



# INHERENT DIGNITY

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## AN ADVOCACY GUIDEBOOK

to preventing trafficking for the purpose of  
sexual exploitation and realizing the human rights  
of women and girls throughout their lives

A PUBLICATION OF MERCY INTERNATIONAL ASSOCIATION

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# FOREWORD

The Universal Declaration of Human Rights begins by recognizing that ‘*the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world*’. This simple statement was made 70 years ago but its truth and justice continues to shine. All human beings, irrespective of their race, class, sex or any other difference, are recognized as having value and of being worthy of respect. The concept of inherent dignity is the foundation of human rights because, ultimately, all human rights seek to advance and protect this fundamental entitlement. We reject discrimination and torture, we reject poverty and exclusion from education because these practices rob individuals and communities of the recognition and respect their inherent dignity demands.

The sexual exploitation of women and girls through trafficking is a direct and dangerous challenge to the foundational concept of human dignity, not least because it involves taking the freedom away from one person in order to serve the interests of another. Trafficking for sexual exploitation violates many of the basic human rights to which all persons are entitled including the right to be free from enslavement, servitude, debt bondage and forced marriage. The impact is worsened because such trafficking disproportionately affects those whose rights are too often already seriously compromised including women and girl migrants, refugees and others fleeing or enduring conflict and violence.

The great strength of this Handbook lies in it explicitly placing human rights and human dignity at the center of how trafficking for sexual exploitation is to be understood and responded to. As the Handbook demonstrates, a human rights approach compels us to examine the ways in which human rights violations arise throughout the trafficking cycle - and of the ways in which States’ obligations arise under international human rights law. A human rights approach works to identify (and hopefully redress) the discriminatory practices and the unequal distribution of power that underlie trafficking, which maintain impunity for traffickers and deny justice to their victims.

A human rights approach to trafficking means that all those involved in anti-trafficking efforts - from law enforcement agencies to victim service providers - should integrate human rights into their analysis of the problem and into their responses. This approach requires us to be rigorous in considering, at each and every stage, the impact that a law, policy, practice or measure may have on women and girls who have been trafficked or are at risk of being trafficked. It means embracing responses that empower and protect. Critically, it also means rejecting responses that risk compromising rights and freedoms. A useful example of this risk is the still-common practice of detaining women victims of trafficking in shelters. While there may be good reasons to seek to protect trafficked women from further harm, denying adult victims their right to freedom of movement in this way is not in keeping with a human rights approach.

The trafficking of women for sexual exploitation is a global wrong that implicates us all. But like so many challenges facing our fractured, troubled world, it is not amenable to a quick, technical fix. More than money or expertise, an end to the exploitation of human beings for private profit requires moral and spiritual leadership – it requires us all to stand up and say “this is wrong, this must stop”. Until then, what Pope Francis has called “*an open wound on the body of contemporary society*” will continue to fester. Many of the users of the Handbook are serving on the frontline. You know, better than most, what is happening, and what needs to be done. Your voice is valuable and I urge you to speak your truth loudly and clearly.

Finally, I congratulate all those involved in its preparation of this excellent resource. The Handbook is ultimately about *prevention*: it is about creating rights-based and respectful families, communities and societies where trafficking through sexual exploitation is no longer possible. That goal is an ambitious one but those we serve deserve nothing less.

**Anne T. Gallagher AO**

President, International Catholic  
Migration Commission





**PART ONE**  
**Introduction**



## 1.1 Trafficking for the Purpose of Sexual Exploitation Violates the Human Rights of Women and Girls

Human trafficking for the purpose of sexual exploitation is a human rights violation and a form of violence, which most commonly affects women and girls. Operating at both international and local levels, trafficking for the purpose of sexual exploitation generates enormous economic profit while reducing girls and women to a commodity to be traded in the commercial sex market. Predominantly preying on people from marginalized sectors, trafficking exploits vulnerability and denies human dignity.

Violations of human rights often occur before a girl or woman is trafficked and make her more vulnerable to being trafficked. For example, a girl who does not have access to free primary education is likely to be less aware of her rights and less able to find decent work. A woman who lives in poverty and does not have an adequate standard of living may be more likely to “consent” to dangerous and degrading work in order to feed herself and her family. Women who suffer discrimination in terms of what work is available to them have less choice in earning a

living. Girls who grow up experiencing family violence or sexual abuse may flee from their homes, making them more vulnerable to traffickers.

Listening to the experiences of women who have been trafficked, it is possible to identify the push and pull factors that lead someone to agree to a job offer that may lead to trafficking or to “consent” to work which they know is unsafe and degrading.

Trafficking for the purpose of sexual exploitation is a crime, one which involves multiple violations of human rights and fundamental freedoms when a woman or girl is trafficked. Common stories of trafficking include victims being lured using false promises of engaging in decent work in a faraway city or foreign land, only to be forced to work in the sex industry.



## 1.2 The Purpose of this Guide

This Guide aims to assist advocates and local actors to incorporate a robust human rights approach into their work, as they collaborate with other NGOs, governments, groups, and individuals to prevent trafficking for the purpose of sexual exploitation. It outlines the human rights of women and girls that are violated prior to being trafficked – making them more vulnerable – as well as after. In addition, it recognizes that most survivors of human trafficking experience cumulative disadvantage and marginalization over their lifetime. This Guide therefore advocates for trafficking prevention over the entire life course.

The Guide’s title, “Inherent Dignity,” comes from an understanding of human dignity that inextricably links it to the realization of human rights. Dignity refers to both an innate quality that demands respect for each one’s humanity and the capacity for development and self-determination. Therefore, approaching trafficking as a violation of human rights not only requires prosecution of criminals and protection of human rights, but also demands that survivors have an essential and active role in the work of prevention, which is achieved over the course of their life.

This Guide is relevant to community organizers, those who work for non-governmental organi-

zations, religious institutions, community associations, and grassroots campaigning groups, as well as those who work for the State, such as teachers and social workers. It can empower vulnerable and marginalized people at the local level where trafficking occurs.

It suggests actions that can be taken to bring a human rights-based approach to preventing trafficking and to ensure that the voices of women and girls are central to advocacy work.

There are additional complications and challenges for advocates and others working to prevent trafficking for the purpose of sexual exploitation in situations of armed conflict. Trafficking that occurs in those circumstances present different characteristics, such as the mass kidnappings and “slave markets” organized by ISIL, for example. Nonetheless there are some common precursors, including gender inequality and the objectification of women and girls.

A brief discussion of trafficking in conflict zones, together with references for further reading, is contained in section 1.6 of this Guide.

Where relevant, this Guide provides references to other guides that advocates and activists will find useful in their work on the prevention of trafficking for the purpose of sexual exploitation. There are several excellent guides to human rights-based advocacy, to working with and within the United Nations system, and to the obligations of states (countries) under international human rights conventions.<sup>1</sup>

This Guide is offered as a work in progress, inviting further contributions from around the world. It encourages more collaborative efforts on this vital subject, with the ultimate goals of empowering rights-holders, shaping policy, and ensuring accountability.

Courtesy of Colleen Cloonan



## 1.3 The Structure of this Guide

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After a brief discussion of what amounts to trafficking for the purpose of sexual exploitation (1.5) and the special circumstances of trafficking in conflict zones (1.6), the rest of **Part One** will introduce the human rights-based approach as applied to trafficking.

**Parts Two and Three** analyze the common patterns of human rights violations that are related to understanding and preventing trafficking. This is done through the lens of one survivor's particular testimony of her life's events. Part Two looks at the deprivations and violations of rights that make people vulnerable to being trafficked and Part Three looks at the categories of internationally recognized rights that are key to describe trafficking and remedy for victims.

**Part Four** covers several key international and regional human rights instruments and details the obligations of States that are derived from these.

Finally, **Part Five** provides concrete suggestions and consideration to incorporate this framework and approach into effective advocacy.

## 1.4 Acronyms

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|               |  |
|---------------|--|
| <b>CEDAW</b>  | Convention on the Elimination of All Forms of Discrimination against Women |
| <b>CRC</b>    | Convention on the Rights of the Child                                      |
| <b>ECOSOC</b> | Economic and Social Council  |
| <b>HRC</b>    | Human Rights Council   |
| <b>ICCPR</b>  | International Covenant on Civil and Political Rights                       |
| <b>ICESCR</b> | International Covenant on Economic, Social and Cultural Rights             |
| <b>NGO</b>    | non-governmental organization  |
| <b>OHCHR</b>  | Office of the High Commissioner for Human Rights                           |
| <b>UN</b>     | United Nations   |
| <b>UNODC</b>  | United Nations Office on Drugs and Crime                                   |
| <b>SDGs</b>   | Sustainable Development Goals  |
| <b>ILO</b>    | International Labour Organization  |
| <b>UNTOC</b>  | United Nations Convention against Transnational Organized Crime            |



## 1.5 What is Trafficking for the Purpose of Sexual Exploitation?

### Definition

The United Nations defines trafficking in persons as: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>2</sup>

Victims are deceived, coerced, or forced into trafficking for the purpose of sexual exploitation and then have little to no ability to escape or to change their circumstances. Often, those who are recruited come from communities rendered poor, where employment opportunities are scarce, and they hope to feed their families and send their children or siblings to school.

Traffickers further entice victims by informing them of the high demand for laborers in cities or in another country and lying about the nature of the work, describing it as office work or waitressing. Another common reason for victims wanting to leave their hometowns is the dream of working in another country and finding “greener pastures.” This is most often true for those coming from very poor, rural, and remote communities. This dream to uplift their lives is shattered once the full extent of the exploitation becomes clear.

## No Real Consent

According to the International Labor Organization, approximately 21 million men, women, and children are subjected to various forms of forced labor; and 90% of these people are exploited by individuals or companies who operate illegally.<sup>3</sup> Child trafficking is on the rise as well. Twenty percent of reported human trafficking cases involve children, with three of every four victims being girl-children.<sup>4</sup> Statistics detail that women and girls account for 71% of human trafficking victims worldwide.<sup>5</sup>

Women and girls should never be coerced or forced to sell their bodies or to engage in sexual conduct with another person against their free will. It is important to understand that women and girls who have been trafficked are not “sex workers” – they have not chosen this work. Some girls and women may seem to agree or go along with a trafficker; however we must recognize that by definition they are under duress (directly or indirectly) and have no other real, safe, and free choice available. They have not “consented” to engage in sexual activity and are not complicit in the sex trade.

## Systemic Exploitation

Popular discourse and media coverage largely presents trafficking as a random and rare act of abduction and victimization, but in reality, relatively few trafficked women are kidnapped or chained up in brothels. Narratives shared by survivors of trafficking reveal that trafficking is far more systemic. Formerly trafficked women and girls tell us that trafficking for sexual exploitation often occurs in less sensational ways. They became victims of sexual exploitation through a more systemic process of victimization and repeated violations of their human rights throughout their lives.

Survivors of trafficking report that they were victimized from childhood to early adulthood, making them prey to traffickers. Their opportunities for decent work were severely limited, as were the supervision and support provided by their families, their safety at home and in the community, and their education. These precursors to trafficking all reflect a more sinister and structural oppression in which girls and women are made vulnerable to predators. Understanding systemic victimization over the life course is key to a holistic and preventative approach to human trafficking.

## A Profitable Business

Trafficking is a very lucrative business. Recent estimates of the ILO suggest that globally:

“forced labour in the private economy alone generates \$150 billion in illegal profits per year. Two thirds of this figure (approximately \$99 billion) comes from commercial sexual exploitation, while another US\$ 51 billion are a result of forced economic exploitation, including domestic work, agriculture and other economic activities.”<sup>6</sup>

The ILO estimated at one point that the sex trade and sex tourism represented between two percent and fourteen percent of the economic activities of the countries of Thailand, Indonesia, Malaysia, and the Philippines.<sup>7</sup> Human trafficking, according to the ILO, is the third most profitable criminal activity in the world, after the sale of illegal drugs and weaponry.<sup>8</sup>

## A Crime under International Law and a Violation of Human Rights

There have been significant legal advances in recent years, both at the international and domestic levels, to address key intervention points – prevention of recruitment, freeing of survivors, prosecution of perpetrators, and rehabilitation of survivors. International law now addresses the issue of trafficking primarily through the United Nations Convention against Transnational Organized Crime<sup>9</sup> (UNTOC) and two related protocols: the Protocol to Prevent, Suppress, and Punish

Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”<sup>10</sup>), and the Protocol against the Smuggling of Migrants by Land, Sea, and Air.<sup>11</sup> These instruments are preceded by other agreements that address trafficking and slavery.

When the **Trafficking Protocol** was adopted in 2000, less than half of the countries in the world had declared human trafficking a crime. Today, 90% of the countries have.<sup>12</sup> Despite this, many countries’ domestic laws do not comply with the **Trafficking Protocol**, thus leaving billions of people in different parts of the world with inadequate legal protections. UN human rights instruments and documents also highlight States’ obligation to suppress trafficking, following the human rights-based approach. The next section explores how human rights can be used as part of advocacy for the prevention of trafficking for the purpose of sexual exploitation.

## RESOURCES

### Further Information on Trafficking for the Purpose of Sexual Exploitation

UNICEF, Innocenti Insights, *South Asia in Action: Preventing and responding to child trafficking. Child rights-based programme practices* (2008), <https://www.unicef-irc.org/publications/500/>.

UNICEF, Innocenti Insights, *Child Trafficking in Europe: A broad vision to put children first* (2007), <https://www.unicef-irc.org/publications/498/>.

UNICEF, Innocenti Insights, *Trafficking in Human Beings, Especially Women and Children, in Africa* (2005), <https://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf>.

Oxfam International, *Gender, Trafficking, and Slavery* (2002).

UNODC, *Human Trafficking*, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>.



## 1.6 Trafficking in Conflict Zones

The trafficking of women and girls for the purpose of sexual exploitation is prevalent in conflict zones. There are related and different issues and advocacy approaches that are relevant in the context of conflict. The US State Department summarizes:

“Armed conflict amplifies the risks of human trafficking for vulnerable populations by increasing economic desperation, weakening rule of law, decreasing the availability of social services, and forcing people to flee for their safety.

