

The next decade: Promoting common priorities and greater coherence in the fight against human trafficking

1 Introduction

Established in 2006 in response to response to a United Nations (UN) Economic and Social Council (ECOSOC) resolution¹, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) is a policy forum mandated by the UN General Assembly to improve coordination and cooperation between UN agencies and other international organizations². It is also intended to facilitate a holistic and comprehensive approach by the international community to preventing and combating trafficking in persons including protection and support for victims of trafficking³.

In response to this mandate, ICAT is preparing to publish a series of five issue papers over the course of 2012 and 2013. Each issue paper will examine one key issue that has been identified and agreed by ICAT's member organizations as a critical challenge to address for the international community to succeed in the fight against trafficking in persons in the coming decade. This planned series of ICAT papers provides an opportunity for international organizations to speak with one voice, and is intended to serve as a catalyst for the promotion of common strategic priorities and greater policy and programmatic coherence. This document provides an introduction to each of the five key challenges identified with the intention of inviting public comment, and so marks the beginning of this consultation process.

1.1. Consultation

This public consultation document is intended to solicit inputs from the community of practice on five key issues:

1. The international legal framework relating to trafficking in persons;
2. Evaluating anti-trafficking responses;
3. Preventing trafficking in persons by addressing demand;
4. Preventing trafficking in persons by addressing vulnerabilities;
5. Providing effective remedies for trafficked persons.

For each issue, a **description of the problem** is provided, followed by a brief analysis of **why the topic deserves attention**. Finally, **key questions** are addressed to readers for their assessment and response. All inputs received⁴ will be considered by the ICAT working group⁵, in finalizing the forthcoming series of five papers. Written responses should be sent, by Wednesday 1 August, to:

- icat@unodc.org;

Responses are welcome on one, several or all of the five issues noted. Please note that responses should not exceed a maximum of 10 pages on any one issue, and should be written in English. Responses that exceed this limit will not be reviewed.

¹ ECOSOC Resolution 2006/27 of 27 July 2006, Strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking,

² ICAT is composed of DPKO, ICAO, ICPO-Interpol, IOM, ILO, OHCHR, UNAIDS, UNDP, UN Women, UNFPA, UNHCR, UNICEF, UNIFEM, UNICRI, UNESCO, UN-INSTRAW and UNODC.

³ See UN GA resolutions A/RES/61/180 and A/RES/64/293.

⁴ Please note the requirements provided for responses.

⁵ ICAT Working Group is composed by ICPO-Interpol, IOM, ILO, OHCHR, UNHCR, UNICEF and UNODC.

2. The International Legal Frameworks relating to Trafficking in Persons

2.1. Description of the problem

The struggle against human trafficking and related practices of forced labour and slavery has preoccupied the international community for many decades. The adoption of the Trafficking in Persons Protocol in 2000, once again, put this serious human rights violation at the center of global attention. Since then, many states have aligned themselves with these new international standards and created a platform for better coordination.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, is not a stand-alone tool.⁶ It is part of a constellation of complementary international legal instruments, some focusing on the suppression of crime and others on human rights and protection, that are available to address the trafficking challenge. These instruments and legal regimes include international human rights law, international humanitarian law, international refugee law, labour law, and criminal law.

Despite an implicit recognition of the need to rely on a variety of sources of international law to address human trafficking, there is little evidence that this recognition has found practical expression⁷. There is generally a lack of clarity on how these different international and regional instruments intersect and relate to each other, the strengths and weaknesses of their supervisory mechanisms as well as the impact they have on law and policy at national levels. Different government ministries, for example, are tasked with the monitoring and reporting under these various instruments, potentially pulling policy-makers, legislators and practitioners in different directions.

This paper seeks to promote an approach to addressing the challenges of trafficking in persons that brings to bear provisions and legal obligations from different bodies of law and legal instruments that are relevant to the task of preventing trafficking, protecting victims, and prosecuting perpetrators.

2.2. Why the topic deserves attention

Prior to the adoption of the UN Trafficking in Persons Protocol in 2000, the main international convention concerned with trafficking in persons dealt uniquely with traffic for the purposes of prostitution, being the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). The convention, however, does not define ‘trafficking in persons’. Other UN instruments prohibit slavery, servitude and related violations of human rights⁸ and the ILO has adopted two conventions to prohibit the use of forced labour.⁹ In 1999,

⁶ This is specifically recognised in the Protocol. It refers explicitly to complementary legal regimes in article 14 (“Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law...”). The same article requires the interpretation and application by States of the measures set out in the Protocol “to be consistent with internationally recognized principles of non-discrimination”. Article 2 also specifies that an objective of the Protocol is to protect and assist victims of trafficking “with full respect of their human rights”.

⁷ For further discussion on this, see the International Framework for Action to Implement the Trafficking in Persons Protocol, Vienna, 2010. http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

⁸ The Slavery Convention (adopted by the League of Nations in 1926) and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).

