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SEMINAR REPORT

Migration and Development Series Countering human trafficking: partnerships for protection and capacity-building

organized jointly with IOM, UNODC, UNFPA, OHCHR, ILO and the MacArthur Foundation

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BACKGROUND

International trafficking in human beings has garnered increasing attention from the international community in recent years, leading to its recognition as a crime in the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as one of the two Palermo Protocols). The Protocol, which entered into force in December 2003, has been signed by 117 States. The global fight against the exploitation of children, women and men through trafficking has further gained momentum with the launch of the UN Global Initiative to Fight Human Trafficking (UN.GIFT) in March 2007, and the beginning of its implementation phase at the Vienna Forum to Fight Human Trafficking, held on 13-15 February 2008. While multiple perspectives on and approaches to tackling human trafficking continue to exist, there is widespread recognition of the need to place the human rights of trafficked persons, particularly women and children, at the centre of all efforts. Still, interpretations of what constitutes a human rights-based approach to human trafficking vary, and effective implementation often remains a challenge.

OBJECTIVES

In this context, and in view of the UN General Assembly's thematic debate on human trafficking held on 3 June, Third Committee deliberations, and the agenda of the second Global Forum on Migration and Development (GFMD), the seminar on *Countering Human Trafficking* was intended to: Familiarize participants with human rights-based legal, policy and operational approaches to human trafficking; look at the role of innovative partnerships for the protection of victims of trafficking and effective advocacy; identify the role of the demand side in international human trafficking; discuss good practices and challenges facing capacity-building for counter-trafficking, including the inclusion of capacity-building in national and regional action plans; and explore the resources and contributions that various actors can bring to the fight against human trafficking.

Information on the seminar and the *Migration and Development Series* is available from info@unitar.org or at <http://www.unitar.org/en/migdevseries.html>

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SUMMARY OF DISCUSSIONS

Throughout the seminar, speakers and participants voiced concern regarding the gravity and the scope of the problem of human trafficking. Defined as a crime under international law in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, trafficking consists of three elements: the recruitment, transport and reception of a trafficked person (the act); the abuse of his/her vulnerability and the threat or use of force to achieve and maintain control over the victim (the means); and the exploitation of the trafficked person (the purpose). The Protocol entered into force on 25 December 2003 and has already been signed by 117 States.

Nevertheless, despite this encouraging signal of intent, and the increased efforts of the international community to develop a coordinated approach to the fight against human trafficking, millions of people are still being subjected to exploitation every year in a business that generates billions of dollars. While exploitation is an old phenomenon, newer forms of exploitation such as the trafficking in persons for the purpose of organ removal, in their commodification of the person seem to exemplify the excesses of modern global capitalism. Thus, trafficking was described as a symptom, revealing “the tip of the iceberg” of our social relations more generally.

By the same token, as an international “duty to care” is gaining recognition, there is increasing awareness that, like the crime of genocide, human trafficking concerns all and transcends national borders. Recent years have seen, for instance, the inclusion of human trafficking as a crime against humanity in the Rome Statute of the ICC, as well as the first convictions for the recruitment and use of children in armed conflict being issued by the Special Court in Sierra Leone.

One of the key messages of the seminar was that human trafficking represents a grave violation of human rights. At the same time, it was emphasized that a lack of respect for and protection of human rights, as reflected in food insecurity, lack of employment and livelihood opportunities, inequality, conflict, violence and discrimination, are among the risk factors rendering a person more vulnerable to being trafficked. Frequently, these factors disproportionately affect women and children. Effective prevention, a priority for a human rights-based approach to trafficking, therefore requires that special attention be paid to gender-relations and the status of women in society. It was pointed out that victims of trafficking often experience violence and abuse prior to being trafficked – one of the panellists observed that “nobody is more likely to be victimized than a victim”.

Speakers warned against confounding trafficking and prostitution – an association that can have adverse effects for victims of trafficking if translated into policy. Sexual exploitation and prostitution are not the same. In fact, many (female) migrants experience sexual violence, i.e. by smugglers, as domestic servants etc., without being involved in the sex industry. Supporting specific counter-trafficking measures, there should therefore be harsher punishment of sexual violence, and the creation of more legal migration channels, especially for women.

Indeed, it was deemed important to tackle the issue of human trafficking in the wider context of migrants’ rights, while not confounding it with migration *per se*, or reducing it to a question of migration management. Migration can be a movement of liberation in certain cases, as seen in Eastern Europe, while traditional, exploitative practices and bondage often affect people who do not move at all. It is important not to criminalize the search for better opportunities abroad



as manifested in (irregular) labour migration. Also, granting more migrants citizenship rights would probably provide the most powerful shield from abuse.

