

ATELIER SUR LES VIOLENCE CONTRE LES FEMMES

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Background paper for Working Group II

TRAFFICKING AS A FORM OF VIOLENCE AGAINST WOMEN

INTRODUCTION

Trafficking in women is synonymous with violence. Violence and threats of violence are common forms of coercion employed against trafficked women. Rape and other forms of sexual violence are often used to break trafficked women physically, mentally and emotionally to obtain their enforced compliance in situations of forced labour and slavery-like practices. Sexual violence is also used to condition trafficked women for forced sexual exploitation.¹

The majority of victims are women and girls trafficked for commercial sexual exploitation. However, recent data indicates that there are also significant numbers of human beings trafficked for other forms of exploitation. These include labour exploitation in domestic work, agriculture, construction, small manufacturing and other occupations². As in cases of forced prostitution, violence and threats of violence are present in these lesser documented cases too.

Legal definitions of trafficking also emphasise the role of violence in its commission. The definition of trafficking under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the *Palermo Protocol*), requires some form of force or abuse as the means by which persons are trafficked. Furthermore, the purposes for which persons are trafficked, including forced labour, slavery or practices similar to slavery, incorporate elements of coercion under international law. Trafficking is also identified under the Declaration on the Elimination of Violence Against Women as a form of violence. Article 1 of the Declaration defines violence as: ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’³ Under article 2 of the Declaration, violence is also understood to encompass ‘physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.’⁴ Therefore trafficking, whether for forced sexual exploitation or forced labour exploitation, is both enforced by and constitutes violence in its own right.

Besides the violence integral to the trafficking process, studies show that female migrant workers are also subject to a wide range of abuse and discrimination. The Special Rapporteur on the human rights of migrants has reported that in addition to the abuse and discrimination

¹ See Report of the Special Rapporteur on violence against women, its causes and consequence, Ms Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, E/CN.4/2000/68 at p.15.

² Report of the Special Rapporteur on trafficking in persons, especially women and children, E/CN.4/2005/71 at p.5. See also US Trafficking in Persons Report, 2004, reporting that 600,000 to 800,000 people were trafficked across transnational borders worldwide. Analyses of data revealed that 80% of victims trafficked across borders were female and 70% of those victims were trafficked for commercial sexual exploitation. Recent studies by ILO in Europe indicate that up to 30% of trafficked persons surveyed were in forced labour situations unconnected to commercial sexual exploitation.

³ Article 1 of the Declaration on the Elimination of Violence against Women (1993) A/Res/48/104

⁴ Article 2(b) of the Declaration on the Elimination of Violence against Women.

faced by women migrants because of their irregular immigration status, national origin and/or employment, women migrants are far too frequently victims of violence, in particular of a sexual nature, at their place of work. Concern with violence against women migrant workers has led the United Nations Commission on Human Rights to devote frequent attention to this issue.⁵ However the point is often made that the violence suffered by women migrant workers would not generally be construed as constituting slavery, servitude or forced labour and therefore such individuals are not trafficked victims (see section 1.1 below for definition of trafficking.) On the other hand if the use of violence is to enforce situations of forced labour it is equally arguable that such migrant women are trafficked victims. Information from reports therefore on violence against women migrant workers will be used for this paper to the extent that it can also inform discussions of trafficking for labour exploitation. The question of violence against women migrant workers *per se* however will not be developed further here.

The OSCE is committed to eliminating violence against women and all forms of trafficking in human beings. It adopted an Action Plan to Combat Trafficking in Human Beings in Maastricht in 2003 in order both to incorporate best practices and an advanced approach in its anti-trafficking policies and to facilitate co-operation among participating States. It recognizes that the problem needs to be addressed comprehensively through a multi-dimensional approach. Much still remains to be done, not least in terms of improved implementation of the commitments made under the Action Plan by participating States throughout the entire OSCE region. This paper aims to highlight particular priorities for future action.

The first part of the paper focuses on the purposes for which women are trafficked, including sexual exploitation, economic exploitation and domestic servitude, identified as of particular concern to participants for this workshop. The forms of violence that typically accompany such forms of exploitation will also be identified. The second part of the paper explores the root causes of trafficking, for which the countries of both origin and destination of trafficked persons are responsible. It will also outline factors that aggravate or contribute to the exploitation of trafficked persons. The third part will consider some of the implications and consequences of trafficking from a human security perspective and conclude with recommendations.