⁹ ILO Convention No. 29 on Forced Labour (1930) and ILO Convention No. 105 on the Abolition of Forced Labour (1957). These are among the widest ratified of the ILO’s conventions, ratified by 175 and 169 States respectively (by 4 May 2012). Their application is supervised by an independent Committee of Experts.

the ILO adopted a new Convention on the Worst Forms of Child Labour which calls for the elimination of child trafficking, among other exploitative forms of child labour.¹⁰

The Convention on the Elimination of all Forms of Discrimination against Women, adopted in 1979, and the Convention on the Rights of the Child, adopted in 1989, also made specific reference to trafficking of children and women. Both referred to trafficking for a variety of purposes.¹¹ By the 1990s, there were suggestions that the use of the term ‘traffic in persons’ should be extended to cover forms of recruitment and exploitation, not directly linked to prostitution. The Special Rapporteur on Violence against Women concluded in 1997 that “documentation and research shows that trafficking occurs for a myriad of exploitative purposes to which trafficked victims have not consented, including but not limited to forced and/or bonded labour, including within the sex trade, forced marriage and other slavery-like practices”.¹²

It was in this context of renewed and expanded understanding of the issue that the General Assembly decided¹³ to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime. Two years later, the General Assembly adopted the UN Trafficking in Persons Protocol. Since then the international community has made a substantial investment in developing new national legislation and expertise, as required by the Protocol.

As adopted in 2000, the UN Trafficking in Persons Protocol explicitly refers to a variety of forms of exploitation, most of which are defined in other legal instruments. It also recommends certain responses to facilitate the protection and assistance of trafficked persons. There are further complementarities between the Trafficking in Persons Protocol and that of other instruments, such as in identifying the rights of victims of crime and victims of human rights violations. There exists a number of guidelines relating to the protection of adults or children who have been (or may have been) trafficked or exposed to other forms of exploitation and the use of various related tools in a complementary way is critical to responding effectively to the issue.

One of the lessons increasingly learnt in the decade since the adoption of the UN Trafficking in Persons Protocol is the recognition that relying exclusively on the obligations created (and sometimes not fully detailed or defined) by the UN Trafficking in Persons Protocol is not sufficient to ensure a comprehensive and effective response to human trafficking. As such, efforts must be made to ensure better understanding of the coherence between human rights law, refugee law, labour law and criminal law, in particular, and the need to bring diverse but complementary instruments to bear on the trafficking challenge.

¹⁰ For further reference on how ILO Conventions relate to the Trafficking Palermo Protocol, see: ILO: Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement, Geneva 2005

¹¹ Article 35 of the Convention on the Rights of the Child referred explicitly to cases of traffic “for any purpose or in any form”. The treaty-monitoring body established by the Convention on the Elimination of all Forms of Discrimination against Women noted in 1992 that trafficking was taking new forms, “such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals” (Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, ‘Violence against women’, 1992, paragraph 14).

¹² Economic and Social Council, *Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur on Violence Against Women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women*, submitted in accordance with Commission on Human Rights resolution 1997/44, UN Doc. E/CN.4/2000/68 (2000), paragraph 13.

¹³ By General Assembly resolution 53/111 of 9 December 1998.

2.3. Key questions

There is a current and on-going need for States, international organizations and other actors to focus on a number of intersections between legal regimes relating to trafficking in persons, considering the most relevant, common and problematic ones as a priority. There are a number of priority questions, starting with several that focus on the international definition of trafficking in persons, as contained in the UN Trafficking in Persons Protocol, and its relationship with other legal instruments concerned with specific forms of exploitation.

1. To what extent is a more holistic approach to reducing coercive and exploitative practices a necessary precondition to achieve more effective outcomes in combatting trafficking in persons? What do we mean by comprehensive anti-trafficking legislation?
2. How can international instruments, including the UN Trafficking in Persons Protocol, international human rights, refugee law, humanitarian law and labour law be used effectively to prevent and combat *all* coercive and exploitative practices related to trafficking in persons, including slavery and forced labour, and not only those that are the result of internal or cross-border migration? Which instruments and specific provisions are most relevant to trafficking in persons? How can these instruments and provisions be tailored as policy responses to provide more protection and assistance to victims, such as those who were deceived into a situation of exploitation, or those who were born into bondage or servitude or those affected by conflict and displacement, such as internally displaced persons, refugees or stateless persons?
3. The UN Trafficking in Persons Protocol suggests various options that states might consider to protect victims of trafficking. Other legal instruments create stronger protection obligations, depending on the victims' status, such as those concerned with internally displaced persons, refugees, stateless persons, non-combatants, women and children. What other protection regimes, instruments, and provisions and standards are most applicable to victims of trafficking, and to what extent are trafficked persons able to benefit from the protection available through these other legal regimes? Where are the protection gaps, and how best could these be addressed?
4. The UN Trafficking in Persons Protocol suggests that states consider legislative or other measures that permit foreign (non-national) victims of trafficking in persons who have no legal entitlement to be on a State's territory to remain there temporarily or permanently (article 7). States are also asked to facilitate the safe, and preferably voluntary, return of victims of trafficking, without undue or unreasonable delay and with due regard for the status of any legal proceedings related to the fact that a person is a victim of trafficking. (article 8). In addition, States are asked to respect the rights, obligations and responsibilities arising from international law, including international humanitarian law and international human rights law, and in particular the 1951 Refugee Convention and its 1967 Protocol and to respect the principle of non-refoulement as contained therein (Article 14). Which other international instruments or specific provisions are relevant to the stay and/or return of a victim of trafficking? To what extent are these being applied, and what are the gaps? What can be done to facilitate greater policy coherence and compliance in this area?
5. The UN Trafficking in Persons Protocol is silent regarding the non-punishment of victims for offences committed while, or as a consequence of, being trafficked. Which other international instruments or specific provisions are relevant to a concept of non-punishment of trafficking victims? To what extent are these being applied, and what are the gaps? What can be done to facilitate greater policy coherence and compliance in this area?

