

**TRAFFICKING IN CHILDREN FOR SEXUAL PURPOSES  
AN ANALYTICAL REVIEW**



## **CONTENTS**

### **Part A: ANALYTICAL FRAMEWORK 5**

1. The nature of the problem 5
  - 1.1. 'Push' factors 5
  - 1.2. 'Pull factors 5
  - 1.3. Mechanisms and traffickers 6
  - 1.4. Difficulties with data 6
  
2. Building consensus on definitions and terms 7
  - 2.1. Child sexual abuse 7
  - 2.2. Commercial sexual exploitation of children (CSEC) 7
  - 2.3. Trafficking 7
  - 2.4. Adults vs children 8
  - 2.5. Trafficking and migration 9
  
3. Some critical gaps 9
  
4. Protection, prevention and prosecution: legal perspectives to address trafficking 10
  - 4.1. The crime prevention framework
  - 4.2. The human rights framework

### **Part B: ANALYZING TRENDS, STRATEGIES AND INTERVENTIONS 13**

5. The anatomy of trafficking 13
  - 5.1 What fuels trafficking? 13
  - 5.2 Leading illegal lives 14
  
6. Addressing trafficking: approaches, strategies and interventions 14
  
7. Concluding comments 16



## **Part A: ANALYTICAL FRAMEWORK**

### **1. The nature of the problem**

The first World Congress against Commercial Sexual Exploitation of Children in Stockholm in 1996 placed the issue of commercial sexual exploitation of children (CSEC) high on the international agenda as a fundamental violation of their rights and a crime in international and national law. Since 1996, the exploitation of children in prostitution and pornography, and the sale of children's sexual services to local clients, to men (and sometimes women) travelling with the intent of abusing children, and across borders to people in other countries seeking children for sex, have been the focus of much study, consultation and action. In recent years, however, it is the trafficking of children (and indeed adults) that has become the focus of attention, as governments, intergovernmental bodies and non-governmental organizations (NGOs) have highlighted and then attempted to deal with the increase in movement of human beings both within their own countries and across borders, and their exploitation not only in commercial sex but in many other forms of exploitative labour, including begging and hawking, agriculture, manufacturing, entertainment, fishing and domestic service. Young women, many of them under 18 years of age, are also trafficked for marriage, and there are reports of children being trafficked for the trade in human organs as well as by militias who force them to fight or to undertake tasks ranging from sexual services to cleaning of weapons.

Trafficking is a complex phenomenon. It comprises a series of acts, not all of which may be illegal in other circumstances. Fundamentally, it can be said to involve the movement of a child from his/her normal location to a new location, and the exploitation of that child at some stage in the process.<sup>1</sup> It is this combination of movement and exploitation that characterizes trafficking, no matter when the exploitation itself takes place. It might, for example, occur at the very beginning of the journey, when a child, family or whole community is deceived with promises of a better life elsewhere, of greater work opportunities or rewards, or even safety from discrimination or conflict. It may occur if false documents are provided to the child or family, putting the child in debt bondage as well as a legally vulnerable situation. It may occur during the journey, if the child or at times whole family are smuggled across a border or otherwise helped as 'irregular' migrants. It might happen only after the child has moved 'willingly'<sup>2</sup>, not knowing what awaited him/her at the end of the journey.

#### **1.1 'Push' factors**

Trafficking is generally described according to the 'push' factors that lead to the child or adult leaving one place, and the 'pull' factors that decide the place to which the trafficking victims move or are moved. Push factors typically include poverty, family break-up, violence or other dysfunction, lack of job opportunities, low education levels or the wrong skills for the jobs that are available, family pressures or a sense of responsibility to provide for the family, discrimination or marginalization including the very fact of being female. Sometimes a compelling push factor is simply the perception that life is better somewhere else, a perception often supported by the mass marketing and consumerism that has crept into even remote rural areas through increasing globalization of communications technology and advertising.

#### **1.2 'Pull' factors**

Pull factors might include economic differentials that make even relatively poor neighbouring cities, regions or countries seem a likely source of livelihood, unmet demand for cheap and malleable labour, demand for sexual services for example linked to tourism development or shifts in the supply of local women in the sex sector (for example as a result of high HIV/AIDS prevalence).

Trafficked children are often separated from their families, isolated in towns or countries unknown to them, further isolated if they are not able to speak the language of the community in which they

end up, put into illegal and thus risky and frightening situations, incarcerated, badly fed, denied access to health and other services and, in many instances, exploited by means of coercion, violence or abuse of authority. Those children who are not trafficked directly into commercial sex may nevertheless transit into commercial sex either through persuasion, fear or threats.