1. EXPLOITATION

1.1 Legal Definitions

Until recently one of the main problems in addressing trafficking was the lack of international consensus concerning its definition. In particular there was much confusion over the distinction between trafficking, smuggling and illegal migration. This problem was addressed by the Palermo Protocol, which contains an internationally recognized definition.

The definition involves three distinct but interconnected elements:

1. the recruitment, transportation, transfer, harbouring or receipt of persons;
2. by means of the threat or use of force, or other forms of coercion, abduction, fraud or deception, abuse of power or of a position of vulnerability, or the giving or receiving

⁵ See 'Violence against women migrant workers: Report of the Secretary General', 17 July 2003, A/58/161.

- of payments or benefits to achieve the consent of a person having control over another person;
3. for the purpose of exploitation, including 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.

The purposes for which persons are trafficked, as described in the third section of the definition, forms the focus of this part of the paper which aims to elaborate on what is understood both legally and in practice by different forms of exploitation.

Firstly, amongst other terms, the Protocol fails to define ‘exploitation’. It leaves open the problem of distinguishing trafficking from legally tolerated forms of employment. Questions about what constitutes an exploitative employment practice are much disputed and indeed remain a central focus of the organized labour movement’s struggle to protect workers. Therefore precisely how exploitative an employment relation has to be before we can say that a person has been recruited or received for the purposes of exploitation is not clear.⁶

The terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ are equally left undefined in the Palermo Protocol nor are they defined in international law. A UN interpretative note to the Protocol reads: ‘The *Travaux Préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.’ The Palermo Protocol therefore takes no position on the sex industry and explicitly leaves its legal treatment to the discretion of individual governments.⁷

The term forced labour is defined in article 2.1 of the Forced Labour Convention No.29 of the International Labour Organization. It provides:

‘for the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under any menace of any penalty and for which the said person has not offered himself voluntarily.’

The term ‘penalty’ covers not only penal sanctions but also loss of rights and privileges.

While all forced labour involves bad working conditions, not all situations of unsatisfactory working conditions constitute forced labour. The ILO treaty supervisory body, the Committee of Experts, has identified several component elements which, together or individually, can indicate a situation of forced labour under article 2.1. These include:

1. Threats or actual physical harm to the worker;

⁶ See *Forced Labour and Migration in the UK*, Study prepared by COMPAS in collaboration with the Trades Union Congress, Bridget Anderson and Ben Rogaly, February 2005.

⁷ See *The Annotated Guide to the Complete UN Trafficking Protocol*, International Human Rights Law Group, May 2002 at 8 and *The negotiations on the UN Protocol on Trafficking in Persons*, Nemesis 2003 nr.4, Melissa Ditmore and Marjan Wijers at 84 for further information in this regard.

2. Restriction of movement and confinement to the workplace or to a limited area.
3. Debt bondage where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
4. Withholding of wages or excessive wage reductions that violate previously made agreements.
5. Retention of passports and identity documents, so that the worker cannot leave, or prove his or her identity and status.
6. Threat of denunciation to the authorities, where the immigration status of the worker is irregular immigration.

These factors are seen to lead to extreme individual vulnerability conducive to the emergence of forced labour situations.⁸

Slavery is defined in article 1.1 of the UN Slavery Convention as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Practices similar to slavery are contained in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery and include debt bondage and forced marriages. Debt bondage is defined under article 1(a) as ‘the status of condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.’⁹ Article 1.1(c) provides ‘any institution or practice whereby...a woman without the right to refuse is promised or given in marriage on payment of a consideration of money or in kind to her parents, guardian, family or any other person or group.’

Servitude is not defined in international law but it is understood that forced labour, slavery and practices similar to slavery are forms of servitude.

1.2 Exploitation in practice

Trafficking for forced prostitution

Trafficking for forced prostitution is the most widely reported form of trafficking in the OSCE region.¹⁰ The United States Trafficking in Persons report for 2004 estimates that over half of all victims trafficked internationally are trafficked for sexual exploitation.¹¹ The violence associated with this form of trafficking is also well documented. Women are subject to physical, sexual and psychological abuse. They are forced to consume drugs and alcohol, are subject to a range of abusive living and working conditions, social restrictions and

⁸ *Forced Labour and Migration in the UK*, Study prepared by COMPAS in collaboration with the Trades Union Congress, Bridget Anderson and Ben Rogaly, 2005 at 16.

