



COMBATING TRAFFICKING IN PERSONS AND CONTEMPORARY FORMS OF SLAVERY¹

Building upon the New York Declaration for Refugees and Migrants adopted on 19 September 2016, the Global Compact for Safe, Orderly and Regular Migration (GCM) will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. The GCM should make an important contribution to global governance and enhance coordination on international migration. For the consideration of Member States, the “Thematic Papers”, developed by IOM, outline core topics and suggestions to inform actors involved in the 2017 consultation process that will lead to the inter-governmental negotiations and final adoption of the GCM.

INTRODUCTION

The global community has long condemned the abhorrent practice of trafficking in persons (TIP), and many States have considerably strengthened their efforts to prevent and prosecute TIP and protect its victims. While great strides have been made, much more remains to be done. As with other crimes, addressing the demand side of trafficking, for example, has proven particularly challenging. Often, even identifying persons who have been trafficked is difficult – for example, when they are males who do not fit stereotypical notions of a TIP victim. And, despite the laudable and significant increase in anti-trafficking laws on the books in many states, there are still far too few successful prosecutions of traffickers. This paper outlines the key challenges faced by States and the anti-trafficking community in preventing and responding to TIP, including protecting victims, and makes recommendations for concrete actions and commitments that should be addressed in the Global Compact on Migration.

EXISTING PRINCIPLES

The normative framework

A number of widely ratified international instruments provide the framework for addressing TIP. The internationally accepted definition of TIP appears in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, (commonly referred to as the Palermo Protocol) as follows:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”^{2 3}

Importantly, States are obliged to protect victims as part of their international obligations not only under the Palermo Protocol⁴ but other international instruments as well, including international human rights law and international labour law. Several International Labour Organization (ILO) Conventions are applicable, such as Convention No. 105 on the Abolition of Forced Labour (1957); Convention No. 29 on



Forced or Compulsory Labour (1930) and the 2014 Protocol thereto (June 2014), and Convention No. 182 on the Worst Forms of Child Labour (1999). Furthermore, the 1989 Convention on the Rights of the Child, and the 2000 Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, prohibit trafficking in children for any purpose, including for exploitive and forced labour, and contain a number of principles and provisions that underpin a child-rights approach. Regional instruments such as the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015) have also been significant in strengthening the protection afforded to victims.

At the national level, most countries have adopted legislation to criminalize TIP as a specific offence.⁵ Usually, domestic legislation also separately establishes the most common offences related to trafficking, such as physical, sexual and psychological violence; abduction; threats to kill; unlawful imprisonment or deprivation of freedom of movement; slavery; debt-bondage; servitude; forced marriage; facilitation of irregular immigration; creation and membership of organized criminal structures or groups; production, use and possession of forged and or fraudulent identity and travel documents; money laundering; bribery and corruption of public officials.

A number of domestic laws have also been enacted to encourage businesses to address human and labour rights violations, including human trafficking, that may occur in their supply chains. Legislation such as the California Transparency in Supply Chains Act (2010), the UK Modern Slavery Act (2015), and revisions to the US Federal Acquisition Regulations (2015), obligate companies with a certain scale of operation to be proactive in understanding the risks in their business processes that can directly or indirectly compromise labour and human rights; and to document actions they are taking to address such risks. In keeping with the “Protect, Respect, Remedy” framework of the UN Guiding Principles on Business and Human Rights, these government efforts have contributed to greater business accountability in combating all forms of modern day slavery.

Trafficking in persons in the 2030 Agenda for Sustainable Development

The adoption of the 2030 Agenda for Sustainable Development in September 2015 renewed political commitment to combat TIP and protect victims. Target 8.7 of the Sustainable Development Goals (SDGs) calls for an end to all forms of forced labour, human trafficking, modern day slavery, and child labour by 2025. Two additional targets also address human trafficking: 5.2 (“Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”); and 16.2 (“End abuse, exploitation, trafficking and all forms of violence against and torture of children”).

Progress against the other Goals is also essential to a strengthened, comprehensive approach to combatting TIP, for example, in the areas of poverty eradication (Goal 1); gender equality and women’s empowerment (Goal 5); promoting full and productive employment and decent work (Goal 8); reducing inequality within and among countries (Goal 10); and providing access to justice for all and building effective, accountable and inclusive institutions (Goal 16). Target 10.7, which seeks to facilitate safe, orderly, regular and responsible migration, is also critical. It recognizes that realizing the benefits and full potential of migration, while addressing risks such as human trafficking, requires well-managed and well-governed approaches to migration and human mobility.



