



**Women Trafficking:
links and risks in
unregulated labour markets**

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I. Introduction

Migration is supposed to be beneficial to both sending and receiving countries. Migrant workers usually occupy those jobs not attractive to national workers anymore, but in demand in the labour market. Migration also relieves unemployment pressures in countries of origin, and provides productive labour and an economic lifeline for millions of women and men. For the majority of women migrant workers, migration represents a positive and empowering opportunity since the fact of becoming the principal breadwinner of the family gives them a prominent role in their family and decision-making. Many women, as well as their families, largely benefit from migration. However, migration has also permitted unscrupulous employers, recruitment agents and others, some practices like that of trafficking considered abusive by international and national standards.

When studying the trafficking phenomenon, and the protection that can be provided to women and men migrant workers, prevailing labour market differences in terms of the roles of women and men in both countries of origin and destination should not be underestimated. In general, abuses and labour exploitation in male-dominated sectors are well-documented and more exposed since men usually work in groups in construction and agriculture. On the other hand, abuses and exploitation against women migrant workers are less known since they occur at an earlier stage of the migration process or in more invisible labour market situations with weak labour inspection services. These abuses can include non-payment or withholding of wages, control or lack of freedom of movement, withdrawal of passports and other identity documents, large working daily shifts (between 12 to 16 hours a day), long working weeks of 7 days, non-payment of wages, violations of physical integrity (physical punishments, intimidations, ridicule, humiliations and sexual exploitation), as well as bad living conditions comprising inadequate provision of food, water, lodging and clothing.

Indeed, since women trafficked are found in individualised, unregulated and almost invisible work environments (e.g. domestic service and sex work), most of the reports published are based on a small number of case studies and it can be argued that they are not representative enough. In addition, if data on overall international documented migration flows are scarce, those relative to the trafficking of women into often invisible occupations, are even less abundant. The lack of labour protection of women migrant workers then often starts and is reinforced by the lack of information available.

At the same time, the proportion of women involved in migration flows, and especially those trapped by traffickers, is increasing rapidly and more attention should be concentrated on the types of social, legal and labour protection suitable to be furnished by origin and destination countries.

The ILO is deeply concerned by the **labour dimensions of human trafficking** since it views trafficking as an assault on labour protection and a denial of a worker's opportunity to make the most of his or her resources and to contribute to the economic development of his or her nation. The exploitation suffered by victims of trafficking is contrary to "full, productive and freely chosen employment" – even more so for trafficked children, who often suffer the loss of their potential to become productive adults. ILO's work on migration recognizes the crucial role of social partners, social dialogue and tripartism in migration policy, and advocates for gender-sensitive migration policies that address the special problems faced by women migrant workers. As a result, the increasing role of employers' and workers'

organisations, as well as governments' in its work against trafficking in human beings into labour and sexual exploitation is ILO's key response to the phenomenon, and it has stood resolutely against the dangerous proposition that human labour should be valued merely as a commodity.

With rapidly advancing globalization, the ILO recognizes that policies and mechanisms need to be put in place to regulate and manage present-day labour migration. To this end, the ILO has promoted a tripartite debate on labour migration in recent years, starting with the World Commission on the Social Dimension of Globalization.¹ In 2004, the 92nd Session of the International Labour Conference undertook a General Discussion on migrant workers and adopted a Resolution², which called for an ILO Plan of Action on Labour Migration. The centrepiece of this Action Plan is the "ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration",³ adopted by a Tripartite Meeting of Experts in November, 2005.

ILO's Multilateral Framework includes principle no. 11 that recommends **"Governments should formulate and implement, in consultation with the social partners, measures to prevent abusive practices, migrant smuggling and trafficking in persons; they should also work towards preventing irregular labour migration."**⁴

ILO's multilateral framework includes the following guidelines as valuable in giving practical effect to the above-mentioned principle:

- 11.1. adopting and implementing legislation and policies to prevent irregular labour migration and eliminate abusive migration conditions, including the trafficking of men and women migrant workers;
- 11.2. intensifying measures aimed at detecting and identifying abusive practices against migrant workers, including physical or sexual harassment or violence, restriction of movement, debt bondage, forced labour, withholding, underpayment or delayed payment of wages and benefits, retention of passports or identity or travel documents and threat of denunciation to authorities, particularly in those sectors that are outside the usual avenues of regulation and protection, such as domestic work;
- 11.3. implementing effective and accessible remedies for workers whose rights have been violated, regardless of their migration status, including remedies for breach of employment contracts, such as financial compensation;
- 11.4. imposing sanctions and penalties against individuals and entities responsible for abusive practices against migrant workers;
- 11.5 adopting measures to encourage migrant workers and trafficking victims to denounce abuse, exploitation and violation of their rights, taking account of the special circumstances of women and children and to this effect establishing mechanisms for

1 ILO (2004). A fair globalization: Creating opportunities for all. Geneva, World Commission on the Social Dimension of Globalization and International Labour Office, Geneva, February 2004.