⁹ *The Annotated Guide to the Complete UN Trafficking Protocol*, 2002, International Human Rights Law Group at 10.

¹⁰ See in particular the series of three publications entitled *Trafficking in Human Beings in South Eastern Europe*, OSCE/ODIHR, UNICEF and UNOHCHR for 2002, 2003 and 2004. These reports only document in detail trafficking for forced prostitution in the region.

¹¹ See *Trafficking in Persons Report*, US Department of State, 2004.

manipulation.¹² In many cases the women are subject to sexual violence, confinement and threats already during their journey to a destination country. At the destination stage women report broken bones, loss of consciousness, gynaecological problems and other diseases (including HIV/AIDS) as well as deprivation of food, human contact and valued activities and items.

Escaping a trafficked state however does not signal the end of harm for many women. Findings of a recent study indicated that many women continue to suffer both physically and mentally through the intervention of the State during detention, deportation and criminal proceedings.¹³ Often immigration officials, police officers and other authorities are insufficiently sensitive to victims' needs and inadvertently re-traumatize victims in their contacts with them. Whilst in custody, they are often kept in locked and enclosed conditions that may be reminiscent of their experience of being trafficked and this may further jeopardize their physical and mental health. The experience of testifying in criminal proceedings or administrative proceedings (such as during asylum or other protection claims) may have a significant impact on women's physical and mental health, as painful memories are explored and dissected. Equally the repatriation of trafficked women by States to countries where no effective mechanisms are in place to protect them from possible future ill-treatment or re-trafficking is a direct source of harm and a violation of international law.

Trafficking for labour exploitation: domestic and care work

There has been less visibility in the OSCE region of trafficking for purposes other than forced prostitution. However, as already noted in the introduction, significant numbers of people are reported to be trafficked for labour exploitation too. In particular, reports point to the increase of modern forms of slavery or forced labour in domestic and care work.

Much of what we know in relation to the exploitation of women in domestic or care work however has not necessarily been presented as trafficking research or information. This is partly because research on trafficking has so far preoccupied itself with and been monopolized by studies on trafficking for sexual exploitation. This tendency was perhaps foreseeable considering the nature of discussions during the drafting of the Palermo Protocol. It should be recalled that negotiations at that time were beset with questions on prostitution, which deflected from the more general issue of human rights and migrant labour, an issue that many commentators believe underpin the problem of trafficking.¹⁴

¹² For a comprehensive overview of the use of violence predominantly in the trafficking of women for forced prostitution see *The Health Risks and Consequences of Trafficking in Women and Adolescents, Findings from a European Study*, London School of Hygiene and Tropical Medicine et al., 2003.

¹³ *Ibid.* at 6

¹⁴ See *The negotiations on the UN Protocol*, Melissa Ditmore and Marjan Wijers. The authors here consider that : 'Migration is at the heart of the international traffic in persons, as trafficked persons are (usually undocumented) migrants seeking work elsewhere who find themselves in untenable working conditions.' See also Hope Lewis, cited in *Intersecting Protections, Migrating Women: Using Human Rights Law to Empower Women Migrant Workers*, Centre for Human Rights and Global Justice Working Paper, Number 6, 2004, Margaret Satterthwaite at 17, who writes: ' At this early stage in the recognition of the human rights implications of female migration, the attention of most mainstream human rights organizations remains fixed primarily on the physical and sexual abuses associated with slavery and trafficking.... Are the stories of economic, social and cultural violations that many other female migrant workers experience too 'ordinary' for us to see them as a matter of human rights urgency?'