Armed conflict often results in broken governments, judicial systems, job markets, and community support structures that would normally offer citizens protection from disasters and crime, including human trafficking. Many contributing factors, such as high unemployment rates, homelessness, limited social services, and weak law enforcement oversight, are amplified in conflict zones and exploited by traffickers. Without formal options and services to maintain their livelihoods, people are more likely to resort to illicit activities or risky,

## Trafficking: Key Facts

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- 71% of detected trafficking victims are women and girls<sup>14</sup>
- “Females are chiefly trafficked for sexual exploitation, but also for sham or forced marriages, for begging, for domestic servitude, for forced labour in agriculture or catering, in garment factories, and in the cleaning industry and for organ removal.”<sup>15</sup>
- The illegal sex industry is the third fastest growing economic enterprise in the world.<sup>16</sup>
- 72% of females that have been trafficked are sexually exploited<sup>17</sup>
- Trafficking for the purpose of sexual exploitation is the most predominant form of global trafficking currently detected, accounting for 54% of all forms of trafficking<sup>18</sup>
- An estimated 40.3 million people were victims of modern slavery in 2016.<sup>19</sup>

informal means to survive—sectors in which traffickers thrive. ...

Young women and girls are often forced to marry or have sex with commanders and male combatants. ... Armed conflict can break down government institutions and create a climate of impunity that encourages traffickers to prey on vulnerable populations. Women and children, migrants, and internally displaced persons are among those most at risk of being subjected to trafficking in conflict zones. ...

Camps for refugees and internally displaced persons are prime targets for traffickers. The concentration of vulnerable, displaced people, combined with a lack of security, services, and oversight typically found in such camps, make them ideal locations for traffickers to operate. In long-standing camps, traffickers are able to build relationships with corrupt camp officials and establish trafficking rings. ... Trafficking operations can flourish amidst international reconstruction efforts where there are few government institutions or rule of law.”<sup>13</sup>

Human trafficking is used by some non-state armed groups as a military strategy to terrorize civilian populations. Organized recruitment of children by non-state armed groups (such as Boko Haram and ISIL), including for the purpose of sexual exploitation, is a war crime.

Importantly, women and girls have the **same human rights** in situations of armed conflict that they do outside of these circumstances.

There are **additional international laws** that protect children in war and conflict. For example, Article 38 of the CRC provides that States must



do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war, which includes forced work of any sort by girls. The CRC Optional Protocol on the involvement of children in armed conflict expands on these rights.

The UN Security Council has in recent years increased its attention on trafficking in conflict situations. Many have called on the Security Council to use its “normative, financial and technological” leverage to increase its impact on this matter.<sup>20</sup>

## Further reading

- James Cockayne & Summer Walker, *Fighting Human Trafficking in Conflict: 10 Ideas for Action by the United Nations Security Council* (2016), [http://collections.unu.edu/eserv/UNU:5780/UNUReport\\_Pages.pdf](http://collections.unu.edu/eserv/UNU:5780/UNUReport_Pages.pdf).
- Caritas, *Trafficking in Human Beings in Conflict and Post-Conflict Situation* (2015), <http://www.caritas.org/wordpress/wp-content/uploads/2015/11/CoatnetParis-15Report.pdf>.
- ‘Security Council Presidential Statement Says Human Trafficking Might Constitute War Crimes, as Members Consider Issue for First Time’, UN Doc. SC/12165 (Dec. 16, 2015), <http://www.un.org/press/en/2015/sc12165.doc.htm> (which includes presidential statement PRST/2015/25 regarding ISIL)



## 1.7 Using International Human Rights Law in Advocacy Work

The international human rights framework, complemented by other international agreements and national legislation, can be used by local communities, activists, governments, and policy makers.

International human rights law can be utilized to better understand why trafficking occurs and to campaign for its prevention.

The international human rights framework is also a useful lens through which to view, interpret, and describe the needs and rights of the most vulnerable and marginalized people in society.



## 1.8 What are Human Rights?

Human rights are the basic rights and freedoms of individuals established in declarations of the United Nations, international agreements called treaties to which States can agree to be bound, decisions of international courts and tribunals, customary international law,<sup>21</sup> and other sources.

Human rights are **indivisible and interrelated**.<sup>22</sup> Human rights must be considered together when determining an individual's human rights and a state's human rights responsibilities. The indivisible and interrelated qualities of human rights mean that the fulfilment of one right contributes to the fulfilment of other rights, and deprivation of one right results in the deprivation

of other rights as well. This is significant for any discourse on trafficking, as push and pull factors in trafficking are often linked with deprivations of rights prior to the act of trafficking.

**Human rights are universal** in that they apply equally and without discrimination to all people, and inherent in that they attach to any human being regardless of nationality, race, gender, religion, or any other status. The inalienability of human rights means that they cannot be taken away, “except in specific situations and according to due process.”

## Sources of International Law

The **Universal Declaration of Human Rights (UDHR)**<sup>23</sup> is a resolution of the General Assembly of the United Nations. Unlike a treaty, it is not formally legally binding, except by operation of customary international law.<sup>24</sup> The UDHR is a statement of the fundamental human rights for which there is broad agreement.

The UDHR, the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** together form what is known as the “International Bill of Rights.”

Other **treaties** deal specifically with discrimination based on race and gender, children, refugees, workers and migrant workers, and other matters. A treaty is an instrument like a contract that imposes binding obligations on the States that choose to become a party to it.<sup>25</sup> This means that countries that have not chosen to become a party to a treaty (‘non-parties’) are not bound by its obligations. The process by which a country becomes bound by a treaty includes: signature of the treaty; ratification according to the country’s own ratification process (commonly set out in its constitution); and accession, which generally occurs after the treaty has entered into force.



In addition to the Universal Declaration of Human Rights, there are nine core human rights treaties:<sup>26</sup>

- International Covenant on Civil and Political Rights;
- International Covenant on Economic Social and Cultural Rights;
- Convention on the Rights of the Child;
- Convention on the Elimination of all Forms of Discrimination against Women;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- International Convention on the Elimination of all Forms of Racial Discrimination;
- Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Rights of Persons with Disabilities; and
- International Convention for the Protection of All Persons from Enforced Disappearances.

The human rights set out in the UDHR are codified and detailed in the ICESCR, ICCPR, and other multilateral treaties. For example, the UDHR's right to education is addressed in Articles 13 and 14 of the ICESCR, which specify numerous dimensions of the right, including the obligation of states to provide compulsory primary education free of charge.

The human rights that are most relevant to trafficking for the purpose of sexual exploitation are contained in many different international instruments. This Guide focuses on the Universal Declaration of Human Rights, the first five of the multilateral treaties mentioned above, as well as the Trafficking Protocol.<sup>27</sup>

The UN treaty bodies issue statements to accompany treaties, such as general recommendations or general comments. These provide further interpretation and explanation of treaty

provisions that help States understand their obligations and individuals to understand their rights.<sup>28</sup>

The work of *Special Rapporteurs* is also highly persuasive in the discussion of human rights. Special Rapporteurs fall under the special procedures of the United Nations Human Rights Council, as part of its mandate to promote and protect human rights.<sup>29</sup> Their reports contribute greatly to the understanding of human rights and serve as a “contributing force to change” and a platform for the open discussion of human rights violations.<sup>30</sup>

Special Rapporteurs also intervene on behalf of victims.<sup>31</sup> There is a number of country and thematic mandates, including the Special Rapporteur on trafficking in persons, especially women and children.<sup>32</sup>

This Guide will also reference the mechanisms by which human rights under these international instruments are monitored and enforced and provide referrals to reliable information and guidance about how States are held accountable for their human rights performance.

Importantly, while the international human rights instruments are each independent, it is the stated intention of the United Nations that they be considered together when determining a State's human rights responsibilities.<sup>33</sup> The accounts of women who have been trafficked show that the violation of one right can aggravate the vulnerability of another right. For example, even if education is theoretically accessible to a girl, other factors such as poor health or family violence can force her to drop out of school. In turn, this can leave her with no option but to take up work for little to no remuneration, with dangerous working conditions, and in which she is more vulnerable to abuse and violence. Throughout this Guide, the interrelatedness of human rights will be highlighted.



## 1.9 Taking a Human Rights Approach in Preventing Trafficking

Courtesy of Colleen Cloonan

Although largely a hidden phenomenon, in recent decades the nature and extent of sex trafficking across the globe has begun to be exposed through the work of inter-governmental organizations, civil society, the media, and academic researchers.

There are **some common approaches to considering trafficking**, each with different emphases, underlying values, and recommended approaches to preventing and combatting trafficking.<sup>34</sup> They include the following:

| Paradigm                              | Key Tenets / Way of Understanding Trafficking  |
|---------------------------------------|--|
| <b>Globalization</b>                  | Products, information, and people are being commodified and moving across borders at a rapid pace.   |
| <b>Economic</b>                       | Sex trafficking is fundamentally about financial profit. Global markets commoditize sexual services and allow the interaction of supply and demand.  |
| <b>Migration</b>                      | Women’s migration and their changing role in the workforce is relevant, as are women’s livelihoods in less developed countries.  |
| <b>Organized crime and corruption</b> | Organized crime networks are seen as a fundamental cause of sex trafficking, including: large, international, organized criminal syndicates; small-scale, local criminal networks; and informal cooperation by a few people.   |
| <b>Gender / Feminist</b>              | Gender-based subordination, discrimination, and violence against women and girls are causally linked to trafficking for the purpose of sexual exploitation. Women’s safety rather than state security should be prioritized. The policy focus should be social services, human rights, and safe migration. |
| <b>Localized</b>                      | Understands human trafficking as situational; recognizes unique places and unique experiences; focuses on cultural, social, and specific environmental factors that are unique to a particular place.  |
| <b>Human rights</b>                   | The exploited person (or “victim”) should be at the center of any discourse on human trafficking. Focus is on the rights and protection of the trafficked person, as well as prevention and addressing the root causes of trafficking.   |

(Adapted from Reed 2014)

In most approaches trafficking for the purpose of sexual exploitation is understood as a criminal threat to the state and to state-controlled borders, rather than as a human rights issue.<sup>35</sup> The recurrent response to trafficking has been to

enhance border security and deport trafficked persons, who are considered illegal immigrants. Human rights and women’s accounts of their experience of sexual exploitation are often largely missing from the discussions.



Artwork by Sr. Venus Marie Pegar SFX

Former UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezelio, relates that unfortunately human rights are not usually the primary consideration in pursuing criminal justice in cases of trafficking.<sup>36</sup> Where States adopt a purely punitive approach to trafficking, this diverts attention from the root causes and can also result in survivors being prosecuted for crimes occasioned by the circumstances of trafficking,<sup>37</sup> such as vagrancy, prostitution, and illegal immigration. The treatment of survivors as criminals further impedes their enjoyment of their inherent human rights, such as the rights to education, housing, and employment, among others.

Further, viewing trafficking only through a criminal lens risks focusing disproportionate attention on the identification and prosecution

of individual traffickers. It does not focus enough on:

- the prevention of trafficking,
- reducing the vulnerability of women and girls to trafficking,
- supporting survivors to rebuild their lives, and
- empowering women to have more options in the paid work that is available to them.

This Guide **recommends a human rights approach** as a core, credible, and current way to articulate the harm done by trafficking and the importance of its prevention.

The Office of the UN High Commissioner for Human Rights and the Special Rapporteur on Trafficking in Persons, Especially Women and Children, advocate the adoption of a human rights-based approach to combating trafficking for the purpose of sexual exploitation. Also, the preamble to the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography states:<sup>38</sup>

“the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a **holistic approach, addressing the contributing factors**, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behavior, harmful traditional practices, armed conflicts and trafficking in children.”  
(emphasis added)

The human rights-based approach is a conceptual framework that evolved with the idea of **human rights and human development**. Human rights as “universal legal guarantees of... fundamental freedoms, entitlements, and human dignity”<sup>39</sup>

are vital components of human development. The realization of all basic freedoms, which are also human rights, make opportunities for development possible for all.<sup>40</sup>

This conceptual framework identifies **individual rights-holders** and their entitlements, as well as **duty-bearers** (individuals, States, and governmental agencies, and non-state actors) and their accompanying obligations. The aim is to strengthen the capacities of rights-holders to claim their rights and entitlements, and the will and capacities of duty-bearers to fulfil their obligations.<sup>41</sup> The standards and principles for the human rights-based approach are found in numerous international human rights treaties, outlined in the previous section. United Nations agencies have acknowledged the Statement of Common Understanding, which outlines the basic aspects of the human rights-based approach. The Statement of Common Understanding identifies the following three aspects of the human rights-based approach:

All programmes of development cooperation, policies, and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

Human Rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.<sup>42</sup>

Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and of “rights-holders” to claim their rights.

The human rights-based approach provides for a **holistic view** of situations, taking into consideration the interrelatedness and interdependence of human rights. It also accounts for the facets of human life, such as the family, the community, civil society, and local and national authorities.<sup>43</sup> This holistic view demands an “integrated response” that takes into consideration the social, political, and legal framework.<sup>44</sup> The human rights-based approach also brings the standards of international instruments to the local level, and “assists countries in translating such goals and standards into time-bound and achievable national results.”<sup>45</sup> Since this approach is also centered on rights-holders, processes are participatory and democratic and heavily involve the capacity-building of individuals and communities.<sup>46</sup>

It has been recognized repeatedly that trafficking is a **violation of numerous human rights** standards and principles<sup>47</sup> throughout the entire trafficking cycle. Further, the “discriminatory practices and unjust distributions of power that underlie trafficking maintain impunity for traffickers and deny justice to victims of trafficking.”<sup>48</sup>

The human rights based approach ensures that **governments take responsibility for prevention**, and that the **protection of the human rights of women and girls throughout their lives** is paramount. It entails the identification, prevention, and remediation of human rights violations across the life course. This includes those factors that can make women and girls more vulnerable to trafficking as well as “the discriminatory practices and unjust distributions of power that underlie trafficking, maintain impunity for traffickers and deny justice to victims of trafficking.”<sup>49</sup> Listening to and understanding women’s experiences and applying a human rights approach to our work in advocacy and prevention will improve the values-base and effectiveness of our work.



