

Thematic issue relating to irregular migration and trafficking

I. Background

In recent decades, population mobility has increased in almost all regions of the world and transnational migration has particularly increased. As the International Organization for Migration (IOM) highlighted in 2004 “the number of international migrants world-wide has increased by some 50 million, their yearly remittances sent back home have multiplied to reach over 100 billion USD, and the average annual flow of migrants from less developed countries to the more developed regions has doubled”¹. The United Nations estimates that the number of international migrants worldwide has increased from an estimated 75 million in 1965 to 175 million in 2000.²

A. Trafficking vs. smuggling

Although trafficking in persons can be confused with smuggling of migrants, there are significant differences between these two phenomena. The smuggling of migrants is often performed in dangerous or degrading conditions but it involves migrants who have consented to the smuggling. Smuggling usually ends at the arrival of migrants to their destinations. On the other hand, trafficking implies that victims either never consented or, if they initially consented, the consent was done under coercive, deceptive or abusive actions of the traffickers. In addition, trafficking involves the on-going exploitation of the victims in some manner that generates profit to the traffickers.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the Convention against Transnational Organized Crime defines trafficking as “... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat of 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.”³

The report on the human rights of migrants submitted by the Special Rapporteur of the Commission on Human Rights at its 58th session (2003)⁴ indicated that smuggling may increase the risk of trafficking. Due to the extreme vulnerability of smuggled migrants owing to their irregular situation and the debt contracted with the smugglers,

¹ Speech delivered by Mr. Luca Dall'Oglio at the Tenth anniversary of the International Conference on population and Development. New York 14 October 2004.
http://www.iom.int/en/news/icpd_141004.shtml

² World Population Monitoring 2003, United Nations. Page 132.

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, art 3.

⁴ Report on the human rights of migrants submitted by the Special Rapporteur of the Commission on Human Rights. A/58/275 para 13.

they may face degrading or humiliating jobs to pay back their debt. As a result they can easily go from irregular migrants to being victims of trafficking.

Recent trends indicate that the number of victims of trafficking has increased in the last decade and trafficking has spread, affecting a larger number of countries around the world. Social and economic disparities, rising unemployment, the disruption of traditional livelihoods, eruption of natural disasters and armed conflicts have pushed people to search for better opportunities abroad. When these factors are combined with restrictive policies with regard to immigration or asylum in the countries of destination, migrants can fall into alternative migration methods, including trafficking, with serious implications for the human rights situations of affected persons.

Trafficking is considered to be a gendered phenomenon. Trafficking and related exploitation affect mainly women and girls due to the persistent social, economic and often legal inequalities that make women and girls particularly vulnerable to trafficking. Women and girls are often thrown into the sex industry and are furthermore penalized on charges of prostitution or illegal entry or stay depriving them from receiving assistance as victims. Yet, there is increasing evidence that other groups such as boys and men are also being trafficked. Trafficking is not only confined to the sex industry and trafficked persons are also “used” for other purposes such as to work in sweatshops, in bonded labour or servants or dirty, difficult and dangerous jobs (the “three D Jobs”).

B. Trafficking and organized crime.

Trafficking is almost always a form of organized crime. Irregular migrants and trafficking victims are now seen as another commodity in a larger realm of criminal commerce that often involve other commodities such as narcotics, weapons and money laundering that generate large illicit revenues. Trafficking has also gone global as other forms of organized crime, linking groups together and forming networks. The relatively low risks of trafficking and appealing profits are root factors for criminals to engage in trafficking activities. For traffickers risks are limited as victims are intimidated by them both in the countries of destination where the victims fear prosecution and deportation, and in the countries of origin where victims are vulnerable to retaliation. With the adoption of international human rights instruments addressing the issue of trafficking and organized crime, governments have started to develop the necessary criminal offences and enforcement powers to investigate, prosecute and punish traffickers and to confiscate their profits. Further expertise and resources will be needed to transform these instruments into effective tools to combat trafficking. The support and protection of victims of trafficking should be a key element for Governments when formulating anti-trafficking measures.

