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**INTERNATIONAL SYMPOSIUM
THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME:
REQUIREMENTS FOR EFFECTIVE IMPLEMENTATION
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***GETTING AT THE ROOTS*
STOPPING EXPLOITATION OF MIGRANT WORKERS BY ORGANIZED CRIME:**

SUMMARY

This contribution presents ILO perspective and experience in combating exploitation of migrant workers by organized crime in its broader labour migration and regulatory context. It outlines labour migration demand and push factors, describes incentives for trafficking arising from absence of regular migration channels, offers specific examples of migrant abuse, and presents proposals for comprehensive migration measures to combat trafficking and reduce underlying pressures.

The first section summarizes *powerful 'market pressures'* reflected in demand and push factors driving migration, namely continuing demands in both Western industrialized countries and emerging economies for cheap, low-skilled labour, in such sectors as agriculture, food processing, construction, domestic help, labour-intensive manufacturing, home health care, and other sectors, often involving dirty, dangerous and degrading jobs. The increasing 'crisis of security' resulting in many societies as an aspect of globalization is cited in describing increasing pressures for emigration. Related *push* factors include disappearance of traditional industry, loss of agricultural competitiveness, elimination of jobs and subsidies by structural adjustment, and resulting increased poverty.

The second section notes that immigration restrictions in many situations have inhibited regular labour migration to meet measurable labour demands. Given these demands, employers and migrants are willing to pay increasingly higher prices to meet each other in an internationalized labour market. Increased migration control and restrictions contributes to making circumventing restrictions a lucrative field of activity to respond to market pressures, making trafficking and smuggling of migrant labour very profitable.

The third section outlines some dimensions and characteristics of trafficking and the resulting abuse of victims, drawn from the extensive ILO research and programmatic activity in several regions worldwide.

The concluding part outlines an integrated national legal and labour market policy package necessary to effectively combat trafficking and organized criminal involvement. Components include: elaboration of regular migration channels based on labour market assessment to identify needs for labour migration; a

standards based approach to criminalize trafficking and exploitation while ensuring protection of migrants rights; complementary enactment and enforcement of minimum standards for decent work conditions; development of institutional mechanisms and practical measures including public advocacy and awareness raising to cover prevention, protection, rights restoration, recovery and healing services addressing victims of trafficking.

Introduction

The theme of this symposium is the *requirements for effective implementation* of the Palermo Convention. This paper focuses on the Protocols to that Convention that most directly affect workers, migrant workers. We start by describing and analysing economic and social conditions that give rise and impetus to trafficking and smuggling of migrants, and make of them profitable enterprises. In response, we outline the basis for and content of a comprehensive policy approach to addressing economic and social factors as well as law enforcement. Only attacking the roots of trafficking, as well as its immediate manifestations, can we assure an effective implementation of the Protocol.

The Palermo Convention Against Transnational Organized Crime and its Protocols on Combating Trafficking in Persons and against Smuggling of Migrants were adopted in December 2000 in the spirit of the fight against organised crime. The focal point in these instruments is clearly the organised criminal group and how to weaken it through law enforcement. The main provisions of the Convention and Protocols reflect this by dealing almost exclusively with providing for the criminalization of such groups and improving measures to fight them. In adopting these instruments, governments therefore commit to criminalizing offences committed by organised groups, cracking down on the proceeds of crime, speeding up and widening the reaches of extradition of members of criminal groups and tightening law-enforcement cooperation to seek out and prosecute suspects.¹ The logic of these instruments is that the interception and prosecution of the members of criminal groups will lead to their downfall.

A distinguishing feature of the movement of people, as compared to the movement of illicit goods by criminal groups, is the question of choice, by the people moved, as to how the movement is organised. We are dealing with people, not commodities. People, unlike commodities, are conscious actors, exercising choices in their decisions and activities. Furthermore, people have inalienable human rights, which must be protected. The trafficking paradigm is particularly complex because by definition it violates both the possibilities for choice and fundamental rights by such features as coercion, physical and sexual abuse, deception and kidnapping.

Experience of ILO constituents and ILO's own research demonstrates that restrictive barriers placed between strong push and pull factors make trafficking and smuggling lucrative business. On the adoption of the Palermo Convention, the Minister of State of the UK, Barbara Roche, remarked that 'A European Union report on migration has found that almost all *illegal entrants* now make use of criminal groups to facilitate their travel.'² What alternative do they have?

