

## 15<sup>th</sup> Informal ASEM Seminar on Human Rights: Human Rights and Trafficking in Persons

### *Introduction*

Projected to be a \$150 billion industry<sup>1</sup>, the trafficking of human beings is considered to be the fastest growing illegal enterprise in the 21<sup>st</sup> century, coming in second after drug trafficking as the most widespread form of global organised crime. Given its nature, finding precise statistics on human trafficking is difficult but it is estimated that out of the 29.8 million people<sup>2</sup> living in modern slavery<sup>3</sup> worldwide, at any given time 2.4 million people are trapped in a trafficking situation.<sup>4</sup>

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*”.<sup>5</sup>

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 members, its leaders have acknowledged the importance of addressing human trafficking; however, the issue is mainly posited in a security rubric.<sup>6</sup> 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.<sup>7</sup>

The 15<sup>th</sup> 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 20<sup>th</sup> century<sup>8</sup>, 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)<sup>9</sup>; the 1989 Convention on the Rights of the Child (CRC)<sup>10</sup>; 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 Organised 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’.<sup>11</sup> 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.*”<sup>12</sup> 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.<sup>13</sup> 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 ILO (2012), 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 subregions. Countries of Western and Central Europe reported the greatest variety of origins and the greatest distances spanned by trafficking flows. Nevertheless, 64 per cent of victims detected between 2007-2010 were trafficked from Western and Central European countries.<sup>14</sup>

#### ***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*”.<sup>15</sup> The following year, the five-year EU Strategy towards the Eradication of Trafficking in Human Beings was adopted.<sup>16</sup>

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. 65 per cent of all registered victims were EU citizens.<sup>17</sup> Directive 2011/36/EU was to be transposed into national law by 6 April 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 requires (Article 5(3)) 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. 42 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 (ie 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.<sup>18</sup> The majority of the victims are women, although this varies across the region.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>

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<sup>23</sup>, 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.<sup>24</sup> ASEAN is working on building a Convention on Trafficking in Persons (ACTIP) and a Regional Action Plan.<sup>25</sup>

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.<sup>26</sup>

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 remain weak and 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.<sup>27</sup>

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.<sup>28</sup>

### ***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...*”<sup>29</sup> 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.<sup>30</sup> The Committee against Torture also recognises the prohibition of torture as a relevant standard for the human rights violations of trafficking victims.<sup>31</sup> 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 is the combat against organised crime).<sup>32</sup>

#### ***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<sup>33</sup> (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.<sup>34,35</sup> 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).<sup>36</sup> 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<sup>37</sup>) 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), Abolition of Forced Labour Convention, 1957 (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 (Migrant Workers Convention, 1975 (No.143)), children (Worst Forms of Child Labour Convention, 1999 (No, 182) and domestic workers (Domestic Workers Convention, 2011 (No. 189))<sup>38</sup> – 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”.<sup>39</sup>

#### *Human Trafficking and Human Smuggling*

The demand for cheap labour coupled with the strict immigration regime practiced in many countries means that potential migrants may turn to undocumented entry methods to seek easier access to new labour markets.<sup>40</sup> 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).<sup>41</sup> 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”.<sup>42</sup>

#### ***Prevention, remedy, recovery and justice***

An ILO review of law and practice in 133 member States indicates<sup>43</sup> 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”.<sup>44</sup>

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.<sup>45</sup> Effective remedy comprises of 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*”.<sup>46</sup>

“*Empowerment, self-representation and participation of those affected by trafficking are fundamental principles for a human rights based approach*”<sup>47</sup> 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 Protocol<sup>48</sup> 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 organisations providing direct assistance to victims to help them seek justice and recover from their experience.<sup>49</sup>

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.<sup>50</sup> Protection from forced return is also guaranteed by the principle of non refoulement as noted by Art.14(1) of the Palermo Protocol and Art 40(4) of the CoE Convention which both 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 counseling, are key to victim protection*”.<sup>51</sup> Likewise, reintegration measures should be sustainable, enable former victims to regain control over their lives, and address the root cause of migration.<sup>52</sup> 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<sup>53</sup>. 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.<sup>54</sup>

### ***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.<sup>55</sup>

Civil society organisations (CSOs) serve as important partners in anti-trafficking efforts, providing assistance services, monitoring trafficking flows, evaluating policy effectiveness and providing recommendations for improving mechanisms.<sup>56</sup> CSOs need to be recognised as important strategic partners and in many countries already, civil society organisations partner with governments in preparing national action plans and coordination mechanisms to ensure that a human rights-based approach is adopted.<sup>57</sup> 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, 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).<sup>58, 59</sup>

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<sup>60,61</sup>.