ISSUES

Understanding Trafficking in Persons

Trafficking in persons results in the exploitation of boys, girls, men and women within their own countries or abroad in situations where victims are unable to escape from their abuser. Through deception, coercion or threats (physical or psychological), victims of human trafficking can be exploited in various forms including in forced labour, begging, organ removal, sexual exploitation or forced marriage.⁶ The actual act of trafficking includes any or all of the following: recruitment, transportation, transfer, harboring or receipt of persons.

In recent years, IOM, the ILO, the UN Office on Drugs and Crime (UNODC) and other organizations have invested significant effort in improving data on TIP and modern slavery. While there is now an abundance of qualitative data, quantitative estimates of the prevalence of human trafficking at the national, regional and global levels are difficult to validate due to the clandestine nature of the crime and the difficulty in accessing affected groups and individuals. In 2012, the ILO reported that 20.9 million people are victims of “forced labour” globally (11.4 million women and girls and 9.5 million men and boys),⁷ while the Walk Free Foundation’s 2016 Global Slavery Index⁸ estimates that there are 45.8 million people living in “modern slavery” in the world today.

While definitional conflicts between “slavery”, “forced labour”, “exploitation”, and “trafficking in persons” account for at least some of the uncertainty, and the often clandestine nature of the problem is responsible for much of the rest, the more important fact is that trafficking in persons affects every country, whether as country of origin, transit, or destination for victims of trafficking. In a globalized economy, the demand for cheap labour, sexual services, and for people to exploit in petty and more serious crimes (such as street begging or drug dealing), are primary root causes of trafficking. The challenge for all countries is to address this demand and target the criminals who exploit the aspirations of people to improve their lives while at the same time protecting and assisting victims of trafficking.

Although most migration is voluntary and has a largely positive impact on individuals and societies, migration, particularly irregular migration, can increase vulnerability to human trafficking and exploitation. Many migrants face significant rights violations during the migration process. Despite the growing prevalence of migration as a global phenomenon, migration governance frameworks are not adapting quickly enough to address the emerging protection challenges. While avenues for safe and regular migration do exist, they do not fully meet the demand brought about by the desire or pressure to migrate (even under irregular or dangerous conditions) for a variety of social, economic, political, and environmental reasons. On irregular migration routes around the globe, migrants, including many children, have been subjected to kidnapping and ransom demands, extortion, physical violence, sexual abuse, and trafficking.⁹ In this way, many who start their journeys by willingly placing themselves in the hands of smugglers can become TIP victims along the way. Migrants may also be the victims of collusion between smugglers and local money-lenders who provide loans to pay for the journey and then claim family land or property as collateral. In communities where subsistence agriculture functions as the social safety net, this can have a devastating impact, not just on the migrant, but on extended families.

Once they reach their destination, migrants (both regular and irregular) remain vulnerable to TIP and other forms of exploitation due to language barriers, challenges of social integration, and unscrupulous employers, landlords, and service providers who take advantage of their limited knowledge of local conditions and reduced bargaining power. Many migrants are unable or unwilling to access social services and the justice system even if they are entitled to do so.



Given the fact that the majority of international migrants are migrant workers or job seekers, particular attention to labour recruitment systems is warranted. Exploitation of migrant workers often begins even before the migration process, when recruitment agents charge unnecessary fees, deceive job seekers about the conditions of employment, or even operate knowingly or unknowingly as the recruitment arm of human trafficking operations. When migrants have paid high recruitment fees and incurred costs in order to secure employment, they may arrive at the workplace mired in debt and have few options when they find that their contract terms or labour rights are not respected. This is even more likely when a worker's migration status ties them to a specific employer or they have migrated irregularly, and their bargaining power is significantly impacted. Companies have a particular responsibility to ensure that their suppliers, all throughout their supply chain, engage in ethical recruitment and fair employment practices.

Finally, humanitarian crises such as armed conflicts, natural disasters, and protracted unrest, can lead to an increase in TIP and associated forms of exploitation, both within/to and out of crisis-affected areas.¹⁰ Crises can exacerbate vulnerabilities of affected populations to pre-existing forms of trafficking and to new, crisis-induced forms of trafficking. Trafficking within and to crisis-affected areas can take many forms, such as trafficking for sexual exploitation. Large-scale displacement caused by crises also creates vulnerable populations who can become victims of trafficking.