Combating organized crime in the context of movement of people also must take into account securing cooperation by victims. If successful prosecutions of traffickers require the testimony of victims, there is

¹ See 'After Palermo: An Overview of what the Convention and Protocols Hope to Accomplish' at www.undcp.org/palermo/sum1.html

² UN Press Release L/T/4356, 'Aspects of UN Convention Against Transnational Organised crime Discussed by 19 Government Representatives' (author's italics).

little incentive for victims to voluntarily testify if they risk deportation to their countries of origin as irregular migrants. It is equally clear that victims of trafficking identified during police raids often fear reprisals by traffickers and therefore do not provide evidence for the prosecution of the trafficker or the criminal group.³

The combination of these two factors appears to seriously undermine the capacity for States to control trafficking by criminal groups through prosecution in the short term. The question this paper poses is whether States may be able to weaken criminal groups more successfully by providing migrants with incentives to make the right choices in the manner in which they travel and thereby avoid the services of criminal groups. Beyond immediate choices, employment possibilities –in both home and host countries– must be generated that broaden or expand choices of potential migrants for employment and livelihood.

Only a comprehensive set of measures to eliminate root factors that make trafficking and smuggling necessary for migration, and profitable for criminal groups will achieve what the Protocol against trafficking intends to obtain. These measures include addressing conditions that compel out-migration, reducing widespread demand for clandestine and unregulated labour, and replacing restrictive barriers with regulated legal migratory channels. And in the longer-term perspective, assistance programs in skills training, micro-finance and employment creation must be put on the agenda.

The lack of adequate and appropriate regular migration channels in the face of important imbalances between labour supply and demand argues for clarifying distinctions between smuggling of migrants across borders, and trafficking in persons, the latter by definition comprising deception, coercion and exploitation. Smuggling per se will be all but unavoidable and stoppable until labour market imbalances in a globalized economy are addressed through regular and transparent mechanisms. However, the exploitation, deception, coercion combined with multiple other violations of human rights must be combated by all means.

I. Supply and Demand Factors driving Trafficking and Smuggling of Migrant Workers

a) Supply Factors.

In this age of globalization, most countries of the world are engaged, to varying degrees, in processes of substantial economic reform. These include the adoption of market economies, trade liberalisation, privatisation, new rules of international investment and new labour regimes, as well as new forms of international cooperation and trade agreements⁴. As a consequence of some of these reforms, livelihoods have been lost through the disappearance of public sector employment, decline of traditional industries, loss of agricultural competitiveness, and elimination of jobs and subsidies by structural adjustment. Disappearance of jobs and increasing poverty has directly led to increased migration pressures in **countries of origin**. As a recent ILO study puts it:

the evidence so far available on the impact of globalization points to a likely worsening of migration pressures in many parts of the world. Peter Stalker finds that processes integral to globalization have intensified the disruptive effects of modernization and capitalist development.

³ See Conference Report of the OSCE Office for Democratic Institutions and Human Rights, Berlin 15-16 October 2001, 'Prevention: Migration Policies Within the European Union', at 68.

⁴ Escobar Latapí, Agustín; *Emigration Dynamics in Mexico, Central America and the Caribbean*, 12th IOM Seminar on Migration, Managing International Migration in Developing Countries, Geneva, 28 -29 April, 1997, p.1.

While acknowledging that this has been different from one country to another, “the general effect has been a crisis of economic security.”⁵

Although there is insufficient research on this point, evidence indicates that shrinking opportunities for legitimate employment have affected women disproportionately to men and acted as a further push factor in women’s migration. It is clear, for example, that the transition to market economies in Eastern Europe and the CIS States has had a particularly serious impact on women leading to disproportionate unemployment and wage differentials as compared to men.⁶

b) Demand Factors.

Globalisation and trade liberalisation have had contradictory impacts on employment conditions in **countries of destination**. Demand for cheap, low-skilled labour in industrialized countries as well as a considerable number of developing nations in Africa, Asia, Latin America and the Middle East remains evident in agriculture, food-processing, construction, semi-skilled or unskilled manufacturing jobs (textiles, etc.), and low-wage services like domestic work, home health care and the sex sector.

Small and medium size companies and labour-intensive economic sectors do not have the option of relocating operations abroad. Responses in these sectors include downgrading of manufacturing processes, deregulation, and flexibilization of employment, with increased emphasis on cost-cutting measures and subcontracting⁷. In a considerable number of countries, these measures have expanded the number of jobs at the bottom of the employment scale. These jobs are often those referred to as the “3-D” jobs: dirty, degrading and dangerous. Such employment needs are only partially met or unmet by available or unemployed national workers, for reasons of minimal pay, degrading and dangerous conditions, and/or low status in those jobs and sectors, as well as alternative access available for unemployed in some countries to social welfare, etc.