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<sup>62</sup>, 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<sup>63</sup>.

Given the scale of its operations, human trafficking is also a financial crime issue<sup>64</sup> 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.<sup>65</sup>

### ***15<sup>th</sup> 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-organised 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 15<sup>th</sup> 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 which 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 the 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?
2. The media plays an important role in educating and informing society about trafficking; how can their influence and reach be made more effective?
3. The Internet has emerged as a tool that plays a big role in trafficking - it can be used to recruit and traffic vulnerable people but it can also be used to dismantle trafficking rings. How have anti-trafficking efforts addressed the potential and challenges of information and communication technologies (ICT) in their prevention strategies?
4. Are there specific challenges faced in countering domestic trafficking (which is increasing), separate from intra-regional and inter-regional trafficking? Similarly, are there specific challenges when people are trafficked for different purposes (sexual exploitation/forced labour)?
5. Different countries have tried different approaches to reduce trafficking. Some countries have legalised sex-work to reduce sexual exploitation and to enhance the protection of potential victims. Have such policies helped to reduce trafficking?
6. How effective are the international and regional mechanisms in tackling the trans-national nature of the trafficking in persons? What evaluations have been conducted on the success of existing approaches?

### **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 is 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 criticized 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.<sup>6</sup> 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? Also 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, Aseanpol) 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? Where does their greatest strength lie in addressing trafficking?
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 require 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?

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### **ENDNOTES**

<sup>1</sup> ILO 2014, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm)

<sup>2</sup> Global Slavery Index 2013

<sup>3</sup> For a detailed explanation on modern slavery, see Kelly (2013), Modern-Day Slavery: An Explainer, The Guardian, 3 April 2013, available at <http://www.theguardian.com/global-development/2013/apr/03/modern-day-slavery-explainer>

<sup>4</sup> ILO 2012 ([http://www.iomvienna.at/en/?option=com\\_content&view=category&id=71&lang=en](http://www.iomvienna.at/en/?option=com_content&view=category&id=71&lang=en))

<sup>5</sup> <http://www.ohchr.org/documents/publications/traffickingen.pdf>

<sup>6</sup> Chair's Statement (2014), Responsible Partnership for Sustainable Growth and Security, Final Chair's Statement, 10th ASEM Summit (16-17 October 2014), <http://www.aseminfoboard.org/2011-12-22-05-56-13/event/436-asem-10-summit.html>

<sup>7</sup> For the Chair's Statements of these meetings, please visit the ASEM Infoboard at <http://www.aseminfoboard.org/component/rsevents/event/61-10th-asem-conference-of-the-directors-general-of-immigration-mongolia.html?Itemid=0>

<sup>8</sup> 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.

<sup>9</sup> 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'.

<sup>10</sup> 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 criminalize the sale of children, child prostitution, and child pornography.

<sup>11</sup> Article 2 states out the purpose of the Protocol which are, namely, 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.

<sup>12</sup> 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 9 July 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/ql77sHb3q28L/content/id/7596701](http://www.coe.int/en/web/human-rights-rule-of-law/news/-/asset_publisher/ql77sHb3q28L/content/id/7596701)

<sup>13</sup> For details on the mandate of the SR, see <http://www.ohchr.org/EN/issues/Trafficking/Pages/Traffickingindex.aspx>

<sup>14</sup> For more details see the ILO 2012 report.

<sup>15</sup> 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).