Legal protection and law enforcement

There are a number of international legal instruments providing protection to victims of trafficking. Besides the above-mentioned Protocol, the 1985 General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), as well as GA Resolution 61/144 on Trafficking in women and girls spell out standards and guidance on this issue. Nevertheless, it was emphasized that there is a need to close legislative loopholes at the national level, i.e. by criminalizing natural and corporate persons involved in trafficking. Other reforms that should be undertaken include: criminalizing acts such as sexual exploitation and harassment, organ removal, and child labour and prescribing higher penalties for these crimes, as well as for the crime of human trafficking. In addition, labour laws should cover all forms of work, including domestic work. Labour rights should include minimum wages and should apply to all workers, regardless of their status. The important role of effective labour inspections was highlighted. Also, consulates should have trained labour officials to offer adequate assistance.

Another avenue for legal protection is the right to seek asylum, which must be available to victims of trafficking in cases where they fear to return to their country of origin. It was mentioned that guaranteeing such access requires inter-agency and intra-governmental coordination and awareness. Under certain conditions victims of trafficking can qualify as refugees, although there are a number of obstacles, for example the fact that persecution is not usually expected from the State itself, and the fact that the persecution feared may not be in the country of origin. Nevertheless, sometimes victimization through human trafficking is in fact linked to the criteria spelled out in the 1951 Refugee Convention, namely the victim's race, religion, nationality, membership of a particular social group or political opinion. UNHCR has issued guidelines on the application of the refugee criteria to victims of trafficking, emphasizing awareness for gender-related persecution and child sensitive application. In addition, victims of trafficking sometimes fall under the protection mandate of UNHCR if they find themselves in a situation of statelessness, mostly due to the home country's unwillingness to replace lost documents, and to admit the person's nationality.

It was mentioned that a 3-P approach to counter-trafficking – combining prevention, protection, and prosecution – which is spelled out in the Trafficking Protocol, requires different priorities in countries of origin and destination. Prosecution will focus on the exploitation of the victim in the country of destination, while in countries of origin the focus will be on recruitment. In cases where the victim of human trafficking is repatriated, protection involves short-term pre-departure assistance in the country of destination, and long-term rehabilitation and reintegration of the victim in the home country. Prevention in receiving countries must tackle the demand for human trafficking, while in places of origin pro-active measures to address factors of vulnerability are required.

From the perspective of the victims of trafficking, it is imperative that legal protection is adequate and consistent from the pre-trial, through the trial to the post-trial phase. It is important that throughout the process, victims of trafficking are recognized and treated as agents who are capable of informed decisions over their lives, even though their free will and right of self-determination was violated and manipulated by traffickers.

Indeed, in addition to legal reform, effective law enforcement is crucial to deliver on the promise of protection. In this regard, the prevalence of official corruption and complicity in the profitable business of human trafficking and the wide-spread impunity of traffickers were



strongly criticised. It was recommended that the focus in law enforcement should be on catching the 'big fish', an effort that will require specialist techniques, including a stronger emphasis on financial investigations. Countries should consider establishing special investigation and victim protection units. Some comments touched on the issue of raids, urging that these should only be carried out if there is adequate planning for follow-up care and assistance to victims, including access to social services. Too often, raids are a traumatizing experience for victims and result in detention. In general, speakers advocated for States to refrain from detaining or mass deporting victims of trafficking. Neither should victims be prosecuted for activities resulting from the fact of being trafficked. It was recommended that victims be given a reflection period during which to decide whether they want to collaborate with law enforcement. The granting of residence permits should not be tied to such collaboration. Law enforcement and other State agencies should provide for gender and age sensitive procedures, including the availability of women interpreters and interviewers, and guardians for unaccompanied children. Speakers stressed the fact that commitments to protection need to be backed up by adequate funding, which should be allocated according to the needs of victims and those providing assistance on the ground. Critical in this regard is the transfer of assistance programmes from international to national stakeholders, who then often lack support or fail to allocate adequate resources.