### **1.3 Mechanisms and traffickers**

Trafficking of both children and adults takes many different forms and recent research has begun to identify regional patterns of trafficking.<sup>3</sup> With these different patterns, mechanisms and routes, there are also different categories of traffickers and exploiters who take on different roles along the journey from vulnerability to exploitation. In some regions, for example, children are recruited into the trafficking process by members of their own community who act as ‘suppliers’ of children to those who will exploit them. In other regions, recruitment is largely through bogus or semi-legitimate employment agencies, or through advertisements in local newspapers. Children may also be forcibly abducted or persuaded to relocate by adults who have returned from work overseas and who profit from providing others to take their place. Suppliers of false documentation and clandestine or quasi-legal travel arrangements will profit from the trafficking, as often will transport companies or individual drivers, ferry captains or others involved in moving the children. There may be people accompanying the children or families, who will hand them over to others in a cross-border relay chain. There may well be individuals or structures in place to ‘receive’ the children and place them into exploitation. And of course there are the pimps, brothel owners, employers and ‘handlers’ who will then exploit the child’s services for either labour or sexual commerce. At each stage of the trafficking process, this veritable army of exploiters will make money from the trafficking of the child. As a result of this low-risk, high-profit activity, in recent years there have been increasing reports of traffickers’ links with organized crime.

Combating trafficking consequently requires multidisciplinary cooperation at national as well as at regional and international levels, based on a detailed understanding of the players and mechanisms involved in each particular trafficking situation, and on the relative strengths of each party in acting against it.

### **1.4 Difficulties with data**

The United States Congress<sup>4</sup> has estimated that between 1 and 2 million people are trafficked each year worldwide, 50,000 of these into the United States. The United Nations estimates that, in the last 30 years, trafficking in women and children for sexual exploitation in Asia alone has victimized more than 30 million people.<sup>5</sup>

In practice, however, few statistics on trafficking victims are disaggregated according to the age of the victim. One disaggregated body of statistics, however, is data collected by the Migration Information Programme (MIP) of the International Organization for Migration (IOM) in the Netherlands. The MIP collected data from the Netherlands on 155 victims of trafficking who were assisted by the Foundation Against Trafficking in Women (STV) in 1994. Most of the women were from Central and Eastern European countries, but around one-third came from developing countries. Approximately three-quarters of the victims were women under the age of 25 and many of the victims (28 of 155) were aged between 15 and 18, especially those coming from Central Europe (16 of 44).<sup>6</sup>

A report on trafficking in children in the Mekong countries provides another estimate on the ratio of child victims.<sup>7</sup> In Thailand alone, it is estimated that there are 16,423 foreign prostitutes from the Mekong sub-region, including 30 per cent under the age of 18; 75 per cent of all prostitutes entered prostitution when they were under the age of 18. In total, it is estimated that, between 1990 and 1997, there were approximately 80,000 women and children from the Mekong sub-region and ethnic groups along the Thai/Myanmar border, drawn into the sex industry in Thailand.

In South Asia, UNICEF, NGO and government sources estimate that between 5,000 and 7,000 Nepali girls are trafficked every year across the border to India and most of them end up as sex workers in brothels in Bombay and New Delhi.

Statistical data, however, are in general both scarce and often unreliable. There is as yet no widely accepted methodology for data collection and so there is little comparability in the figures that do appear. Various data is collected from official migration figures, from information relating to arrests and prosecutions for such things as soliciting or illegal hawking, from surveys among children in drop-in centres or refuges, from children working and living on the streets, or through targeted small-scale surveys among children in situations of exploitation in brothels or other sex outlets. In some cases, whole surveys are based on media reports, failing to take account of the fact that media coverage is almost always, by definition, based on the exception rather than the rule. Alarming much valuable small-scale data is extrapolated into conclusions relating to much larger, and often quite different situations.

Additionally, what figures do exist are often recycled and regularly quoted without any reference to the original source or application. The figure of 5000-7000 Nepali girls trafficked into India each year and 150,000-200,000 of them in Indian brothels, for example, has remained unaltered since 1989.<sup>8</sup>

## **2. Building consensus on definitions and terms**

Because of the complex nature of the trafficking and the growing battery of international instruments, programming and research dealing with it, it is useful to begin with a reminder of some of the terms that are used:

### **2.1 Child sexual abuse**

This is understood as the involvement in sexual activity of a child who is unable to give informed consent for lack of comprehension of the act and its implications, and/or for which the child is not developmentally prepared to give consent.<sup>9</sup> Child sexual abuse may also refer to the use of a child in sexual activity that violates the laws or social taboos of a society.<sup>10</sup> Incest may be defined as child sexual abuse perpetrated by a blood relative. Child sexual abuse is non-commercial, to the extent that market forces or pecuniary gain, either in cash or kind, are not involved.

### **2.2 Commercial sexual exploitation of children (CSEC)**

CSEC involves the sexual exploitation of children primarily or entirely for financial benefit or other economic profit, in either monetary form or in kind (food, shelter, drugs, etc), and in most cases entails maximum gain to the exploiter (client, broker, agent, intermediary). CSEC also entails a violation of basic rights, dignity, and physical and mental well-being of the child. The Declaration<sup>11</sup> adopted at the first World Congress against Commercial Sexual Exploitation in 1996 defined CSEC thus:

*“The commercial sexual exploitation of children is a fundamental violation of children’s rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.”*

### **2.3 Trafficking**

Trafficking has been defined in many different ways over its history, and in recent years largely to accommodate the specific needs of the organization or body developing the definition. It has thus been variously defined, among others, in terms of human rights, criminal activity, irregular migration, labour exploitation and modern slavery. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the UN Trafficking Protocol) that was opened for signature in December 2000<sup>12</sup> brought much-needed and widespread consensus on a working definition of trafficking, thanks to a lengthy consultative process that attempted to bring in not only

governments but most of those involved in programming against trafficking, regardless of their sectoral mandate.