**PART TWO**  
**Listening to Survivors:**  
**Cathy's Experience**





**Cathy<sup>50</sup> described her experiences to a researcher, Angela Reed RSM PhD, in 2014. At that time, Cathy lived in Cebu in the Philippines. Cathy's story is highlighted here because of common elements with the experiences of many other women and girls who have been trafficked. Elements of her experiences – both before and after she was trafficked – help us to understand how she was rendered vulnerable to trafficking and how her human rights have been violated throughout her life.<sup>51</sup> This Guide will consider Cathy's experiences from a human rights, life course approach.**

I am Cathy. I am 20 years of age and was born in the north of the Philippines. I lived with my paternal grandmother as a young child and was told that my mother had been a prostitute and had met my father in a bar. She became pregnant with twin girls and we were adopted out to separate places.

Luckily for me I was adopted in the local area so I was able to be reunited with my grandmother and father. I heard years later that my twin sister had died. I met my mother only once before she died. I was 10 at that time and she was selling vegetables in the market and a neighbour pointed her out to me.

My father was worried that my mother would make my life a mess if we stayed together and so I stayed living with my Lola [grandmother].

When I was 13 I attended my mother's funeral. I was told that she was pregnant at the time and had been beaten up by her live-in partner. She had many bruises all over her body. It was very scary to see her that way. I was not really distressed at the actual time of her death because I did not really know her. However, I regretted that I did not have much time to be with her.

Although I was loved by my grandmother, it's not the same as the love of a mother that I really wanted. If I could turn back time, I

would love to have my mother, even for one month, so that I could feel her love.

I attended school up until my second year of high school. My grandmother was the one who bore the cost of my schooling, though sometimes my father would give her money.

My aunties really resented me because of the care my grandmother gave me. They were cruel to me and teased me and told me I was going to end up a prostitute like my mother. This made me sad, but I loved school and I was especially proud when I won Miss Filipina in my school. My aunties didn't believe that I could do it, but I joined the parade and I won because of a poem I wrote. I couldn't imagine that I would ever win. It was a very happy moment for me.

When I was a teenager, I left school because I had told my grandma that I would help earn money. I started work as a waitress. It was during this time that I had an affair with a married man. His wife was out to get me so I needed to leave that place. An acquaintance of mine asked me if I wanted to work in Cebu. I told him that it was so far away and that I was only 16, but he arranged for two other friends of mine who were also minors to come to Cebu with me. He told us we would earn good money as waitresses, but when we arrived in Cebu we were transported in a van to a club.

When we entered the club it was big and dark, but I knew it was a club because there were lights flickering and plenty of girls with heavy make-up. I was nervous at that moment because I knew that this is what they wanted me to do also. I didn't feel good about it. I had to wear heavy makeup and put on shorts which were very transparent, my underwear could be seen, and I also had to wear boots. We were given numbers to wear so that we could be identified by the customers. We were called one after the other to dance on the stage. My heart was pumping very fast and I was perspiring and I really didn't know what was happening.

For three weeks I was just dancing on the stage and then one night I was told that somebody had "bar fined" me. I did not know what this meant. A more experienced woman explained that a man had bought me. She loaned me her cell phone and told me to call her when I got to the hotel. When I got there I rang her and she told me to take a bath and then to lie down on the bed and so I followed her instructions. Later she texted me and told me if I was done I should take a bath and return to the club.

I was so ashamed, but I could not escape my situation. I had more customers after that. Some gave me big tips and some guys were nice to me. I was cautious though because some of the more experienced women told me that foreigners were more inclined to beat their customers. I was always on guard. My customers were generally Korean, Japanese and American. I never went with a Filipino because I was too ashamed.

I gave all my earnings to the two women who were my managers; this included any tips that were given to me. They said that I

had plenty of debts. My debts included payment for living in the apartment, my food, clothing, and make up. I could not escape because there were people who watched what we were doing – we called them "watchers."

I think I was in that bar for two years. A few days before I turned 18 the bar was raided. Our casa, our apartment, was raided early in the morning. We were so shocked because we slept in our bras and undies and when we opened our eyes there were lights from the cameras shining in our eyes. We were told to get dressed. They raided three casas simultaneously. All the casas were operated by the same managers. There were 90 of us, but not all were minors. During the raid I was shocked and afraid. I even hid behind the door because there were plenty of cameras and we were soon on television and in the news.

Although I had had problems earlier in life, I did not know that another problem awaited me in Cebu. I pitied myself for what happened to me. I felt that I was alone and nobody would support me, that I would just have this lonely life. I interacted with my co-workers but my own true feelings, I did not share. I did not trust anyone. I did not know if I told them my real feelings, whether they would tell my managers and that could have caused conflict. And I was angry with myself. I wondered how I could let all this happen to me.

There were times when I was a victim of trafficking that I just went with the flow, like I just accepted it. But I still had hopes and I fought for my future. No one can treat me like a dog. I had a limit to what could be done.

## The Importance of Listening to the Life Stories of Survivors

Listening to the experiences of women and girls who have been trafficked is an essential part of developing grounded and effective policy that goes beyond criminalization. It enables:

- a more holistic and integrated approach;
- the identification of circumstances that heighten vulnerability;
- the prevention of trafficking at the earliest possible time, including during childhood; and
- appropriate interventions for the protection, assistance, and rehabilitation of trafficking survivors.

Listening to the life stories of women who have been trafficked puts their **experience of trafficking into context**. We must recognize the human rights violations that survivors suffered during their childhoods in order to understand the various social, political, economic, gender, and other factors that are precursors to the trafficking and that increased the women's vulnerability to exploitation and abuse.

Survivor stories reveal **multiple, systemic oppressions**, including gender discrimination, poverty, rural isolation, domestic violence, limited educational opportunities, and family disintegration. Often they describe childhoods that were largely marred by deprivation, stigmatization, and abuse. Many survivors also experienced family violence and sexual abuse, and some from a very early age. Several migrated to other parts of their countries, or internationally, in order to flee impoverishment and oppression and to seek out new alternatives for their futures. Some were victims of petty criminals, themselves caught on the bottom rungs of national and global crime networks.

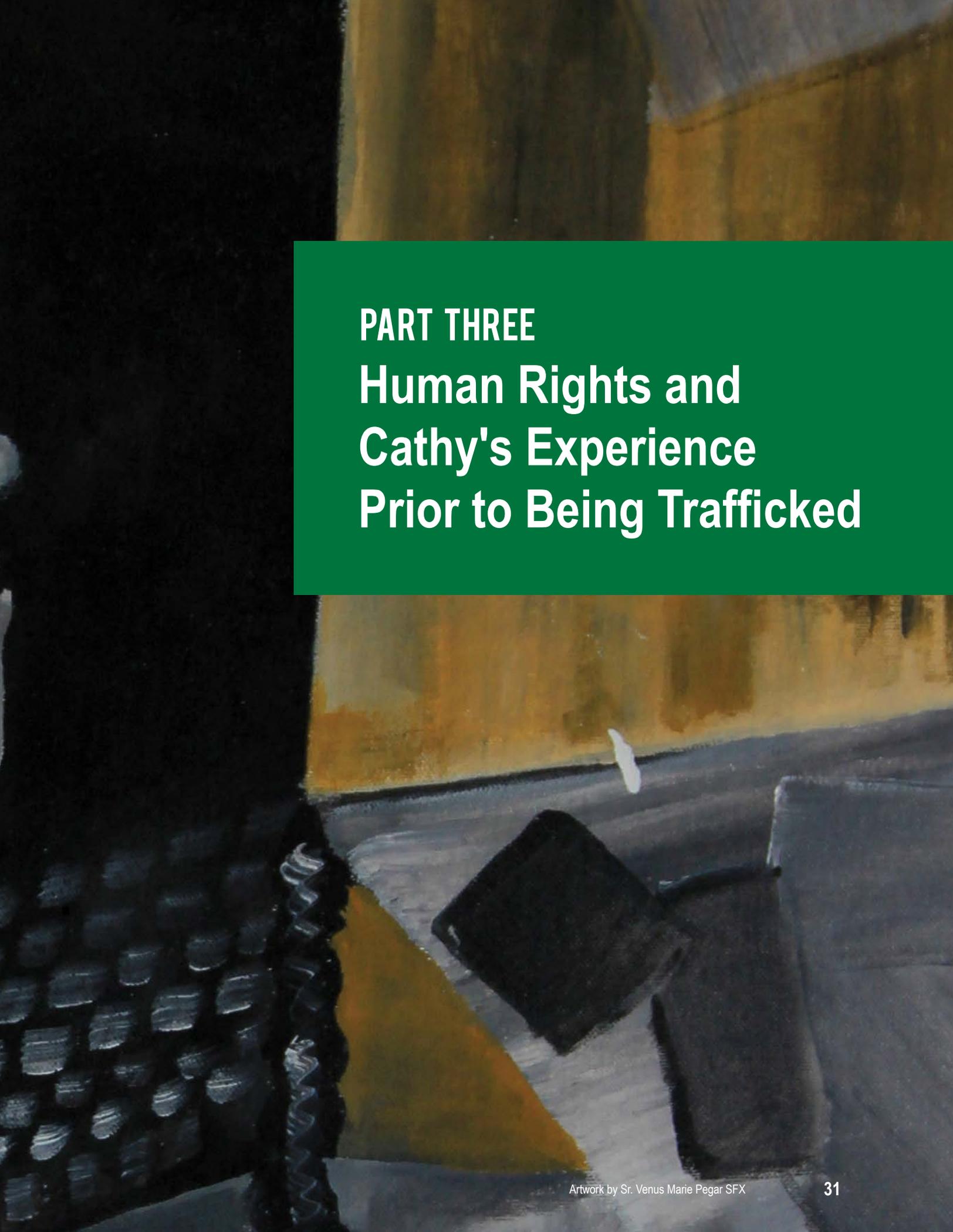
The common context revealed in many stories of trafficked women challenges the view that being trafficked for sexual exploitation is a rare, one-off event. It draws attention to human rights violations and systemic oppression that survivors experience across their whole lives – starting well before they are trafficked.

Engaging with trafficked women and girls about their experiences emphasizes the need to address vulnerabilities to prevent trafficking in the first place. If **preventive measures** are designed and implemented to address these vulnerabilities early, the likelihood of a woman being trafficked will be reduced. For example, trafficking prevention should include advancing the right to education, which is empowering and provides girls with more options in determining their line of work.

Storytelling can also be part of **survivors' healing process**, as it helps them to process their traumatic experiences. Encouraging women to share their stories is also relevant to their rights to effective remedy and the access to justice that must be guaranteed by the state.<sup>52</sup> Importantly, considering women's accounts is a way of **acknowledging and validating** their human dignity. Acknowledging their experiences, and listening to their descriptions of their memories and feelings, is a way for advocates and others to acknowledge their claim to basic human rights, their value as individual women, and their desire to live a life free from violence and commodification.<sup>53</sup>

Finally, storytelling is an active way for women to realize their own dignity through self-determination, which involves reclaiming and reshaping their own identities. Many women who have been trafficked describe the trafficking experience as isolating, degrading, controlling, and imposing on their personal freedom. Stripped of their true identities, and stigmatized and rejected by their societies, some consider themselves worthless and no longer of any value to society. Loss of identity is experienced through objectification, stigmatization, drug inducement, and being viewed as a chattel in an economic transaction. Survivors described feelings of fear, shame, despair, shock, sadness and in some instances, self-blame. Storytelling helps many to maintain their hope that someday they will not be subjected to such brutal exploitation by upholding their dignity through a belief in their own self-worth and a right to self-determination.





**PART THREE**  
**Human Rights and**  
**Cathy's Experience**  
**Prior to Being Trafficked**



### 3.1 The Right of Children to Special Protection

**Cathy:** [M]y mother had been a prostitute and had met my father in a bar. She became pregnant with twin girls and we were adopted out to separate places. Luckily for me I was adopted in the local area so I was able to be reunited with my grandmother and father. I heard years later that my twin sister had died. ...

An acquaintance of mine asked me if I wanted to work in Cebu. I told him that it was so far away and that I was only 16, but he arranged for two other friends of mine who were also minors to come to Cebu with me. He told us we would earn good money as waitresses, but when we arrived in Cebu we were transported in a van to a club.

When we entered the club it was big and dark, but I knew it was a club because there were lights flickering and plenty of girls with heavy make-up. I was nervous at that moment because I knew that this is what they wanted me to do also. I didn't feel good about it. I had to wear heavy makeup and put on shorts which were very transparent, my underwear could be seen, and I also had to wear boots. We were given numbers to wear so that we could be identified by the customers. We were called one after the other to dance on the stage. My heart was pumping very fast and I was perspiring and I really didn't know what was happening.

Childhood should be one of the most cherished stages of a person's life—one in which a child's growth and development is nurtured. The circumstances, memories, and events that formerly trafficked women describe usually reflect the exact opposite. Many trafficked women report that they were subjected to some form of abuse – physical, sexual, emotional, or mental – during their early lives, as well as neglect, substance abuse, and extreme poverty. In some cases, the family environment causes girls to leave home, making them alone, vulnerable, and desperate to find means to survive.

Child psychologists tell us that the developmental nature of childhood has implications for later victimization. “Childhood is a period of enormous change in size, strength, cognitive capacities, gender differentiation, relationships and social environments – all of which affect the potential for victimization.”<sup>54</sup> This precious nature of childhood is given special protection in United Nations treaties.

Children are entitled to **all of the human rights and protections** set out in the general human rights treaties to the same degree as adults. Several articles of the ICCPR and the ICESCR refer to the special needs of children and families. For example, Article 24 of the ICCPR calls for the protection of children and registration at birth of their name and nationality, and Article 10 of the ICESCR calls for specific attention, protection, and assistance to children.

In addition, the **Convention on the Rights of the Child** (CRC)<sup>55</sup> sets out additional and detailed rights to protect the special circumstances of people under 18 years of age. The CRC was unanimously adopted by the UN General Assembly on 20 November 1989, and it is now the most widely ratified human rights treaty.<sup>56</sup> Nearly all States are now party to the

CRC, affirming their commitment to realizing the special human rights of children. At time of writing, the United States has not yet ratified the Convention, but they have signed it and indicated their support.

