders and at the wider community-level as well; this applies to preventive and re-integration strategies too.

Labour migration

Studies also show that human trafficking has to be seen in context of a larger labour migration framework (including the growing “feminisation” of migration), which recognises that labour rights violations are at the core of trafficking. The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) provides the international protection needed by migrant workers, taking into account the often insufficient recognition of their rights and the situation of vulnerability in which migrant workers frequently find themselves. The Convention also encourages appropriate action to prevent and eliminate clandestine movements and migrant trafficking in the case of irregular migration, while at the same time assuring the protection of their fundamental human rights.

The ILO has several labour protection standards in place, such as the 1930 ILO Convention on Forced Labour (No. 29), 1957 Abolition of Forced Labour Convention (No. 105), and the 2014 Protocol supplementing the Convention on Forced Labour. In addition, the ILO has also specific Conventions targeted to specific groups such as migrant workers (1975 Migrant Workers Convention [No. 143]), children (1999 Worst Forms of Child Labour Convention [No. 182]) and domestic workers (2011 Domestic Workers Convention [No. 189]) — domestic workers are one of the most vulnerable groups of workers as they are in informal employment working “for private households, often without clear terms of employment, unregistered in any book, and excluded from the scope of labour legislation…. 83% of domestic workers are women”.

Human trafficking and human smuggling

The demand for cheap labour coupled with the strict immigration regime practised in many countries means that potential migrants may turn to undocumented entry methods to seek easier access to new labour markets. In this regard, it is important to note the blurred lines between human trafficking and migrant smuggling. Although some migrants may be willing to accept the services of a smuggler to cross a border illegally in exchange for payment, such relationships have been noted to turn exploitative, with smugglers coercing migrants to pay off the cost of their journey (via debt bondage, forced labour, forced criminal activities, etc.) Even those undocumented workers who are working voluntarily in any industry can suffer from exploitative labour conditions and labour right abuses. Due to their illegal status, undocumented workers may have little recourse to official support on fear of being criminalised.
To strengthen its Convention No. 29, which serves to protect against forced or compulsory labour, the International Labour Organization will be adopting supplementary measures “to address the significant implementation gaps remaining in order to effectively eradicate forced labour in all its forms… through standard setting to advance prevention, protection and compensation measures”.42

**Prevention, remedy, recovery and justice**

An ILO review of law and practice in 133 Member States indicates43 that country efforts have focused on identifying and detecting the crime and the prosecution of perpetrators, while preventive action and victim protection have been accorded lower priority. Preventive action and victim protection can be challenging because of the complexity of trafficking, which has to be seen in the context of economic globalisation and social justice issues — poverty, age, ethno-linguistic background, social and cultural practices, unemployment, corruption, violence are some of the factors of marginalisation that make people vulnerable to trafficking situations; often disproportionately affected by these factors, women are doubly marginalised given the gender discrimination faced by them. The search for better living conditions can be a significant “pull” factor. In its toolkit to combat human trafficking, the UNODC notes that many of the root causes of trafficking are “specific to individual trafficking patterns and to the States in which they occur. There are, however, many factors that tend to be common to trafficking in general or found in a wide range of different regions, patterns or cases. One such factor is that the desire of potential victims to migrate is exploited by offenders to recruit and gain initial control or cooperation, only to be replaced by more coercive measures once the victims have been moved to another State or region of the country, which may not always be the one to which they had intended to migrate”.44

In a recent report to the UN, the UN Special Rapporteur on Trafficking noted that States have an obligation to provide remedies for trafficked persons where they fail to exercise due diligence to prevent and combat trafficking.45 Effective remedy comprises compensation as well as “recovery, restitution, satisfaction and guarantees of non-repetition as well as a set of ancillary procedural rights that enable trafficked persons to exercise the right to an effective remedy. Such procedural rights of access to substantive remedies may include the rights to legal, medical, psychological, social, administrative and other assistance”.46