The Protocol defines trafficking 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 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.”* [Article 3(a)] It further specifies that ‘exploitation’ shall include “forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The UN Trafficking Protocol is an important step in the growing battery of instruments that consolidate understanding of trafficking as the movement and exploitation of human beings for whatever purpose. Historically, trafficking has often been confused as movement only for commercial sexual purposes, and has thus not been comprehensively dealt with in law. Still in many countries, anti-trafficking laws are also prostitution laws which seek variously to criminalize, regulate or control the sex industry and sex trade.

There is clearly an urgent need for countries to review laws that do not take account of a comprehensive understanding of trafficking and to ensure that adequate protection in law is provided for both adults and children who are victims of this heinous act. This is reflected in the approach taken by the United States in enacting the Victims of Trafficking and Violence Protection Act of 2000. As part of its commitment to global action against trafficking, the Act includes a provision for sanctions against countries not satisfying a number of minimum standards, among these the prohibition of trafficking, and the prescription of punishment “commensurate with that for grave crimes”.<sup>13</sup>

The Victims of Trafficking and Violence Protection Act essentially follows the definition of the UN Trafficking Protocol. It focuses on “severe forms of trafficking in persons” and defines these as:

- *sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or*
- *the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

The term “sex trafficking” is defined in the Act as the recruitment, harbouring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

As the battery of legal instruments has grown in recent years,<sup>14</sup> it has become clear that trafficking in human beings is now widely understood to be not only a crime but also a serious violation of human rights, children’s rights, labour rights, and fundamental freedoms.

## **2.4 Adults vs children**

Many of the major documents and laws addressing the issue of trafficking continue to make no distinction between the trafficking of adults (generally women) and children. In part this is because trafficking is a clandestine activity and disaggregated data are difficult to collect. As a result, for example, the International Organization for Migration (IOM) regularly published research results on ‘women’ victims of trafficking that may include data relating to 16 and 17 year-olds who are to be protected under international law as ‘children’. Efforts to disaggregate data must continue if children and women are to benefit from the laws that have been drafted to protect them.

In commenting upon the South Asian Association for Regional Cooperation (SAARC) Draft Convention on Trafficking, for example, in which children and women are considered as a single group, the UN Special Rapporteur on Violence against Women has said that “the legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with children must be completely different”.<sup>15</sup> Some women, for example, may have been trafficked while they were children. In such a case a woman should be

‘entitled to a legal remedy for any harm she may have endured as a child, whether it is in the form of child sexual abuse, slave labour, or coerced work while still a minor. Providing such remedies is different from setting up a legal regime that treats all women like children’.<sup>16</sup>

## 2.5 Trafficking and migration

The debate on trafficking has also in recent years increasingly occurred alongside consideration of migration – legal, illegal and irregular. In some parts of the world this has been a logical result of the nature of the trafficking pattern in that region: trafficking between Eastern and Western Europe, for example, frequently occurs within the flow of irregular migration, with children being separated from their families by those who are facilitating the movement of the family. There has also been confusion between trafficking – which presumes an exploitative act – and alien smuggling, which may have no intended exploitation.

The United Nations Convention against Transnational Organized Crime and its two distinct Protocols -- on Trafficking and against the Smuggling of Migrants by Land, Sea and Air – has tried to address this problem. The Protocol on Smuggling defines smuggling of migrants as:

*“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.*

The definition of trafficking, in contrast, includes means of coercion, deception or some other form of illicit influence in the recruitment and transportation process.

However it is dealt with, however, there is growing acknowledgement that trafficked people should be dealt with not as criminals of illegal or undocumented migration, but as victims of a chain of events that might include coercion or deception in recruitment and transportation, and culminate in exploitation, forced labour, and slavery-like practices involving economic and/or sexual exploitation.

## 3. Some critical gaps

As understanding of the nature of trafficking improves and the complexities inherent in both the problem and responses to it are clarified, it is also clear that there are a number of unmet challenges that need to be addressed. Some of these are listed below:

- There is still limited understanding of the complex links between poverty, gender, age, displacement, mobility, market factors and HIV/AIDS, and how these lead to particular vulnerability to trafficking;
- Both government and civil society institutions as well as other stakeholders have still only begun to develop and implement effective interventions based on reliable research and evaluated according to appropriate criteria;
- The challenge of involving affected children and their families as active participants in initiatives addressing prevention, protection, reintegration and care is still largely unmet;
- There are few comprehensive regional and national rights-protective strategies to combat the trafficking of children;
- There are few models of recovery, repatriation and reintegration actions that prioritize the interests and rights of children affected by trafficking;
- There is a clear need for models for institutional capacity building, measurement and evaluation, coordination and strategic planning;
- The challenge of devising methodologies that provide evidence-based, comprehensive data on trafficking has not been met.