The Committee on the Rights of the Child has identified four articles in the CRC that should guide States as they implement laws relating to children's rights, particularly in early childhood:<sup>57</sup>

- all children should be able to enjoy the rights accorded to them under the CRC without discrimination of any kind (Article 2);
- the best interests of a child should always be considered when making decisions affecting that child (Article 3);
- states should recognise all children's inherent right to life, survival, and development (Article 6); and
- due weight should always be given to the views of a child when making decisions affecting that child (Article 12).

The CRC recognises that children should develop their full potential and be free from hunger and want, neglect and abuse. It confirms that children are neither the property of their parents nor helpless objects of charity: they are human beings with their own rights.

**Under the CRC, States have assumed obligations to provide the resources, skills, and contributions necessary to ensure the survival and development of children to their maximum capability and to protect children from neglect, exploitation, and abuse.**

A State that has signed and ratified the CRC is obliged to **align its laws and policies** to fully implement the CRC. This includes assessing social services, legal, health, and educational systems, as well as levels of funding. States parties are obliged to ensure that the minimum standards set by the Convention in these areas are being met.

UNICEF has created helpful, plain-language summaries of the four key categories of rights set out in the CRC:<sup>58</sup>

- **Guiding principles:** The guiding principles of the Convention include non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate. They represent the underlying requirements for any and all rights to be realized.

- **Survival and development rights:** These are rights to the resources, skills and contributions necessary for the survival and full development of the child. They include rights to adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, cultural activities and information about their rights. These rights require not only the existence of the means to fulfil the rights but also access to them. Specific articles address the needs of child refugees, children with disabilities and children of minority or indigenous groups.

- **Protection rights:** These rights include protection from all forms of child abuse, neglect, exploitation and cruelty, including the right to special protection in times of war and protection from abuse in the criminal justice system.

- **Participation rights:** Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society.”

The CRC specifically states that children have the right to be protected from all forms of violence, physically or mentally, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation.<sup>59</sup>





Article 4 of the CRC affirms that governments have a responsibility to take all available measures to make sure children's rights are respected, protected, and fulfilled. The CRC also obliges States "to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."<sup>60</sup>

In addition to the individual rights and State obligations under the CRC, there are three Optional Protocols to which States can agree:<sup>61</sup>

- the first Optional Protocol deals with the involvement of children in armed conflict,<sup>62</sup>
- the second is the Optional Protocol to the Convention on the Rights of the Child on

the Sale of Children, Child Prostitution and Child Pornography,<sup>63</sup> which aims to prohibit and eliminate the worst forms of child labor (discussed below in section 4.2); and

- the third Optional Protocol establishes a procedure to allow individuals or groups to submit a complaint to the Committee of an alleged violation of any of the rights contained in the CRC.<sup>64</sup>

It is clear that international law provides for Cathy's protection as a child; however, throughout many instances in Cathy's life her rights were violated. The challenge for anti-trafficking advocates is to leverage the States' legal obligations to protect these rights.



## 3.2 The Right to be Free from Sexual Exploitation, Abduction, Sale, and Trafficking

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**Cathy:** For three weeks I was just dancing on the stage and then one night I was told that somebody had ‘bar fined’ me. I did not know what this meant. A more experienced woman explained that a man had bought me. ... I could not escape because there were people who watched what we were doing – we called them ‘watchers.’

A fundamental ethical rule, basic to modern understandings of human decency, is that **no person should ever be sold**. Cathy describes that she was forced to be prostituted and held against her will.

In addition to the prohibition on slavery and forced labor under international law (considered below in section 4.2), there are special

rules against forcing children to do certain types of work and also against working conditions that are unsafe or detrimental to their development and wellbeing.

Article 34 of the CRC establishes that States should **protect children from all forms of sexual exploitation and abuse.**

Article 35 of the CRC provides that States should take all measures possible to make sure that children are not abducted, sold, or trafficked.

These provisions of the CRC are supplemented by the **Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.**<sup>65</sup> The Optional Protocol mandates States to prohibit and criminalize the sale of children, which includes “offering, delivering or accepting, by whatever means, a child for the purpose of: (a) sexual exploitation of the child; (b) transfer of organs of the child for profit; (c) engagement of the child in forced labour...”<sup>66</sup> The Optional Protocol concentrates on States’ obligations to make relevant local laws to prohibit trafficking, to protect the rights and interests of child victims, to cooperate internationally, and to prevent the sale of children, child prostitution, and child pornography. A more detailed explanation of the obligations under the Optional Protocol is detailed below in section 5.2.

Article 36 of the CRC addresses the protection of children from other forms of exploitation and provides that children should be protected from any activity that takes advantage of them or could harm their welfare and development.



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Restrictions on harmful child labor are found in the **International Labor Organization Conventions**, including:

- Minimum Age Convention, 1973 (No 138)<sup>67</sup>; and
- Worst Forms of Child Labour Convention, 1999 (No 182)<sup>68</sup>.



### 3.3 The Right to Education

**Cathy:** I attended school up until my second year of high school. My grandmother was the one who bore the cost of my schooling, though sometimes my father would give her money. ... When I was a teenager, I left school because I had told my grandma that I would help earn money. I started work as a waitress.

Real opportunities for education, and all of the flow-on advantages, are dependent on the socio-political circumstances in which a child is raised. Unfortunately for many trafficked women, consistent and quality schooling was unattainable, resulting in a very limited education, a low level of literacy, and poor opportunities to engage in more favorable employment.

As Irina Bokova, Director-General of UNESCO, summarized in 2014:

“According to the UNESCO Education for All Global Monitoring Report, 58 million children are still out of school today, while 250 million more are unable to read, write and count even after 4 years of schooling. In this picture, girls and women are hit the hardest. This global learning crisis violates basic human rights. It undermines social cohesion and threatens stability, throwing a shadow over the development of entire societies, condemning generations to despair.”<sup>69</sup>

The UDHR provides in Article 26:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

The ICESCR addresses education in Articles 13 and 14, in which (among other obligations) the States parties:

- recognize the right of everyone to education, which “shall enable all persons to participate effectively in a free society;”

- agree that education shall be directed to the full development of the human personality and the sense of its dignity, shall strengthen the respect for human rights and fundamental freedoms, enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace (Article 13(1)); and
- recognize that, with a view to achieving the full realization of this right, primary education shall be compulsory and available free to all, secondary education shall be made generally available and accessible to all, and higher education shall be made equally accessible to all on the basis of capacity, in particular by the progressive introduction of free education (Article 13(2)).

There is **additional special protection of education** in the CRC. Among other provisions on education, Article 28 provides that wealthy countries should help poorer countries achieve the right to a free primary education.

**The CRC places a high value on education, stating that young people should be encouraged to reach the highest level of education of which they are capable.**

Further, Article 29 of the CRC provides that education should develop each child’s personality, talents, and abilities to the fullest, encouraging them to respect others’ human rights, their own, and other cultures and the environment.

In sum, Cathy received a full elementary education, as is her human right. However, Cathy was not given the opportunity to fully realize her educational capabilities, as she felt compelled to leave school to earn money for her family.



## 3.4 The Right to an Adequate Standard of Living

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**Cathy:** When I was a teenager, I left school because I had told my grandma that I would help earn money. I started work as a waitress.

Food, housing, water, health, and sanitation are the most basic needs for life. Yet many throughout the world, particularly girls, are deprived of these essential components, which negatively impact their future health and wellbeing, growth and development.

Among the factors that increase vulnerability to trafficking for the purpose of sexual exploitation, the CEDAW Committee has highlighted poverty and unemployment as factors that force women and young girls into prostitution.<sup>70</sup>

Article 25 of the UDHR provides:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The ICESCR addresses adequate standard of living in Article 11, which provides that the States parties:

- recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions, and agree to take appropriate steps to ensure the realization of this right;
- recognize the fundamental right of everyone to be free from hunger and shall take, individually and through international co-operation, the measures which are needed to improve methods of production, conservation and distribution of food and to ensure an equitable distribution of world food supplies in relation to need.

There are **special protections of the right of children** to an adequate standard of living in the CRC. Article 26 provides that children – either through their guardians or directly – have the right to help from the government if they are poor or in need. According to Article 27:

**children have the right to a standard of living that is good enough to meet their physical and mental needs. State parties should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing, and housing.**



Article 12 of the ICESCR recognizes the related right of everyone to enjoy the highest attainable standard of physical and mental health. States are obliged to take steps to achieve the full realization of this right, including:

- a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b) the improvement of all aspects of environmental and industrial hygiene;
- c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d) the creation of conditions which would ensure to all medical service and medical attention in the event of sickness.

Article 24 of the CRC provides that children have the right to the best health care possible, as well as safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.

Cathy's need to work in order to support the family's basic income is driven by deprivations to her right to an adequate standard of living.



## 3.5 The Right to be Free from Violence

**Cathy:** When I was 13 I attended my mother's funeral. I was told that she was pregnant at the time and had been beaten up by her live-in partner. She had many bruises all over her body. It was very scary to see her that way.

**All children have the right to live free from fear, violence, and abuse.**

Early exposure to violence in the home or community, or both, has a significant impact on the development of the child.

Sadly, many women who have been trafficked describe experiencing violence at a young age, within their families and outside the home. Violence related to alcoholism, domestic violence, marital desertion, and divorce increase the risk of trafficking for women.<sup>71</sup> As a response to abusive situations, many children seek safety by opting to run away from home in the hope of a better life, only to find that they become subject to further abuse through the experience of trafficking.

Violence against women is not mentioned specifically in any of the core international human rights treaties; however, two United Nations instruments are significant. Firstly, the **Declaration on the Elimination of Violence against Women** was adopted by the General Assembly in 1993. This Declaration applies to all forms of gender-based violence within the family and the general community as well as by the State. This non-binding declaration encourages governments to “exercise due diligence to prevent, investigate and... punish acts of violence against women.”

Secondly, General recommendation No. 19 on violence against women, issued by the Committee on the Elimination of Discrimination Against Women in 1992,<sup>72</sup> stipulates that the definition of discrimination contained in Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) includes gender-based violence:



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**Gender-based violence is described as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”**

This form of violence includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Gender-based violence “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions.” States parties to CEDAW are required to “take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.”<sup>73</sup>

There is an explicit **right of children to freedom from violence**. Article 19 of the CRC provides that children have the right to be protected from being hurt and mistreated, physically or mentally. States have corresponding obligations to ensure that children are properly cared for and protected from violence, abuse, and neglect. Cathy experienced fear of violence and articulates this in her story.



## 3.6 The Right to be Free from Discrimination

**Discriminatory, gender-based violations of human rights are one of the root causes of trafficking and a key feature of the trafficking process.**

Survivors' narratives clearly point to gender subordination in their treatment by their families, their partners, and the State, as well as in terms of their opportunities in life.

Considering that women and girls make up 71% of all identified victims of trafficking (including trafficking for non-sexual purposes),<sup>74</sup> the link between trafficking and gender is undeniable. Research has found that “women and girls who have been victims of gender-based violence and live in societies that tolerate severe gender discrimination appear to be more vulnerable to becoming victims of trafficking.”<sup>75</sup> However, when it comes to policymakers and stakeholders, these connections are often lost.<sup>76</sup>

Trafficking is a form of violence against women and “incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity.”<sup>77</sup>

The very first article of the UDHR states “all human beings are born free and equal in dignity and rights.” Article 2 sets out a non-exhaustive list of prohibited grounds for discrimination, including discrimination on the basis of sex. Both the ICCPR and ICESCR also include the same list of prohibited grounds of discrimination.

CEDAW was adopted specifically to address sex discrimination. Article 1 describes sex discrimination as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

CEDAW then sets out State obligations to avoid discriminating on the basis of sex and also to take steps to ensure that women have real equality in their countries. For example, Article 2 of CEDAW requires States parties to take all appropriate measures to ensure that women are not discriminated against by individuals or organizations and, if discrimination does occur, to ensure that women have access to effective legal remedies. Article 6 mandates States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>78</sup> CEDAW also imposes other specific obligations on States, including regarding women’s equal rights to employment, health services, and other similar areas (Articles 11 to 13).

## RESOURCES

### Further Information on Trafficking and Human Rights

UNICEF’s information on the Convention on the Rights of the Child:  
<http://www.unicef.org/crc/>

Child-friendly version of the Convention on the Rights of the Child:  
<https://www.unicef.org/rightsite/files/uncrcchildfriendlylanguage.pdf>

For further information on CEDAW, see:

- OHCHR, *Fact Sheet No 22: Discrimination against Women: The Convention and the Committee*  
<http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf>
- UN Committee on the Elimination of All Forms of Discrimination against Women homepage:  
<http://www.un.org/womenwatch/daw/cedaw/>

**PART FOUR**  
**Human Rights and**  
**Cathy's Trafficking**  
**Experience**





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## 4.1 The Right to Liberty and Security; The Right to Freedom of Movement

As described earlier, the indivisible and interrelated qualities of human rights mean that the fulfillment of one right contributes to the fulfillment of other rights, and deprivation of one right results in the deprivation of other rights as well.<sup>79</sup> The previous section reviewed some of the human rights that are commonly violated prior to the act of trafficking. This part will consider some of the human rights violations that are caused by trafficking.

**Cathy:** I was so ashamed, but I could not escape my situation. I had more customers after that. Some gave me big tips and some guys were nice to me. I was cautious though because some of the more experienced women told me that foreigners were more inclined to beat their customers. I was always on guard.

Trafficking is effected through high levels of violence, intimidation and coercion. Women who have been trafficked for sexual exploitation describe both direct and indirect ways that the pimps and owners of brothels and clubs restrict their movements and deprive them of their liberty. Some are physically restrained inside buildings. Most are supervised or watched to ensure that they do not leave and subjected to threats of a physical or financial nature – to themselves and also their families – to prevent them from leaving the situation of sexual exploitation.

The Universal Declaration of Human Rights establishes:

- Article 3. Everyone has the right to life, liberty and security of person.
- Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 9 ICCPR also codifies the right to liberty and security of person.