3. Evaluating Anti-Trafficking Responses

3.1. Description of the problem

Over the past decade, estimates of the global scale of the human trafficking problem have ranged from several hundreds of thousands people trafficked annually across international borders to several million women, men and children living in a trafficking situation at any given point in time. The significant disparities between global estimates of the scope and scale of the crime makes for an unreliable baseline against which progress made in reducing trafficking is difficult to measure. A similar situation exists at regional and national levels, as well as at the level of programmes and projects, where the baseline data necessary for measuring the achievements of anti-trafficking initiatives is often unavailable or unreliable, and where efforts to measure achievements beyond the level of outputs are infrequent so that their real outcomes and impact remain largely unknown.

This general lack of reliable baseline data, as well as the infrequency with which longer term results and effectiveness of many anti-trafficking policies and programmes are evaluated, has created an environment where lessons are learned slowly, mistakes are repeated frequently, and a good practice identified in one context is transplanted directly to another one without an adequate appreciation of the geographic, political, economic, social, or cultural factors which allowed for its initial success.

3.2. Why the topic deserves attention

The importance of discerning basic information, at any level, of the volume and nature of human trafficking and understanding the effects of related anti-trafficking measures has been broadly accepted and emphasized for some time as an essential foundation stone for effective action:

“Knowledge of and research into the specific national, regional and international trafficking in persons context is a prerequisite for the elaboration, implementation and evaluation of anti-human trafficking strategies and development of evidence-based policies”¹⁴.

In 2002, the UN High Commissioner for Human Rights’ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* drew attention to the risk that anti-trafficking laws, policies, programmes and interventions might have an adverse effect on the very people they were intended to benefit. The High Commissioner then called on States and, where applicable, intergovernmental and non-governmental organizations, to consider “establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions”.

Nevertheless, many programmes have been initiated in the absence of reliable data about who is being trafficked, where and for what purposes. Not surprisingly, in these circumstances, the internal logic of programmes to bring about change and to stop human trafficking is often faulty. This includes national action plans that lack clear indicators, budget allocations, and monitoring mechanisms.

Differences in legislative definitions of human trafficking and related legal terms, and limitations of current data collection practices make it difficult to compare trafficking-related data. There are

¹⁴ International Framework for Action to Implement the Trafficking in Persons Protocol, Vienna, 2010, page 5. http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

efforts to improve data gathering at the national, regional and global level, but obstacles remain. The data currently available allows some analysis of patterns, trends and flows, but does not indicate whether the numbers of people being trafficked is increasing or decreasing in absolute terms at either national, regional, or global levels.

Some States have entrusted a national rapporteur on trafficking with responsibility for monitoring the national response. In others, there are national institutions monitoring particular trafficking-related forms of exploitation, such as national commissions monitoring levels of forced labour. However, monitoring anti-trafficking responses at the national level and reporting to a national authority (or, at the international level, to an international treaty-monitoring body) are distinct from what should be the routine monitoring and evaluation of programmes and projects.

Despite the need to ‘learn lessons’ and identify ‘best practices’, there has been a marked tendency to monitor and report (publicly or to donors) predominantly on the production of the ‘outputs’ of counter-trafficking initiatives (for example, the number of law enforcement officials who have been trained to identify victims, or the number of awareness raising materials distributed), rather than the ‘outcomes’ of these initiatives (for example, whether the law enforcement officials that have been trained are applying new skills in their daily work to produce a more effective institutional response to trafficking, or whether the new knowledge gained by those who received the awareness raising materials has resulted in attitudinal or behavioral change).

There is no doubt about the challenge ahead. In addition to the methodological challenges, evaluating the outcomes and impact of anti-trafficking initiatives is difficult to carry out on a project-by-project basis, as projects and the financial support associated with them come to an end, whereas the earliest opportunity to measure their long-term impact might only be evident and measurable several years later. However, evaluating anti-trafficking interventions and assessing their longer-term results is crucial to assessing progress to date, to answer questions about which policies work and to what extent, and to identify which measures have proved insufficient, inadequate or counterproductive. Armed with such information, national actors and the international community would be better able to face the next decade of work with more targeted and effective approaches.