“Empowerment, self-representation and participation of those affected by trafficking are fundamental principles for a human rights based approach”47 such that the protection of trafficked persons, their recovery, rehabilitation and reintegration are a central element of anti-trafficking efforts. Both Article 6 of the Palermo Protocol48 and Article 32 of the UN’s Global Plan of Action call on States to provide measures for the physical, psychological and social recovery and rehabilitation of trafficking victims. The Global Plan also established the Trust Fund for Victims of Trafficking in Persons, Especially Women and Children, which provides grants to organizations providing direct assistance to victims to help them seek justice and recover from their experience.49

Guidelines recommend that the return of trafficking victims to their origin country should be voluntary where possible; returnees should have informed choice, and be protected from re-victimisation.50 Protection from forced return is also guaranteed by the principle of non-refoulement as noted by Article 14(1) of the Palermo Protocol and Article 40(4) of the CoE Convention, both of which reference the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. In its advice to the EU, the UN Refugee Agency (UNHCR) notes “…victims of trafficking may also become refugees because they are unable to return to their countries of origin for fear of being stigmatized for their forced participation in sex work, or may risk being re-trafficked, and not be able to find protection…. Non-refoulement, i.e., ensuring that no one is sent back to persecution, as well as referral mechanisms to the asylum authorities with access to proper legal counselling, are key to victim protection.”51 Likewise, reintegration measures should be sustainable, enable former victims to regain control over their lives, and address the root cause of migration.52 Given the nature of these interventions, a coordinated response between State agencies, law enforcement and civil society actors is required.
In practice however, successful recovery and rehabilitation have proven difficult — from lack of capacity and resources to administrative difficulties (such as being expelled from the country before being able to successfully seek assistance), support may also sometimes be restricted to only certain categories of trafficked persons (for example, internally trafficked persons may not receive assistance) or even made conditional on the capacity of trafficked persons to cooperate with law enforcement agencies. Furthermore, although social and familial acceptance of returnees is recognised as being important for successful reintegration, not many interventions address this. Moreover, reintegration measures cannot be a “one size fits all” type of intervention but must be flexible enough to respond to the individual situation.

Involvement of multiple actors

Whereas the primary responsibility to combat trafficking lies with the State, there is no one actor who can tackle this challenge alone. Many anti-trafficking instruments recognise that an effective response to human trafficking requires the cooperation of multiple stakeholders in which successful coordination includes both civil society and the private sector and not just between different state agencies, both at the national and international level.

Civil society organizations (CSOs) serve as important partners in anti-trafficking efforts, providing assistance services, monitoring trafficking flows, evaluating policy effectiveness and providing recommendations for improving mechanisms. CSOs need to be recognised as important strategic partners and in many countries already, civil society organizations partner with governments in preparing national action plans and coordination mechanisms to ensure that a human rights-based approach is adopted. However, it has been noted that not all coordination mechanisms are equal; those that are involved in policy-making would have very different decision-making abilities than those that function in an advisory function.

National human rights institutions (NHRIs) have also been active in this field. Since 2004, the NHRIs of Indonesia, Malaysia, the Philippines and Thailand have been meeting periodically to strengthen their cooperation on issues of common concern including trafficking in women and children. In 2007, the four institutions signed a “Declaration of Cooperation”, which reaffirmed their cooperation on trafficking in women and children (in addition to other areas of cooperation).

If trafficking is part of the labour migration debate, then private companies and trade unions (TUs) are necessarily important stakeholders in any anti-trafficking strategy. The International Trade Union Confederation (ITUC) published a best practices manual to help trade unions world over combat forced labour and trafficking. Noting that TUs are “uniquely well placed to contribute to strategies that will help eliminate forced labour and can tailor their involvement to suit their particular areas of expertise and their available resources,” the manual encourages TUs to look beyond specific forced labour and trafficking laws to identify gaps in legislation that are contributing to the problem.

For businesses, trafficking becomes a cause for concern especially when their supply chains are complex; multiple layers of sub-contractors, recruitment and employment agencies involved in labour supply presents challenges for accountability; businesses in the tourism and transport sector may also be unknowingly abetting traffickers. The SA2008 Standards, which are the first social certification standards for decent workplaces, across all industrial sectors, expressly commit companies and labour supplying entities to not engage in or support human trafficking. Other initiatives such as the UN Global Compact’s Initiative to Fight Human Trafficking have also been active in encouraging private businesses to address trafficking in their behaviour.
Given the scale of its operations, human trafficking is also a financial crime issue and in recent years financial institutions have begun to implement new monitoring techniques specifically designed to detect human trafficking activity and many have begun to set up industry specific task forces to address human trafficking; in 2013, JP Morgan Chase, Citigroup, Bank of America, Wells Fargo, TD Bank, Barclays, Western Union and American Express announced a human trafficking working group.