The **right to liberty** includes detention by the state for the purposes of immigration control. The Human Rights Committee has held that Article 9(1) of ICCPR “protects the right to security of person also outside the context of formal deprivation of liberty,” and that an interpretation of Article 9 “which would allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render totally ineffective the guarantees of the Covenant.”<sup>80</sup>

The **right to personal security** has not been defined in international law as specifically as the right to liberty. The ICCPR gives it its broadest meaning: the right to personal security is understood to mean the right to the protec-



tion of the law in the exercise of the right to liberty. Under this understanding, the right to security applies to situations beyond the formal deprivation of liberty by the State (for example, formal criminal punishment). By way of example, a State has an obligation to take reasonable and appropriate measures to protect the life of a person under its jurisdiction that has been threatened.<sup>81</sup>

The **right to freedom of movement** is a separate and related right. This right includes the right of everybody lawfully within a given territory to move about freely within it, without being hindered, and without having to ask specific permission of the authorities. The right to freedom of movement, as found in international human rights instruments includes four distinct rights: a) the right to move freely within a given territory; b) the right to choose a residence within a territory; c) the right to leave any country, including one’s own; and d) the right to enter one’s own country.<sup>82</sup> The State is obliged to ensure that the right to freedom of movement is protected from both public and private interference.



## 4.2 The Right to Free Choice of Employment: Freedom from Slavery and Forced Labor

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**Cathy:** For three weeks I was just dancing on the stage and then one night I was told that somebody had “bar fined” me. I did not know what this meant. A more experienced woman explained that a man had bought me. ... I could not escape because there were people who watched what we were doing – we called them “watchers.”

The history of international instruments on human trafficking can be traced to a string of conventions in the 1900s to the 1920s, the foremost of which were the 1904 Agreement for the Suppression of White Slave Traffic,<sup>83</sup> the 1910 Convention for the Suppression of White Slave Traffic,<sup>84</sup> and the 1922 International Convention for the Suppression of the Traffic in Women and Children.<sup>85</sup> The instruments were among the first to protect persons, especially women and children, from illegal

recruitment for illicit purposes.<sup>86</sup> After the change in language from “white slave traffic” to “trafficking” in the conventions, the Slavery Convention came into force in 1927.<sup>87</sup> The Convention was aimed at eliminating slavery, slave trade, and all other forms of labor akin to slavery.<sup>88</sup> The Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others<sup>89</sup> entered into force in 1951. It became the consolidation of anti-slavery and anti-trafficking conventions; however, the Convention limited “trafficking” to conduct leading to prostitution.<sup>90</sup>

Forced or compulsory labor is defined in Article 2 of ILO Convention 29 concerning Forced Labour as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

### **The prohibition of slavery or forced or compulsory labor is included in several modern human rights instruments, including in the International Bill of Rights.**

The Universal Declaration of Human Rights establishes:

- Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
- Article 23. (1) Everyone has the right to work, to free choice of employment...

The ICESCR Article 6 provides:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.



2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The ICCPR also bans slavery and servitude (Article 8).

The **International Labor Organization** is at the forefront of the eradication of forced labor. The first convention on the matter is the Forced Labor Convention (No. 29), which entered into force in 1932. Convention No. 29 came with ILO’s efforts to mainstream the issue of forced labor.<sup>91</sup> The aim of the ILO to curb forced labor was also reinforced by the adoption in 1957 of Convention No. 105, otherwise known as the Abolition of Forced Labour



## Strong links between trafficking and slavery and forced labor exist and trafficking is often referred to as “modern-day slavery.”

Convention.<sup>92</sup> By ratifying the Convention, States undertake “to suppress and not to make use of any form of forced or compulsory labour ... as a means of labour discipline.”<sup>93</sup>

Recently, the ILO Protocol No. 29,<sup>94</sup> also known as the Protocol of 2014 to the Forced Labour Convention, was adopted. Its preamble specifically recognizes that the forms and contexts of forced labor have changed and trafficking “for the purposes of forced or compulsory labor, which may involve sexual exploitation” is an international concern and needs to be immediately eradicated.<sup>95</sup> As such, the new Protocol “require[s] States to take effective measures to prevent and eliminate forced labour, to provide victims protection and access to appropriate and effective remedies, such as compensation, and to sanction perpetrators.”<sup>96</sup> In particular, the Protocol seeks to bring ILO Convention No. 29, adopted in 1930, into modern times by addressing issues like trafficking and creating new obligations on protection, prevention, and reparation, including compensation.<sup>97</sup>

In the context of the ILO, trafficking is not explicitly mentioned until the adoption of Protocol No. 29. Even then, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated that the exploitative conditions inherent in trafficking as defined in the Protocol make it clear that trafficking for the purpose of exploitation is covered by Convention No. 29’s definition of forced or compulsory labor.<sup>98</sup> It also clarified that “coercive sexual exploitation and forced prostitution do come within the scope of the definition of forced or compulsory labor” in Convention No. 29.<sup>99</sup> In making recommendations to countries, the CEACR considers penalizing trafficking as part of a State party’s obligation under Article 25 of Convention No. 29 to punish the illegal exaction of forced labor.<sup>100</sup>

There is additional protection of **children’s labor rights** in the CRC. Article 32 states that governments should protect children from work that is dangerous or might harm their health or their education. The focus of the Convention is to protect children from harmful and exploitative work, recognizing that many families depend on children’s work to supplement the family income. The work that children do for the family should be safe, suited to their level of development, comply with national labor laws, and not jeopardize any of their other rights, including the right to education.



## 4.3 The Right to Just and Favorable Conditions of Work and Fair Remuneration

**Cathy:** I gave all my earnings to the two women who were my managers; this included any tips that were given to me. They said that I had plenty of debts. My debts included payment for living in the apartment, my food, clothing, and make up.

Many women who have been trafficked report that they do not receive any salary for their work. Instead, they are forced to repay inflated debts for accommodation, cosmetics and food, as well as debts for “advances” previously paid for them by their recruiters or managers. This amounts to “debt bondage” or “the pledging of personal services as security for a debt where the value of those services is not applied



towards the liquidation of the debt”<sup>101</sup> – which is a violation of human rights.

Everyone is guaranteed the right to work, to free choice of employment, and to just and to favorable conditions of work.<sup>102</sup>

**The right to work means the right to *decent work*, that respects the fundamental rights of persons in terms of work conditions and remuneration.**<sup>103</sup>

The right to just and favorable conditions of work is a right guaranteed by the UDHR and the ICCPR. The UDHR Article 23 provides:

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 7 of the ICESCR provides that the States parties recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

The right of everyone to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, is protected in Article 24 of the UDHR and Article 7(d) of the ICESCR. Article 31 of the CRC goes further and provides that children have the right to relax and play and to join in a wide range of cultural, artistic and other recreational activities.

Also relevant is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).<sup>104</sup> This Convention aims to protect the rights of a particular group of people — migrant workers and their families. The ICRMW entered into force in 2003, and is the most recent of the key human rights treaties.<sup>105</sup>

Also, the ILO conventions protect the right to freedom from discrimination in employment, as detailed in, for example:

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and
- Equal Remuneration Convention, 1951 (No. 100).<sup>106</sup>



## 4.4 The Right to Participation

Given the degree of deprivation of human rights that women and girls experience when they have been trafficked, it is not surprising that it is almost impossible for them to participate in broader society as empowered citizens, to organize and join trade unions, or otherwise to progress their legal rights as a group.

The human right to freedom of participation in society includes the freedom of association and the right to strike in order to progress the interests of employees. These rights allow individuals to join together to pursue and further collective interests in groups such as political parties, NGOs, trade unions, and corporations. The rights to freedom of participation and association have both individual and collective aspects.

The UDHR Article 19 (the right to freedom of opinion and expression) and Article 20 (the right to freedom of peaceful assembly and association), enshrine the rights of organization and participation as human rights.

Article 19 of the UDHR provides that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 20 of the UDHR provides that “everyone has the right to freedom of peaceful assembly and association,” that “no one may be compelled to belong to an association,” and that “everyone has the right to form and join trade unions.”

The ICCPR also enshrines freedoms that should be enjoyed without unjustified intervention:

- the freedom of thought and religion (Article 18);
- the freedom of opinion and expression (Article 19);
- the right to peaceful assembly (Article 21); and
- the right to freedom of association, including trade unions (Article 22).

Among the key labor rights in the ILO conventions are the right to freedom of association and the right to organize and bargain collectively, as detailed in, for example:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87); and
- Right to Organise and Collective Bargaining Convention, 1949 (No 98).

Further, the CRC provides in Article 13 that children have the right to get and share information, as long as the information is not damaging to them or others. Children also have the right to meet together and to join groups and organizations (Article 15), as long as it does not stop other people from enjoying their rights.



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## 4.5 The Rights to Reparation, Protection, and Assistance

Women who have escaped trafficking face many challenges. They often lack support, family networks, and alternative work opportunities. They often fear retaliation and violence from their traffickers and brothel owners for having escaped.

As Anne Gallagher describes:

“Victims who break free from their traffickers often find themselves in a situation of great insecurity and vulnerability. They may be physically injured as well as psychologically and/or emotionally traumatized. They may be afraid of retaliation. They are likely to have few, if any, means of subsistence... [T]he responsibility of protecting and caring for victims lies with the state.”<sup>107</sup>

The Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons consider protection and assistance as included

in the remedy that States must afford to trafficking victims.<sup>108</sup> Under the ILO Protocol No. 29, States must “take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.”<sup>109</sup>

Under the Trafficking Protocol<sup>110</sup> survivors of trafficking have the right to support and protection after they have escaped the exploitation.

Articles 6-8 of the Trafficking Protocol require States parties to:

- protect the **privacy and identity** of victims of trafficking, including by making legal proceedings confidential (Article 6);
- provide to victims of trafficking **information on relevant court and administrative proceedings**, including information on the timing and progress of relevant proceedings as well as the disposition of any case in which

the victim has an interest, and assistance to enable their views to be presented and considered in criminal proceedings against offenders (Article 6(2));

- provide measures for victims’ **physical, psychological and social recovery** including housing, counselling, information, medical, psychological and material assistance, and employment, educational and training opportunities (Article 6(3));
- “endeavour to provide” for the **physical safety of victims** of trafficking while they are within its territory (Article 6(5)) – this obliges States parties to “take at least some steps that amount to ‘endeavour’ to protect safety;”<sup>111</sup>
- offer victims of trafficking the possibility of obtaining **compensation for damage suffered** (Article 6(6));
- “consider” permitting victims of trafficking to **remain in its territory** in appropriate cases, temporarily or permanently, considering humanitarian and compassionate factors (Article 7); and
- with due regard for safety, **facilitate and accept the return of a victim of trafficking** who is a national or permanent resident of that State Party (Article 8), including issuing the necessary travel documents, with due regard for the safety of the person and for the status of any related legal proceedings.

## Protection from Further Harm

The parent instrument of the Trafficking Protocol, the Organized Crime Convention, has stronger obligations on States parties. It requires them to provide witnesses with protection from retaliation or intimidation.<sup>112</sup>

The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the United Nations High Commissioner for



Human Rights (“Trafficking Guidelines”) describe that States are responsible to “protect trafficked persons from further exploitation and harm” as well as from “threats or intimidation by traffickers and associated persons.”<sup>113</sup>

## Physical and Psychological Care and Support

Trafficked women have the right to be treated with humanity and dignity. The Organized Crime Convention requires States parties to take “appropriate measures” within their means to provide assistance to victims, recognizing that trafficked women are victims of crime and of human rights violations.<sup>114</sup> Victims of crime are entitled to receive “the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means,”<sup>115</sup> as well as medical and psychological care and rehabilitation.<sup>116</sup>

As noted above, Article 6(3) of the Trafficking Protocol requires States parties to:

“consider implementing measures to provide for the physical, psychological and social recovery of victims ... in particular the provision of (a) appropriate housing; (b) counseling and information in particular as regards their legal rights in a language that the victims ... can

understand; (c) medical, psychological and material assistance; and (d) employment, education and training opportunities.”

The Legislative Guide to the Protocol says that States parties are “urged” to implement the measures mentioned in Article 6(3) “to the greatest extent possible within resource and other constraints.”<sup>117</sup>

## Right to a Remedy

States must ensure the victims’ right to effective **remedy**. Remedies contained in international instruments include: repatriation of trafficking victims,<sup>118</sup> freezing and confiscation of assets involved in trafficking,<sup>119</sup> compensation for victims,<sup>120</sup> and effective and appropriate legal remedies.<sup>121</sup> The UN Special Rapporteur on Trafficking in Persons in her 2014 report Basic Principles on the Right to an Effective Remedy.<sup>122</sup> The report recognizes that trafficking is an internationally wrongful act as contained in anti-trafficking and human-rights instruments; thus States have the obligation to ensure the victim’s right to effective remedy, which includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>123</sup> The Basic Principles on the Right to an Effective Remedy further elaborates on what each of these entail.

## The remedies identified under satisfaction and guarantees of non-repetition require that States address the root causes of trafficking.

Thus, effective remedy requires measures aimed at preventing or addressing the events in the life of the victim that increase vulnerability to trafficking.

## Additional Support for Child Victims

Child victims of trafficking are not only under-age and less able to care for their own interests; they have usually been separated from their parents or guardians by the traffickers. The Trafficking Guidelines (Guideline 8) recognizes that special care is needed for child victims of trafficking:

“The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.”

Guideline 8 then recommends (amongst other things) that States:

- Ensure that **definitions of trafficking** of children in both law and policy reflect their need for special safeguards and care, and not require “evidence of deception, force, coercion, etc” where the victim is a child;
- Ensure that children who are victims of trafficking are **not subjected to criminal procedures or sanctions** for offences related to their situation as trafficked persons;
- In cases where children are not accompanied by relatives or guardians, **take steps to identify and locate family members**;
- Following a risk assessment and consultation with the child, take measures to **facilitate**

**the reunion of trafficked children with their families** where this is deemed to be in their best interest;

- Where the safe return of the child to his or her family is not possible or in the child's best interests, **establish adequate care arrangements** that respect the rights and dignity of the trafficked child; and

- Ensure that a child who is capable of forming his or her own views enjoys the **right to express those views freely** in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family.