The resulting demand for migrant workers provides a significant impetus to labour flows and facilitates the incorporation of undocumented migrants⁸. Despite relatively high unemployment in a number of developed countries, foreign workers –including particularly unauthorized migrants-- are able to find jobs easily⁹. On average, for example, a Mexican undocumented migrant worker to the USA will find a job two weeks after his/her arrival. Similar evidence in Europe indicates that undocumented migrants are rarely ‘unemployed’.¹⁰

Industrialized countries and numerous developing nations have thus remained a pole of attraction for migrant workers, who migrate before the presumed economic equalization forces of trade liberalization have time to act.¹¹ Often they are well-educated people who are ready to take up jobs that they would not accept in their home environment and this process involves an enormous loss of human resources. Wage

⁵ Stalker, Peter: *Workers Without Frontiers*. International Labour Organization. Geneva 2000. p. xi-x

⁶ Scanlan, Shivaun, in *Combating Trafficking Through Migration*, unpublished at 1

⁷ Lean Lim, Lin; *Growing Economic Interdependence and its Implications for International Migration* in United Nations: Population Distribution and Migration, New York, 1998, p. 277.

⁸ Escobar Latapí, op. cit., p.4.

⁹ Lean Lim, p.277.

¹⁰ OSCE Office for Democratic Institutions and Human Rights Conference Report: Europe Against Trafficking in Persons’, Berlin, 15-16 October 2001, at 72

¹¹ Stanton Russell, Sharon; *Migration between Developing Countries in Sub-Saharan Africa and Latin America* in United Nations: Population Distribution and Migration, New York, 1998, p.242.

differentials however between countries of origin and destination justify their interest especially where conditions at home are akin to poverty.

II Restrictive migration policies fuel markets for smuggling and trafficking of migrant

Trade and finance have become increasingly deregulated and integrated across regions and globally. By contrast, however, migration policies have not been liberalized, nor have they otherwise addressed the gulf between continued demands for cheap labour and the increasing supply of such labour in other countries. On the contrary, most industrialised countries imposed restrictive immigration laws and policies over the last decade, and many developing countries across the South appear to be following suit. These restrictive measures often appear to have been established with little or no consideration of labour domestic labour demand and supply considerations. In some regions, imposition of tighter border controls and restrictions on movement have frequently cut across traditional routes and patterns of labour and trade migration. To put it in perhaps oversimplified terms, basic labour economics theory would suggest that placing barriers between high demand and strong supply creates a potentially lucrative market for services of getting the supply to where the demand is.

Professor Clarke's paper at this symposium described "opportunity structures" produced by social, technological and legal changes that give rise to illegal activity –often taken advantage of by what he described as temporary and loosely knit "networks of criminal entrepreneurs," distinct from highly structured organized crime syndicates. This may well be the case in response to increasing migration restrictions meeting increasing pressures. Clearly, more research is required to better determine to what extent such "opportunities" give rise to illegal smuggling --and eventually trafficking-- activity by individuals and loose networks, as well as by highly organized criminal groups.

Another contextual factor is benign tolerance by some States for poor work conditions and non-regulation –situations that attract irregular labour. Such tolerance appears to be all but official policy in some countries, in order to maintain marginally productive economic activity that nonetheless provides employment, export products, etc.

Tighter border controls have not halted migratory flows nor have they had projected results in reducing the number of workers crossing borders. Instead they have put more pressure on those who migrate. With few options available for legal migration in the face of strong pull-push pressures, irregular migration channels become the only alternative, and one which presents lucrative "business" opportunities for helping people arrange travel, obtain documents, cross borders and find jobs in destination countries.

Testimony to the fact that restrictive immigration policies fail is the fact that the trafficking and smuggling 'business' is considered to be worth 7 billion US dollars, second only to drugs and arms smuggling.¹² As noted by the ILO report on Forced Labour: 'The recent rise in labour trafficking may basically be attributed to imbalances between labour supply and the availability of legal work in a place where the jobseeker is legally entitled to reside.'¹³

a) Trafficking vs Smuggling

¹² United Nations, *Human Development Report 1999*, New York, at 48

¹³ ILO, Global Report 'Stopping Forced Labour', *op cit* at 53

Determining effective and appropriate policy and law enforcement requires distinguishing carefully between *trafficking* and *smuggling*. There are essential differences with major policy and practical implications between these two phenomena, distinctions often lost in much current public and political debate. The Palermo protocols provide specific, distinct definitions for each.

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹⁴

Trafficked persons are considered victims. We underline the violations of human rights and labour standards inherent in 'use of force, coercion, fraud, deception and/or abuse of power...for purposes of exploitation'.