15th Informal ASEM Seminar on Human Rights

The Informal ASEM Seminar on Human Rights series was launched in 1997 to deepen relations between civil society actors and governments in Asia and Europe on human rights issues. The Seminar series is co-organized by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry of Foreign Affairs and International Development, and the Philippine Department of Foreign Affairs. The 15th Informal ASEM Seminar on Human Rights is hosted by the Federal Department of Foreign Affairs of Switzerland.

Participation in the 15th Informal ASEM Seminar on Human Rights will take place in four simultaneous working group discussions (on Day 2), on the following topics:

I. Preventive Measures
II. Protection and Assistance of Trafficked Persons
III. Access to Justice
IV. International cooperation Against Trafficking

In addition to the guiding questions specific to each working group, there are cross-cutting questions that are valid across all the four working groups. The cross-cutting questions and the working group questions can be found on the following page.

Cross-cutting Questions:

1. As the issue of trafficking in persons has multi-dimensional characteristics, how do we promote the primacy of its human rights dimension?
2. To what extent does the lack of reliable methodology that can provide accurate information and data affect anti-trafficking efforts? How can the situation be improved?
3. The importance of adopting a gender-sensitive approach has been underscored in international and regional instruments; how do we mainstream gender issues in anti-trafficking measures?
4. In the case of trafficked children, what special considerations apply in developing and implementing counter-trafficking responses?
5. To what extent have local community-based interventions (interventions that target not just victims but also include their families and the larger society) been successfully utilised in developing counter-trafficking responses – both in prevention and also in the reintegration of trafficked victims?
6. Given the inter-sections between trafficking and smuggling, how do we address this issue in a sensitive manner without criminalising those affected?
7. What roles do businesses and civil society play in counter-trafficking efforts? How can their involvement be improved?

Working Group 1: Preventive Measures

1. Although the Palermo Protocol provides a definition for trafficking, it is not always followed at the country level. To what extent does the lack of standardised understanding of terms (such as “trafficking offence” and “victim”) affect counter-trafficking operations?
Working Group 2: Protection and Assistance of Trafficked Persons

1. Unidentified victims remain unprotected victims. In this regard, how do countries improve victim identification processes and the corresponding referral mechanisms? How can we improve the identification of trafficking victims without criminalising them?
2. Rehabilitation is aimed at restoring the situation that existed prior to the violation. How to ensure that victims do not become vulnerable to trafficking again or that they face further human rights violations upon their return?
3. For the complete and proper rehabilitation of trafficking victims, such interventions may go beyond just counter-trafficking measures and may take a long time to come to fruition. To what extent are these sustainable?
4. Apart from legal assistance and compensation of victims, psycho-social care, recovery and support are also recommended as part of the recovery process. To what extent has this been applied unconditionally to all victims, irrespective of their position and legal status? What is the general duration of the recovery process?
5. In the rehabilitation of trafficking victims, what has more positive impact — reintegration or voluntary return? What are the systemic challenges with reintegration interventions?
6. What is the impact of anti-trafficking measures on victims and their families? To what extent are the victim’s family taken into account? How can they be persuaded to cooperate in reporting and dismantling trafficking networks?

Working Group 3: Access to Justice

1. The Palermo protocol has been criticised for not being able to explicitly acknowledge the victims’ right to access information and remedies, and this in turn will undermine the effectiveness. What supplementary measures are needed at the international and regional level?
2. As has been recently noted, for victims to have access to justice, national legislation and supporting policy must take a broad approach to justice and cannot rely on prosecutions alone. What would such policies be?
3. What training does the judiciary need in order to be sensitive to a human rights-based approach (instead of relying only on criminal law) to countering trafficking? What about training for law enforcement bodies and border security?
4. Although the role of corruption in human trafficking is well known and documented, there is not much focus on corruption in anti-trafficking policies. How can this be better addressed in all aspects of anti-trafficking efforts?
5. With regard to the rights and protection of trafficking victims, what assurances and protection do victims require in the context of legal proceedings? What are rights of victims if they have committed a criminal offence (e.g., the prosecution of former child soldiers who were trafficked into military conscription)?
6. What are the challenges for trafficking victims with regard to seeking compensation?
7. Given the inter-sections between trafficking and smuggling, how do we address this issue in a sensitive manner without criminalising those affected?