Similar provisions are in the ILO's Worst Forms of Child Labour Convention.<sup>124</sup>

## RESOURCES

### Further Information on Trafficking and Human Rights

- United Nations Office of the High Commissioner, *Human Rights and Human Trafficking: Fact Sheet No. 36* (2014), available at [http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf).
- Youla Haddadin & Alexander Klimova, *Human Rights-Based Approach to Trafficking the Work of the United Nations Office of the High Commissioner for Human Rights*, *The Judges Journal*. Vol. 52 ,No. 1 (2013), available at [https://www.americanbar.org/publications/judges\\_journal/2013/winter/human\\_rightsbased\\_approach\\_to\\_trafficking\\_the\\_work\\_of\\_the\\_united\\_nations\\_office\\_of\\_the\\_high\\_commissioner\\_for\\_human\\_rights.html](https://www.americanbar.org/publications/judges_journal/2013/winter/human_rightsbased_approach_to_trafficking_the_work_of_the_united_nations_office_of_the_high_commissioner_for_human_rights.html).
- UN Women, *Sex Trafficking is a Grave Violation of Human Rights and a Form of Violence Against Women and Children* (2012), available at <http://www.endvawnow.org/en/articles/538-sex-trafficking-is-a-grave-violation-of-human-rights-and-a-form-of-violence-against-women-and-children.html>.
- OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (2010), available at [http://www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf).
- Anne T. Gallagher, *The International Law of Human Trafficking* (2010).
- Tiantian Zheng, *Sex trafficking, Human Rights and Social Justice* (2015).
- Julietta Hua, *Trafficking Women's Human Rights* (2011).
- Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, in *International Studies in Human Rights* vol. 89 (2006).



CHINA

EGYPT

FRANCE

JAPAN

RUSSIAN FEDERATION

NEW ZEALAND



## PART FIVE

# Governments' Obligations to Prevent Trafficking



## 5.1 Overview

States that are party to international human rights treaties have a three-fold obligation: to respect, protect, and fulfil human rights. States must take appropriate measures to ensure that individuals within their jurisdiction enjoy the rights and freedoms guaranteed by human rights conventions following the principle of non-discrimination.<sup>125</sup>

**International law expects States to prevent trafficking, investigate, and prosecute perpetrators, and assist and protect trafficked persons,<sup>126</sup> as well as to criminalize trafficking, penalize traffickers, and afford remedies to trafficking survivors.<sup>127</sup>**

In fulfilling their obligations, States must give primacy to the human rights of trafficked persons and ensure that the dignity of trafficked

persons, migrants, internally displaced persons, refugees, and asylum-seekers are not unduly affected.<sup>128</sup>

The United Nations Office of the High Commission for Human Rights has published an excellent guide to the human-rights obligations of governments in relation to human trafficking, called Human Rights and Human Trafficking.<sup>129</sup> Published in 2014, it covers, amongst other things:

- the obligation to identify, protect and support victims of trafficking;
- obligations related to the return of trafficked persons;
- remedies for trafficking;
- obligations of an effective criminal justice response;
- preventing trafficking; and
- ensuring responses do not violate established rights.

It also covers implementation, monitoring and accountability, including:

- mechanisms attached to treaties on trafficking;
- the international human rights system;
- the Global Plan of Action to Combat Trafficking in Persons and the United Nations Trust Fund for Victims of Trafficking;
- international and regional courts and tribunals; and
- national monitoring and accountability.

We recommend reading OHCHR’s Human Rights and Human Trafficking in conjunction with this Guide. This section of the Guide covers the obligations on States under the:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>130</sup> (Trafficking Protocol);
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>131</sup> (Optional Protocol);
- Obligations of Members of the International Labor Organization; and
- Regional human rights instruments.

Different international law instruments address different aspects of human trafficking and impose various obligations on States.

**Table 1: Comparative Table of International Instruments**

|  | Trafficking Protocol | CRC Optional Protocol | ILO Protocol No. 29 | ILO Convention No. 182 | Recommended Principles | Principles on Right to Remedy |
|--|----------------------|-----------------------|---------------------|------------------------|------------------------|-------------------------------|
| Criminalization, Jurisdiction, Extradition | X                    | X                     |                     |                        | X                      |                               |
| Protection and Assistance                  | X                    | X                     | X                   | X                      | X                      | X                             |
| Preventive Measures                        | X                    | X                     | X                   | X                      |                        | X                             |
| Status, Permit to Stay, Residence          | X                    |                       |                     |                        |                        | X                             |
| Border Measures                            | X                    |                       |                     |                        |                        |                               |
| Non-punishment of Victims                  |                      |                       | X                   |                        | X                      | X                             |
| International Cooperation                  |                      | X                     | X                   |                        |                        | X                             |
| Remedies                                   | X                    |                       | X                   |                        | X                      | X                             |
| Provisions for Child Victims               | X                    | X                     |                     | X                      |                        | X                             |



## 5.2 The Optional Protocol to the CRC

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In relation to preventing trafficking for the purpose of sexual exploitation, under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,<sup>132</sup> States must (amongst other obligations):

- **prohibit** the sale of children, child prostitution and child pornography (Article 1);
  - ensure various law enforcement measures are in place (Articles 3-8), which are likely to have some deterrent and preventative effects;
  - “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to **prevent the offences** referred to in the present Protocol,” and give particular attention “to protect children who are especially vulnerable to such practices” (Article 9):
- promote “awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences” and “encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes” (Article 9(2));
  - take “all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery” (Article 9(3));
  - ensure “that all child victims ... have access to adequate procedures to seek,

without discrimination, compensation for damages from those legally responsible” (Article 9(4)); and

- take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol (Article 9(5)).
- take steps to **strengthen international cooperation for the prevention, detection, investigation, prosecution and punishment** of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism (Article 10(1)), including international cooperation with other authorities, non-governmental organizations and international organizations; and
- “promote the **strengthening of international cooperation in order to address the root causes**, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism” (Article 10(3)).

In relation to the criminalization and law enforcement of trafficking for the purpose of sexual exploitation, under the Optional Protocol States must (amongst other obligations):

- **prohibit** the sale of children, child prostitution and child pornography (Article 1);
- as a minimum, **fully cover under its criminal or penal law** (whether committed on a domestic, international, individual or organized basis), the following:
  - offering, delivering or accepting a child for the purpose of sexual exploitation or forced labour; and
  - offering, obtaining, procuring or providing a child for child prostitution (Article 3(1));

- make such offences punishable by **appropriate penalties** that take into account their grave nature (Article 3(3)), and make legal persons liable, in criminal, civil or administrative law (Article 3(4));
- take measures to **establish its jurisdiction** over offences when the alleged offender is a national of that State or a person who has his habitual residence in its territory, and where the victim is a national of that State (Article 4(2)), and also when the alleged offender is present in its territory (Article 4(3));
- treat the sale of children, child prostitution, and child pornography as “**extraditable offences**” in any extradition treaty existing between States parties, and consider the Protocol in handling extraditions (Article 5);
- **assist other States** in connection with investigations or criminal or extradition proceedings (Article 6);
- take measures to provide for the **seizure and confiscation of goods and proceeds of offences, and close premises** used to commit offences (Article 7);
- adopt appropriate measures to **protect the rights and interests of child victims** at all stages of the criminal justice process (Article 8), including recognizing their vulnerability, adapting legal procedures, providing appropriate support throughout the legal process, protecting the privacy and identity of child victims, providing for the safety of child victims, their families and witnesses from intimidation and retaliation, and ensuring that the best interest of the child shall be a primary consideration; and
- awareness by education and training, community participation (Article 9(2)).

In relation to the support and recovery of victims of trafficking for the purpose of sexual exploitation, under the Optional Protocol States must promote international cooperation to **assist child victims in their physical and psychological recovery**, social reintegration, and repatriation (Article 10(2)).

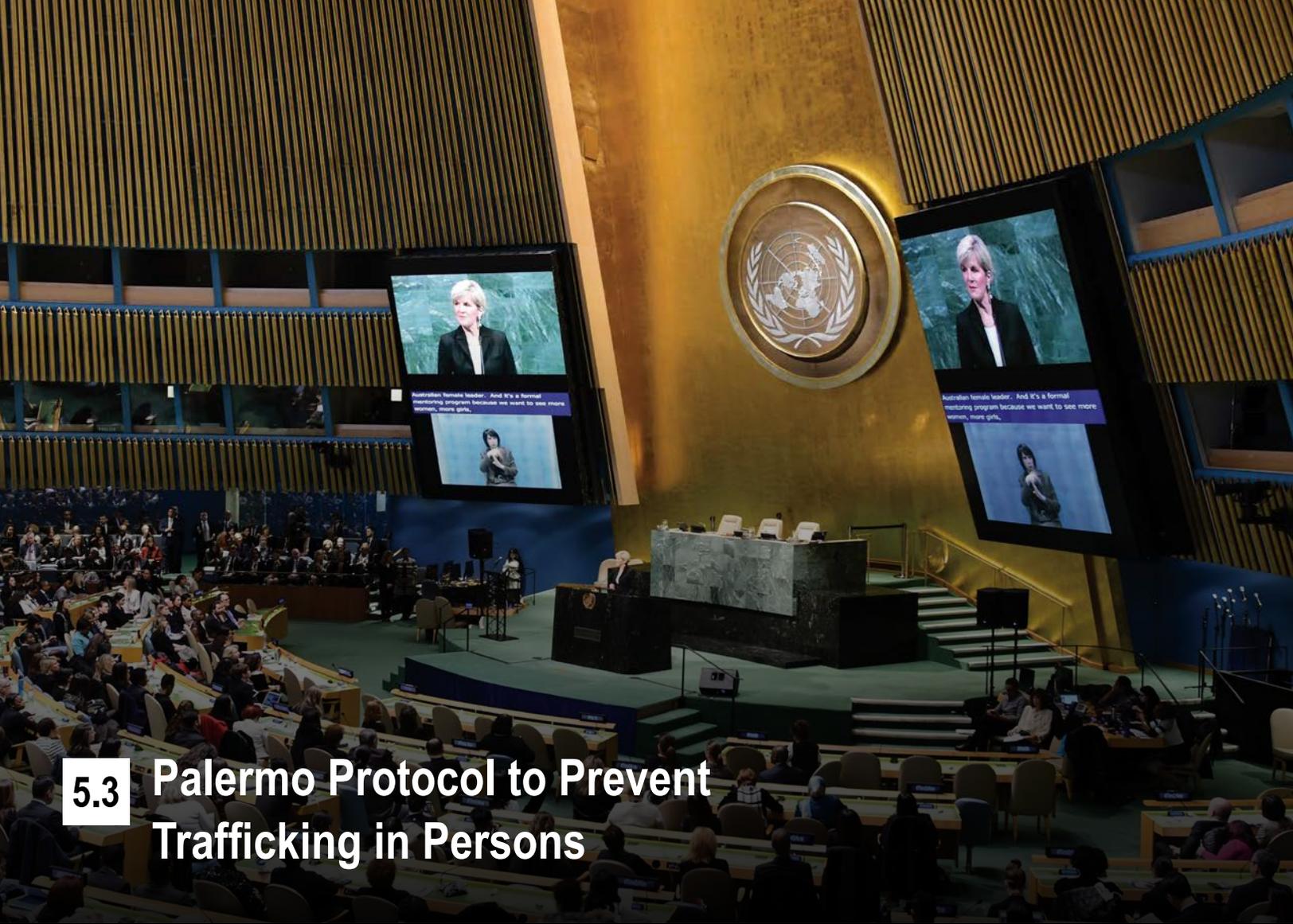
International cooperation is necessary to the complete suppression and abolition of trafficking, owing to its transnational nature. Cooperation covers a wide range of aspects – from

identification and prosecution to mutual assistance and information exchange. Financial, technical, and other forms assistance are likewise encouraged.<sup>133</sup>

Finally, the Optional Protocol requires that States submit a **report to the Committee on the Rights of the Child** providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, and then report every five years after that (Article 12).

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## 5.3 Palermo Protocol to Prevent Trafficking in Persons

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The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol)<sup>134</sup> was adopted and opened for signature by the General Assembly on November 15, 2000. It is one of three protocols known as the Palermo Protocols. The other two concern the smuggling of migrants and the illicit manufacturing and trafficking of firearms.

The Trafficking Protocol opens by declaring that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach

in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”

The purposes of this Protocol are (Article 2):

- (a) to prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) to promote cooperation among States Parties in order to meet those objectives.

Article 3(a) of the Protocol defines “trafficking in persons” to 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. Exploitation shall include, at a mini-

imum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The Protocol states that “the consent of a victim of trafficking in persons to the intended exploitation” is “irrelevant” where any of the means listed in 3(a) have been used. This recognizes that victims of trafficking are often pressured, deceived, overpowered or otherwise compelled to give their “consent.” Further, 3(c)

Courtesy of Colleen Cloonan



states that any recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation amounts to “trafficking in persons,” even if the means listed in 3(a) have not been used.

Importantly, Article 4 states that the Protocol applies to the prevention, investigation, and prosecution of the relevant offences where those offences are transnational in nature and involve an organized criminal group. It also applies to the protection of victims of such offences. As a result, trafficking for the purposes of sexual exploitation that occurs within a State party’s borders is not within the scope of this Protocol.

Article 9 of the Protocol addresses prevention of trafficking in persons. It requires States Parties to:

- establish comprehensive **policies, programmes and other measures to prevent and combat trafficking**, and **to protect victims of trafficking**, especially women and children, from revictimization;
- endeavor to undertake measures such as **research, information and mass media campaigns and social and economic initiatives** to prevent and combat trafficking in persons, including cooperation with non-governmental organizations, other relevant organizations and other elements of civil society;
- “take or strengthen measures, including through bilateral or multilateral cooperation, to **alleviate the factors that make persons, especially women and children, vulnerable to trafficking**, such as poverty, underdevelopment and lack of equal opportunity;” and
- “adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to **discourage the demand** that fosters all forms of exploitation



of persons, especially women and children, that leads to trafficking.”

