



**10th ASEM Conference of the Directors-General of
Immigration and Management of Migratory Flows**
5 – 7 September 2011, Ulan Bator, Mongolia



Mongolian Immigration Agency
Ulan Bator, Mongolia

Preventing Trafficking in Persons and Protecting its Victims: Role for Immigration Agencies

A key element in managing migration flows commonly acknowledged by States is the need to fight against human trafficking. It is widely recognized that, in order to successfully combat this transnational crime, there needs to be strengthened cooperation between source, transit, and destination countries. Although the global scale of human trafficking is difficult to quantify, as many as 800,000 people may be trafficked across international borders annually, with many more trafficked within the borders of their own countries.¹ Organized criminal groups are earning billions of dollars in profits from trafficking and exploiting people, many of whom suffer severe violations to their human rights. Human traffickers and smugglers, if not combated, will not only continue to violate the rights of migrants, but will also continue to undermine the immigration systems of source, transit, and destination countries as they, often clandestinely, transport migrants across borders.

Immigration agencies and their frontline officers have a key role to play in combating this crime. In order to combat human trafficking, there needs to be widespread understanding amongst frontline immigration officials of the definition of trafficking (and difference between smuggling), and design of robust policies to both prevent the crime, and also protect the victims. There also needs to be relevant legislation, often both in criminal and migration laws, which prevent against the abuses experienced by trafficked persons, which include rape, torture, debt bondage, unlawful confinement, threats against their family or other persons close to them, as well as other forms of physical, sexual and psychological violence. However, it is clear that laws will not be enough to combat this crime whilst there continues to be demand for cheap labour and sexual services in destination countries, as well as poverty of opportunity and resources in source countries.

Trafficking of Persons Overview:

At the international level, the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000 (United Nations Protocol), represents a comprehensive legal approach to trafficking in persons. However, from a human rights perspective, it falls short in terms of the provisions pertaining to protection and assistance. Moreover, there is limited reference to immigration or labour which complicates efforts by immigration agencies to combat the crime.

Trafficking in persons shall mean:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the receiving or giving of payment... to a person having control over another person, for the purpose of exploitation.

(Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime)

Specific mention of combating trafficking from an immigration perspective:

¹ In 2005 the United States Trafficking in Persons Report estimated that between 600,000 to 800,000 persons were trafficked across international borders annually worldwide (not taking into consideration internal trafficking within countries); UNICEF estimated that 1.2 million children are trafficked worldwide each year; while the ILO estimates that 12.3 million people are subjected to forced labour worldwide, including at least 2.4 million as a result of human trafficking.



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Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

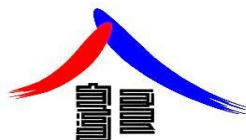
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers....

(Article 10 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime)

Although the Protocol views human trafficking through a criminal lens, an effective counter-trafficking response needs to be rooted within a broader migration management approach; an approach which emphasizes a coherent response to migration challenges at points of source, transit, and destination, but which also prioritizes the human rights of all migrants as a means of ensuring better protection for trafficked persons. To this end, according to international law, national anti-trafficking legislation and immigration policies should not adversely affect the human rights of victims. The Universal Declaration of Human Rights (1948) and binding international treaties afford inalienable and inviolable rights to victims, regardless of nationality or immigration status. Similarly, the Convention on the Rights of the Child (1989) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) guarantee protection to child victims under 18 years of age. States have international obligations to protect all persons within the jurisdiction of their territory.

To ensure that human rights are fully respected, efforts to investigate and prosecute traffickers should be balanced with protecting victims' human rights and interests. However, in some countries there may be a tendency to solely identify the victim of trafficking as a criminal, either due to existing legislation, or a lack of widespread understanding of the complex nature of the crime of human trafficking. States have until now largely adopted a counter trafficking approach including *preventing* trafficking in persons, *protecting* victims, and *prosecuting* perpetrators—commonly known as the “3 Ps”— which is commonly interpreted through a criminal justice lens.

Prevention



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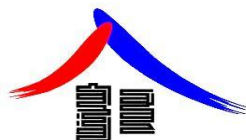
As in all things, in the case of trafficking in persons *prevention* is better than cure. Important prevention activities in both source and destination countries include information campaigns to: educate the general public about trafficking in persons; encourage people to report suspected cases; and equip populations at risk with the necessary information to better protect themselves from the recruitment tactics of traffickers. The use of mass media ensures that the information reaches large populations quickly, while organizations also work on a smaller scale using strategies such as community theatre (education-entertainment), posters, and interpersonal communicative methods (peer education), to reach specific populations with more targeted messages.

Some observers have also noted that a disproportionate share of prevention efforts and resources have supported initiatives in source countries that aim to reduce the supply of potential victims, and suggest, alternatively, that a far greater proportion of resources be focused on reducing and eliminating the demand for trafficked labour and services at points of destination.

Protection

For the *protection* of victims of trafficking, direct assistance to victims incorporating the collaboration of both the source, transit, and destination countries is critical. This includes accommodation in places of safety, medical and psychosocial support, skills development and vocational training, reintegration assistance, and the options of voluntary, safe and dignified return to countries of origin, or, in extreme cases, resettlement to third countries. It is estimated that as many as one third of trafficked persons are minors. This highly vulnerable group requires a policy of specialized protection and assistance.

In terms of *prosecution*, there can be technical cooperation activities that build the capacity of both government and civil society institutions to better address the challenges posed by human trafficking. These include the training of government officials, such as immigration officials and police, as well as non-governmental organizations on technical areas such as the development of counter-trafficking legislation, policies and procedures, as well as infrastructural upgrades.



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Questions:

Prevention:

- In what way does your country address the prevention of human trafficking?
- Does your country 1) use mass media campaigns to educate the public about the risks of human trafficking, or 2) encourage citizens to report trafficking crimes to police agencies?
- Does your country offer training for immigration officers on identifying and protecting victims of trafficking? Or, do you have any other immigration measures to prevent human trafficking?
- What inter-agency government cooperation systems do you have in place in your country to adequately identify and protect victims of trafficking?
- What services are offered to your country's nationals who have been trafficked abroad and are returning to your country?

Protection:

- Who are the key agencies in the referral system for victims of trafficking in your country and how does the process function? (E.g. who identifies and certifies someone as a victim?)
- Which agencies in your country are responsible for shelter and/or other support services for victims of trafficking?
- Does your country offer residence permits/legalization of status for those who are identified as victims of trafficking? If so, what are the conditions?
- What are the (criminal, immigration, labour) penalties for perpetrators of human trafficking in your country?
- Does your country offer any services for foreign national victims of trafficking who wish to voluntarily return to their own country?