Working Group 4: International Cooperation Against Trafficking

1. As anti-trafficking policies require multidisciplinary cooperation and coordination among relevant stakeholders, what is the best way to avoid unnecessary duplication of efforts and to make them cost-effective?
2. What international mechanisms or structures must be in place to improve the coordination of efforts of international and regional organizations?
3. What are the challenges faced by international (e.g., Interpol) and inter-regional law enforcement agencies (e.g., Europol, ASEANAPOL) in tackling trafficking? How does a human rights-based approach to trafficking apply in this context?
4. What have been the experiences and challenges of NHRIs? In addressing trafficking, where does their greatest strength lie?
5. The migrant labour rights approach to trafficking encourages safe migration for workers as well as worker empowerment. How can this be translated into implementation? What have been the experiences of ASEM countries so far?
6. Have financial crime laws been useful in tackling human trafficking? How should this be explored further in Asia and Europe? What support is needed from financial institutions and what systems need to be in place?
7. With rapidly evolving technology, the role of ICTs in trafficking also requires attention given as citizens’ rights (such as the right to privacy) need to be balanced with the need to protect vulnerable groups. How does this balance work?

Endnotes:

2 Global Slavery Index 2013
4 ILO 2012 (http://www.iomvienna.at/en/?option=com_content&view=category&id=71&lang=en)
7 For the Chair’s Statements of these meetings, please visit the ASEM Infoboard at http://www.aseminfoboard.org/events/10th-asem-summit-asm10
8 See the 1904 and 1910 International Convention for the Suppression of White Slave Traffic, and the 1921 International Convention for the Suppression of the Traffic in Women and Children, which expanded its terminology to include people of all races and included children of both sexes in its protection clauses.
9 Article 6 of CEDAW requires State Parties to take appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women. Article 6 specifically separates the “traffic in women” and “exploitation of prostitution of women”.
10 Article 34 protects children from all forms of sexual exploitation and sexual abuse; Article 35 is specific in its call for national, bilateral and multilateral measures to prevent the abduction, of the sale of or traffic in children for any purpose or in any form. Furthermore, in the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRCOP), State Parties are obliged to prohibit and criminalise the sale of children, child prostitution and child pornography.
11 Article 2 spells out the purpose of the Protocol which are to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives.
Although the emphasis remains on sexual exploitation and forced labour, organ trafficking is also part of human trafficking, as reflected in the Palermo definition. To protect victims and to facilitate international cooperation, the Council of Europe (CoE) has proposed a Convention against Trafficking in Human Organs, which makes organ trafficking a criminal offence. The CoE’s Committee of Ministers adopted the Convention on July 9, 2014. More information on the Convention can be found on the CoE website, http://www.coe.int/en/web/human-rights-rule-of-law/news/-/asset_publisher/qI77sHb3q28l/content/id/7596701

For details on the mandate of the SR, see http://www.ohchr.org/EN/issues/Trafficking/Pages/Traffickingindex.aspx

For more details see the ILO 2012 report.

Commission Staff Working Document — mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings (COM[2014]) 635 final.

The EU legal framework also includes Directive 2004/81/EC, which regulates temporary residence permits to third-country national victims of trafficking; and Directive 2012/29/EU, which establishes minimum range of rights to victims which are not specified in Directive 2011/36/EU. The various EU instruments that address trafficking in human beings can be found at http://ec.europa.eu/anti-trafficking/legislation-and-case-law/eu-legislation/into/EU%20Legislation_en


Australia, Japan and Mongolia reported more adult victims than children; in Southeast Asia, the proportion of children is reported to be above 15–20 per cent. In South Asia, Nepal reported the proportion of victims who were children was about 50 per cent (UNODC, 2012)

UNODC (2012)

For example, the 1993 ASEAN Plan of Action for Children, the 1997 ASEAN Declaration on Transnational Crime, the 1998 Hanoi Plan of Action, and the 1999 ASEAN Plan of Action to Combat Transnational Crime Plan of Action all include references to human trafficking in the region. The 1997 ASEAN Declaration on Transnational Crime established the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and called for the involvement of the ASEAN Chiefs of National Police (ASEANAPOL) to address regional level anti-trafficking measures.