<http://www.ilo.org/public/english/wcsdg/docs/report.pdf>

2 The full *Report of the Committee on Migrant Workers, ILC 2004* which contains the above Resolution is available (in English) at:

<http://www.ilo.org/public/english/standards/reim/ilc/ilc92/pdf/pr-22.pdf>

3 ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, January 2006), p. 13-14.

<http://www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf>

4 Conventions No. 29, 105, 138 and 182; Convention No. 97 (Art. 3, Annex I; Art. 8 and Annex II, Art. 13); Convention No. 143, Part I; 1990 International Convention (Art. 21).

migrant workers to lodge complaints and seek remedies without intimidation or retaliation;

11.6. prohibiting the retention of the identity documents of migrant workers;

11.7. creating and strengthening channels or structures for information exchange and international cooperation to address abusive migration conditions;

11.8. disseminating information on trafficking to warn potential victims of its dangers and raise public awareness on the issue;

11.9. assisting and protecting victims of trafficking and other abusive migration conditions, with particular attention to the specific needs of women and children;

11.10. adopting policies to address the root causes and impact of trafficking in persons with particular attention to gender-related issues;

11.11. encouraging the elimination of misleading propaganda relating to labour migration.

II. Root causes behind the trafficking of women workers

In the latest global report under the follow-up to the *Declaration on Fundamental Principles and Rights at Work*, “A Global Alliance against Forced Labour”, the ILO estimates that around 2.5 million men, women and children are victims of trafficking, and that around one-third of them are trafficked for economic purposes other than sexual exploitation.⁵ While in Asia, Latin America and sub-Saharan Africa, the proportion of trafficked persons is less than 20 per cent of all forced labour, trafficking in industrialized and transition countries accounts for more than 75 per cent of the total. According to the report, economic incentives for trafficking are powerful: the total illicit profits – produced in one year by a single commercial sex worker in industrialized countries – attain an average of US\$ 67,200 per year.⁶

Rapid assessment studies on trafficking for labour and sexual exploitation have been completed in several Eastern European countries of origin by ILO’s Special Action Programme on Forced Labour (SAP-FL). The main findings of this research indicate that the majority of trafficked victims for forced labour are women (64%). The studies also provided insight into the recruitment of victims. Trafficked victims of forced labour mostly found a job abroad via an intermediary⁷ (43%). Non-trafficked victims of forced labour mostly obtained work abroad through their social connections (54.7%). Agencies also played a role in trafficking (11.9%) as well as in other forced labour outcomes of migration (15.1%). These results indicate that the lack of social connections abroad is a vulnerability factor when considering trafficking, and that there is a need for proper migration management, particularly the monitoring of recruitment of migrant workers. Once arrived in the destination country, trafficked victims of forced labour are mostly present in sex work (32.4%), construction (16.8%), entertainment/dancing/bar-tendering (12.8%), and agriculture (12.3%). The majority of trafficked women were forced to provide sexual services (sometimes in conjunction with other work).⁸

⁵ ILO, *A Global Alliance Against Forced Labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2005, p.46.

⁶ ILO Online, No. 24, May, 2005, p.1.

⁷ An intermediary is understood to be a non-legal person, working on his/her own or as part of a network, with the aim of recruiting potential migrants for work/forced labour abroad. Agencies, on the other hand, are considered as legal, semi-legal or pretending to be legal entities seeking to recruit potential migrants for employment/forced labour abroad.

⁸ ANDREES, Beate, and VAN DER LINDEN, Mariska, *Designing Trafficking Research from a Labour Market Perspective: The ILO experience*, Geneva, ILO, 2004, p. 10-11.

Few other surveys such as ICMC-IOM *“Research Report on Third Country National Trafficking Victims in Albania”*⁹ provide more detailed information on the victims. The above-mentioned survey is based on individual interviews and describes the experience of 125 trafficked women through Albania who received shelter assistance in the year 2000. Some of the most interesting report findings were:

- a. The overwhelming majority of trafficked victims through Albania are from Moldovan or Romanian origin (91%);
- b. in most cases victims knew their recruiters beforehand. In 50% of cases they were relatives, friends or acquaintances;
- c. 18% of the group interviewed were kidnapped: snatched off the street and pulled into a car, or kidnapped after invitations to parties;
- d. most were abused en route, many gang raped, preparing them psychologically for what lied ahead;
- e. 72% were confined against their will by the traffickers;
- f. three-quarters of them had hoped to find a job abroad;
- g. from their home countries, they transited through Yugoslavia. 93% of them entered Albania through Montenegro via the northern town of Shkodra;
- h. about 10% of the group claimed police officers were directly involved in the trafficking process while in Albania, either passively or actively releasing women into the hands of traffickers, including even giving traffickers and their cargo a police escort;
- i. 6% of them possessed university degrees (two teachers, one nurse and an accountant) and 74% had either high school education or had completed middle school;
- j. 10% of them attempted suicide while in the shelter, some had received psychiatric care for suicide attempts prior to entry into the shelter, and another 10% underwent psychiatric treatment for post-traumatic stress;
- k. 42% of the women were found to have sexually transmitted diseases.