3.3. Key Questions

1. How much is known about the broader impact of initiatives to prevent trafficking, protect victims, and prosecute perpetrators? Is there adequate evaluation of the outcomes of anti-trafficking programmes and projects? If not, why not?
2. What are the main reasons for the lack of systematic evaluation of anti-trafficking initiatives, and how are these best addressed? Are the challenges to evaluation primarily methodological, or are there other significant challenges? How can the significant challenges best be addressed?
3. What type of anti-trafficking initiatives can and should be systematically evaluated for their outcomes and impact, and how can systematic evaluation be encouraged? Are there certain types of initiatives that cannot or should not be evaluated? Which are these, and why? Are they still worth implementing?
4. Is there in fact a paucity of baseline data and, if so, what can be done to address this at the project and programme levels, as well as at national and international levels?
5. Is there a need to develop standard methods for evaluating anti-trafficking policies and programmes? If so, how best can this be achieved? What indicators should be used?

4. Preventing Trafficking in Persons by Addressing Demand

4.1. Description of the problem

Trafficking in persons is often understood as a crime that is rooted in the economic law of supply and demand; an oversupply of people, desperate for work or other opportunities, are deceived or forced by criminals to meet the otherwise unmet demand for cheap goods, illegal services, or an unprotected or under protected workforce. According to this theory, an absence of demand would eliminate the pecuniary and related incentives that motivate traffickers, which should make demand reduction a priority focus of trafficking prevention efforts. While there is a need to address the demand, it is important to acknowledge the limits of a term that is not properly defined, under researched and still subject to debate and confusion.¹⁵

The Trafficking in Persons Protocol accepts this model by encouraging states to seek to prevent trafficking in persons by *inter alia* discouraging ‘the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking’¹⁶. This call is echoed by the UN General Assembly in the UN Global Plan to Combat Trafficking in Persons (2010) which aims at prevention efforts that focus “on the demand that fosters all forms of trafficking and the goods and services produced as a result of trafficking in persons” (article 21), as well as the promotion of awareness-raising campaigns to discourage demand (article 18) and the dissemination of best practices on the implementation of such campaigns. In a related article, the Global Plan of Action calls on States to “adopt and implement specific measures at the national level to combat trafficking for labour exploitation and strive to educate consumers on those measures” (article 22). Most regional instruments, strategies, and plans of action to combat trafficking similarly direct attention to discouraging demand¹⁷.

The role of demand in fuelling trafficking in persons has also been recognized by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) through referring to the efforts needed to raise public awareness and reduce consumer demand for the sale of children.

Despite this near unanimity, there are few examples of concrete initiatives that have been undertaken to discourage demand when compared with those that have intended to address supply, and fewer still that can demonstrate success. The reasons for this are complex, as are the implications for trafficking prevention efforts. On the one hand, the term ‘demand’ is still subject to different interpretations; on the other hand, addressing the demand would likely require a significant shift in focus of existing efforts and priorities, bringing increased attention to the places where trafficked persons are exploited (the destinations for migrants in general) and to the factors that allow certain demand to be met by the exploitation of trafficked persons, including economic, social and cultural factors.¹⁸ Regarding definition, demand can refer to quite different points of focus; employer demand for cheap and exploitive labour; consumer demand for goods and services provided by trafficked persons; and the demand generated by exploiters and others involved in the trafficking cycle.

¹⁵ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary, Geneva and New York, 2010, HR/PUB/10/2, page 97

¹⁶ Article 9(5), UN Trafficking in Persons Protocol.

¹⁷ See the European Trafficking Convention, the EU Directive on preventing and combating trafficking in human beings and protecting its victims; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary, Geneva and New York, 2010, HR/PUB/10/2, pages 97-103,

¹⁸ E. Pearson, *The Mekong Challenge, Human Trafficking: Redefining Demand, Destination factors in the trafficking of children and young women in the Mekong sub-region*, (Abridged), Mekong Sub-regional Project to Combat Trafficking in Children and Women, ILO, Bangkok, 2005.

4.2. Why the topic deserves attention

At the time the UN Trafficking Protocol was adopted in 2000, there was an assumption by many anti-trafficking professionals that ‘demand’ referred chiefly to demand for commercial sex provided by women and girls who had been trafficked for the purpose of the exploitation of the prostitution of others. This assumption was responsible, at least in part, for a common conclusion that measures to address demand could be limited to those targeting individuals who knowingly use or take advantage of the services of trafficked persons, rather than needing to target unknowing consumers more generally.