The Plan of Action also establishes the Senior Officials Meeting on Transnational Crime (SOMTC) to implement the policies and plans adopted by AMMTC and report to AMMTC accordingly.

A list of some of the regional and bilateral agreements can be found at the UN Inter-Agency Project on Human Trafficking, http://www.no-trafficking.org/resources_laws_regional.html


Principle 13, ASEAN Human Rights Declaration

In addition, international law prohibits forced labour, arbitrary detention, discrimination on the basis of race and sex, sexual exploitation of women and children, gendered violence, debt bondage and forced marriage.


Another instance in which the Protocol emphasises the criminal aspect of trafficking over victim-protection, is how the Protocol makes its criminal provisions obligatory on State Parties yet its human rights protections remain discretionary. See GTZ, Trafficking in Persons as a Human Rights Issue, 2008.

34 For those governments that use language such as “sexual exploitation” for their trafficking definitions, the Global Alliance Against Trafficking In Women encourages the use of the following definition: “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 in under the age of 18, sexual exploitation shall be deemed to exist.” See GAATW, Definitions of Trafficking, Review of the UN Protocol, http://www.bayswan.org/traffick/deftraffickUN.html


37 Female migration has grown slowly but steadily over the years. From the 1960s to 2000s, the proportion of female migrants has increased from 46.6 to 47.1 per cent in Asia and from 49.0 to 52.9 per cent in Europe. Female migrants are often confronted with gender-specific disadvantages in the migration process and in their employment due to different factors; this makes them particularly vulnerable to discrimination and exploitation.


40 See for example, Kathleen Kim and Grace Chang’s “Reconceptualizing Approaches to Human Trafficking” (2007); and Piotr Bąkowski’s “The Problem of Human Trafficking in the European Union” (2014).


45 UN, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Note by the Secretary-General, A/66/283, August 9, 2011

46 Ibid.


48 As per Article 6 of the Palermo Protocol, States should provide for the physical, psychological and social recovery of trafficking victims including shelter, counselling, information about their legal rights, medical and psycho-social care, employment and training opportunities, as well as the possibility of obtaining compensation for damage suffered. See document available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx

49 In recognition of the urgency of the situation, support for the Trust Fund has been growing. The French contribution, for example, has increased four-fold since the Fund was created, amounting to €100,000 in 2013.


53 UN, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Note by the Secretary-General, A/66/283, August 9, 2011.

54 The ILO recommends that a more appropriate goal than “reintegration” would be a successful recovery of a victim’s autonomy in making decisions and choices about her own needs and future. See ILO, Going back, moving on: a synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines, 2009.
For example, the Palermo Protocol, the Council of Europe Convention and the OSCE Action Plan contain specific provisions for coordination, cooperation or strategic partnerships with NGOs and civil society.

In ASEAN, the ASEAN Guidelines for the Protection of the Rights of Trafficked Children were developed by an NGO called Asia ACTS to put in place mechanisms that would prevent victims of child trafficking from further exploitation. It was adopted by the ASEAN Senior Officials on Social Welfare and Development in 2007.


Further, the Southeast Asia National Human Rights Institutions Forum signed a Memorandum of Understanding Against Trafficking of Women and Children in 2010.

See also the Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia, which was an NHRCK-led initiative and adopted in 2010, http://www.asiapacificforum.net/news/regional-plan-to-protect-rights-of-migrant-workers.html

It is also interesting to note that the ITUC and ILO have created a Global Trade Union Alliance to Combat Forced Labour and Trafficking which promotes decent work for all and, more specifically, geographical and institutional commitment and cooperation to eradicating forced labour and human trafficking.