Table 2. Root Causes in the trafficking of women workers

Supply-side

- ✓ Feminization of poverty
- ✓ Chronic unemployment and lack of economic opportunities
- ✓ Lack of access to information
- ✓ Discrimination on the basis of gender
- ✓ Sex-selective migration policies
- ✓ Ineffective migration management framework

Demand-side

- ✓ Lack of provision of legal means to migrate
- ✓ Employers’ demand for cheap and exploitable labour
- ✓ Consumer demand for services provided by trafficked persons
- ✓ Gender discrimination
- ✓ Increasing casualization and informalization in the labour market

source: ILO: An Information Guide: Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6 “Trafficking of Women and Girls”, p. 29.

⁹ This report, along with the *Save the Children* report “Child Trafficking in Albania”, are the first efforts made by international organisations that contain any form of reliable statistics on trafficking in Albania.

According to the United Nations Economic and Social Council, to tackle trafficking is necessary to address the root causes on both the supply and demand sides –making it absolutely necessary to try to find the best measures or responses in both countries of origin as well as those of destination.¹⁰ (See table 2)

1) Supply and demand

Powerful ‘market pressures’ are reflected in demand and push factors driving migration, namely continuing demands in both Western industrialized countries and emerging economies for cheap, low-skilled labour, in such sectors as **agriculture, food processing, construction, domestic help, labour-intensive manufacturing, home health care, and other** sectors with often hard jobs. The increasing ‘crisis of job security’ resulting in many societies as an aspect of globalization increases pressures for emigration. Related *push* factors include disappearance of traditional industry, loss of agricultural competitiveness, elimination of jobs and subsidies by structural adjustment, and resulting increased poverty where women account for growing proportions of the poor.

On the other hand, immigration restrictions in many situations have inhibited regular labour migration to meet measurable labour demands for female-related jobs. Given these demands, employers and migrants are willing to pay increasingly higher prices to meet each other in an internationalized labour market. Increased migration control and restrictions contributes to making circumventing restrictions a lucrative field of activity to respond to market pressures, making trafficking and smuggling of migrant labour very profitable.

Supply factors- In this age of globalization, most countries of the world are engaged, to varying degrees, in processes of substantial economic reform. These include the adoption of market economies, trade liberalisation, privatisation, new rules of international investment and new labour regimes, as well as new forms of international cooperation and trade agreements.¹¹ As a consequence of some of these reforms, livelihoods have been lost through the disappearance of public sector employment, decline of traditional industries, loss of agricultural competitiveness, and elimination of jobs and subsidies by structural adjustment. Disappearance of jobs and increasing poverty has directly led to increased migration pressures in *countries of origin*.

As a recent ILO study puts it: the evidence so far available on the impact of globalization points to a likely worsening of migration pressures in many parts of the world. Although there is insufficient research on this point, evidence indicates that shrinking opportunities for legitimate employment have affected women disproportionately to men and acted as a further push factor in women’s migration. It is clear, for example, that the transition to market economies in Eastern Europe and the CIS States has had a particularly serious impact on women leading to disproportionate unemployment and wage differentials as compared to men.¹²

10 United Nations Economic and Social Council: *Trafficking in Women and Girls* Note prepared by the Office of the High Commissioner for Human Rights and the Economic Commission for Europe Secretariat, E/ECE/RW.2/2000/3, 1 December 1999, p.7.

11 Escobar Latapí, Agustín; *Emigration Dynamics in Mexico, Central America and the Caribbean*, 12th IOM Seminar on Migration, Managing International Migration in Developing Countries, Geneva, 28-29 April, 1997, p.1.

12 Scanlan, Shivaun, in *Combating Trafficking through Migration*, unpublished at 1.

Trafficking cannot be effectively tackled without addressing the reasons behind labour market failures such as the disadvantaged position of women relative to men in the labour market. Indeed, some economic factors contributing to the growing number of trafficked women in particular are female's growing unemployment rates or lack of employment opportunities. In some countries or cultures, the growing number of unemployed women is strongly related to the lack of educational opportunities provided by parents to these girls due to the belief that investing in girls will not pay back. In other countries, this lack of employment opportunities has been linked to discrimination practices.