Existing approaches and gaps

Global anti-trafficking efforts by States, international organizations and non-governmental organizations have used the "3P" paradigm of prosecution, protection, and prevention established by the 2010 United Nations Global Plan of Action to Combat Trafficking in Persons.¹¹ Despite these collective efforts, however, there is no reason to believe that human trafficking is any less prevalent today than it was when the Palermo Protocol was adopted in 2000.

The Palermo Protocol, contrary to earlier human rights oriented instruments, was accompanied by a strong emphasis on criminal justice responses to TIP. While the criminal justice approach has helped drive a legislative change at national level, the eradication of TIP requires a much greater focus on social justice issues, such as discrimination and inequality, labour migration opportunities, and conscientious consumerism. In particular, responses to trafficking face the following key challenges:

Prevention

While protection frameworks for victims of trafficking have been strengthened in recent years, less progress has been made in preventing exploitation from occurring in the first place. Far too often public awareness campaigns are targeting potential victims, highlighting the risks of trafficking instead of promoting safe alternatives, either at home or through safe migration channels. By contrast, the responsibility of the industries and consumers demanding sexual services, cheap labour and cheap goods usually goes unrecognized. Efforts are needed to address the reality that some goods are sold as cheaply as they are because of the poor and irregular payment of migrant workers in global supply chains.

Addressing the demand side of trafficking and exploitation requires the engagement of those creating the demand, including consumers themselves and the private sector. Campaigns to shift individual citizens' behaviour in their role both as consumers and as conscientious members of society should be expanded, and efforts to sensitize, encourage, assist, or obligate companies to clean up their supply chains should be enhanced.



Protection

Considerable progress has been made in creating legal frameworks that better protect those identified as victims of trafficking. In many countries, registered victims have access to temporary residence, safe accommodation, medical and psychosocial support, assisted voluntary return and reintegration opportunities as well as integration opportunities and support. However, the number of people benefiting from these protection schemes remains small when compared to the estimated millions who continue to be exploited. In reality, the line that separates a trafficked person from many exploited or abused irregular/smuggled migrants is blurred at best, and difficult to distinguish for front-line responders, such as police officers, border officials, healthcare staff, or labour inspectors. At present, identifying a person as a victim of trafficking means that he or she may be eligible for a period of stay and various forms of assistance in many countries. But many migrants, particularly young, male migrants working illegally, do not fit the stereotype of a victim of trafficking, thus are unlikely to be screened and identified as such.

In addition, many victims are unable to access protective services and effective remedies. Too often, victims are detained for offences committed while they were trafficked, and too few incentives exist for victims to want to assist in the investigation and prosecution of their traffickers. In its 25 years of working with trafficking victims, IOM is well aware that the majority need more than basic humanitarian assistance, temporary status regularization, and measures to limit their direct interaction with the accused during trial. Indeed, most victims want to be able to work, to earn an income for families back home, and to be compensated fairly for the work they did under exploitative conditions. The need for an income is particularly pronounced for those who accumulated high levels of debt, for example to secure their employment opportunities.

Finally, it is important to enhance the response to vulnerabilities to trafficking and exploitation among crisis-affected populations, and to ensure that anti-trafficking measures are systematically included during all phases of humanitarian action. While emergency responses typically take into account protection issues such as gender-based violence, physical and sexual violence against children, and child labour, trafficking in persons remains largely invisible within current humanitarian coordination structures and the Inter-Agency Standing Committee (IASC) Cluster System.

Prosecution

In spite of the large body of laws at national, regional, and international levels that prohibit TIP, the criminal justice response to trafficking remains inadequate. Efforts to prosecute the criminals behind trafficking networks have had limited impact and additional approaches to secure justice for victims must be sought. Often, this also requires reinforcing and promoting the rule of law. As mentioned above, the criminal justice response is also insufficient to eradicate TIP.

Finally, more investment is needed to learn from anti-trafficking interventions, and to draw on the experience and expertise acquired by the anti-trafficking community and others to date (such as the labour rights movement) to inform future anti-trafficking responses.¹² While the amount of trafficking data increases every year, there is very little standardization, which limits opportunities to compare responses or understand whether 'best practices' are replicable. Anti-trafficking actors should find ways to overcome obstacles around sharing data within a framework of strict confidentiality and appropriate safeguards to protect individuals' personal data.