The provisions of the Protocol that are focused on law enforcement require States to:

- **criminalize the relevant offences** (Article 5), including attempting to commit an offence, participating as an accomplice in an offence, and organizing or directing other persons to commit an offence;
- cooperate (law enforcement, immigration or other relevant authorities) with one another by **exchanging information** about individuals crossing international borders and the means and methods used by organized criminal groups (Article 10);

- provide or strengthen **training for law enforcement, immigration and other relevant officials** in the prevention of trafficking in persons (including protecting the victims from the traffickers), taking into account human rights and child- and gender-sensitive issues and encouraging cooperation with non-governmental organizations, other relevant organizations and other elements of civil society (Article 10);
- **strengthen border controls** as may be necessary to prevent and detect trafficking in persons, prevent commercial carriers from being used in the commission of offences, and introduce sanctions for violations (Article 11);
- **deny entry or revoke visas of persons implicated** in the commission of trafficking offences (Article 11);
- ensure that the **travel or identity documents** it issues are of such quality that they cannot easily be misused, falsified or unlawfully altered, replicated or issued, and ensure their integrity and security (Article 12); and
- at the request of another State party, **verify the legitimacy and validity of travel or identity documents** suspected of being used for trafficking within a reasonable time (Article 13).

With respect to support for victims of trafficking, Articles 6-8 of the Protocol require States to:

- **protect the privacy and identity of victims** of trafficking, including by making legal proceedings confidential (Article 6);
- provide to victims of trafficking **information on relevant court and administrative proceedings**, and assistance to enable their views to be presented and considered in criminal proceedings against offenders (Article 6(2));

- provide measures for victims' **physical, psychological and social recovery** including housing, counselling, information, medical, psychological and material assistance, and employment, educational and training opportunities (Article 6(3));
- “endeavour to provide” for the **physical safety of victims** of trafficking while they are within its territory (Article 6(5));
- offer victims of trafficking the **possibility of obtaining compensation for damage** suffered (Article 6(6));
- “consider” **permitting victims of trafficking to remain** in its territory, considering humanitarian and compassionate factors (Article 7); and
- with due regard for safety, **facilitate and accept the return of a victim of trafficking** who is a national or permanent resident of that State Party (Article 8), including issuing the necessary travel documents.

In sum, adoption of **preventive measures** is also an important obligation of States. The Trafficking Protocol mandates States to utilize research, information and mass media campaigns, and social and economic initiatives to prevent trafficking.<sup>135</sup> The Protocol recognizes how factors such as poverty, underdevelopment, and lack of equal opportunity increase vulnerability to trafficking, especially for women and children.<sup>136</sup> Thus, States are mandated to take or strengthen measures that address such factors. Information exchange and training of law enforcers, immigration personnel, and other relevant agencies in the areas of prosecution, prevention, and protection are also necessary.<sup>137</sup>



BUREAU INTERNATIONAL DU TRAVAIL  
INTERNATIONAL LABOUR OFFICE  
OFICINA INTERNACIONAL DEL TRABAJO



## 5.4 Obligations of Members of the International Labor Organization

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The International Labor Organization (ILO) was established in 1919. It promotes human and labor rights and sets international labor standards. The ILO has expanded on the International Bill of Rights in 189 conventions aimed specifically at the protection of labor rights.

ILO provisions related to trafficking are discussed in sections 4.2-4.4. The four key labor rights in the ILO conventions are:

- the right to freedom of association and the right to organize and bargain collectively;
- the right to freedom from forced or compulsory labor;

- the right to freedom from discrimination in employment; and
- the right to freedom from harmful child labor.

These rights are enhanced by the ILO Declaration on Fundamental Principles and Rights at Work (1998), which provides that even if Members have not ratified the eight core ILO conventions, they have obligations based on their membership to the ILO to respect, promote, and realize the fundamental rights enshrined in the conventions.



## 5.5 Regional Human Rights Instruments on Trafficking

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Many of the provisions in the international instruments discussed above are echoed in regional anti-trafficking instruments, including the Council of Europe Convention on Action against Trafficking in Human Beings (COE Convention),<sup>138</sup> the Directive 2011/36/EU of the European Parliament and Council on preventing and combating trafficking in human beings and protecting its victims (EU Directive),<sup>139</sup> and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Convention).<sup>140</sup>

Table 2 reveals that the COE and ASEAN conventions are the most extensive. The COE Convention, EU Directive, and ASEAN Convention all mandate the criminalization of trafficking.<sup>141</sup> All three have provisions on criminalizing attempts to commit trafficking and acts of aiding and abetting.<sup>142</sup> Both European instruments recognize the liability of corporations and legal persons in trafficking and indicate sanctions and penalties for these entities separately from the liabilities of individuals.<sup>143</sup> The COE Convention and the ASEAN Convention provide for circumstances when the crime of trafficking is aggravated.<sup>144</sup>

The COE Convention criminalizes the use of services of a trafficking victim and acts relating to travel and identity documents.<sup>145</sup> The ASEAN Convention criminalizes participation in organized criminal groups,<sup>146</sup> laundering of proceeds from trafficking,<sup>147</sup> corruption,<sup>148</sup> and obstruction of justice.<sup>149</sup> All three conventions provide for the non-punishment of victims.<sup>150</sup>

In the area of protection and assistance, all three instruments mandate the provision of the appropriate assistance for trafficking victims for their physical, psychological, social, and legal needs.<sup>151</sup> The COE and ASEAN conventions mandate the protection of the private life and privacy of the victims.<sup>152</sup> Both conventions highlight the importance of identifying victims as a first step to ensuring that victims are protected and receive the necessary assistance.<sup>153</sup> Further, the COE Convention provides for a reflection and recovery period for survivors “to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.”<sup>154</sup>

All three instruments also contain varying ranges of preventive measures.<sup>155</sup> It is worth noting that

these three instruments emphasize the need to discourage demand as an important means of preventing trafficking.<sup>156</sup> The COE and ASEAN conventions have provisions on the legal status of victims and residence permit,<sup>157</sup> border measures,<sup>158</sup> and security, legitimacy, and validity of travel documents.<sup>159</sup> These regional instruments also deal with remedies. Compensation of victims is included all three instruments,<sup>160</sup> and the COE and ASEAN conventions provide for the possible repatriation of victims.<sup>161</sup>

The ASEAN Convention has not entered into force; it will enter into force after the deposit of the sixth instrument of ratification.<sup>162</sup> To date,

only Cambodia and Singapore have ratified the convention.<sup>163</sup>

Unlike in Europe and the ASEAN, the African, and Inter-American human rights systems do not have instruments that specifically deal with trafficking. However, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa mandates States to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking."<sup>164</sup> The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women<sup>165</sup> includes trafficking within its definition of "violence against women."<sup>166</sup>

**Table 2: Comparative Table of Regional Instruments (Europe and ASEAN)**

|   | <b>COE Convention<br/>against Trafficking<br/>in Human Beings</b> | <b>Directive<br/>2011/36/EU<br/>of the European<br/>Parliament<br/>and Council</b> | <b>ASEAN Convention<br/>Against Trafficking<br/>in Persons</b> |
|---|---|--|--|
| Criminalization,<br>Jurisdiction, Extradition | X   | X  | X  |
| Protection and Assistance                     | X   | X  | X  |
| Preventive Measures                           | X   | X  | X  |
| Status, Permit to Stay,<br>Residence          | X   |  | X  |
| Border Measures                               | X   |  | X  |
| Non-punishment<br>of Victims                  | X   | X  | X  |
| International<br>Cooperation                  | X   |  | X  |
| Remedies                                      | X   | X  | X  |
| Provisions for<br>Child Victims               |   | X  | X  |





## PART SIX

# Prevention of Trafficking: What Organizations and Individuals Can Do



## 6.1 Changing the Narrative

Language is powerful. Advocates, policy-makers, and others should take care not to talk about trafficking for the purpose of sexual exploitation in ways that denigrate women and girls or that see them as powerless or hopeless. Remember that **dignity** is a quality mentioned in various human rights instruments – the quality of being worthy of honor and respect. However, as we noted, dignity is more than an invisible, innate quality. It can also be evidenced in the capacity of persons to exercise their human agency and self-determination over a life course. Both the quality and exercise of human dignity are denied when persons are forced against their will to act, even if their behavior looks like a choice. Both aspects of dignity are honored and respected in human rights approaches.

Consider the way that you talk about trafficking and be mindful of the language you use in relation to this phenomenon. Women and girls who have been trafficked for the purpose of sexual exploitation have not chosen to be prostituted. Women and girls who have been trafficked are not “sex workers” or “prostitutes,” because they have not freely chosen to do that work. Some women who have formerly been trafficked prefer to use the term “survivor” rather than “victim.” Many prefer not to be labeled at all. They see the trafficking experience as part of their story but not representative of who they are.

Describing trafficking as a one-off event, or focusing on more sensational examples of trafficking for the purpose of sexual exploitation



(such as kidnappings), fails to recognize the **systemic, organized and prevalent nature** of trafficking. It is important for governments and their agents (police, prosecutors, and other officials) to recognize that systemic problems render women and girls more vulnerable to trafficking over the course of their lives. We must encourage governments and other policy-makers to **recognize and address the root causes**, some of which are discussed above and include:

- poverty;
- lack of social protection (i.e., healthcare, education and adequate living conditions);
- rural isolation;
- lack of options for work that is healthy, safe, dignified and reasonably paid;
- discrimination against women and girls;
- violence and sexual violence against women and girls;
- racism, particularly in ‘sex tourism’ where men travel to other countries to exploit women and girls sexually; and
- family breakdown.

Rather than use one-off and sensational examples of an individual kidnapping, consider **discussing trafficking events in their broad context** and talking about the things that could be done at a systemic level to reduce the vulnerability of women and girls to traffickers.



## 6.2 Including and Empowering Survivors in Advocacy

Photo courtesy of Mercy International Association: Mercy Global Action at the UN

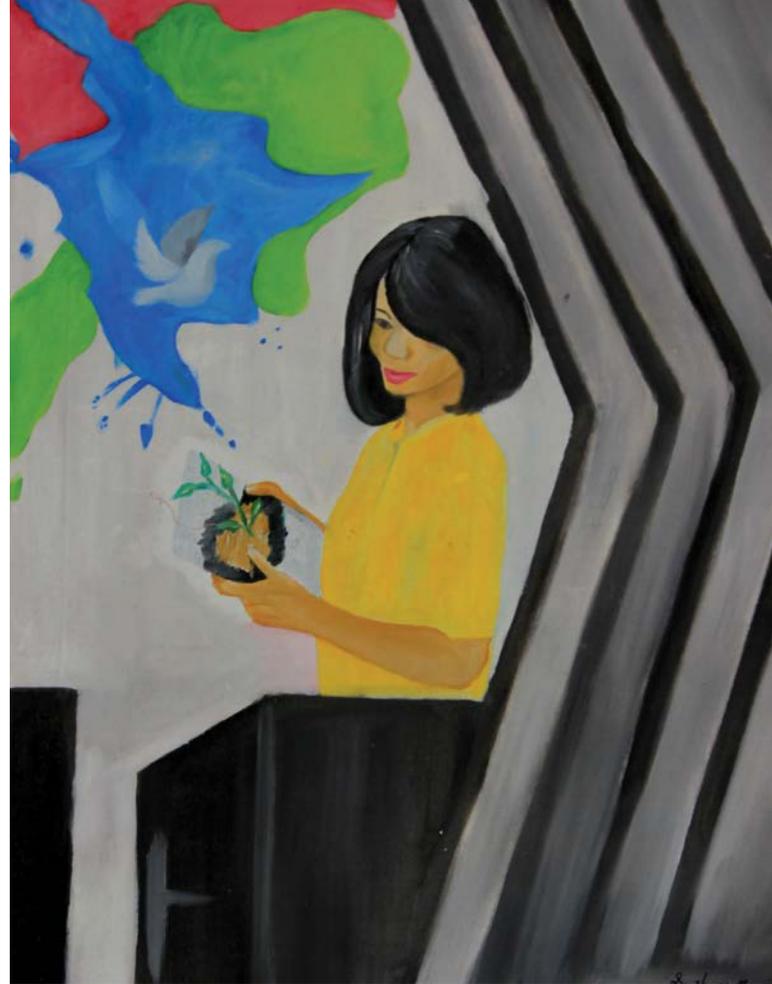
In addressing human rights issues like trafficking for the purpose of sexual exploitation, individuals as rights-holders must be able **to participate and be empowered** in the process. In the human rights-based approach, individuals should not be passive recipients of government programs but **actively included in the design, development, and roll-out of responses**, to ensure the quality, appropriateness, and applicability of those programs. Trafficking survivors are able to provide **guidance to policy and**

**decision makers and other stakeholders** who create anti-trafficking programs, manage legal cases, and handle concerns of other survivors.

One way to encourage survivors to meaningfully participate in the protection and promotion of their human rights is to **provide avenues for them to describe their experiences**. In sharing their stories, trafficking victims can further their recovery and healing process. They are also empowered to name the wrong that was done

to them and to encourage activists, supporters, and policy-makers to sustain their efforts to end trafficking.

Allowing women to share their stories is also an important way for them to exercise their agency and claim their human rights. This can be integral in the process of recovery for the survivor and empowers her to begin asserting rights that she should rightfully enjoy. As women tell their stories they reveal extraordinary resilience and determination, at the same time they expose human rights violations, highlighting the need for recognition and redress. Their narratives exemplify the interplay between the personal story and the wider environment in which they live.



Artwork by Sr. Venus Marie Pagar SFX

## RESOURCES

### Further Information on Storytelling in Human Rights Work

- Rachel Ball, *When I Tell My Story, I'm in Charge: Ethical and Effective Storytelling in Advocacy* (2013), [https://www.victorialaw-foundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20 Final web.pdf](https://www.victorialaw-foundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20Final%20web.pdf).
- Cathy Zimmerman & Charlotte Watts, WHO, *Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003).
- Watch survivor advocate Mely Lenario share her story at the United Nations Commission on the Status of Women Sixty-Two Side-Event entitled "Preventing Human Trafficking among Rural Women and Girls: Integrating Inherent Dignity into a Human Rights Model" on March 13, 2018 at <http://webtv.un.org/search/preventing-human-trafficking-among-rural-women-and-girls-integrating-inherent-dignity-into-a-human-rights-model-csw62-side-event/5752837968001/?term=&lan=english&page=24>.