There is also an ongoing debate about whether demand for the services of people trafficked for the purpose of being exploited in prostitution is directly comparable to demand for the services of people in forced labour or other forms of economic exploitation and therefore whether the measures to reduce demand should be similar or different. As international experts have reached different conclusions,¹⁹ it is not surprising that some States have been unclear on how to proceed.

A UNODC Guide produced immediately after the Trafficking in Persons Protocol came into force suggested that most of the measures required to implement this provision involve non-law based initiatives, although legislative or other measures could target “those who knowingly use or take advantage of the services of victims of exploitation”.²⁰ In contrast, the emphasis of stakeholders that focus on labour rights and child rights has been precisely on legislative measures, both those intended to ensure satisfactory minimum labour standards²¹ (which, if enforced, reduce employers’ demand for workers to exploit) and those which make the exploitation and abuse of children offences (and thereby contribute to creating a protective environment for children).

There are a variety of actions that can be taken to address businesses and organizations that buy services or products from others, and consumers who seek cheap products and unwittingly contribute to encouraging employers to subject workers to forced labour. Many of these are voluntary commitments (including those involving particular businesses entering into legally binding commitments with other businesses in their supply chain), raising questions about the effectiveness of such commitments, either against human trafficking or against specific forms of exploitation such as forced labour and child labour. These commitments routinely take the form of codes of conduct (with which businesses require their suppliers to comply) or procurement policies. Further, when businesses and other organizations are required to take action with respect to abuse committed in their own workplace or in those of their suppliers, there is also an open question about how extensive the range of abuse (or other negative impacts of their activities) should be that they are asked to address.²²

¹⁹ For a summary of positions taken in this debate, see UN Special Rapporteur on Trafficking in Persons, Ms. Joy Ezeilo, *Trafficking in persons, especially women and children, Note by the Secretary-General, transmitting the interim Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN General Assembly document A/65/288 (9 August 2010), paragraph 34.

²⁰ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, UN, 2004, page 297.

²¹ The ILO has noted that “[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 ... [t]olerance 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” (International Labour Organization, *Getting at the roots: Stopping exploitation of migrant workers by organized crime*, International Symposium on the United Nations Convention against Transnational Organized Crime: Requirements for Effective Implementation, Turin, 22-23 February 2002, section 3 (b), quoted in OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, page 102.

²² In June 2011 the UN Human Rights Council endorsed a set of *Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework* (by UN Human Rights Council resolution 17/4, ‘Human rights and transnational corporations and other business enterprises’, 6 July 2011, UN document A/HRC/RES/17/4. The *Guiding*

4.3. Key Questions

1. How important is it to the overall effort to prevent trafficking in persons to discourage the demand that fosters all forms of exploitation? Have prevention efforts thus far been disproportionately oriented towards addressing supply and, if so, why might this be?
2. Is there a common understanding about the full range of measures that can be employed to discourage demand, including those targeting the public at large? Which of these have proven effective, and why, and to what extent could they be transferred successfully to other contexts, and/or to different forms of trafficking?
3. What kinds of legislative measures are necessary to discourage demand, and what evidence exists that these have been effective?
4. How significant is the role of private businesses in discouraging demand and, in particular, how significant is their role in sectors that are commonly identified as highly vulnerable to trafficking (agriculture, construction, care and hospitality, fisheries, mining, etc.)? What role should they play, and how best can they be engaged?
5. Do individual consumers have a role to play in discouraging demand? If so, what role could and should individual consumers play, how best should they be engaged, and what messages should be used to engage them?
6. Do preventive strategies effectively address demand as a root cause of trafficking?

Principles focus on the responsibility of businesses to respect human rights in general, stating that business enterprises should respect human rights and underlining their duty to exercise due diligence in checking the human rights impact of their business activities and taking action to remedy any adverse effects. The text of the *Guiding Principles* is found in the *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 21 March 2011, UN document A/HRC/17/31).

5. Preventing Trafficking in Persons by Addressing Vulnerabilities

5.1. Description of the problem

In the years after the UN Trafficking Protocol was adopted, prevention efforts focused mainly on countries of origin, where trafficked persons are recruited or from where they migrated and eventually came under the control of traffickers. The most common method used was to raise awareness about the danger of migration or of leaving one's community and to disseminate information to people who seemed likely to be targeted by traffickers (mostly in poor communities). This approach assumed that poverty, migration and lack of knowledge of the dangers involved constituted major "root causes" of trafficking. But investments aimed at raising awareness about the dangers of irregular migration do not in general appear to have yielded the desired results.

Doubts about the viability of preventing trafficking by interrupting the 'supply' of trafficked persons at source—in countries and communities of origin—as well as growing awareness, have during the past several years generated greater discussion around the need to revisit the strategies of prevention at source. This has led to the recognition that prevention work needs to be done not just at the source communities but also at the destination.

The UN Trafficking Protocol obligates States to 'take or strengthen measures to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of opportunity (article 9.4).