<sup>16</sup> 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](http://ec.europa.eu/anti-trafficking/legislation-and-case-law/eu-legislation/into/EU%20Legislation_en)

<sup>17</sup> EC (2014), Trafficking in human beings 2010-2014: eradicating the slave trade Carrying out the concrete actions of the 2012-2016 EU Strategy on trafficking in human beings, Press Release, Brussels, 17 October 2014

<sup>18</sup> UNODC (2012), Global Report on Trafficking in Persons, [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)

<sup>19</sup> 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)

<sup>20</sup> UNODC (2012)

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> 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](http://www.no-trafficking.org/resources_laws_regional.html)

<sup>24</sup> Ranyta Yusran (2011), Law in a Sustainable Asia 8<sup>th</sup> Asian Law Institute Conference, Thursday and Friday, 26 and 27 May 2011, Kyushu, Japan, Trafficking in Women and Children and an Observation to ASEAN Counter-Trafficking Efforts, <http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/ASLI-8th-Conference-ASEAN-and-Trafficking-in-Women-and-Children-RY-pdf.pdf>

<sup>25</sup> <http://www.asean.org/news/asean-secretariat-news/item/asean-commits-to-combat-trafficking-in-persons>

<sup>26</sup> The Strategy Paper of the Bali Process can be found at

[http://www.baliprocess.net/files/Ad%20Hoc%20Group/Bali%20Process%20Strategy\\_FINAL%20%28following%20AHG%20SOM%20revisions%29\\_140807.pdf](http://www.baliprocess.net/files/Ad%20Hoc%20Group/Bali%20Process%20Strategy_FINAL%20%28following%20AHG%20SOM%20revisions%29_140807.pdf)

<sup>27</sup> South Asia ranks among the highest for the prevalence of forced labour, ILO (2005), [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_075504/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_075504/lang-en/index.htm)

<sup>28</sup> Virtual Global TaskForce, <http://www.virtualglobaltaskforce.com/what-we-do/>

<sup>29</sup> Principle 13, ASEAN Human Rights Declaration

<sup>30</sup> 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.

<sup>31</sup> OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO (2011), Human Trafficking: Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, United Nations, available at <http://www.refworld.org/pdfid/4edcbf932.pdf>

<sup>32</sup> 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 Deutsche Gesellschaft für Technische (2008), Trafficking in Persons as a Human Rights Issue

<sup>33</sup> Tandon, Armas-Cardona, Grover (2014), Sex Work and Trafficking: Can Human Rights Lead Us Out of the Impasse?, Health and Human Rights Journal, available at <http://www.hhrjournal.org/2014/10/21/sex-work-and-trafficking-can-human-rights-lead-us-out-of-the-impasse/>

<sup>34</sup> 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>

<sup>35</sup> Widney Brown (2002), Human Rights Watch, "21st Century Slavery - The Human Rights Dimension to Trafficking in Human Beings" Conference in Rome, Italy on May 15-16, <http://www.hrw.org/news/2002/05/13/human-rights-approach-rehabilitation-and-reintegration-society-trafficked-victims>

<sup>36</sup> UNODC (2012), Global Report on Trafficking in Persons, [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)

<sup>37</sup> 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% in Asia and from 49.0% to 52.9% in Europe. Female migrants are often confronted with gender-specific disadvantages

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in the migration process and in their employment due to different factors; this makes them particularly vulnerable to discrimination and exploitation.

<sup>38</sup> For a detailed list see ILO (2013), Strengthening Action to End Forced Labour, Report IV(1), presented at the International Labour Conference, 103<sup>rd</sup> Session, 2014. Available at [http://apflnet.ilo.org/resources/strengthening-action-to-end-forced-labour/at\\_download/file1](http://apflnet.ilo.org/resources/strengthening-action-to-end-forced-labour/at_download/file1).

<sup>39</sup> ILO (2015), <http://www.ilo.org/global/topics/domestic-workers/lang-en/index.htm>

<sup>40</sup> See for example, Kathleen Kim and Grace Chang (2007), Legal Studies Paper No. 2007-47, December 2007, Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s); and European Parliamentary Research Services, The problem of human trafficking in the European Union, Briefing 9/4/2014,

[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM\\_BRI%282014%29140780\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM_BRI%282014%29140780_REV1_EN.pdf)

<sup>41</sup> ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Case, [http://www.unodc.org/documents/human-trafficking/ASEAN\\_Handbook\\_on\\_International\\_Legal\\_Cooperation\\_in\\_TIP\\_Cases.pdf](http://www.unodc.org/documents/human-trafficking/ASEAN_Handbook_on_International_Legal_Cooperation_in_TIP_Cases.pdf)

<sup>42</sup> Conclusions adopted by the Tripartite Meeting of Experts concerning the possible adoption of an ILO instrument to supplement the Forced Labour Convention, 1930 (No.29) - Geneva, 11–15 February 2013, [http://www.ilo.org/global/standards/WCMS\\_212068/lang-en/index.htm](http://www.ilo.org/global/standards/WCMS_212068/lang-en/index.htm)