## 6.3 Engaging with Governments

As readers work through this Guidebook, they will be reminded of particular areas of need in the countries in which they work. For example, some countries have significant challenges with gender equity but have a better record in supporting the rule of law and in the integrity of law enforcement, judges and officials. Some countries have good labor laws but poor enforcement practices. Advocates will choose the key issues that require their focus.

In all discussions and other engagement with governments, advocates must be well prepared. For example, referring to treaties or international instruments will not be persuasive if the country in question has not signed or ratified them.

Here are some matters to consider, as advocates preparing to engage with governments about preventing trafficking.

### 1. Is the country party to the relevant treaties, conventions and international instruments?

Advocates can determine whether the relevant country has signed and ratified the relevant conventions and treaties online.

The website of the United Nations Office of the High Commissioner for Human Rights allows people to search by country for signature

and ratification of human rights treaties and conventions, reports submitted to committees (described below), and other relevant documents. See <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HUIndex.aspx>.

It is also possible to search a database of the United Nations Office of the High Commissioner for Human Rights, by country or by treaty, to find ratifications: [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN).

## 2. Has the country enacted local laws to put its obligations under international instruments into effect?

If the relevant country has signed and ratified the relevant treaties, it has obligations to take action. Article 2(2) of the ICCPR (and a similar provision in Article 2 of the ICESCR) requires States parties to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the covenant. All treaties require their signatories and ratifying countries to take actions.

Review the treaties to see what the signatories and ratifying countries are required to do to put those treaties and conventions into force, including laws concerning forced or bonded labor, slavery, forced marriage, and child labor. Review the country's efforts to implement its treaty obligations and consider whether they are adequate. Does the legislation cover all forms of trafficking? Does it fully implement the country's obligations under the relevant treaties?

## 3. Has the country reported to the relevant convention committees? What does it report that it has done to prevent trafficking?

Governments that ratify a human rights treaty are obliged to **report regularly to the relevant committee** on their compliance and their work implementing its goals. For example, governments that ratify the CRC or one of its Optional Protocols must report to the Committee on the Rights of the Child within two years of ratification and every five years after that. The Committee on the Rights of the Child has adopted guidelines which set out the information States are expected to give in their reports. The Committee then reviews States' reports, considering how well governments are meeting the standards for the realization and protection of children's rights.

Some committees seek further information or require supplementary reports from States.

The vast majority of treaty body reports are publicly available. Advocates can find the reports using OHCHR's website<sup>167</sup> or a general internet search to inform their research about a country's performance in preventing trafficking.

## 4. What do the UNODC Report on Trafficking in Persons and the United States' TIP Report say about the country's recent efforts to prevent trafficking?

The United Nations Office of Drugs and Crime publishes an annual Global Report on Trafficking in Persons. This report provides a global and regional overview of trafficking, including data about incidence, offenders, survivors, patterns and trends, trafficking flows and organised crime.

Advocates should also review the country's annual assessment by the United States' Department of State. The Department of State issues an annual Trafficking In Persons Report (TIP Report) as mandated by the US Victims of Trafficking and Violence Act of 2000.<sup>168</sup> The TIP Report includes assessments of individual countries in three key areas: prosecution, protection, and prevention of trafficking. While the TIP Report is the perspective of one country only, it can be useful and provides recent information about individual countries. It aims to encourage countries to improve their anti-trafficking efforts through recommendations and sanctions.

## 5. What support does the country provide for survivors?

Criteria to assess a country's support of survivors include:

- the different types of assistance and support pathways that the government provides to women and girls who have been trafficked;
- the protection the government provides to women and girls who are participating in a criminal justice process;
- how the government facilitates and supports family reunions between trafficked people and their families, including dependent children;
- whether the support provided for survivors includes appropriate access to safe and sustainable housing; and
- whether there are protocols and guidelines for government agencies and support services that work with survivors of trafficking to ensure the protection of their human rights.

## 6. Does the country have a strong strategy to achieve gender equality?

For example, some countries have a gender equality strategy that includes a gender equality agency (or equivalent), laws that prohibit gender discrimination and family violence, labor rights that focus on women (such as equal pay and maternity leave), and formal positions such as an ambassador for gender equity.

## 7. Other matters to consider:

Advocates and survivors will have a strong sense of what they want their governments to do to prevent trafficking. Some other matters to consider might include, for example:

- Does the country consult with community stakeholders to develop legal and policy initiatives?
- Does the country ensure that prosecutions are genuine, fair and impartial?
- Is the adjudication in trials fair, impartial and free from gender stereotyping and discrimination?
- Do federal and state (or national and sub-national) government agencies ensure a coordinated and efficient response to trafficking?
- Is information about trafficking and forced labor freely available within the country?
- Are multilingual resources and information available for all people entering the country and for communities identified as most vulnerable to trafficking?
- Are neighbor countries and allies taking a stronger stance to prevent trafficking? What can the country learn from other countries in the region?



## 6.4 Submitting Information to the Special Rapporteur

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The Special Rapporteur on Trafficking In Persons, Especially Women and Children can receive and consider complaints about trafficking and human rights violations, make country visits, and urge governments to take action.<sup>169</sup> The Special Rapporteur’s website explains:

“The Special Rapporteur takes action on violations committed against trafficked persons and on situations in which there has been a failure to protect their human rights, including ensuring adequate redress

for the violations suffered and to provide adequate medical, psychological, social and other necessary assistance. The Special Rapporteur shall also take action in cases in which laws and/or policies might negatively impact of the human rights of trafficked persons, in countries of origin, transit and destination, as well as in cases in which efforts to combat or prevent trafficking might have an impact on the human rights of the persons concerned, be there migrants, asylum seekers, or all



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the citizens of the country/ies concerned. The Special Rapporteur shall also take action on cases of trafficking within the same country (internal trafficking).”

The Special Rapporteur can send an urgent appeal which “warns the concerned government about a specific situation and requests it to inform her about measures taken to guarantee that the human rights of the persons concerned are fully respected.” She can also transmit concerns and a summary of information about human rights violations to governments “for clarification,” and to “request their comments and observations.” The Special Rapporteur has developed guidance (in the form of a questionnaire) to help advocates and concerned individuals to submit reliable information to her.<sup>170</sup>

## RESOURCES

### Information about the Special Rapporteurs

#### Special Rapporteur for Trafficking in Persons, especially women and children

Ms Maria Grazia Giammarinaro

Email: [SRtrafficking@ohchr.org](mailto:SRtrafficking@ohchr.org)

Website: <http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

#### Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography

Maud De Boer-Buquicchio

Email: [srsaleofchildren@ohchr.org](mailto:srsaleofchildren@ohchr.org)

Website: <http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>

#### Special Rapporteur for Contemporary Forms of Slavery

Urmila Bhoola

Email: [srslavery@ohchr.org](mailto:srslavery@ohchr.org) or [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

Website: <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx>



## 6.5 Making a Complaint about a Breach of Human Rights

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There are mechanisms attached to committees under most of the human rights treaties which allow people to make a complaint that the treaty has been breached. In 2016, eight of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC and CRC) could, under certain conditions, receive and consider individual complaints or communications from individuals. The United Nations

OHCHR has a useful website which explains how to make complaints under those treaties.<sup>171</sup>

There are many excellent guides to engaging with the international human rights system, making complaints and taking legal action. Advocates who are considering formal action of this type are encouraged to work with lawyers with expertise of those systems and processes, and to refer to the links and resources below.

# RESOURCES

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## Rights-Based Advocacy

*Making Human Rights Work for People Living in Extreme Poverty* (2015) [http://www.atd-fourthworld.org/wp-content/uploads/sites/5/2015/05/2015-09-01-GuidingPrinciplesEPHR-HANDBOOK-EN-ATD\\_FI\\_Handbook\\_English\\_WEB-1.pdf](http://www.atd-fourthworld.org/wp-content/uploads/sites/5/2015/05/2015-09-01-GuidingPrinciplesEPHR-HANDBOOK-EN-ATD_FI_Handbook_English_WEB-1.pdf).

*Human Rights to Human Reality: A 10-Step Guide to Strategic Human Rights Advocacy* [https://www.nlchp.org/documents/HumanRights\\_to\\_Human\\_Reality](https://www.nlchp.org/documents/HumanRights_to_Human_Reality).

## Advocating for Law Reform

International Service for Human Rights and Human Rights Law Centre (Australia), *Domestic Implementation of UN Human Rights Recommendations: A guide for human rights defenders and advocates* (2013), [https://www.ishr.ch/sites/default/files/article/files/domestic\\_implementation\\_of\\_un\\_human\\_rights\\_recommendations\\_-\\_final.pdf](https://www.ishr.ch/sites/default/files/article/files/domestic_implementation_of_un_human_rights_recommendations_-_final.pdf).

*The Change Toolkit*, <http://www.thechange-toolkit.org.au/> (Primarily written for pro bono and community lawyers, this excellent guide to advocating for law reform has broad appeal.)

## Engaging with the International Human Rights System – General Information

International Service for Human Rights, *Simple Guide to the UN Treaty Bodies* (2015), available in English and French, <http://www.ishr.ch/news/updated-simple-guide-un-treaty-bodies-guide-simple-sur-les-organes-de-traites-des-nations-unies>; see also <http://www.ishr.ch/news/manuals-and-handbooks>.

United Nations, Office of the High Commissioner for Human Rights, *Civil Society Space and the United Nations Human Rights System – A Practical Guide for Civil Society* (2014), [http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS\\_space\\_UNHRSYSTEM\\_Guide.pdf](http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSYSTEM_Guide.pdf).

United Nations, Office of the High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme – A Handbook for Civil Society*, [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf).

United Nations, Office of the High Commissioner for Human Rights, *How to follow up on United Nations Human Rights Recommendations – A Practical Guide for Civil Society*, <http://www.ohchr.org/Documents/AboutUs/CivilSociety/HowtoFollowUNHRRRecommendations.pdf>.

International Service for Human Rights, *Guide for Human Rights Defenders on Domestic Implementation of UN Human Rights Recommendations*, [https://www.ishr.ch/sites/default/files/article/files/domestic\\_implementation\\_of\\_un\\_human\\_rights\\_recommendations\\_-\\_final.pdf](https://www.ishr.ch/sites/default/files/article/files/domestic_implementation_of_un_human_rights_recommendations_-_final.pdf).

## RESOURCES

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### Submitting Information and Making Complaints

United Nations, Office of the High Commissioner for Human Rights, *Reporting To the United Nations Human Rights Treaty Bodies Training Guide: Part I-Manual* (2018), [http://www.ohchr.org/Documents/Publications/PTS20\\_HRTB\\_Training\\_Guide\\_PartI.pdf](http://www.ohchr.org/Documents/Publications/PTS20_HRTB_Training_Guide_PartI.pdf).

Procedure for complaints by individuals under the human rights treaties: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#procedure-generale>.

Submit information to the special procedures such as Special Rapporteurs: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

Submit information to a treaty body or request an inquiry: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

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A photograph of the United Nations Secretariat Building in New York City. The building is a tall, modern skyscraper with a grid of windows. In the foreground, a row of flags from various countries is flying on tall poles. The sky is blue with some light clouds. The overall scene is bright and clear.

## Conclusion

This Guide has highlighted the human rights violations and violence that women and girls experience related to human trafficking for the purpose of sexual exploitation. Recognized as both a national and international problem, human trafficking is not only a violation of human dignity, but a crime in which traffickers often escape with impunity. This Guide has also sought to challenge the dominant narrative that trafficking is a single isolated event. While this may be the case in some instances, for the most part marginalization,

discrimination, and gendered violence are common preconditions for vulnerability to trafficking. Therefore, trafficking actually occurs as a result of a process of systemic victimization over the life course. Violations of human rights often occur prior to the experience of trafficking and render women and girls more vulnerable to exploitation. In preventing human trafficking it is critical to address these early life conditions.<sup>172</sup> Therefore States must also take responsibility for ensuring the realization of human rights over



the life course, enabling women and girls to flourish and develop to their full potential.

Key to any trafficking preventative response is the need to consult with and listen to the experiences of formerly trafficked women. These women have the expertise and experience that no theoretical analysis can provide. Addressing trafficking as a violation of human rights not only requires prosecution of criminals and protection of human rights, but also demands responses that respect and recognize that survivors have an essen-

tial and active role to play in the work of prevention.

This Guide was produced to assist advocates and local actors to incorporate a robust human rights-based approach in their work to prevent and end human trafficking. It is a work in progress and further developments and contributions to this work are always encouraged. Ultimately, the goals of this publication are to empower rights-holders, help shape policy, and ensure government accountability.

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**A PUBLICATION OF**  
**Mercy International Association:**  
**Mercy Global Action at the UN**

**Primary Author**

**Rose Bryant Smith**

Short-Term Research Fellow,  
Mercy International Association:  
Mercy Global Action at the UN

**Secondary Author**

**Angela Reed Ph.D., RSM**

Coordinator  
Mercy International Association:  
Mercy Global Action at the UN

**Project Coordinator**

**Colleen Cloonan**

Women's Leadership Development and Advocacy Associate,  
Sisters of Mercy (NGO),  
Mercy International Association  
Mercy Global Action

**Graphic Designer**

**Julie Conway**

**Editor**

**Amanda Lyons**

**Other Contributions**

**Ryan Quan**

International Human Rights Lawyer and Consultant

**Sheila Smith Ph.D. RSCJ**

**Marietta Latonio MSW**

**PUBLISHED** July 2018

# SISTERS OF MERCY (NGO), MERCY GLOBAL ACTION

Sisters of Mercy (NGO) enjoys Special  
Consultative Status with the Economic and Social  
Council (ECOSOC) of the United Nations.

**Contact:**

Angela Reed, Ph.D, RSM | [MercyRep@mercyinternational.ie](mailto:MercyRep@mercyinternational.ie)

Mercy Global Action Coordinator at the UN  
777 UN Plaza, 6h | New York, NY 10017 | USA

For more information:

[www.mercyworld.org](http://www.mercyworld.org)