In addition, women's access to information on labour markets' job opportunities, as well as migration recruitment processes seems to be lower than that of men. A larger number of women than men do not know how to make use of institutions and structures such as government employment services or social networks that will provide them with a safer way to migrate abroad.

Demand factors- The United Nations Recommended Principles on Human Rights and Human Trafficking emphasize that strategies aimed at preventing trafficking should address demand as a root cause of trafficking. Globalisation and trade liberalisation have had contradictory impacts on employment conditions in *countries of destination*. Demand for cheap, low-skilled labour in industrialized countries as well as a considerable number of developing nations in Africa, Asia, Latin America and the Middle East remains evident in agriculture, food-processing, construction, semi-skilled or unskilled manufacturing jobs (textiles, etc.), and low-wage services like domestic work, home health care and the sex sector.

Small and medium size companies and labour-intensive (and often export-oriented) economic sectors do not have the option of relocating operations abroad. Responses in these sectors include downgrading of manufacturing processes, deregulation, and flexibilization of employment, with increased emphasis on cost-cutting measures and subcontracting.¹³ In a considerable number of countries, these measures have expanded the number of jobs at the bottom of the employment scale. These jobs are often those where a lack of respect for labour standards can be easily identified. Such employment needs are only partially met or unmet by available or unemployed national workers, for reasons of minimal pay, degrading and dangerous conditions, and/or low status in those jobs and sectors, as well as alternative access available for unemployed in some countries to social welfare, etc.

The resulting demand for migrant workers provides a significant impetus to labour flows and facilitates the incorporation of undocumented migrants into the informal sector outside the scope of labour inspection and where there is a lack of absence of organization and representation of workers. Despite relatively high unemployment in a number of developed countries, foreign workers –including particularly unauthorized migrants – are able to find jobs easily.¹⁴ On average, for example, a Mexican undocumented migrant worker to the USA will find a job two weeks after his/her arrival. Similar evidence in Europe indicates that undocumented migrants are rarely 'unemployed'.¹⁵

¹³ Lean Lim, Lin; *Growing Economic Interdependence and its Implications for International Migration* in United Nations: Population Distribution and Migration, New York, 1998, p. 277.

¹⁴ Lean Lim, *op. cit.*, p.277.

¹⁵ OSCE - Office for Democratic Institutions and Human Rights Conference Report: *Europe Against Trafficking in Persons*, Berlin, 15-16 October 2001, p. 72.

Industrialized countries and many developing nations have thus remained a pole of attraction for numerous women migrant workers, who migrate before the presumed economic equalization forces of trade liberalization have time to act.¹⁶ Often they are well-educated people who are ready to take up jobs that they would not accept in their home environment and this process involves an enormous loss of human resources. Wage differentials however between countries of origin and destination justify their interest especially where conditions at home are akin to poverty.

Of particular importance to Western Europe is the growing demand into the lucrative sex and entertainment industry. The growth of the sex industry has been linked to the growing number of gambling, entertainment establishments, newspaper ads offering sex services, a pornography industry linked to the use of internet, and to the large-scale concentration of unaccompanied males in military bases, as well as legal male migrants in the construction and agricultural sectors that are not permitted to be accompanied by their family.¹⁷

Since the issue of the demand into the sex sector is a very sensitive one, it is very important to make clear here that the majority of women migrants are **not** looking for a job abroad into the sex sector. They are simply looking for an honest job as nurses, waitresses, cleaners, housekeepers, babysitters, etc. At some point during the migration process, women migrant workers are deceived by traffickers who force them to do sex work. The author would like to make sure that this paper will not be misinterpreted as considering as calling for the opening of legal migration channels into the sex sector.

In fact, some countries such as Sweden have been trying to attack the existing demand for lucrative sex and the growth of the entertainment industry by imposing heavy fines on users and even threatening them with jail sentences. Will these measures have a real impact on the reduction of the demand for lucrative sex or just push it further underground and hide it? It is still too early to assess.

2) Restrictive immigration laws and policies

Trade and finance have become increasingly deregulated and integrated across regions and globally. By contrast, however, migration policies have not been liberalized, nor have they otherwise addressed the gulf between continued demands for cheap labour and the increasing supply of such labour in other countries. Tighter border controls have not halted migratory flows nor have they had projected results in reducing the number of workers crossing borders. Instead they have put more pressure on those who migrate. With few options available for legal migration in the face of strong pull-push pressures, irregular migration channels become the only alternative, and one which presents lucrative “business” opportunities for helping people arrange travel, obtain documents, cross borders and find jobs in destination countries. Testimony to the fact that the sole control of borders and restrictive immigration policies fail is the fact that the trafficking and smuggling ‘business’ is still considered to be worth 7 billion US dollars per year, second only to drugs and arms smuggling.¹⁸ As noted by the ILO report on Forced Labour: ‘The recent rise in labour

¹⁶ Stanton Russell, Sharon; *Migration between Developing Countries in Sub-Saharan Africa and Latin America* in United Nations: *Population Distribution and Migration*, New York, 1998, p.242.