However, as already mentioned in the introduction to this paper, reports of the Special Rapporteur on the human rights of migrants may also be instructive and valuable in developing what we know of possible trafficking for forced domestic or care work.¹⁵ These reports generally focus on the conditions of work of migrant women which in some cases may amount to forced labour. Often the manner by which women have arrived in such situations, is not sufficiently explored in the reports to determine whether or not the migrant woman is though a victim of trafficking. Commentators have however made the point that interpretations of the Palermo Protocol that concentrate on the *process* of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited.¹⁶ They note that the key element to the Palermo Protocol is the forced labour outcome, encompassing forced labour and services, slavery, slavery like practices and servitude. It is these human rights violations against the individual that the Palermo Protocol seeks to redress and that to effectively counter trafficking, policy interventions should focus on the forced labour and services, slavery and slavery like outcomes of trafficking, no matter how people arrive in these conditions, rather than on the mechanisms of trafficking itself.¹⁷

Therefore notwithstanding the lack of information on issues connected essentially with the organization of recruitment, movement and placement for the purposes of exploitation, such reports should not be disregarded as irrelevant to trafficking. On the contrary, the existence of forced labour should be *prima facie* evidence of possible trafficking. A number of interesting observations in connection with the growth of the care and domestic work sector, particularly in Western countries, and the conditions faced by those working in it have been made in these reports. It has been noted that migrant domestic workers are becoming indispensable in developed countries to enable men and women to advance in employment and society. The work of migrant domestic workers in caring for the elderly has also taken on particular importance as a result of demographic changes in many developed countries. This process has been characterized by some as the female underside of globalization where millions of women migrate to do what has traditionally been considered to be the ‘women’s work’ of the North.¹⁸ Data indicates that domestic work is the most prevalent occupation for women migrants around the world with up to 85% of the world’s domestic workers being women.¹⁹

Although many female migrants may find liberation and the chance to become independent breadwinners through such work, others are less fortunate and end up in the clutches of criminal employers. With their passports confiscated and their freedom of movement curtailed, they are forced to work without pay, often facing sexual harassment and abuse in the provision of cleaning and care services.²⁰

¹⁵ See generally reports of the Special Rapporteur on the Human rights of Migrants, Ms Gabriela Rodriguez, including E/CN.4/2003/85, E/CN.4/2004/76 and E/CN.4/2005/85.

¹⁶ *Draft report of the European Experts Group on Trafficking in Human Beings*, October 2004, at 15.

¹⁷ *Ibid.*

¹⁸ *Global Women, Nannies, Maids and Sex Workers in the New Economy*, Barbara Ehrenreich and Arlie Russell Hochschild eds., Granta Books, 2003

¹⁹ See International Labour Organisation, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An Information Guide – Booklet 1: Why the Focus on Women International Migrant Workers 5* (2003). In Italy 50% of the estimated 1 million domestic workers are non-European Union citizens and in France over 50% of migrant women are believed to be engaged in domestic work.

²⁰ *Ibid* at 3.

General findings indicate that many women migrant domestic workers work under the explicit or psychological threat of deportation and violence. The exploitative working conditions and psychological violence, the control and domination by their employers and restrictions on their freedom of movement increase their sense of isolation and powerlessness to such an extent that they are often afraid to leave their jobs. Importantly, the risk of deportation and inability to repay debts they may have incurred to finance their travel often remove any incentive to seek assistance.²¹

A recent report commissioned in France found that the majority of victims of forced domestic work were women originating from West Africa or Asia. Commonly on arrival in the country their papers were confiscated and they were forced to work long hours without days off, rarely paid and often denied permission to leave the home. They were also exposed to physical and sexual violence from their employers.²²

Other forms of forced labour

Other forms of forced labour, apart from domestic work, for which women are reported as having been trafficked, include work in the agricultural (including food processing) and the hospitality/catering sector and manufacturing.

A recent study explored the context in which forced labour was occurring in the UK and considered whether systemic features in the labour market in general or in certain sectors in particular created an environment conducive to forced labour and therefore possibly trafficking. It found that sectors prone to forced labour (which for purposes of the study were identified as including construction, affecting men only, contract cleaning, agriculture and residential care work) were all operating in highly competitive markets in which there was strong pressure on owners and employers to reduce costs or increase productivity to remain in business. The work involved was arduous, sometimes dangerous and usually informally skilled. Labour also tended to represent a significant proportion of total operating costs for the business.²³

The report found that in most cases the work was also location-specific, which meant that certain processes could not be transferred to another work-site: a crop had to be grown in a particular holding, a supermarket cleaned or a sick person cared for so that the labour had to move to the place concerned, without the work being able to relocate to where labour might be more readily or cheaply available.