These gaps may lead, *inter alia*, to:

- Further victimization and criminalization of trafficking victims because of their illegal status;
- Skewed, inaccurate and unsubstantiated statistics for the number of trafficking victims and the mechanisms involved, leading to inappropriate responses, wasted resources and little or even negative impact;
- Draconian laws which, in an attempt to prevent trafficking, formulate penalties which are so stringent (death penalty and life imprisonment) that the conviction rate falls drastically due to imperfect investigation, weak evidentiary procedures and reservations on the part of judges to mete out such harsh sentences;
- Further violations of the human rights of victims due to enhanced powers accorded to law enforcement agencies, many of whose members are corrupt and partners in the crime;
- Increased invisibility and inaccessibility of victims of trafficking when the wholesale and uncritical criminalization of the sectors into which they have been exploited (brothels, sweatshops, for example) encourages the criminals operating these sectors to move them underground.

#### **4. Protection, prevention and prosecution: legal perspectives to address trafficking**

Legal perspectives determining anti-trafficking interventions may be broadly divided into two major frameworks: the crime prevention framework, and the human rights framework.

##### **4.1 The crime prevention framework**

The crime prevention framework views the issue of trafficking as a problem of law and order involving international or local crime gangs, which necessitates ‘cleaning up’ operations. This framework relies upon increased participation of law enforcement agencies, stricter border controls and surveillance, greater powers to police to search, seize and prosecute, and tightening of legal regimes through promulgation of invariably more stringent and punitive laws.

The UN Trafficking Protocol and the UN Convention against Transnational Organized Crime are both grounded in the framework of crime prevention and were finalized under the aegis of the UN Crime Commission.

Other major international instruments that take a primarily crime-related approach to trafficking are:

- International Convention for the Suppression of White Slave Traffic (1910)
- International Convention for the Suppression of the Traffic in Women and Children (1921);
- International Convention for the Suppression of the Traffic in Women in Full Age (1933)
- Convention on the Suppression of Trafficking and the Exploitation of the Prostitution of Others (1949);<sup>17</sup>

In addition to these instruments, regional initiatives such as the SAARC Draft Convention for Preventing and Combating Trafficking in Women and Children (1998) and a majority of national laws deal with trafficking essentially as an issue of law and order, aiming to eliminate trafficking as a contravention of such laws. Such predominantly crime-focused instruments do not necessarily deal with the effects on the victims of trafficking nor on the rights of the victim as they relate both to the act of trafficking and due redress and treatment under the law.

## 4.2. The human rights framework

Trafficking has been identified as a fundamental human rights violation by both the United Nations Secretary General and the United Nations High Commissioner for Human Rights.<sup>18</sup> Several significant international treaties and agreements have been promulgated to address the human rights violations involved in the trafficking of human beings, among them:

- Convention on the Elimination of Discrimination of Women (CEDAW) (1979)
- Convention on the Rights of the Child (CRC) (1989)<sup>19</sup>
- Convention on the Protection of All Migrants and their Families (1990)
- The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)<sup>20</sup>
- The Stockholm Declaration and Agenda of Action against Commercial Sexual Exploitation of Children (1996)
- The Rome Statute of the International Criminal Court (1998)<sup>21</sup>
- International Labour Organization Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)<sup>22</sup>
- The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)<sup>23</sup>

There are also several important regional and sub-regional agreements:

- **Recommendation 11 on action of the Council of Europe adopted against trafficking in human beings for the purpose of sexual exploitation (2000):** This Recommendation covers the procurement by one or more natural or legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal- of persons, even with their consent, for the purpose of their sexual exploitation, *inter alia* by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability.
- **Two Framework Decisions submitted by the European Commission for adoption by the Council (2000):** Two Framework Decisions were submitted, one concerning trafficking in persons and the other concerning sexual exploitation of children.<sup>24</sup>
- **Association of South East Asia Nations (ASEAN) Ministerial Decision on Trafficking (1999)** has stressed the urgent need to strengthen the regional capacity of ASEAN to combat such trafficking.
- **SAARC Draft Convention for Preventing and Combating Trafficking in Women and Children (1998):** The adoption of this Convention, which has been finalized, is contingent on the scheduling of the next SAARC Summit.

In essence, the human rights framework draws upon the human rights standards and principles that have been codified in international treaties, covenants and protocols, which are promulgated and monitored by the United Nations system and its mechanisms. These offer a framework as well as tools for analysing the issue of trafficking.

By taking into account the principles of universality, indivisibility and non-discrimination which are the bases of the human rights framework, an analysis of the causes and consequences of trafficking must, in actuality, include all economic, social and cultural factors as well as the civil and political contexts of the places and communities where trafficking occurs. It is vital to consider all these factors in any strategy to combat and especially prevent trafficking, at any level. In addition, inclusion of the basic principles of ‘participation’ and ‘self-representation’, as key elements of human rights action, into anti-trafficking strategies and programmes have been seen to strengthen the rights of trafficked children and women. “ Rights remain theoretical, and become real and

concrete only when the people become conscious of their entitlement, and are able to act to secure or exercise that right.”<sup>25</sup>

## **Part B: ANALYSING TRENDS, STRATEGIES AND INTERVENTIONS**

Given the scope of this paper, it is not possible to describe or even fully outline the various global patterns and trends of trafficking in children for sexual purposes nor even highlight the vast array of interventions.<sup>26</sup> Therefore, in keeping with the spirit of critical analysis of the previous section, an attempt has been made in this segment of the paper to briefly highlight and assess some of the major patterns evidenced in relation to trafficking of children. This section also identifies and discusses some of the problems and strengths of anti-trafficking interventions by analysing the approaches and strategies in the context of which they have been designed and implemented. It is important to point out as a caveat that, in identifying and analysing specific examples, the objective is to further the project of collective discussion and constructive learning.