¹⁷ ILO: *Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6 Trafficking of Women and Girls* (Geneva, 2003), p. 36.

¹⁸ United Nations, *Human Development Report 1999*, New York, p. 48.

trafficking may basically be attributed to imbalances between labour supply and the availability of legal work in a place where the jobseeker is legally entitled to reside.’¹⁹

An important consideration to make here is that women’s opportunities to migrate legally within temporary schemes to most industrialised countries have been more limited than men. In some countries of origin, States have aimed at protecting women migrant workers from exploitation and abuse by imposing restrictive emigration policies that infringe on women’s basic human rights to free movement and in fact make them more vulnerable to traffickers. In countries of destination, when legal, recruitment immigration efforts take place, they are frequently aimed at construction workers and farm labourers (mainly male-related jobs). For example, in 1999, while 32,372 agricultural workers were admitted as temporary workers to the United States; only 534 registered nurses were admitted.

Migration policies of Western European destination countries are not openly biased by sex. However, in some countries restrictions have been imposed on admissions of migrants for female type of occupations. The case of Switzerland is notorious since no immigration quotas exist for domestic workers, yet many undocumented women from a number of developing countries work as domestics in middle and upper middle class households.

Germany is also a good example of male-biased migration policies. All four legal means of migration for work are dominated by men: firstly, *project-linked employment* in the building industry; secondly, *guestworker contracts*; thirdly, *seasonal workers* for agriculture, forestry, construction and vineyards; and *commuters* living up to fifty kilometres from the German border (80 per cent are male).

If stricter immigration policies are not a successful means for combating trafficking and smuggling, but in fact intensify the activities of such groups, is there reason to suggest that more liberal migration regimes would diminish the incidence of trafficking or smuggling? Some evidence in Central Europe might indicate that this may already have happened.

In the early and mid-nineties, many victims of trafficking to Western Europe Central and Eastern Europe were Polish, Czech, Slovak and Hungarian women. However, the latest data indicate that victims of trafficking to Western Europe from Eastern Europe are almost exclusively Moldovan, Romanian and Ukrainian.²⁰ It is observed that one of the main reasons for this change is that the first group of countries now comprise candidate countries to the EU. Nationals of these countries no longer require visas to enter for a stay of up to three months. Women are continuing to migrate from these countries and finding employment as baby sitters, in domestic work, and other services, albeit irregularly, but they are able to do so without requiring the labour broker services offered by smugglers or worse, by a trafficker.²¹

In contrast, current main source countries of trafficked victims in Europe are on the “black list” of countries that require visas for any visit, even for short tourist stay of less than three months. The list of requirements for visas is long (return travel tickets, certification of regular income, etc.), the rejection rate is high and the time involved and lack of required

19 ILO: Report of the Director-General, ‘*Stopping Forced Labour*’, op. cit. p. 53.

20 See *Victims of Trafficking in the Balkans*, op. cit.

21 Scanlan, S., op. cit., p.1.

documentation deter many from even bothering²². This factor alone creates a substantial market for the trafficker.

Data from the Philippines indicates that where there are bilateral labour agreements between the Philippine Government and the receiving state, there in fact seems to be a lower incidence of trafficking. The incidence of trafficking reported generally among Filipino irregular migrants is low, although data to date have largely focused on the sex sector whereas Filipinos are concentrated more on domestic help and the service sector. Nonetheless, the Filipino situation is characterized by ample channels for regular labour migration monitored through government supervision, extensive experience with migration, and the amplitude of consequent contacts and connections to Filipinos Associations abroad.

Similarly, data on the US indicates that few if any of the hundreds of thousands of Mexican nationals who enter the US irregularly every year are trafficked. While many may use the services of smugglers to cross the border, most end up in jobs that, while exploitative, don't constitute a trafficking situation. Again, the absence of trafficking in this irregular labour migration is attributed to the many connections between Mexicans in the two countries, to extensive employment recruitment of Mexicans through **cross border social networks** and to the relative ease to leave abusive situations, as well as to the considerable attention to migration by both governments.

Again, it should be mentioned here that this report is not claiming for the opening of regular migration legal channels into the sex sector. The author is convinced that if enough regular migration channels are available for women into the other existing wide range of female-related jobs, women will prefer to go abroad not utilizing the services of traffickers that could mislead them into the sex sector.