The other Palermo Protocol defines,

"Smuggling of migrants" shall mean 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.¹⁵

Given ambivalent attitudes in some countries towards addressing the gulf between labour demands and restrictive admissions, combating smuggling per se –without providing adequate legal migration channels and regulation of conditions of employment in sectors recruiting migrants—will contribute to further stigmatising migrant labour, driving irregular migrant workers deeper underground and increasing abuse of migrants.

By contrast, the abhorrent abuse and exploitation inherent in trafficking compel immediate and commensurate responses. Much of the subsequent discussion in this paper focuses on addressing the trafficking phenomena, distinct from smuggling per se.

By definition, a smuggler, will be involved only in the transportation phase of migration, providing assistance to achieve undocumented entry into a foreign country, as well as to obtaining departure from highly restrictive situations, and deriving a profit from this intervention. Smugglers and traffickers may both play roles as "labour brokers": promising to provide persons seeking work abroad with assistance in getting to destinations where employment is presumed available or specific jobs are waiting. Smuggling operations—sometimes difficult to distinguish from legitimate work of travel agencies or labour recruitment agencies-- may include assisting migrants with obtaining a passport, visa, funds for travelling (travel loans), as well as the transportation itself, en route to hoped for job openings or opportunities. The Council of Europe has characterized this role –referring in particular to trafficking-- as the gap-filler: operating between the high demand for migrant labour on the one hand and the diminished legal channels of migration in most countries on the other.¹⁶

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

¹⁵ Protocol Against the Smuggling of Migrants by Land, Sea and Air

¹⁶ Council of Europe, Parliamentary Assembly Recommendation, *Campaign against trafficking in women*, provisional edition, Recommendation 1545 (2002), at 2.

Trafficking involves conditions, services and outcomes that go far beyond the transportation and border crossing elements, involving forced labour of victims for an indefinite period of time, putting them in a contemporary form of debt bondage, and deriving considerable profit from this exploitation¹⁷.

Distinctions in policies combating trafficking from those addressing smuggling may be necessary to assure consistent defence of migrant workers while seeking to suppress organized crime. As noted below, a number of factors contribute to individual migrants being able to –or not– distinguishing between smuggling and trafficking alternatives in getting from often hopeless situations in homelands to possible employment elsewhere. At the same time, ILO field experience illustrates that distinctions can be arbitrary and artificial, especially when approached from development considerations in contrast to legalistic delineations. Lines are not easily drawn — what started as a smuggling situation can change into a trafficking one.

Nonetheless, distinctions between occurrences of smuggling and trafficking reinforce differentiated relationships of these phenomena to the greater or lesser existence of alternative channels for migration. Data from the Philippines indicates that where there are cooperative agreements between the Philippine Government and the receiving state, there in fact seems to be a lower incidence of trafficking. The incidence of trafficking reported generally among Filipino irregular migrants is low, although probes to date have largely focused on the sex sector whereas Filipinos are concentrated more on domestic help and the service sector. Nonetheless, the Filipino situation is characterized by ample channels for regular labour migration monitored through government supervision, extensive experience with migration, and the amplitude of consequent contacts and connections to Filipinos

Similarly, data on the US indicates that few if any of the hundreds of thousands of Mexican nationals who enter the US irregularly every year are trafficked. While many may use the services of smugglers to cross the border, most end up in jobs that, while exploitative, don't constitute coerced or forced labour. Again, the absence of trafficking in this irregular labour migration is attributed to the many connections between Mexicans in the two countries, to extensive employment recruitment of Mexicans through cross border networks –recruitment that appears to treat the border as another business obstacle to circumvent–, to the relative ease to leave abusive situations, as well as to the considerable attention to migration by both governments.

Meanwhile, current research indicates that a large proportion of women moving from Eastern to Western Europe are prey of trafficking. It is certainly no coincidence that they originate from countries and situations with no history, experience, or connections for migration, where government supervision, regulatory mechanisms or attention to protection of nationals is absent, and where few concrete measures have been put in place for regular migration.

The absence of regular migratory channels combined with non-existent supervision of labour conditions and non-attention to protection of migrants in the face of strong push-pull factors play directly into the hands of criminal groups. Women's' groups from Bosnia reported that criminal groups moved into Kosovo to organize trafficking as soon as they knew there would be an international presence there.¹⁸ Clearly there were predictions of a boom in business following the arrival of foreign troops and workers. It is useful to consider how the criminal groups then went about supplying the sex-workers. Statistics now indicate that the majority of trafficking victims in Kosovo are Moldovan, Romanian and Ukrainian

¹⁷ While smuggling of migrants often involves a mutual interest between the smuggler and the smuggled, trafficking in human beings constitutes a crime against persons.