The chronic problem of reliable data on trafficking is a hurdle that cannot be overstated. A necessary condition for effectively combating the phenomenon of trafficking in human beings is acquiring better knowledge of the phenomenon. However, given the clandestine nature of trafficking, this task is very difficult.

### **5. The anatomy of trafficking**

#### **5.1. What fuels trafficking?**

The phenomenon of trafficking is truly global, affecting richer and poorer countries alike. The source areas or points of origin are often the more deprived regions or countries, and the points of destination are often – although not always -- urban conglomerates within or across borders, or sites such as tourist destinations where demand for cheap labour and commercial sex is developed. Importantly, it is the (real or perceived) differential between the economic status of source and destination area that is important; in practice, children may be trafficked from one poor area to another poor area as long as there is some clear economic incentive for this to happen – for example from one rural area to another to take account of the demand of seasonal workers for prostitutes .

Many causes have been attributed to the growth of trafficking in adults and in children, including poverty, lack of sustainable livelihoods, structural inequities in society, gender discrimination, war and armed conflict, and other forms of natural or constructed disasters. However, it is critical to understand that these factors are not in themselves the causes of trafficking; they merely exacerbate the vulnerability of marginalized and disadvantaged groups and render them increasingly more amenable to a variety of harms. These factors contribute to the ‘freeing-up’ of marginal and vulnerable groups and hence create a potential supply of migrants and livelihood-seekers. The trafficking of people is, most importantly, a demand-driven phenomenon. It is contingent upon unmet demand from particular sectors of the economy for certain types of labour that would enable maximization of profit. And trafficking for commercial sexual purposes is tied in to the expansion and diversification of the sex entertainment industry, as well as to the expansion of marketable, intimate services and arrangements, including marriage.

It is the drive to maximize profit in a situation of least risk that creates demand for workers who are the most exploitable and controllable. Children, followed by women, fit this description perfectly. All trafficking includes aspects of forced or exploitative labour, be it productive or sexual labour.

Hence in ascertaining the causes of trafficking, the distinction between causes of vulnerability that creates supply, and the nature and incidence of demand, needs to be maintained. Like smuggling, the sale of children and bonded labour, trafficking in children feeds upon the vulnerability of the marginalized and on their need to seek alternative life options at the economic and/or social levels; it is caused by the drive to extort the maximum benefit or profit through extreme and heinous forms of exploitation and abuse.

## 5.2. Leading illegal lives

Cross-border trafficking as well as smuggling or other clandestine forms of labour recruitment is closely connected to imbalances between the growing numbers of unskilled job-seekers and the availability of legal and sustainable work in places where they have legal rights to residence or citizenship.

A recent ILO study supports this and maintains that “labour trafficking should not, in theory, take place if the job-seeker has freedom of geographical movement and freedom of access to employment”.<sup>27</sup> Lack of legal rights to mobility and to legally accepted forms of livelihood compel marginal and vulnerable groups to lead illegal lives, enhancing many-fold their vulnerability to harms such as trafficking, bondage, slavery-like working and living conditions, and HIV/AIDS. This is the ‘quintessential knot’ in the nexus of vulnerability where prevailing vulnerabilities of age, gender and socio-economic status forge a dialectical relationship with newer vulnerabilities such as widespread and unprecedented insecurity of food and livelihood spawned by globalization. The UNDP’s *1999 Human Development Report* traced a clear connection between the increase in trafficking and the expansion of globalization.

This nexus of vulnerability is increasingly cemented today by the ‘illegality factor’, where practically everything about the victim of trafficking is covered by a shroud of illegality. Hence, the work done by trafficked people is often illegal; her/his age is often below the legally stipulated age of employment; her/his status within the country of residence is illegal; the conditions of work under which s/he labours are illegal or not up to legal standards; the hovels, slums or brothels in which s/he resides are illegal; and several of her/his partners in business or life are illegal, such as pimps, madams, other sex workers.

The illegal status of trafficking victims keeps them from accessing most of the freedoms and rights that are extended to human beings. They frequently live hidden and invisible lives. Much of their energy is spent on averting either state agents such as law enforcement from apprehending them, or non-state agents, such as their employers and exploiters, from exploiting them further. The illegality of the status and persona of victims of trafficking intensifies their victimization severalfold; their criminalization as workers and people on the other hand stigmatizes them and leaves them little recourse to avenues for redress.

Any strategy to address the issue of trafficking of children and adults from a rights-based perspective, therefore, must respond to issues of illegality and criminalization of the victims. A preventive strategy in this regard must be targeted towards providing expanding options for forms of legal employment or means of earning a livelihood. It is also crucial to address the issue of mobility and the right to freedom of movement. This is tied in integrally with questions of migration and the rights of migrants. In the context of trans-border movement of people and border controls exercised by nations, the question of illegality of migrants is a complex one. Nonetheless, concerns related to the rights of a person regardless of citizenship and nationality need to be taken up in a systematic fashion within the anti-trafficking discourse on strategies and interventions. At the same time, the debate on the rights of young people to migrate should be expounded within this framework.