The Global Compact notes “Human trafficking is an abuse of human rights (Global Compact principles 1 and 2). If child labour or forced labour is involved, Global Compact principles 4 and 5 are also implicated. Finally, if corruption is involved, Global Compact principle 10 is implicated. As a result, human trafficking is an issue that Global Compact participants and other companies will want to be aware of, including how to avoid contributing to the problem and how they might be able to take steps to help combat it”, http://www.ungift.org/docs/ungift/pdf/Human_Trafficking_-_Everybodys_Business.pdf

In the US, human trafficking is a “specified unlawful activity” under the nation’s primary money laundering law (US Code Title 18, Section 1956).


ANNEX 4: BIBLIOGRAPHY


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ANNEX 5: ABOUT THE CO-ORGANIZERS

The Asia-Europe Foundation (ASEF) promotes understanding, strengthens relationships and facilitates cooperation among the people, institutions and organizations of Asia and Europe. ASEF enhances dialogue, enables exchanges and encourages collaboration across the thematic areas of culture, economy, education, governance, public health and sustainable development.

ASEF is an intergovernmental not-for-profit organization located in Singapore. Founded in 1997, it is the only institution of the Asia-Europe Meeting (ASEM).

Together with about 750 partner organizations ASEF has run more than 700 projects, mainly conferences, seminars and workshops. Over 20,000 Asians and Europeans have actively participated in its activities and it has reached much wider audiences through its networks, web-portals, publications, exhibitions and lectures.

For more information, please visit www.asef.org

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

For more information, please visit www.rwi.lu.se

The Ministry of Foreign Affairs and International Development of France, as a founding member of ASEM, is pleased to have supported the ASEM human rights dialogue since its inception in 1997.

For more information, please visit www.diplomatie.gouv.fr/en/

The Department of Foreign Affairs of the Philippines is the prime agency of the Philippine government responsible for the pursuit of the State’s foreign policy. It is also responsible for the coordination and execution of the foreign policies of the country and the conduct of its foreign relations.

For more information, please visit www.dfa.gov.ph
ANNEX 6: ABOUT THE HOST

The Federal Department of Foreign Affairs of Switzerland (FDFA) forms and coordinates Swiss foreign policy on behalf of the Federal Council, pursues foreign policy objectives, safeguards the interests of Switzerland and promotes Swiss values.

www.eda.admin.ch
ANNEX 7: ABOUT THE ASIA-EUROPE MEETING (ASEM)

The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern.

ASEM brings together 53 partners (21 Asian and 30 European countries, the ASEAN Secretariat, and the European Union).

www.aseminfoboard.org
The Informal ASEM Seminar on Human Rights is co-organized by:

The aim of the Informal ASEM Seminar on Human Rights is to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues. Previous seminar topics include:

- Access to Justice; Regional and National Particularities in the Administration of Justice; Monitoring the Administration of Justice (1997, Sweden)
- Differences in Asian and European Values; Rights to Education; Rights of Minorities (1999, China)
- Freedom of Expression and Right to Information; Humanitarian Intervention and the Sovereignty of States; Is there a Right to a Healthy Environment? (2000, France)
- Freedom of Conscience and Religion; Democratisation, Conflict Resolution and Human Rights; Rights and Obligations in the Promotion of Social Welfare (2001, Indonesia)
- Economic Relations; Rights of Multinational Companies and Foreign Direct Investments (2003, Sweden)
- International Migrations; Protection of Migrants, Migration Control and Management (2004, China)
- Human Rights in Criminal Justice Systems (2009, France)
- Human Rights and Gender Equality (2010, Philippines)
- National and Regional Human Rights Mechanisms (2011, Czech Republic)
- Human Rights and Information and Communication Technologies (2012, Korea)
- Human Rights and the Environment (2013, Denmark)
- Human Rights and Businesses (2014, Viet Nam)

The Seminar series is co-organized by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry of Foreign Affairs and International Development, and the Philippine Department of Foreign Affairs. ASEF has acted as the Secretariat of the Seminar since 2000.

Supervision of the seminar is entrusted to a Steering Committee, composed of the Seminar’s four co-organizers as well as representatives of the Ministries of Foreign Affairs of China and Indonesia as well as the European Union.

The 15th Informal ASEM Seminar on Human Rights was hosted by the Federal Department of Foreign Affairs of Switzerland.

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