¹⁸ See *Victims of Trafficking in the Balkans*, *op cit* at 48

women.¹⁹ Most of these women however had approached traffickers on the basis of promises of jobs in Western Europe. Traffickers understand only too well their potential role in offering to provide victims with jobs as nannies, babysitters, domestic helps or dancers in Western Europe.²⁰ The irony of course is that jobs like this do exist, but women have to resort to traffickers in the hope of making them happen. The trafficker however, as we know, has a different agenda and thrives because he/she can make a profit from this dependence.

Ultimately, labour trafficking would not take place if jobseekers had more freedom of geographical movement and freedom of access to employment. Smuggling occurs because borders have become barriers between jobseekers and job offers. Trafficking occurs not only when borders are barriers to labour supplies meeting demands, but when no knowledge is available about proper migration channels, when employment is itself illegal and/or underground, and where conditions of work much worse than legal minimums are tolerated or ignored.²¹

b) The importance of labour standards

In addressing the demand for cheap labour at the recent Berlin conference of ‘Europe Against Trafficking in Persons’ it was stated that ‘the current labour market allows forced labour and trafficking in persons but that the general public denies the existence of substantial economic activity outside of the law.’²²

A major incentive for trafficking in labour is the lack of application and enforcement of labour standards in countries of destination as well as origin. These include respect for minimum working conditions and consent to working conditions. Tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for trafficked migrants who have no choice but to labour in conditions simply intolerable and unacceptable for legal employment. Worse still is the absence of worksite monitoring, particularly in such already marginal sectors as agriculture, domestic service, sex-work, which would contribute to identifying whether workers may be in situations of forced and compulsory labour.

Policy responses to trafficking must address that the major abuse comprising trafficking is the exploitative or forced labour outcome rather than movement across a border, and victims usually comprise persons in a situation in which they have no choice or perceive having no choice but to submit to that labour exploitation.

ILO concern is also being directed at forced prostitution and sex work as well as other forms of forced labour. In the case of Europe, a great deal of evidence indicates that much trafficking of women is into the sex sector. Growth in many countries of a visible but legally restricted “sex industry” has expanded a major area of demand for foreign ‘workers’ not subject to any inspection or regulatory control, and thus more highly exploitable.

However, similar coercion, deception and exploitation constituting trafficking of migrant agricultural workers, domestic workers, sweatshop workers, and particularly those in the informal sector, has been

¹⁹ *ibid*, at 45

²⁰ *ibid* at 51

²¹ ILO Global Report ‘Stopping Forced Labour’, *op cit* at 53

²² Conference Report, OSCE, *op cit*

detected on many continents²³. Research in Europe and elsewhere has highlighted that investor interest in higher capital returns from informal activity not subject to employment standards or regulation has encouraged shifts of capital and employment creation towards informal sector activity, where employment itself is clandestine or ‘illegal,’ and largely invisible or practically unreachable by current labour standards inspection and enforcement. Irregular migrants are preferred employees due to their vulnerability and their inability to protest, denounce or call in regulatory inspection.

The Berlin Conference final report highlighted that, while there were laws in place in many countries to prosecute employers who profited from forced labour, they are rarely implemented in practice since uncovering the proof of exploitation is difficult in the face of quick deportation practices.²⁴

c) Gender and trafficking

Differential opportunities for legitimate employment affect men and women differently. Demand from receiving countries is very much defined by the labour market segmentation in these countries, i.e., opportunities are available for precisely these low-skilled jobs suitable it would seem for women.

Gender plays an important role in influencing whether a migrant ends up as a smuggled migrant or a victim of trafficking. Women and children, especially girls, are definitely more vulnerable to trafficking than men. While most smuggled migrants are male and are not considered victims, most trafficked persons however are young women or children who end up being victims of coercion, abduction, fraud, deception, abuse of power, or abuse of force. Traditional gender segregation in the labour market tends to limit women’s opportunities for work to domestic households, entertainment, hotels and restaurants, sales and assembly work in manufacturing which possibly traffickers in certain places control access to.²⁵

The feminization of international labour migration, together with the fact that most job opportunities for women migrants are in the unregulated sector (domestic work, sex industry) and the existence of sex-disaggregated labour markets contribute to the increase of discriminative labour markets in countries of destination. In addition, women have less access to information on migration/job opportunities, recruitment channels, and often have less preparation than men to cope with the working and living conditions in the countries of destination.