## 6. Addressing trafficking: approaches, strategies and interventions

Trafficking is a complex problem with serious visible and invisible impact especially on children. This inherent complexity necessitates that action be taken on several levels by several actors during the various stages of the trafficking process. However, of essence to developing strategies and subsequent interventions is the approach adopted or framework within which strategic and

programmatic interventions are embedded. This section of the paper broadly analyses the various approaches and initiatives to combat the trafficking of children especially for commercial sexual exploitation.

Six major approaches were identified in a groundbreaking study on trafficking commissioned by the UN Special Rapporteur on Violence Against Women.<sup>28</sup> Completed in 1997, this study undertook a global analysis of trends and interventions in various fields on the trafficking of women. However, many of its conclusions are relevant to the trafficking of children. The six approaches determining strategies and interventions highlighted by this study view trafficking variously as (i) a moral problem, (ii) a problem of organized crime, and law and order, (iii) a migration problem, (iv) a labour problem, (v) a public health problem, and (vi) a human rights issue.

Trafficking of children and women has generally been marked by interventions that flow from one or more of these approaches. The UN Convention on Transnational Organized Crime views trafficking as a problem of organized crime, law and order, and migration. The 1949 UN Convention which preceded the new one, and determined laws and initiatives at the international and national levels until 2000, framed the issue of trafficking as a moral problem with a crucial interface with the law and order approach. The 1949 Convention, while purporting to be an anti-trafficking instrument, was basically a tool to legislate on the issue of prostitution. By failing to differentiate trafficking and prostitution, it engendered interventions that promoted moralistic stances and injunctions in relation to both adult women and minors. Contrary to the moralistic approach, strategies which foreground issues of HIV/AIDS, safe sex practices, sex education and other programmes on health, basically approach trafficking from the perspective of public health.

Trafficking of children, especially for commercial sexual exploitation, has been predominantly framed within the rights approach embodied in the CRC and, since 1999, also within the discourse on child labour. The labour approach has allowed some interesting new approaches to tackling trafficking of children through labour sector players who might otherwise not be engaged in work to protect children, for example trade unions, professional associations and chambers of commerce. The child labour approach is often combined with principles enshrined in the CRC to forge a framework that could potentially be the most empowering of approaches deployed thus far on the issue of trafficking.

Strategies and interventions to address the trafficking of children can be categorized under three major headings: prevention of trafficking; prosecution of traffickers; protection of the human rights of trafficked children.

Within these, there are two principal clusters. The most commonly employed is the cluster of **repressive** strategies, such as:

- restrictive immigration policies that presume that “if we prohibit ‘alien’ children and women from travelling or migrating, they will not become victims”;
- increasingly harsher punishment based on the notion that “if we make penalties very severe people will be deterred”;
- stringent policing and prosecution that presumes that a blanket web of strict control with powers to seize, apprehend, detain and prosecute will lead to ‘a cleaning-up’ of criminal elements and reduce trafficking;
- non-recognition of the informal sector of the economy with a bid to make it illegal, in the belief that “this will eradicate the problem of labour exploitation and child labour”.

In contrast, the second cluster is the **empowering** cluster, based upon expanding and enhancing the rights of children and women who are trafficked. These are strategies that flow from the need to address the harm done to the victims of trafficking, and that ground themselves in strengthening

the human rights of those affected. Empowering strategies call for clearer criminal codes and more effective and non-discriminatory enforcement of laws while at the same time foregrounding care, support and assistance measures for the victims of trafficking. Centring on the rights, realities, needs and aspirations of those who are trafficked or vulnerable to it, empowering strategies focus on: respecting, protecting and restoring the rights of those affected; supporting and assisting; enabling and facilitating; increasing the agency of those involved through principles of self-representation, participation and self-determination; and eliminating root causes.<sup>29</sup>

## **7. Concluding comments**

Given the tentative nature of understanding, data, strategies and interventions relating to trafficking, there can be no conclusive summation of any discussion on this issue. This is all the more true in the case of trafficking of children for commercial sexual exploitation, which is itself a clandestine activity and subject to much unsound documentation. Engagement with trafficking is fraught with challenges because of so many ‘unknowns’. Foremost among these is the abysmal lack of evidence-based data.

This is compounded by an absence to date of a sound and rigorous methodology to research and gather quantifiable data. In the absence of a systematic method to derive quantitative data, the expectation of finding a large body of qualitative information is not unfair, especially when trafficking in women and children as an issue has dominated the arena of social justice for at least the past decade. However, a close analysis of existing material belies this expectation as well. There is a ray of hope, though, which rests on very recent moves on the part of serious researchers to re-engage with this issue in terms of revisiting ‘the beginning’ and undertaking the task of generating ‘sound’ information.