III. Ten Specific Areas of Migration Management Improvement

Trafficking occurs not only when borders are barriers to labour supplies meeting demands, but when migration policies are sex-selective and affecting women negatively, when there exists a greater lack of access to information by women on legal jobs abroad, when migration policy, administration and institutions are weak and where there is gender inequality in access to employment, education and training in countries of origin. At the same time, in countries of destination, trafficking flourishes in the informal, underground female-occupied sectors where there is lack of respect for labour standards and conditions of work are ignored.

The United Nations Recommended Principles on Human Rights and Human Trafficking emphasize that States and intergovernmental organizations (IGOs) should ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.

For this reason, ILO projects and studies have identified areas of intervention of an integrated migration management package necessary to effectively combat trafficking and organized criminal involvement. This package should include in **countries of origin** the following: the establishment of a clear and coherent migration policy; the improvement of migration administration and institutions; the elaboration of bilateral labour agreements

²² Scanlan, S, *op. cit.*, p.2.

ensuring regular migration channels for women migrants and their recognition of diplomas; the establishment of a labour market information system on jobs at home and abroad; the general utilisation of model employment contracts; the improvement of employment and vocational training policies and opportunities for women; and lastly, the monitoring of private recruitment agencies. In the case of **countries of destination**, the improvement of labour inspection services has been identified as necessary, and in **both** sides of the migrations process, the mobilization of the social partners on the combat vs. human trafficking has been found to be very positive.

An **informed and transparent labour migration management system** designed to respond to measured, legitimate needs and taking into account labour concerns seems to be the most effective way to fight trafficking if it relies on regular labour market assessments to identify and respond to current and emerging needs for highly, semi-skilled and low skilled workers.²³

1) The Establishment of a Migration Policy and the Improvement of the Necessary Institutions and Administration to expand avenues for regular labour migration

The establishment of a clear and coherent national **migration policy** will be considered as the first most important area where an improved migration management could contribute to the combat against trafficking. A lot of countries do not actually want to establish a migration policy since they are afraid that the public announcement of a migration policy could either push more nationals to go abroad (in the case of countries of origin), or could attract migrant workers (in the case of destination countries). On both sides of the migration process, the establishment of a migration policy will contribute to the protection of migrant workers and the better channelling of migration flows into sectors recognised in need of foreign labour.

ILO's Multilateral Framework includes a related principle "Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends".²⁴

The following guidelines were included as valuable in giving practical effect to the above principle:

- 5.1. establishing systems and structures for periodic, objective labour market analyses that take into account gender issues and that include:
 - 5.1.1. sectoral, occupational and regional dimensions of labour shortages and their causes, and relevant issues of labour supply;
 - 5.1.2. shortages of skilled workers in both origin and destination countries, including in the public, health and education sectors;
 - 5.1.3. long-term impact of demographic trends, especially ageing and population growth, on the demand for and supply of labour;
- 5.2. establishing transparent policies for the admission, employment and residence of migrant workers based on clear criteria, including labour market needs;
- 5.3. where appropriate, establishing policies and procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements;
- 5.4. promoting labour mobility within regional integration schemes;

²³ ILO; Mekong Sub-Regional Project to Combat Trafficking in Children and Women, *Legal Labour Migration and Labour Markets: Alternatives to Substitute for Trafficking in Children and Women*, p.1.

²⁴ ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, January 2006), p.8.

5.5. ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in national and international labour and human rights standards applicable to migrant workers.

When deciding on establishing a migration policy, a State might also decide the type of foreign employment migration policy regime that will be put in place. According to Abella, there are four different types of foreign employment policy regimes to choose from: *laissez-faire*, regulated system, State-managed system and State monopoly.

1. **Laissez-faire:** the State does not intervene at all and leaves the employment of migrant workers abroad completely to the market. However, this liberal approach could lead to situations where middlemen and traffickers have free reign.
2. **Regulated system:** the State usually intervenes at the legislation level creating laws that regulate the recruitment of its nationals for employment abroad. The actual recruitment is mainly left to the market, but the State influences by screening the jobs offered, regulating intermediation by recruiters, setting minimum standards for employment contracts and requiring emigration clearance for certain categories of workers.
3. **State-managed:** The State does not simply regulate foreign employment, but sets up State enterprises to supervise the recruitment and placement of workers abroad. The State gives direction and regulates the private sector. The State negotiates agreements with countries of employment, increases the supply of skills in great demand abroad and expands deployment in advantageous occupations and countries (ex: Korea, Philippines and Pakistan).
4. **State monopoly:** the State organises the entire labour migration process and there is no place for private recruitment agencies (ex: China and Vietnam).²⁵

States need to define the appropriate migration management framework fitting its needs. In the last three types of migration systems, where States regulate recruitment for employment in foreign countries at a lower or higher degree, it is usually the Ministry of Labour that has the authority to formulate specific migration policies and regulations. At the same time, States will have to establish a mechanism of coordination to get different policy measures work together. For example, the signing of bilateral agreements will require the establishment of the necessary institutions and administrative resources to advance the recruitment process.