Further to this, restrictions on entry, admission and work affect men and women migrants differently. For instance most legal channels of migration offer opportunities in typically male-dominated sectors (construction and agricultural work). As a result women typically lack even more access to legal labour migration channels compared to men. This situation seems to marginalize female migrants even further and exposes them to worst forms of abuse. Gender-selective migration policies and regulations for admission and entry often reproduce and intensify existing social, economic and cultural inequalities between male and female migrants; e.g. the right to entry does not necessarily mean the right to work for women in certain Western European countries.

d) Alternative approaches

If stricter immigration policies are not a successful means for combating trafficking and smuggling, but in fact intensify the activities of such groups, is there reason to suggest that more liberal migration regimes

²³ ILO; Global Report “*Stopping Forced Labour*”, op. cit., p. 47.

²⁴ Conference Report, OSCE, *op cit*

²⁵ ILO; Global Report “*Stopping Forced Labour*”, op. cit., p. 54.

would diminish the incidence of trafficking or smuggling? Some evidence in Central Europe might indicate that this may already have happened.

In the early and mid-nineties, many victims of trafficking to Western Europe Central and Eastern Europe were Polish, Czech, Slovak and Hungarian women. However, the latest data indicate that victims of trafficking to Western Europe from Eastern Europe are almost exclusively Moldovan, Romanian and Ukrainian.²⁶ It is observed that one of the main reasons for this change is that the first group of countries now comprise candidate countries to the EU. Nationals of these countries no longer require visas to enter for a stay of up to three months. Women are continuing to migrate from these countries and finding employment as baby sitters, in domestic work, sex work and other services, albeit irregularly, but they are able to do so without requiring the labour broker services offered by smugglers or worse, by a trafficker.²⁷

In contrast, current main source countries of trafficked victims in Europe are on the “black list” of countries that require visas for any visit, even for short tourist stay of less than three months. The list of requirements for visas is long (return travel tickets, certification of regular income, etc.), the rejection rate is high and the time involved and lack of required documentation deter many from even bothering²⁸. This factor alone creates a substantial market for the trafficker.

III. Some data on Trafficking and Abuse

Trafficking, often run by organized criminal groups, invariably result in a high degree of exploitation and abuse for migrant victims. We highlight some characteristics by region drawn from ILO’s own research and programmatic activity worldwide.

Asia- According to ILO research in the Greater Mekong Sub-region (“GMS”- Cambodia, the Lao People's Democratic Republic, Myanmar, Thailand and Vietnam), Thailand is the main receiving country in the region. An estimated 194,180 foreign child labourers mainly from Myanmar, Laos and Cambodia were trafficked and worked in construction, small shops, fishing, footwear factories, agriculture plantations and domestic work in 1998. They were also involved in begging, soliciting and gang work. In 1999, an estimated 80,000 women and children were trafficked into the commercial sex industry in Thailand, of whom 30 percent were under 18 years of age. At least 6,000 Vietnamese children and women have been trafficked to Cambodia for sexual exploitation, and to China for marriage and domestic work. There is also trafficking from the GMS to other countries, which generally involves Thai women going into domestic service and the "entertainment" industry in Tokyo²⁹.

The ILO South Asian Sub-Regional Programme to Combat Trafficking of Children for Exploitative Employment in South Asia notes that India is the major receiving country of trafficked women and children from Nepal, Sri Lanka and Bangladesh. Bangladeshis are reported trafficked to Pakistan and to some extent to Afghanistan and Thailand. In Sri Lanka, there is evidence of trafficked boys for camel racing to Saudi Arabia and the United Arab Emirates. In Bangladesh, girls are likely to be recruited as domestic workers or to work in brothels, whereas boys are made to work in manufacturing industries and

²⁶ See *Victims of Trafficking in the Balkans*, *op. cit.*

²⁷ Scanlan, Shivaun, *op. cit.*, p.1.

²⁸ Scanlan, *op. cit.*, p.2.

²⁹ ILO: International Programme on the Elimination of Child Labour (IPEC) and the Gender Promotion Programme (GENPROM), Project “Reducing Labour Exploitation of Children and Women: Combating Trafficking in the Greater Mekong Sub-region”.

sweatshops in India and Pakistan. Every year about 4,500 children are trafficked for bonded marriage or bonded labour to Pakistan. In India, there are between 70,000 and 100,000 Nepalese prostitutes, thirty per cent of them younger than 18. A considerable number of prostitutes in India come from Bangladesh. Children trafficked to Kathmandu, Nepal work in manufacturing industries, sweatshops, hotels, and restaurants, as domestic workers and in child prostitution. Pakistan is reported to be a receiving country of children trafficked from Bangladesh and India, recruited to work in farming, fishing, and as prostitutes³⁰.