Tackling the demand side

As reflected in the discussions during this seminar, the demand side of international human trafficking is receiving increasing attention, and with it the potential role of the private sector. It was pointed out that there is no demand for trafficking as such, but a huge demand for cheap labour. Speakers emphasised the potential benefits of a licensing system for international labour brokers and recruitment agencies. For example, such a monitoring mechanism could serve to make sure that recruitment fees are not charged to the prospective employee, but to the end-employer who is looking for labour. This would help end abusive bond practices. It was stressed that share-holders and consumers have important leverage to pressure companies to manage and monitor their supply chains to end labour exploitation. Value-driven companies were also predicted to find it easier to maintain their workforce in what was described as the coming "global war on talent". The Gulf region was cited as an example, where increased demand for foreign labour has already prompted countries to improve legal frameworks for the protection of migrant workers to ensure continuous labour supply.

On a critical note, it was mentioned that this form of consumer power, which is ultimately the power to boycott, is not available to people in developing countries, from which most migrant labour originates. Speakers held that, nevertheless, these countries have some leverage in improving conditions of migrant workers, i.e. by controlling recruitment agencies more carefully. In addition, regional consultative processes were deemed an important platform for the negotiation of interests between sending and receiving countries.

Speakers noted that the role of the private sector is beginning to shift, from being a "cash-cow" for civil-society and NGOs, to becoming a fully-fledged player and partner in the global campaign against trafficking, which offers much untapped potential in terms of funding and value-led initiative. It was pointed out that integrating the private sector will allow for a broader campaign, moving from a predominantly humanitarian agenda to one that takes the commercial interests of governments into account, i.e. by using the leverage of FDI and trade. Despite some encouraging first initiatives, however, there was agreement that a lot more awareness-raising will be necessary amongst business leaders and the wider public alike. It was encouraging to see that efforts in this regard are becoming increasingly sophisticated, with celebrities lending their support to the cause of anti-trafficking. A number of good



practices were presented by the Ricky Martin Foundation, including TV spots, an information call-line, and a tool kit for parents to improve child safety on the internet.

Partnerships and cooperation

There was widespread agreement that the fight against human trafficking requires intensified multi-agency collaboration based on the principle of complementarity. While organizational mandates must be respected, joint initiatives should serve to harness each agency's competitive advantage. Governments remain prime partners in counter-trafficking efforts given that they hold the monopoly of prosecution and law enforcement. Cooperation with and sensitization of police and judges was amongst the challenges identified. In addition, there is a need to engage and work closely with other, non-governmental actors, including health care providers. Coalition-building at the local level, among municipal authorities and civil society was deemed an essential building block of strengthened networks for the prevention of trafficking. Challenges in relations with donors include the need to orient funding decisions towards the needs on the ground, and to ensure long-term commitment. Beneficiaries and their families must be included as full stakeholders. Especially when it comes to the reintegration of victims of trafficking, assistance must be provided to those left behind. In order to make multi-stakeholder partnerships work, it is advisable to establish dedicated units and focal points at different levels of government.

Capacity-building

The discussion on capacity-building picked up on a number of issues broached during the day, highlighting the need for institutionalized rather than one-off trainings for stakeholders, especially law enforcement and the judiciary. This should include support for the professionalization of investigations and international judicial cooperation, i.e. the capacity to monitor and track financial transactions. In addition, sexual and reproductive health services are often an entry point for reaching victims of trafficking, and should be trained to identify and help them, i.e. by diagnosing gender based violence, providing life-saving information, and referring them to legal, social and protection services. In addition, capacities should be built to improve databases, tracking and reporting systems within the health sector on gender based violence and trafficking. Another priority that was highlighted is research on international human trafficking, as well as systematic impact assessments and evaluations of existing policies and programmes. All this will require the availability of long-term funding.

The question of whether it would be desirable and feasible to have a global, multilateral monitoring mechanism on human trafficking sparked some debate. While UNODC is the custodian of the Trafficking Protocol, there is to date no review mechanism that would monitor its implementation. Some suggested that it would be useful to have a UN-authored global ranking of States' performance, modelled after the US annual TIP report. Others pointed out that a number of instruments already exist. For example, several human rights treaties have monitoring mechanisms; a new Special Rapporteur on human trafficking is being appointed by the UN Human Rights Council; and the new Universal Periodic Review (UPR) includes reporting on the issue of trafficking in many cases. In addition, the UNODC Global Patterns 2006 report, alongside collecting information on trials, convictions and the availability of facilities for victims' assistance, lists the top ten origin and destination countries of human trafficking. It was mentioned that such a ranking of countries is a difficult exercise, though, as it risks disproportionately exposing countries that have invested more in research and law enforcement and, therefore, were able to document and prosecute a greater number of trafficking cases.

UNITAR New York is responsible for the contents of this report.