While the absence of data remains a major hurdle, anti-trafficking interventions are increasing in size and frequency. The urgency for “combating”, “stopping”, “eliminating”, and “addressing” trafficking in children and women is no doubt well-placed and emerges from the particularly heinous nature of this crime -- there seems to be universal agreement that trafficking in children for commercial sexual exploitation is a practice that offends all principles of human dignity and violates basic human rights – but this has brought a host of players into the anti-trafficking arena, who have designed and implemented a vast range of activities at all levels and stages of trafficking, often without a platform of sound research on which to build programming. Despite the lack of documented data, however, there are a few examples of good practices that have succeeded in protecting and enhancing the rights of trafficked children. There are many examples of good intentions on the part of key actors even if good practices have not always flowed out of good intentions. Above all, there are countless instances of demonstrated commitment to the objective of social justice and human rights principles all over the world on the issue of trafficking of children.

The inherent complexity of the issue of trafficking of children, combined with lack of data on the one hand and the immense commitment to urgently rectify the problem on the other, has resulted in over-enthusiastic responses in many instances. Such responses are predicated on the assumption that ‘tightening the screws’ will alleviate the crime. However, contrary to their aim, some of these responses have not achieved the aim of child protection and promotion of child rights. The ambit of anti-trafficking initiatives is further weakened by the relative lack of rigorous indicators for evaluating the impact of interventions at various levels.

The “tightening the screws” strategy that has tended to underpin over-enthusiastic responses to trafficking of children is noticeable in the area of law and legislation, rescue and repatriation, as well as interception at border points during the process of transportation and migration. Increasingly stringent laws with draconian measures and harsh punishments have been drafted. At the same time, aggressive and intrusive rescue operations with little regard to the wishes or rights of the

victim have been conducted. Judicial procedures that are anything but rights-based or child-friendly have been employed during trials, and little attention has been paid to witness protection in many cases. In some instances, prevention initiatives have been tantamount to restricting the right to freedom of movement of girls, hence reinforcing the patriarchal practice of keeping girls trapped within the home. Community surveillance and watchdog committees have sometimes gone overboard in their enthusiasm to police young girls and women and, in their enthusiasm to protect, have been responsible for violating the rights of the girls deemed to be vulnerable. Rehabilitation has sometimes meant nothing more than a change in venue of incarceration of the victim from a brothel to a shelter.

Reintegration has been the most difficult stage within the anti-trafficking process, especially in the case of girls returning from the sex industry. The incidence of reintegration at the family and community levels has been low and painstakingly slow. Reintegration within the family or community may not even be desirable when much child sexual abuse is perpetrated within intimate family settings or by people known to the child. However, alternative forms of recovery and reintegration that are both innovative and rights-based and that can be emulated as models have been slow in emerging.

The purpose of this paper in identifying gaps in anti-trafficking strategies and interventions is not to construct a dismal picture of doom and gloom. On the contrary, the commitment to address the problem of trafficking of children for commercial sexual exploitation is apparent in every quarter. Some governments have shown political will by developing national plans of action to combat CSEC. Across borders, governments have drafted memoranda of understanding to allow them to work more effectively together against cross-border criminals. Regional and sub-regional networks, task forces, planning groups and consultative mechanisms have been put in place by governments and intergovernmental agencies, often involving partners from the NGO world.

Intergovernmental and non-governmental organizations have built on traditional programming strengths to develop new initiatives that take account of the specific needs of children who have been trafficked, or those at risk of being victimized. In the context of this background of enormous positive energy, it is time to stop and engage in a systematic stock-taking on the issue. In this light, the 2nd World Congress against Commercial Sexual Exploitation of Children should be seen as a vital moment, both in real and metaphorical terms, to engage in deep reflection, critical analysis, review and evaluation, and reformulation of strategies to address the trafficking of children for commercial sexual exploitation from the standpoint of child protection and a rights-based framework.

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<sup>1</sup> *Trafficking of Children: Problem and Emerging Responses Worldwide*, ILO-IPEC, forthcoming December 2001.

<sup>2</sup> This concept of 'willingness' is no longer accepted in international law since the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature in December 2000. The Protocol specifically excludes the possibility of 'consent' to trafficking by any person under the age of 18.

<sup>3</sup> *Trafficking of Children: Problem and Emerging Responses Worldwide*, ILO-IPEC, *op.cit.*, Part II.

<sup>4</sup> Francis T Miko, *Trafficking in Women and Children: the US and International Response*, Congressional Research Service Report 98-649 C, May 2000, p.1.

<sup>5</sup> <http://www.unicef.org/programme/cprotection/trafficking.html>.

<sup>6</sup> IOM, *Trafficking and Prostitution: The Growing Exploitation of Migrant Women From Central and Eastern Europe*, 1995.

<sup>7</sup> Karitaya Archavantikul, *Combating the Trafficking in Children and their Exploitation in Prostitution and Other Intolerable Forms of Child Labour in Mekong Basin Countries*, Bangkok, 1998, cited in Shibahara and Saeki, *art.cit.*, p.

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<sup>8</sup> The article which first published these statistics was written by Dr. I.S. Gilada of the Indian Health Association in Mumbai, and was presented at a workshop in 1986. Subsequently, a version of this piece was published in the *Times* of India, January 2, 1989. These figures have since been recycled by innumerable reports and articles on trafficking in Nepal.

<sup>9</sup> See above, note 2.