<sup>43</sup> ILO (2013), Sub-regional knowledge sharing meeting: Preventing forced labour and planning future action Bangkok, Thailand, 12 - 14 November 2013 CONCEPT NOTE, [http://apflnet.ilo.org/meeting-outcomes-sub-regional-knowledge-sharing-meeting-preventing-forced-labour-and-planning-future-action-bangkok-thailand-12-14-november-2013/copy\\_of\\_ConceptnoteSubregionalFLmeeting.pdf](http://apflnet.ilo.org/meeting-outcomes-sub-regional-knowledge-sharing-meeting-preventing-forced-labour-and-planning-future-action-bangkok-thailand-12-14-november-2013/copy_of_ConceptnoteSubregionalFLmeeting.pdf)

<sup>44</sup> UNODC (2006), Toolkit to Combat Trafficking in Persons, available at [http://www.unodc.org/pdf/Trafficking\\_toolkit\\_Oct06.pdf](http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf)

<sup>45</sup> UN (2011), Report of the Special Rapporteur on Trafficking in persons, especially women and children, Note by the Secretary-General, A/66/283, 9 August 2011

<sup>46</sup> Ibid

<sup>47</sup> GTZ (2008), Trafficking in Persons as a Human Rights Issue, <http://www.oecd.org/dac/gender-development/44896390.pdf>

<sup>48</sup> 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. Document available at

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>49</sup> 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.

<sup>50</sup> OSCE and ODIHR (2014), Guiding Principles on Human Rights in the Return of Trafficked Persons, <http://www.osce.org/odihr/124268?download=true>

<sup>51</sup> UNHCR (2010), UNHCR advises EU on measures to protect victims of human trafficking, available at <http://www.unhcr.org.uk/resources/monthly-updates/september-2010/unhcr-advises-eu-on-measures-to-stop-human-trafficking.html>. See also the UNHCR Guidelines on Victims of Trafficking for detailed notes on non-refoulement.

<sup>52</sup> UNODC (2009), International Framework for Action to Implement the Trafficking in Persons Protocol, [http://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf)

<sup>53</sup> UN (2011), Report of the Special Rapporteur on Trafficking in persons, especially women and children, Note by the Secretary-General, A/66/283, 9 August 2011

<sup>54</sup> 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. ILO (2009), Going back - moving on: a synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines / ILO Regional Office for Asia and the Pacific. Bangkok, ILO, 2009

<sup>55</sup> 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.

<sup>56</sup> 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.

<sup>57</sup> OSCE (2008), Efforts to combat trafficking in human beings in the OSCE area: coordination and reporting mechanisms.

<sup>58</sup> Further, the Southeast Asia National Human Rights Institutions Forum signed an Memorandum of Understanding Against Trafficking of Women and Children in 2010, SEANF (2010), Memorandum of Understanding Against Trafficking of Women and Children, Southeast Asia National Human Rights Institutions Forum.

<sup>59</sup> 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>

<sup>60</sup> 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.

<sup>61</sup> ITUC (2009), How to Combat Forced Labour and Trafficking: A best Practices Manual, [http://www.ituc-csi.org/IMG/pdf/TU\\_Guide\\_Forced\\_labour\\_EN.pdf](http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf).

<sup>62</sup> See Social Accountability International’s information page on SA8000, at <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937>

<sup>63</sup> 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\\_-\\_Everybody's\\_Business.pdf](http://www.ungift.org/docs/ungift/pdf/Human_Trafficking_-_Everybody's_Business.pdf)

<sup>64</sup> In the US, human trafficking is a “specified unlawful activity” under the nation’s primary money laundering law (US Code Title 18 Section 1956).

<sup>65</sup> Guzman (2014), In global battle against human trafficking, financial institutions lead the way, April 21, 2014, <http://www.acfcs.org/in-global-battle-against-human-trafficking-financial-institutions-lead-the-way/>

<sup>66</sup> Focus on Labour Exploitation CIC (2014), Access to Justice for Victims of Trafficking, available at <https://labourexploitation.files.wordpress.com/2014/06/flex-wp002-access-to-justice1.pdf>