The study also indicated certain production characteristics in the sectors affected by forced labour, including the availability of the workforce when needed and the possibility of laying workers off when no longer required. Technological developments, for instance tying supermarket checkouts to the instant generation of new orders, meant that suppliers were obliged to meet these orders at very short notice, requiring a highly flexible workforce in terms of days and hours worked. Such conditions seemed likely to be conducive to exploitation and possible forced labour practices. The use of sub-contracting arrangements in

²¹ See Report of the Special Rapporteur on the Human Rights of Migrants, E/CN.4/2004/76

²² See Report of le Comité contre l'Esclavage Moderne, available at <http://www.ssem-antislavery.org/FR>

²³ Forced Labour and Migration to the UK, *supra*.

both catering and cleaning were also seen to drive down the costs of labour and give scope for exploitation.

The study went on to consider the forms of coercion used to retain a worker. These could be physical and sexual violence, threats of violence, debt bondage, threats and intimidation based on immigration status, blackmailing and confiscation of identity documents or withholding of payments.²⁴ The use of these forms of coercion were made more effective if the migrant was dependent on the agent or employer, either because of debts incurred or the restriction of work permits; such dependency was actively fostered in some cases to increase control over the worker. It was found that violence in these relationships had several aims: to force a migrant to work, to prevent him or her from seeking assistance, and to assert control over a victim. Violence was also used to prevent migrants from raising issues or making complaints. Physical abuse was also seen to be an assertion of power and control rather than having any direct and immediate purpose. Sometimes violence was combined with debt bondage to secure control.

Although the gender dimension of contemporary forms of forced labour was not analysed for this study, one of the first of its kind to be conducted in Western Europe, other commentators have identified gender specific factors for instance in Asia that contribute to women's labour exploitation. In particular the lower cost of production when labour-intensive tasks are shifted to women migrant workers, due to inequality in pay, together with the stereotyping of women by large business enterprises and governments that may see women as cheap, temporary or supplemental labourers whose 'docile' nature makes them easily exploitable are factors contributing to the economic exploitation of women.²⁵

2. ROOT CAUSES OF TRAFFICKING

2.1 Push factors

Socio-Economic factors

Poverty and unemployment as a consequence of social reforms, the disappearance of public sector employment and the decline of industries and agriculture coupled with gender discrimination, violence against women, failing social safety nets, health and education services are seen to act as push factors in women's migration and therefore potentially contribute to the trafficking of women.²⁶

Returned victims of trafficking are often reported as having been subjected to family violence and sexual abuse so that young women that have experienced violence in their past are seen as particularly vulnerable to trafficking.²⁷ However research on the successful migration of women in South Eastern Europe indicated that family and sexual violence were equally part of these women's experience. Therefore domestic violence may act as a push factor in

²⁴ Ibid. at 36.

²⁵ See references to Saskia Sassen and ILO Booklet No.1 cited in *Intersecting Protections, Migrating Women: Using Human Rights law to Empower Women Migrant Workers*, *ibid* at 10

²⁶ General Recommendation No.19 of the Committee on the Elimination of Discrimination against Women defining violence also recognized the socio-economic causes contributing to trafficking in women and the consequent risk of violence and abuse: 'poverty and unemployment increase opportunities for trafficking in women'.

²⁷ See reports of *trafficking in Human Beings in South Eastern Europe*, ODIHR, UNICEF and OHCHR.

women's migration generally but does not conclusively indicate a particular vulnerability in a woman to trafficking.²⁸

Earnings and remittances

The Governments of some sending countries actively encourage women's migration in search of work abroad, with the rationale that migrant women are more likely than their male counterparts to send their wages back to their families, rather than spend them on themselves. In general women are reported to send home anywhere from a half to nearly all of what they earn, and this has a significant impact on the lives of children, parents and siblings remaining in the country of origin.²⁹

It is also documented that a large part of the annual budgets of many South Eastern European countries come from abroad in the form of remittances and yet overall there are few opportunities for legal migration. One study indicates that in recent years Moldova has become one of the most migration and remittance dependent countries in the world. The rapid growth of remittances is likely to be the single most important factor underlying the growth of the Moldovan economy.³⁰ In the context of high unemployment and inadequate social security at home, it is clear that States with high emigration have much to gain from enterprising migrants who seek their livelihoods abroad and, in the process, enhance the stability and security of their families remaining at home through remittances.