SUGGESTED ACTION

- 1) **Improve the rule of law:** While significant progress has been made to criminalize TIP and better protect victims at the national level, enforcement of these provisions remains a challenge. Effective law enforcement includes enforcement of labour regulations which protect workers against exploitative recruitment and employment practices. In addition, efforts to proactively investigate and prosecute trafficking offenders and combat corruption are necessary.
- 2) **Facilitate access to remedies:** Victims of human trafficking should be given access to remedies, including civil remedies. All of the recent international instruments expressly recognize a victim's right to remedy, and States are encouraged to consider easing access through criminal and civil law, as well as through the creation of special funds established for this purpose.
- 3) **Increase pathways for safe and regular migration:** Irregular migration increases risks for migrants, including the risk of being subject to trafficking and other exploitative practices. Origin, transit, and destination countries should address this issue collaboratively by increasing opportunities for regular migration, including for employment, education, family reunification, and humanitarian admissions.
- 4) **Enhance protection through direct assistance to migrants in situations of vulnerability:** Timely identification of migrants in vulnerable situations is essential to preventing trafficking and exploitation, especially in the context of large migration movements, where migrants often have very limited access to services. States and service providers should work to increase their understanding of what makes individual migrants vulnerable to trafficking and aim to address those vulnerabilities before they are exploited.
- 5) **Reduce the demand for cheap goods and services produced by trafficked persons and exploited migrants:** The demand for sexual services, cheap goods, and cheap or enslaved labour drives trafficking around the world. While criminal agents are involved in delivering trafficked persons to provide those services, it is the end users of these services that keep the criminal agents in business. Efforts should be made to inform the public on the social costs of these services as a means of driving down demand and, where appropriate, purchase or use of such services should be criminalized and individual users punished. The private sector, which is heavily involved in migration as employers and purchasers of good and services, should leverage its significant influence to ensure ethical recruitment and decent work conditions for migrant workers, and to strengthen due diligence and remediation in line with ILO labour standards and the UN Guiding Principles for Human Rights and Business. Recruitment agencies should adhere to standards of conduct regarding ethical recruitment of migrant workers.
- 6) **Address trafficking in persons in times of crisis:** Responding to trafficking should be addressed and mainstreamed within the IASC Cluster System to ensure preparedness, as well as immediate, system-wide response from the outset of a humanitarian emergency. Existing models for prevention and protection should be adapted to humanitarian settings; humanitarian actors should be trained to better respond to the needs of trafficked victims and better coordinate their responses. It is also important to collect data, and to monitor and analyze TIP in the context of crises.
- 7) **Promote and develop research and analysis on human trafficking trends and anti-trafficking response and policy, including to monitor and evaluate interventions:** It is important to develop the capacity of anti-trafficking actors to collect better and more standardized data both on the trafficking



experience itself and on anti-trafficking interventions. Governmental and non-governmental partners should work together to ensure common understanding and knowledge of standards and definitions for human trafficking case data, and to establish information management systems for human trafficking case data. In addition, the barriers to, and costs of, data and information sharing should be reduced in order to strengthen the evidence base for counter-trafficking. Within a framework of strict confidentiality and appropriate safeguards to protect individuals' personal data, systems should be established to publish and exchange securely de-identified human trafficking case data, including multi-stakeholder, open-data publishing platforms, such as IOM's Counter-trafficking Data Collaborative. Communities of practice around counter-trafficking-related issues should be fostered and shared spaces for the exchange of tools, research and analysis, evaluations, and best practice in the field of counter-trafficking should be provided.

¹ This paper specifically addresses the issue of trafficking in persons. Much of the content is also applicable to related phenomena, such as contemporary forms of slavery, worst forms of child labour, forced labour, debt bondage, commercial sexual exploitation, and modern slavery. These terms have different legal definitions (or no legal definition) but often share common elements or circumstances with trafficking in persons.

² *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, Article 3(a). To substantiate the full offence under this definition in respect on TIP involving adult victims, three inter-linked and inter-dependent elements must be proven, each of which comprises a range of specified components: (1) Activity (what the trafficker does); (2) Means (how the trafficker does it); and (3) Purpose (why the trafficker does it). In strict legal terms, it is not necessary to prove that the exploitation actually occurred, only that the trafficker intended to exploit the victim in one of the defined ways at the time he or she applied one of the components of the two elements of activity and means. Article 3 (c) removes the requirement to prove the second element of means if the victim is under the age of 18 years. Therefore, in respect of child victims, the practitioner is only required to prove one component of the activity element for the purpose of exploiting the child in one of the defined forms of exploitation.