Africa- Although some cases of trafficking of children within West Africa for commercial sexual exploitation are reported, these have been far outweighed by the numbers trafficked across borders for other forms of work, of which recruitment for domestic work appears to be the most important, according to research by the ILO project "Combating Trafficking in Children for Labour Exploitation in West and Central Africa (Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria & Togo)". In Benin, there were 3,100 children from Burkina Faso, Ghana, Nigeria, Togo and from the country's rural areas known to have been trafficked. In Côte d'Ivoire, between 10,000 and 15,000 Malian boys were working in plantations, the proportion of these children who can be considered as trafficked is unknown³¹.

ILO studies in West and Central Africa show that there are six types of trafficking of children, depending on the relationships between the various actors at the time the child is placed:

-*abduction*: cases whereby children are abducted from their homes (on the increase)

-*"placement"* as a sale: the child is handed over by the parents to a third party for a set price (14 to 140 U.S. dollars);

-*bonded labour*: placing of children as reimbursement for debt; such cases have been reported in Benin and Ghana;

-*temporary placement*: the child is handed over to a third party who places him or her for a set period of time, for a token sum. The money is paid to the parents in cash or kind and is commensurate with the length of stay agreed upon and the age of the child. The intermediary for his part collects the wages paid by the employer for himself;

-*placement as a service*: the agent is placing the child at the request of the parents, for a fee. The parents also have to pay "handling costs" (50 to 150 U.S. dollars)

-*placement as embezzlement*: the child is handed over to a third party who may be a professional recruitment agent or intermediary and promises the parents that the child will be taken care of. The intermediary collects the wages directly from the employer, since the parents do not claim anything³².

According to other reports Togolese and Eritrean women are trafficked as prostitutes to Gabon, or as far as Lebanon and Israel. It has been noted that young women from Uganda are lured into Kenya to serve as prostitutes and to Dubai to serve as domestic workers. In Mozambique, refugee women from the war-torn countryside are sold as concubines and wives to South African men³³.

Americas- According to the U.S.A. Department of State, it is estimated that 45,000 to 50,000 people, primarily women and children are trafficked to the U.S. annually. Brazil is a significant source country

³⁰ ILO: International Programme on the Elimination of Child Labour (IPEC), Project "South Asian Sub-Regional Programme to Combat Trafficking of Children for Exploitative Employment in Bangladesh, Nepal and Sri Lanka".

³¹ ILO: International Programme on the Elimination of Child Labour (IPEC), project "Combating the Trafficking in Children for Labour Exploitation in West and Central Africa".

³² Op.cit,

³³ U.S.A. Department of State: Victims of Trafficking and Violence Protection Act 2000, *Trafficking in Persons Report*, July 2001.

for victims of both domestic and international trafficking with the majority trafficked for the purpose of sexual exploitation to Europe, Japan, Israel and the United States. Colombia is another important country of origin of trafficked persons, especially women and children, to Asia (Japan, Singapore, and Hong Kong), Western Europe (The Netherlands and Spain), and the United States. Commercial sexual exploitation is a very serious problem affecting thousands of children and adolescents in Central America and in some Caribbean countries. Thousands of girls and women (mainly from the Dominican Republic) are also trafficked to Western European countries such as Austria and Spain annually³⁴.

Europe- Albanian, Ukrainians, Romanian and Moldovan girls and women are the main victims of trafficking into all Western European cities of Rome, Vienna, Brussels, Athens, Zurich, Amsterdam, Bonn, and others. In this region, most of the trafficking in human beings is carried out for purposes of sexual exploitation. The trafficking of women for forced prostitution and of children for begging and street-selling into Greece and Southern Italy is a serious problem. In Southern Europe, a girl trafficked into sex work is reportedly worth between 500 and 2,500 U.S. dollars, while others sell for as much as 4,000 U.S. dollars. For example, a trafficker that "owns" a young virgin from Albania in Belgium is reported to command prices of up to 10,000 U.S. dollars. Most trafficked victims sexually exploited in Italy are obliged to earn around 500 US dollars per night, having to serve as many as 30 clients, and in most cases do not receive any wages³⁵.

IV Recommendations

Ms. Anna Diamantopoulou, EU Commissioner for Employment and Social Affairs, in her opening remarks to the OSCE meeting *Europe Against Trafficking in Persons* stated "to succeed against trafficking, we need to gain a better understanding of what specific factors affect supply and demand"³⁶.

The demand for labour and services in countries of destination and the availability of willing migrants in countries of origin could be the starting point for constructive elaboration of migration and migrant employment policies that are regulated, legally based, and ensure decent treatment of individuals. Such policies would go a long way towards eliminating the incentives for trafficking and thus for activity of organised criminal groups³⁷.