2.2 Pull factors

Demand

The explosion of trafficking in forced prostitution in the South Eastern European region in the second half of the 1990s was generally associated with the post-conflict situation and the international presence there, mainly of peacekeepers. As the majority of bars in which victims of trafficking were kept were located near the military bases or in the Rest and Recuperation areas for foreign soldiers on peacekeeping missions, such a presumption seemed justified. Moreover, victims of trafficking that were assisted in the late 1990s identified their main clients as predominantly international and military personnel.³¹

As a result of allegations of the involvement of peacekeeping personnel in trafficking, the code of conduct for UN personnel was changed in 2001 specifically to include trafficking. The OSCE also developed and adopted its own Code of Conduct in June 2000, holding OSCE staff and its secondees responsible for any affiliation with persons suspected of involvement in trafficking.

An alternative study on the demand aspect of trafficking considered the difficulties associated with assuming that 'trafficking' actually meets a specific demand for a trafficked person's labour or services.³² Noting the overlaps between smuggling and irregular migration, it suggested that it was hard to imagine an abusive plantation manager or sweatshop owner

²⁸ See ILO research in Albania, Moldova, Ukraine and Romania comparing the experiences of successful female migrants with trafficked persons. (On file with author)

²⁹ See *Global Women*, supra at 3.

³⁰ *Trafficking in Human Beings in South Eastern Europe*, 2004 at 77

³¹ See *Trafficking in Human Beings in South Eastern Europe*, 2004 at 26.

³² *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, IOM Migration Series, 2003.

turning down the opportunity to subject a worker to forced labour or slavery-like practices because he or she was a ‘smuggled person’ rather than a ‘victim of trafficking’. Instead, it considered that questions about the demand for a ‘trafficked’ person’s labour/services were inseparable from more general questions about the demand for labour/services of all those who are unable to extricate themselves from exploitative conditions because they are under some form of non-economic compulsion to their exploiter.³³

The study noted that with regard the market for domestic services there was a growing demand for labour in a largely unregulated sector which relied predominantly on a female workforce, many of whom are migrants, and for work which has historically been regarded as low-status. It considered that the rapid expansion of a market which is poorly regulated and partially stigmatized would be associated with an increase in the incidence of abusive practices. There were therefore good reasons to suspect that some of this demand would be met by unfree workers.³⁴

Finally contributing factors to trafficking are also seen to emerge from the lack of legal migration channels available to access domestic work opportunities or other informal work opportunities. Reports have indicated that the nature and scope of public and private initiatives to facilitate migration and recruitment of female domestic workers vary from one country to another, depending on labour agreements and legislation on migration.³⁵ There being few options available for legal migration, irregular migration channels become the main conduit of access to such work, and these render women vulnerable to trafficking.³⁶

3. IMPLICATIONS AND CONSEQUENCES OF TRAFFICKING

Trafficking is seen to cut across all dimensions of the OSCE's work. The human dimensions of trafficking are evident and relate to both the causes and consequences of trafficking. Trafficking and related practices such as debt bondage, forced prostitution, forced labour and slavery-like practices are violations of the most basic human rights, rights which are acknowledged as belonging to all human beings irrespective of their sex, nationality, social status occupation or other differences. Trafficking is also inherently discriminatory and illustrates the way in which multiple forms of discrimination operate. Ethnic, gender and class discrimination deny basic life opportunities and choices to a vast number of the world’s women and girls, whose precarious social, economic and legal situation renders them particularly vulnerable to trafficking and related exploitation.³⁷

Trafficking also affects and is affected by the politico-military dimension of security. Transnational organized criminal groups thrive on the proceeds of trafficking; illicit profits are used to corrupt government officials, and the costs and risks to law enforcement agencies are greatly increased. The international nature of many cases calls for increased cross-border co-operation. In addition, trafficking can be a particular problem in post-conflict areas as a

³³ *Ibid* at 9.

³⁴ *Ibid.* at 11.

³⁵ Draft Report of the European Experts Group on Trafficking in Human Beings, 26 October 2004 at 49.