5.2. Why the topic deserves attention

In focusing attention on the vulnerability of individuals and their communities to trafficking in persons, the UN Trafficking in Persons Protocol cites "poverty, underdevelopment and lack of equal opportunity" as factors (article 9.4) that make people "vulnerable to trafficking" and requires States Parties to take or strengthen measures to alleviate such factors. The UN Convention against Transnational Organized Crime also requires States Parties to alleviate the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime²³ (for example, the social and economic conditions that encourage some people to resort to the services of smugglers in order to migrate). The importance of addressing vulnerability to trafficking is also emphasized by United Nations Organs, UN Human Rights Bodies and a range of regional and international policy instruments²⁴.

While poverty and underdevelopment have often been cited as the main root causes of trafficking in persons, evidence published over the past decade raises questions about the accuracy of such a generalization.²⁵ Some experts have noted that while socio-economic ills like poverty are considered significant migration push factors, few if any of them appear to be prerequisites for human trafficking to occur. Since prevention strategies are generally linked to addressing the root causes of a problem,

²³ Article 31.7 of the UN Convention against Transnational Organized Crime.

²⁴ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary, Geneva and New York, 2010, HR/PUB/10/2, page 107, footnote 192.

²⁵ See, for example, R. Danziger, J. Martens and M. Guajardo, "Human Trafficking and Migration Management" in C. Friesendorf, ed., *Strategies against Human Trafficking: the Role of the Security Sector* (Vienna: National Defence Academy and Austrian Ministry of Defence and Sports, 2009). <http://www.dcaf.ch/Publications/Strategies-Against-Human-Trafficking-The-Role-of-the-Security-Sector>. Further, a UN.GIFT training manual comments that, "There are many children living in poverty who do not fall victim to trafficking...poverty is only one of a range of risk factors that create vulnerability to trafficking" (*Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation*, Text Book 1, Section 1.3, ILO, UNICEF and UN.GIFT, 2009).

rather than the symptoms, it may be that the perceived lack of success in preventing human trafficking is linked to a misidentification of its root causes. This is not to say that it would not be important to address these issues - addressing poverty and other socio-economic challenges are worthy aims. Rather, prioritizing these factors may not necessarily have the desired effect of preventing human trafficking.

Reasons for migration may overlap with vulnerabilities for people to be trafficked, such as poverty and underdevelopment but as well as a wide range of other factors of a social, cultural, economic, political and environmental nature. These include all forms of discrimination, inequality, lack of access to information, violence and conflicts. All of these could trigger people to leave their places of normal residence and they are at the same time areas of vulnerability. It is important to note that links between migration and trafficking are intricate but not identical. As in the case of other forms of exploitation, causes or rather the contributing factors to trafficking can be identified at several different levels: immediate causes, underlying causes and root causes.²⁶ As well, vulnerability to trafficking can be short or long term, specific or general, procedural, political, economic or structural and, for any one person, can change form over time. Different types of preventive action can potentially be taken in response to each level. Therefore, it is important to understand the nature of particular forms of vulnerability, in order to ensure that preventive actions are appropriate and effective.

Reflecting on the knowledge that has been accumulated over the past decade, the UN Global Plan of Action to Combat Trafficking in Persons provides a significantly longer list of factors that can contribute to heightened vulnerability to trafficking: “poverty, unemployment, inequality, humanitarian emergencies, including armed conflicts and natural disasters, sexual violence, gender-based discrimination, social exclusion and marginalization, as well as a culture of tolerance towards violence against women, youth and children” (article 12).²⁷ Factors that can heighten vulnerability to trafficking tend to impact differently and disproportionately on groups that already lack power and status in society, including women, children, indigenous peoples, minorities, migrants, refugees, internally displaced persons and stateless persons. In particular, violence against women, including domestic violence and a lack of protection or effective remedies against such violence, is a common characteristic of trafficked women and girls²⁸. International law also recognizes that, because of their reliance on others for security and wellbeing, children, and in particular unaccompanied and separated children outside their country of origin, are vulnerable to trafficking and related exploitation. Trafficking is also a feature of armed conflict as well as of post conflict situations.²⁹

This list underscores the value of an integrated approach to reducing vulnerabilities over an attempt to tackle them one by one which could result in inefficient use of resources and a projectised approach to the issue. Trafficking awareness and indicators should be mainstreamed into long-term, large-scale development programmes, and to preserve the scarce resources available for trafficking-specific prevention initiatives for law enforcement-type interventions that aim to disrupt the activities of traffickers, and initiatives that discourage demand.

One lesson learnt is the need to shift away from labeling persons or groups as vulnerable and towards recognition of broader categories with a greater focus on the range of factors that create the conditions that render individuals vulnerable to being trafficked, as well as on particular and distinct situations in which they become vulnerable. This means identifying what systems and structures or political,

²⁶See ILO, *A future without child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2002, page 47.

²⁷UN General Assembly resolution 64/293, *United Nations Global Plan of Action to Combat Trafficking in Persons*, 12 August 2010, UN document A/RES/64/293.