Some countries have established some legal channels of migration that they do not actually profit from due to a lack of institutions and the appropriate administration of these outflows. Indeed, some countries complain of not being able to fill up the quotas of workers included in signed bilateral agreement losing the opportunity to reduce the vulnerability of at least some of them going abroad with the help of unscrupulous intermediaries.

The administrative procedure also needs to work at a very efficient level. For example, if finding employment abroad is too difficult, timely and costly, potential migrants will turn to illegal channels. When the system becomes so heavy as to discourage workers from going abroad legally, they will find instead a trafficker who will provide them with a faster and easier way to go abroad. Bureaucratic burdens may make protection measures less effective,

²⁵ Abella, Manolo: *Sending Workers Abroad, A Manual for Low and Middle-Income Countries*, (ILO, Geneva, 1997), p. 8-9.

even constituting a barrier to the migrant's employment and employability. Foreign employment services are more beneficial to migrants if they are not too bureaucratic as this can increase the opportunity for corruption and expense to the recruiter who will pass on all costs to the migrant. On the other hand, a protective framework of legal, fast administered and registered, low-cost migration under a standard model contract and where information on jobs abroad is easily accessible will divert workers from using smugglers or traffickers' services.

It is also essential to study the consequences that policy measures could have on the migration of women. For example, a number of receiving countries have imposed bans and restrictions on female migration to "prevent" them from falling into abusive situations. However, prohibiting the migration of women and increasing regulation often drives the process further underground since it forces women migrants into even more vulnerable positions, increasing their need of demanding recruitment agents to help them migrate clandestinely. Moreover, the effectiveness of protective measures by labour sending countries is minimal if legislation and protective measures, as well as labour inspection are poor in receiving countries, especially in those sectors where women migrant workers are concentrated.

Whether the State is directly involved in migration management or just in the monitoring of private employment or recruitment agents, the establishment of the necessary **institutions** involved on migration management or the **strengthening of their administration capacity** will contribute to a smooth administration or monitoring of migration outflows. The improvement of the administration capacity will require significant training of those officials in charge of migration management or monitoring.

2) Monitoring and Licensing of Fee-Charging Private Recruitment Agencies and other intermediaries

Most of the recruitment of migrant workers is now in the hands of fee-charging private agencies whose numbers have grown rapidly in both sending and receiving countries. In some large labour-supplying countries they now comprise a major service industry, accounting for the recruitment and placement of 60 to 80 per cent of all temporary labour migrants leaving every year, and earn substantial revenues from the business. The commercialization of recruitment through the activities of private fee-charging agents have contributed significantly to the growing exchange of labour among countries. Profit-motivated recruitment agencies have succeeded in bridging national labour markets where states permit the movement of labour. Most private employment agencies played a significant and positive role in the effective functioning of the labour market and have proven particularly effective in quickly sensing skills shortages in labour markets, finding labour to fill the void, and providing flexible and appropriate responses as economies become more complex. Their operations have, in effect, made it possible to overcome the information gaps and institutional obstacles separating national labour markets.²⁶

However, the commercialization of recruitment has, negative aspects which not infrequently take the form of fraud, exorbitant fees and unacceptable conditions of employment of migrant workers. The organization by private recruitment agencies of the

²⁶ ILO: *Protecting the Most Vulnerable of Today's Workers*, Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, (Geneva, 1997) MEIM 1997, p. 28.

international migration of labour has been especially hard on unskilled and non-technical workers. In many countries of origin recruitment malpractices include:

- advertising, soliciting applications and demanding fees for non-existent job offers;
- withholding information or giving false information on the nature of jobs and conditions of employment.
- Charging fees well above the maximum allowed by regulations or the actual cost of recruitment; and
- Selecting applicants not on the basis of job qualification but by the amount they are willing to pay to get the job.²⁷

ILO's Multilateral Framework on Labour Migration recommends in this respect that **“Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188).**

Labour migration is easily susceptible to fraud because of several inherent features of the process. First, there is the geographic distance that makes it very difficult or expensive to verify information supplied by foreign employers or their agents. This is especially true of migration to countries where migrant networks are not yet well established. Second, wage differentials between countries are such that there are labour surpluses, especially for many lower or unskilled occupations, and competition among jobseekers can easily be exploited by unscrupulous agents. Third, little skill and very minimal capital are necessary to engage in the recruitment business, making it easy for almost anyone to claim to be genuine agents of foreign employers. The fact that fraud is not uncommon is reflected in the number of workers stranded in foreign ports who have been recruited for jobs that do not exist.