³ There is a clear legal difference between trafficking in persons and the smuggling of migrants, which is defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime). That said, trafficking and smuggling can occur along the same routes and smuggling can sometimes lead to trafficking: some migrants might start their journey by being smuggled into a country, but find themselves misled, intimidated or forced into an exploitative situation later on in the process by, for instance, being forced to work for extremely low wages to pay for the migrant smuggler's fees. Also, like trafficked persons, smuggled migrants can be victims of other crimes, ill-treatment, violence, or human rights violations. See also IOM's Thematic Paper on "Counter Migrant Smuggling" and *What is the Difference between Trafficking in Persons and the Smuggling of Migrants?* (Inter-agency Coordinating group against Trafficking in Persons, ICAT Issue Brief #1, 2016): <http://icat.network/sites/default/files/publications/documents/UNODC-IB-01-draft4.pdf>

⁴ The protection of victims is one of the stated aims of the Palermo Protocol, which sets out that States: "Shall, in appropriate cases and to the extent possible, protect the privacy and identity of victims, including by making legal proceedings confidential" (Article 6(1)); "Shall, in appropriate cases, provide victims of trafficking in persons with information on court and administrative proceedings, and assistance to present their views and concerns to the court in criminal proceedings, in a manner not prejudicial to the defense" (Article 6(2)); "Shall provide for the physical, psychological and social recovery of victims of trafficking in persons, including by providing appropriate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities" (Article 6(3)); "Shall endeavour to provide for the physical safety of victims of trafficking in persons while they are on State's territory" (Article 6(5)); and "Shall ensure the legal system provides victims of trafficking in persons with the possibility of obtaining compensation for damage suffered" (Article 6(6)).



⁵ According to UNODC's *Global Report on Trafficking in Persons* (2016), the number of countries that criminalize most forms of trafficking in persons in line with the definition used by the Palermo Protocol increased from 33 countries in 2003 to 158 in 2016.

⁶ While trafficking is the most extreme form of exploitation, people may face other forms of abuse including violations of their labour and human rights – not all of which amount to a legal determination of human trafficking. Labour exploitation, for instance, should be seen as a continuum, spanning from simple breaches of employment contract terms, to discrimination in the workplace and other violations of the fundamental freedoms and rights at work, through to forced labour and what has been termed “modern slavery” in the extreme. See also IOM's Thematic Paper on “Expanding legal labour mobility channels”.

⁷ International Labour Organization (ILO), *Global Estimate of Forced Labour* (Geneva, 2012). According to the ILO, this global figure accounts for the full spectrum of human trafficking abuses, with the exception of cases of trafficking for organ removal, forced marriage or adoption, unless the latter practices result in forced labour.

⁸ Published by the Walk Free Foundation, the Global Slavery Index provides a country by country estimate of the prevalence of modern slavery. Available from www.globalslaveryindex.org/.

⁹ In 2015-2016, IOM surveyed over 14,000 migrants in six countries along the Eastern Mediterranean route, as well as in Italy, who had travelled on the Central Mediterranean route, through North Africa to Europe. Over a third of individuals interviewed answered positively to one of the indicators of trafficking and other exploitative practices, with many reporting direct experiences of abuse, exploitation and practices which may amount to human trafficking. The findings provide strong evidence of predatory behavior by smugglers and traffickers and the kinds of enabling environments within which trafficking and associated forms of exploitation and abuse thrive along that particular migration route.

¹⁰ See for instance IOM (2015): *Addressing Human Trafficking and Exploitation in Times of Crisis: Action to Protect Vulnerable and Mobile Populations*. Available from <https://publications.iom.int/books/addressing-human-trafficking-and-exploitation-times-crisis-evidence-and-recommendations-0>

¹¹ United Nations General Assembly, *United Nations Global Plan of Action to Combat Trafficking in Persons*, A/RES/64/293 (New York, 2010). Available from www.refworld.org/docid/4caadf8a2.html.

¹² See for instance, Inter-agency Coordination Group against Trafficking in Persons, *Pivoting toward the Evidence: Building Effective Counter-trafficking Responses Using Accumulated Knowledge and a Shared Approach to Monitoring, Evaluation, and Learning*, (New York, 2016). This fourth ICAT issue paper seeks to construct a common framework for aligning goals, defining and assessing progress, and building a robust and shared evidence-base of effective anti-trafficking programmes and practices.