²⁸OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, Geneva and New York, 2010, HR/PUB/10/2, page 111.

²⁹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, Geneva and New York, 2010, HR/PUB/10/2, page 114.

social, economic, cultural or customary practices increase a person’s vulnerability to trafficking. These systems and structures are not exclusive or unique to places or countries of origin of people who are trafficked, but also occur along the routes they use and in the places and destinations where they are exploited. Consequently prevention interventions as a foundation and cornerstone of effectively addressing trafficking need to be recalibrated from the perspective of both national and international actors. In attempting to address those factors that contribute to creating and/or exacerbating vulnerability, it may be preferable to focus on broader structural or systemic issues, such as the provision of genuine livelihood options to traditionally disadvantaged groups, improving children’s access to education, compulsory birth registration, safe migration options, promotion of legal and non-exploitative migration, better protection for migrants in the workplace, or improving monitoring of labour recruitment practices or international adoption, rather than on labelling specific types of people as vulnerable and raising their awareness of the risks of irregular migration without offering viable alternatives’.

This indicates that past experiences of trafficking, together with an awareness of the dangers and risks involved, are often superseded by economic push factors in the decision to migrate. This demonstrates the need for safe and legal migration channels to prevent a repeat of exploitation through trafficking³⁰. The situation of vulnerability becomes more pronounced in cases involving children. Lack of regular immigration status is often a tool used by unscrupulous employers to control their victims.

In recent years efforts to reduce vulnerability to trafficking in source countries, and once migrants reach their destination can be seen in improving respect for internationally-recognized labour standards as well as addressing the attitudes of the public at destination regarding patterns of consumption and towards foreign migrant workers. Here too, international organizations together with national governments need to work together to identify a series of practical measures which will reduce the vulnerability of men, women and children at places of destination.

5.3. Key questions

1. How important is it to the overall effort to prevent trafficking in persons to alleviate the factors that make persons vulnerable to trafficking? In a migration context, is it more important to focus on alleviating these factors at the point of origin, during the journey, or once an individual is at the point of destination?
2. What kinds of programmes, projects, or activities have been successful in alleviating these factors? What elements were necessary to achieve this success? What evidence is available that proves that these initiatives have prevented trafficking?
3. What has been a more effective approach to preventing trafficking: designing specifically tailored activities for individuals or communities identified as vulnerable, or working to mainstreaming trafficking awareness into long-term and large-scale national or international development efforts?.
4. Are there particular factors that are common to trafficked persons that made them vulnerable to trafficking? How might these be addressed? If these common factors were addressed, would this prevent trafficking?
5. How effective in preventing trafficking are initiatives which aim to raise the awareness of aspirant migrants about the risks of irregular migration? Have public awareness efforts that promote a safe migration message been more or less effective in preventing trafficking?
6. What can we learn from the “voices of victims”, their profiles and experiences in order to craft early and more effective interventions for the benefit of those at heightened risk of trafficking?

³⁰ IOM 2010 ‘The Causes and Consequences of Re-Trafficking, p.41, available at: http://publications.iom.int/bookstore/free/causes_of_retrafficking.pdf

6. Providing Effective Remedies for Trafficked Persons

6.1. Description of the problem

Trafficking in persons is a crime outlawed by international law, and a violation of human rights. As such, victims of trafficking are entitled to remedies. States' responsibility to provide and facilitate access to remedies for victims of trafficking stems from the obligation of states to exercise due diligence in implementing the requirements of international law. This obligation implies that states should be responsible to provide remedies where they fail to act to prevent violations, or investigate and punish acts as such. With regards to trafficking in persons, this due diligence standard is directly applicable to the requirements of both the UN Trafficking in Persons Protocol and the UN Global Plan of Action to Combat Trafficking in Persons (2010).

The obligation to provide remedies to victims of human rights violations is clearly provided for in most international human rights instruments, and has been reiterated by various treaty bodies³¹. The Recommended Principles and Guidelines on Human Rights and Human Trafficking³², for example, require States to ensure that trafficked persons are given access "to effective and appropriate legal remedies". Further, a number of additional international instruments provide for a right to remedy for victims of trafficking³³.

Most recently, at the level of the Conference of the State Parties to the UN Convention against Transnational Organized Crime and the Trafficking in Persons Protocol, attention has specifically been given to the issue of compensation. At its fourth session, in October 2010, the open-ended interim working group on trafficking in persons set up by the Conference of the State Parties adopted a series of detailed recommendations to States Parties regarding enabling the compensation of victims of trafficking in persons³⁴.

In 2011, the UN Special Rapporteur on trafficking in persons, especially women and children, gave special attention to the issue of trafficked persons' access to effective remedies and the difficulties many experienced. Her related reports to the UN Human Rights Council and General Assembly reviewed the international legal framework concerning compensation for trafficked persons and proposed a set of, 'Draft basic principles on the right to an effective remedy for trafficked persons'. In particular, the UN Special Rapporteur emphasized that the right to an effective remedy was not a new right: "The draft basic principles are based on existing international human rights law and standards and do not represent new norms of human rights".