³⁶ See Report of the Special Rapporteur on the Human Rights of Migrants, E/CN.4/2004/76

³⁷ *Human Rights and Human Trafficking*, Conference Paper by the Office of the UN Commissioner for Human Rights and the Office of the UN Commissioner for Refugees at the Economic Commission for Europe, 10 year review of Implementation of the Beijing Platform for Action, Dec 2004.

result of social dislocation, while a large international presence can actually contribute to the incidence of trafficking. However, restrictive immigration policies designed to avert migration flows that are perceived as threats for domestic security, may also unintentionally contribute to increased trafficking

As an element of the economic dimension, trafficking exists largely because of economic and social inequalities between, and within, countries.³⁸ High rates of poverty, unemployment, low pay, and discriminatory labour practices in countries of origin and destination all contribute to its existence. Increased trafficking is associated also with the dislocations resulting from economic transition, particularly the increased feminization of poverty. But trafficking is fuelled by demand in an increasingly informalized global economy. Many trafficked persons are located in the informal, unregulated and unprotected sectors of the labour market, including domestic work and more recently agriculture, construction, contract cleaning and food processing. The failure of states to reconcile labour and migration policies and address the demand for cheap unprotected labour all contribute to trafficking.

Action for the future

OSCE participating States have made numerous commitments to tackle trafficking. By way of longer term commitments to prevent trafficking countries of destination are recommended to ‘implement measures to reduce the invisibility of exploitation’ and ‘address the problem of unprotected, informal and often illegal labour with a view to seeking a balance between the demand for inexpensive labour and the possibilities for regular migration.’³⁹ Countries of origin are recommended to promote economic development and social inclusion, taking measures to raise levels of social protection, eliminate discrimination and prevent violence against women.⁴⁰

However of more immediate concern are States obligations to identify, protect and assist trafficked persons. Efforts to identify trafficked persons generally remain weak and this paper has indicated that the identification of trafficked persons in labour exploitation is virtually non-existent. Other research indicates that women identified as trafficked in situations of forced prostitution are increasingly refusing the assistance on offer when it requires their immediate return to countries of origin.⁴¹ The re-traumatisation of victims also through the intervention of state authorities, as described in this paper, indicates that still more needs to be done to recognize the needs of victims and refer them to the appropriate services and assistance. In addition, risk assessments need to be conducted prior to repatriation of trafficked persons to avoid the infliction of further harm in countries of origin. The concept of National Referral Mechanisms addresses all of these issues in a holistic manner. OSCE participating States have made commitments to establish National Referral Mechanisms which will assist them in fulfilling their obligations to identify, protect and promote the human rights of trafficked persons.⁴² The relevance and importance of their establishment

³⁸ See OSCE Anti-Trafficking Guidelines.

³⁹ See Part IV, para 3.2 of the OSCE Action Plan to Combat Trafficking in Human Beings.

⁴⁰ See Part IV, para 3.1 and 3.2 of the action plan.

⁴¹ *Trafficking in South East Europe*, 2003 and 2004.

⁴² See Part V, para 3 of the OSCE Action Plan.

needs to be emphasized to ensure that the immediate needs of trafficked persons are addressed.

Some of the recommended areas for action that would therefore follow from this paper would include:

- Intensified effort to identify trafficking in all its forms and raise its visibility in destination countries – through media and public awareness-raising. In particular the media need to be educated to understand that perpetuating the image of the migrant as criminal also serves to marginalize trafficked persons and make them more vulnerable. A different message might lead to more trafficked victims identifying themselves and foster an appreciation by the public and policy-makers of the kinds of unregulated, unprotected yet in many cases essential services that trafficked persons are forced to provide.
- Intensified effort is needed to assist trafficked persons in claiming their rights and providing them with remedies – through either civil or criminal procedures which will ensure the satisfaction of States’ obligations to act with due diligence in respect of violations of individuals’ human rights.
- Intensified effort is needed to ensure that proper risk assessments are conducted (and the best interests of any children considered) above all other priorities before suspected victims of trafficking are repatriated. In particular, States should avoid inflicting further harm on trafficked persons through the use of detention or multiple administrative procedures.
- Intensified effort is needed to regularize opportunities for work and to apply minimum labour standards to all.