C. Human rights vs. trafficking

With large numbers of people tricked, sold or otherwise coerced into situations of exploitation, debt bondage, forced labour or slavery-like practices, we encounter one of the most obvious forms of violations of widely accepted basic human rights, rights belonging to all human beings, irrespective of their sex, nationality, social status,

occupation or other differences. Trafficking represents the denial of virtually all human rights: the right to liberty, integrity and security of the person; the right to freedom from torture and other cruel, inhuman or degrading treatment; the right to freedom of movement; the right to home and family; the right to the highest attainable standard of health; and the right to education.⁵

As the Special Rapporteur on Trafficking in Persons, especially Women and Children highlighted, the two principles that guide all actions on this issue are that “(a) The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims; (b) Anti trafficking measures should not adversely affect the human rights and dignity of the persons concerned.”

Despite its overwhelming human rights dimensions, trafficking continues to be addressed primarily as a “law and order” problem and dealt mainly within the crime prevention framework. Victims of cross-border trafficking are criminalized and prosecuted as illegal aliens, undocumented workers or irregular migrants, rather than treated as victims of a crime.

D. Recent developments

Milestones have been carved in recent years.

The United Nations High Commissioner for Human Rights issued the “Recommended Principles and Guidelines on Human Rights and Human Trafficking” in July of 2002. This publication develops detailed human rights based responses to each stage of the trafficking cycle. It is a key tool which aims to integrate the human rights of victims of trafficking at all levels of anti-trafficking interventions. Taken together, the recommended principles and guidelines are a useful contribution for the development of a human rights approach to trafficking, its practical implementation as well as its evaluation.

The United Nations Convention against Transnational Organized Crime came into force in September 2003. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against Smuggling of Migrants by Land Sea and Air* entered into force soon after. These vital instruments require that States Party adopt basic criminal offences, including trafficking in persons or the equivalent, participation in the activities of an organized criminal group, money laundering and other illicit conduct. In particular, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* intends to prevent and combat trafficking in persons and to facilitate international cooperation against such trafficking. It provides for measures against traffickers and for measures to protect and assist the victims.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force in July 2003. It is an important step

⁵ “Integration of the human rights of women and the gender perspective,” Report of the Special Rapporteur on trafficking in persons, especially women and children, E/CN.4/2005/71.

towards the establishment of an international legal framework for the protection of the human rights of all migrant workers.

The Council of Europe is drafting the *European Convention against Trafficking of Human Beings* through an ad-hoc Committee. Once revised by the Council of Europe's Committee of Ministers, the European Convention is expected that the draft European Convention to be open to signatures in the second half of May 2005. A regional initiative of this sort would also be very useful in Latin America and the Caribbean.

The 60th session of the Commission on Human Rights in 2004 established a new mandate – the Special Rapporteur on Trafficking in Human Beings, Especially Women and Children.

The international workshop “National Institutions for the Promotion and Protection of Human Rights: causes, effects and consequences of the migratory phenomenon and human rights protection” was held in Zacatecas in October 2004. The outcome document, also called the Zacatecas declaration, reaffirmed the universality, indivisibility and interdependence of all rights and recognized that the *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* provided an important baseline for assessing respect for migrant workers' rights.

National Human Rights Institutions have played a crucial role in the promotion of many of these international instruments for the protection and promotion of human rights.

E. The role of National Human Rights Institutions

The role of National Human Rights Institutions can be decisive in the promotion and protection of the human rights of migrants both at the national and the international levels. At the national level, National Institutions can promote the entering into force of the existing international legislation on trafficking and irregular migration. In addition, they can analyze the existing national legislation with regard to trafficking and migration smuggling and monitor its adequate implementation and compliance with the international instruments while assessing its impact on the rights of migrant people and submitting specific recommendations in this regard. The recommendations emanating from National Institutions are valuable contributions to eventual decision-making processes in a country when designing, implementing or assessing national human rights policies on migration and trafficking. National Institutions can also open up dialogue for a better understanding of migration through sensitization campaigns that can correct the negative stereotype about this phenomenon, therefore combating racism and xenophobia. In addition, National Institutions can provide legal and psychological support to migrants and victims of trafficking. National Institutions can also visit detention centers to monitor the full respect of human rights of migrants.

At the regional and international level and through regional and international networks, the role of National Institutions is also to participate in international discussions and debates on migration strengthening the importance of placing human

rights at the center of all discussions on migration and providing professional support on the existing international legal frameworks in this regard.