The Special Rapporteur specifically referred in her 2011 report to the obligation of all States to provide or facilitate access to remedies to all trafficked persons within their respective territory and subject to their jurisdiction, including non-citizens. The Special Rapporteur also advocated for the

³¹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, Geneva and New York, 2010, HR/PUB/10/2, pages 224-226; In particular, Article 2(3) of the ICCPR, Article 25 of the ECHR, Article 7 of the African Charter, Article 14 of the CAT, Article 39 of the CRC, Article 73 of the ICC, OAS Convention on Violence against Women, CEDAW General Recommendation No. 19.

³² OHCHR, 2010

³³ See the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power has provided for the right to remedy for victims of trafficking and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The later clearly links reparations to responsibility, and requires states to provide reparations for acts or omissions attributed to them based on failure to act with due diligence. See Trafficking Protocol, Article 6(6), Organized Crime Convention, Article 25(2), and European Trafficking Convention, Article 15.

³⁴ See Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 10 to 12 October 2011, <http://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-oct-2011.html>

provision of temporary or permanent residence status as a substantial form of remedy to trafficked victims, where safe return to the country of origin cannot be guaranteed, may place them at risk of persecution or further rights violations or is otherwise not in the best interest, including to those victims that may qualify as refugees under international refugee law.

As far as children are concerned, remedies should take into account the “best interest of the child”, including the possibility for former victims not to return to their families.

The OHCHR confirmed in 2010 that it was still rare for trafficked persons to get access to remedies, but noted a trend towards making this a legal and practical possibility, commenting that “some countries have expressly granted victims of trafficking the right to private action against their traffickers and have included mandatory restitution to trafficked persons as part of the criminal sentencing of traffickers”³⁵. In other countries, the OHCHR noted, victims are entitled to bring a civil action against the traffickers irrespective of their nationality and migration status. Related to this, some trafficked persons have succeeded in getting compensation ordered by employment tribunals (labour courts) after being subjected to forced labour or other workplace abuse.

The issue of the right to an effective remedy for trafficked persons received significant further attention in 2011; the Human Rights Council unanimously endorsed a set of guiding principles for business and human rights, prepared by the representative of the SG for Business and Human Rights. The principles were of significance for trafficked persons, and in the broader context for responding to adverse impacts on human rights which business enterprises cause or to which they contribute. In both cases, however, the focus was on remedies and remediation, rather than narrowly on compensation, for compensation is just one of the remedies envisaged by the UN for victims of gross violations of international human rights law and serious violations of international humanitarian law.

6.2. Why the topic deserves attention

Although it is generally accepted that remedies or reparation should be proportional to the harm suffered, the scope and form of remedies granted is uneven. Efforts are already under way to share information on current trends towards making access to remedies practically applicable. However, several studies³⁶ have revealed a series of obstacles inhibiting trafficked persons from seeking remedy such as: inadequate access to justice; gender-based discriminatory national and customary law, practice and procedures, inadequate access to information about their rights as trafficking victims and availability of mechanisms to redress; unavailability of free legal aid; the failure to accord victims regular residence status, including for the duration of any criminal, civil or administrative proceedings, or the tendency to provide residency conditional to cooperation with legal proceedings; lack of adequate support mechanisms for psychological and physical recovery of victims; the knowledge gap and experience of national judiciaries in addressing reparations; inadequate witness protection systems in place; or the prosecution of trafficked persons for status-related offences including legal entry, illegal stay or illegal work.

6.3. Key questions

In the light of the above, it would be timely to review and analyse the understanding around the rights to effective remedy, through the following questions:

³⁵ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary*, Geneva and New York, 2010, HR/PUB/10/2, page 223.

³⁶ IOM, *International Migration Law N.24, 2010 – ‘Rights, Residence, Rehabilitation: A Comparative Study Assessing Residence Options for Trafficked Persons’*. See <http://publications.iom.int/bookstore/free/IML24.pdf>

1. What are the components of the effective remedy? Should the right to effective remedy encompass both a substantive right to remedies and procedural rights to access remedies? And if so, should the right to an effective remedy include at least one of the following elements; restitution, rehabilitation, compensation, satisfaction or guarantees for non- repetition, with due regard to the specific situation and needs of the trafficked person?
2. If compensation is the only form recognized, would it be appropriate for child victims of trafficking? Or should effective remedy be focused on other elements of the right, in light of the best interest of the child, and directed towards building child protection systems to secure rights including the right to education?
3. Should the right to effective remedy be seen as a tool to prevent trafficking in persons? If so how does this translate into responses?
4. Is there a clear understanding of the nature of the obstacles faced by victims of trafficking in persons in obtaining effective remedies? What should be done to remove those obstacles?
5. How can the right to remedy be practically fulfilled? Should this include the establishment of a fund at the national level?