ILO can offer recommendations because it draws on the experience of governments and social partners around the world. The foundation for articulating this experience is the fundamental principles and rights at work that ILO was created to advance, and the legal standards elaborated over 80 years of work that give concrete guidance to States in policy and practice.

Put together, constituent experience in the context of these values shows that a migration policy framework for effectively combating trafficking must be a comprehensive and integrated package and must include the following elements:

1) An **informed and transparent labour migration admissions system** designed to respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for

³⁴ U.S.A. Department of State: *Trafficking in Persons Report*, op. cit.

³⁵ Gloria Moreno-Fontes Chammartin: *Report on a Mission to Albania*, February 25, March 4, 2001.

³⁶ Diamantopoulou, Anna; *Opening Remarks*, OSCE meeting Europe Against Trafficking in Persons, Berlin, 15-16 October 2001, p. 2.

³⁷ OSCE/ODHIR Berlin Conference, *op cit* at 67

workers, high and low skilled. ILO research underlines this as a fundamental starting point: legal labour migration channels contribute to both reducing trafficking in children and women and the smuggling of migrants³⁸.

2) **A standards-based approach to combating trafficking and exploitation of migrants, together with protecting basic rights of all migrants.** This includes adopting and utilizing the ‘Palermo’ Convention and its Protocol on Trafficking in Human Beings, complemented by the ILO and UN Conventions on migrant workers³⁹. A total of 68 different States have now ratified one or more of these three complementary standards; a number of European countries ratified one or both of the ILO Conventions. The point of establishing legal rights and policy standards is to ensure social legitimacy and accountability, which can only be ensured by a foundation in the rule of law. Social legitimacy –and public cooperation—for law enforcement and crime suppression is not established by force. As the contrasting experience of dictatorships and democracies demonstrate, the legitimacy of law enforcement and of the State itself comes of its association with justice, human dignity and democratic values.

3) **Enforcement of minimum national employment conditions standards in all sectors of activity**, to serve as a complementary system of criminalizing abuse of persons and of discouraging irregular employment. This involves enactment of clear national minimum standards for protection of workers, national and migrant, in employment, where those do not exist. ILO Conventions on such aspects as occupational safety and health, against forced labour, and on discrimination provide minimum international norms for national legislation. A necessary complement is **monitoring and inspection** in such areas as agriculture, domestic work, sex industry and other sectors of ‘irregular’ employment, in particular to identify and prevent exploitation of children and to detect and stop forced labour, as well as to uphold minimal decent work conditions.

4) **Institutional mechanisms and practical measures** including public advocacy and awareness raising to cover prevention, protection, rights restoration, recovery and healing services addressing victims of trafficking. Steps have been taken in this direction by some Western European countries by provision of temporary residence status to victims of trafficking who testify against their traffickers (e.g. Italy, Austria, Netherlands and Belgium), provision of counselling services, facilitation of support from NGOs, and so on. However these measures will not protect new recruits from the abuse of traffickers⁴⁰.

The nature and predominance of abuse of women in the trafficking phenomena require elaboration of **gender sensitive migration policies** which recognize gender equality as integral to the process of policy making, planning and programme delivery at all levels, focussing not only on providing equal treatment, but on ensuring equal outcomes.

³⁸ ILO; Mekong Sub-Regional Project to Combat Trafficking in Children and Women, *Legal Labour Migration and Labour Markets: Alternatives to Substitute for Trafficking in Children and Women*, p.1.

³⁹ These are: the ILO Migration for Employment Convention #97 of 1949, ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention #143 of 1975, ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by 19 countries and signed by 11 others. Texts and related information available respectively on the ILO website, at www.ilo.org/ilolex, and on that of the Office of the UN High Commissioner for Human Rights, www.unhchr.ch

⁴⁰ Council of Europe; *Recommendation No. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation*, 710th meeting of the Ministers’ Deputies, 19 May, 2000.

The very nature of migration also makes mandatory international consultation, exchange and cooperation in elaboration of effective policies and measures to eliminate the conditions driving trafficking, as well as the phenomena itself.

This kind of comprehensive migration and labour market policy package is essential to eradicating the scourge of trafficking and abuse of migrants by organized crime. ILO is committed to support its tripartite constituents in elaborating in each country the policy, legislative and practical measures to effectively combat trafficking by eliminating the conditions in which it flourishes. Equally essential will be mobilizing advocacy, awareness raising, protection, and direct action to put in place such a package, ensure public support, and effectively implement it.

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