The Special Rapporteur on Trafficking in Persons, especially Women and Children underlined the extensive work on the issue of trafficking undertaken by some national human rights institutions. As a recommendation the Special Rapporteur counts on the support of Governments, NGOs, national human rights institutions and IGOs, including regional organizations, to give concrete follow-up to her future recommendations at the country level.⁶

In addition, important commitments have been taken by National Institutions. For example, participants to the Zacatecas international workshop declared they will “Promote the adoption of national plans of actions and ensure that they take into account the rights of migrant workers, and called upon Governments to ensure that national institutions take their rightful place in the policy-making process in relation to migration” (para. 23).

The National Institutions Unit (OHCHR) and the Division for the Advancement of Women (UNDESA) organized a roundtable of National Human Rights Institutions and National Machineries for the Advancement of Women on “Protecting and promoting the rights of women” in Morocco in November 2004. The outcome statement contains an analysis of both the challenges for NI and National Machineries (NM) as well as common challenges to both. It also contains recommendations for both the NI and the NM as well as for both. In particular the statement stresses the need for NI to find ways to participate in the sessions of Commission on the Status of Women. A follow-up to this recommendation would improve the impact of NI contributions to the work of the Commission and vice versa.

The valuable contribution of National Institutions was also recognized by the Working Group on Contemporary Forms of Slavery. At its twenty-ninth session, the Working Group decided to continue to invite National Institutions that have information relating to the agenda item of the Working Group to assist it by providing such information, preferably in advance of the session.⁷ The Working Group urged States to support unions and non-governmental organizations which defend the rights of forced labourers and carry out activities to allow workers to defend themselves against forced labour. The Working Group also recommended the launching of public information campaigns and of training programmes for the police, magistrates and judges and other relevant officials to raise awareness what constitutes forced labour and that is prohibited by law. National Institutions should have a major role in implementing these recommendations.

⁶ E/CN.4/2005/71

⁷ Recommendations adopted at the twenty-ninth session of the Working Group on Contemporary Forms of Slavery paras 10, 45, 48.

II. Objectives of the seminar

The objectives of the seminar are to:

- Share a common understanding of the differences between smuggling of migrants and trafficking;
- Analyze the phenomenon trafficking and its link with organized crime from a human rights perspective;
- Recognize the fact that trafficking is usually accompanied by other harmful activities such as labour and sexual exploitation, modern forms of slavery or the forced incorporation in illegal networks. Special attention will be given to the situation of women and children;
- Identify the role that National Human Rights Institutions are playing in the promotion and protection of human rights in relation with the rights of migrants.
- Establish new and reinforce the existing international cooperating networks to prevent and sanction trafficking of migrants.

III. Expected outcome

The seminar is expected to:

- Enhance the expertise of NIs with regard to issues such as trafficking and smuggling,
- Analyze the impact of national and regional migrations policies,
- Promote the exchange of best practices and useful tools among representatives of NIs of the region to address trafficking;
- Enhance the role of the NI and the networks as advisors to prevent and combat trafficking;
- Promote partnerships between NIs to enhance their work in a particular area of concern; and
- Adopt a report containing recommendations for future action at the national, regional and international levels.

IV. Participants, duration and venue

The seminar, organized by the Network of National Institutions for the Protection and Promotion of Human Rights in the Americas in collaboration with OHCHR and the International Fund for the Ombudsman and National Human Rights Institutions in Latin America and the Caribbean, is expected to have around 20 representatives from National Institutions of the region and a selected number of experts from other regions such as Canada and Spain and from international organizations such as UNICEF, ILO and IOM. Staff from the State of Campeche will also participate. The seminar will be held from 10 to 11 March 2005 in Campeche, Mexico.

V. Agenda

The agenda for the seminar includes discussions on important issues related to trafficking, smuggling of migrants, organized crime and the role of National Institutions.

The seminar will be opened by high level representatives of National Human Rights Institutions such as the Secretary General of the Network and the President of the Campeche Human Rights Commission.

The meeting will address the following main issues: (1) Trafficking of migrants and its link to organized crime, (2) National, regional and international human rights mechanisms to prevent and sanction trafficking of migrants, and (3) The role of National Human Rights Institutions in creating cooperating networks to prevent and sanction trafficking of migrants.

Each theme will be have a question and answer session. Afterward the meeting will break into four working groups on (a) National Institutions, (b) Regional, local and autonomous institutions, (c) Trafficking and trading of women, and (d) Trafficking and trading of children. Each working group will start with a keynote presentation by experts followed by a question and answer session. Facilitators will be appointed to each working group.

A final document is expected to be adopted at the end of the seminar.

The detailed draft agenda is attached as annex 2 for reference.