<sup>10</sup> This is also largely the UNICEF definition which may be viewed at [www.unicef.org/programme/cprotection/traf.htm](http://www.unicef.org/programme/cprotection/traf.htm)

<sup>11</sup> Stockholm Declaration and Agenda for Action, 1996, para 5. Full text available on the website of the 2<sup>nd</sup> World Congress: [www.focalpointngo.org/yokohama](http://www.focalpointngo.org/yokohama)

<sup>12</sup> Eighty-one countries had signed the Protocol by November 2001.

<sup>13</sup> The US State Department released its first report on Trafficking in Persons in July 2001. In this, 82 countries' performance against the minimum standards is evaluated, and each country is ranked in one of three tiers. Countries that fully comply with the Act's minimum standards appear in tier one. Tier two consists of countries whose governments are making "significant efforts to bring themselves into compliance" with the minimum standards stipulated in the Act, and tier three includes 23 countries who are considered to be lagging behind in complying with the minimum standards to address the problem of trafficking. If these countries are still in tier three in the year 2003 report, they may be subject to sanctions including withdrawal of non-humanitarian, non-trade-related assistance.

<sup>14</sup> Other recent instruments that are relevant to the legal framework to combat trafficking include ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999); the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000); the Hague Convention on the Protection of Children; and the Rome Statute of the International Criminal Court.

<sup>15</sup> Radhika Coomaraswamy, *Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls* (28 October -15 November 2000), Integration of Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on Violence against Women, its causes and consequences, in accordance with the Commission on Human Rights resolution 2000/45: GE.01-10865 (E)

<sup>16</sup> See Jyoti Sanghera and Ratna Kapur, *Trafficking in Nepal: Policy Analysis – An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal*, at p. 24 (Sponsored by the Population Council, New Delhi and the Asia Foundation, Nepal).

<sup>17</sup> The Convention obliges State Parties to punish anyone who, "in order to gratify the passions of another, procures, entices or leads away, for purpose of prostitution, another person, even with the consent of that person; exploits the prostitution of another person, even with the consent of person; keeps or manages, or knowingly finances or takes part in the financing of a brothel; knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others".

These conventions on trafficking in women and children for prostitution show that the emphasis was placed more on the prohibition of prostitution than on the trafficking in women and children.

<sup>18</sup> See the Secretary General's statement to the High Level Conference in Palermo, Italy, to mark the opening for signature of the UN Convention against Transnational Organized Crime, 12 December, 2000, see <http://www.odccp.org/palermo.convmain.html>.

<sup>19</sup> Article 11 of the CRC obliges States Parties to take measures to combat the illicit transfer and non-return of children abroad through the promotion of bilateral and multilateral agreements. More explicitly, Article 35 of the Convention calls upon States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. Article 39 requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of exploitation

<sup>20</sup> This convention prohibits improper financial gain from inter-country adoption.

<sup>21</sup> The Rome Statute of the International Criminal Court that was adopted on 17 July 1998 and opened

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for signature. The International Criminal Court has jurisdiction over “crime against humanity”, which includes enslavement, sexual slavery, enforced prostitution, or any other form of sexual violence of comparable gravity, when committed as part of a widespread or systematic attack directed against any civilian population. Thus the Court has jurisdiction over the trafficking if it is committed as part of a widespread or systematic attack.

<sup>22</sup> ILO Convention 182 requires that each member shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. For the purposes of Convention 182, the term ‘the worst forms of child labour’ comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

<sup>23</sup> The Optional Protocol obliges States Parties to prohibit the sale of children, child prostitution and child pornography. Article 2 defines the term “sale of children” as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. Article 3 obliges State Parties to ensure that, as a minimum, the following activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally, or on an individual or organized basis: (i) offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, or engagement of the child in forced labour; (ii) improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption.

<sup>24</sup> The Decisions require Member States to modify their own legislation and penal codes in order to standardize the definition of offences, and the penalties attached to particular offences, throughout the European Union. It addresses the issue of penalties and jurisdiction, and also touches upon measures to ensure protection of trafficked persons.

<sup>25</sup> Lin Chew, *Addressing Trafficking in Persons in the Human Rights Framework*, Technical consultative meeting on Anti-Trafficking Programs in South Asia, Kathmandu, Nepal, September 11-13, 2001, organized by the Population Council, Path and UNIFEM, p.9.

<sup>26</sup> *Trafficking of Children: Problem and Emerging Responses Worldwide*, ILO-IPEC, *op.cit.*, makes a first comprehensive attempt to provide an overview of trafficking worldwide and to identify regional patterns. It also surveys emerging responses to trafficking by governments, regional networks and bodies, intergovernmental agencies and NGOs and offers ideas on lessons learned to date. The report will be available as a working draft in December 2001.

<sup>27</sup> ILO, *Stopping Forced Labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 89<sup>th</sup> Session 2001, p.53, available at <http://www.ilo.org>.

<sup>28</sup> Marianne Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery Like Practices in Marriage, Domestic Work and Prostitution* STV and GAATW, Utrecht, 1997.

<sup>29</sup> Global Alliance Against Trafficking in Women (GAATW), *Human Rights and Trafficking in Persons: A Handbook*, Bangkok 2001, p.78.