Under the category of fee-charging private recruitment agencies, the following are considered:

- Private employment agencies
- Tourist or travel agencies
- Model agencies
- Matrimonial or bridal agencies

The response of many States to the high incidence of malpractice and abuse in the recruitment of migrant workers has been to regulate the industry more closely than other commercial business and to impose stiff sanctions against certain activities. The stated aims of many of these measures are to:

- prevent fraud in recruitment,
- reduce the cost of job placement to the worker and
- minimize mismatches and recruitment failures.²⁸

²⁷ op.cit, p.30

²⁸ op.cit, p.33

Monitoring through frequent **labour inspection and policing** has been recommended as crucial to prevent abuses, but in close discussions with private intermediaries representatives and **providing incentives** to honest private intermediaries who refuse to participate in the trafficking process. Measures have also been taken to **promote cooperation between private agencies and the public employment services**. For example, **subcontracting or bidding of agreements to private agencies has been organized**. **Standards of good practice** in job advertising, labour contract design and fees have been defined. However, according to experience, monitoring **should not represent repression** in any way since repression would just bring these agencies more underground and would create more problems instead of finding solutions. Licensing is viewed in many countries as a basic policy tool for preventing malpractices. While **licensing regulations** may not completely prevent agencies from engaging in clandestine activities, they do make such activities risky and subject to heavy financial and even criminal penalties. On the other hand, licencing can be also used as an effective mechanism for encouraging good performance, promoting market competition and highlighting best practices. Some countries now require private agents to put up financial guarantees as a condition for the granting of a licence to compensate workers in the event of certain contingencies. Licenses should not have a period of validity shorter than that granted to comparable commercial activities so as to encourage private recruitment agencies to take a long-term view of their investments.

The typical requirements for licensing should be the following:

Financial capability- to provide the necessary logistics and financial resources to support international operations;

Recruitment capability- competence in identifying and selecting qualified persons for jobs abroad. Agency staff should include trained recruitment specialists and documentation officers;

Management capability- competence in organising and managing a business, including the provision of adequate facilities to undertake international operations and extensive domestic networking;

Marketing capability- competence in identifying foreign employment opportunities and negotiating contracts that benefit not only the agency owners but also the workers who are to be hired.

Apart from licensing, some States have prohibited recruitment charges or have set a legal ceiling on the fees that private agents may charge the worker. In order to check abuses on the amount of fees that private agents may charge the worker, some countries have set up regulations prohibiting the direct payment of fees by the worker. In some countries, the workers must pay the recruitment fee through the Bureau of Foreign Employment, or through depository banks.²⁹

Some associations of private recruitment agencies have also tried to convince their members to sign **codes of practice** comprising some of the following issues:

1. Minimum standards on a) job advertising; b) selection of workers; c) testing of workers; d) labour contracts to be used; e) rates of chargeable fees; f) respectful treatment of the worker; g) modes and cost of transportation of the worker; and, standards on minimum qualifications of their personnel and managers;

²⁹ op. cit., p.35.

2. The full and unambiguous disclosure of all charges and terms of business to clients;
3. The principle they must provide the migrant workers with a contract with all job information including functions and responsibilities, wages, benefits, working conditions, travel and accommodation arrangements, etc;
4. The principle they should not knowingly recruit workers for jobs involving undue hazards or risks, abuse or discriminatory treatment;
5. To refrain from bidding down wages;
6. To maintain a register of all migrants recruited or placed through them to be available for inspection by the competent authority.

Another very interesting linkage into the growth of trafficking victims where work has rarely been done is that covering other **intermediaries** providing information services where forced labour or trafficking situations into the sex sector for pornography or prostitution purposes can obviously be found. The most important of these services are the following:

- Internet ads offering sexual-related services
- Newspaper ads providing false information on jobs abroad in countries of origin
- Newspaper ads offering phone numbers with links to sexual-related services in countries of destination

One of the responses studied is the establishment of **codes of ethics** implemented in newspaper companies as a type of self-regulation especially concerning the section with newspaper ads. At the same time, newspaper advertisements and any other type of advertisements providing false information on jobs abroad, as well as those offering sexual-related services could be checked and monitored as much as possible by the police and labour inspectors under the guidance of the National Migration Department since often women and girls providing services for these ads are migrants in forced-labour situations. In the case of internet ads, regulation and monitoring seems to be very costly, time-consuming, and almost an impossible task.

3) Strengthening of Labour Inspection Services

To contribute to the combat against trafficking it is absolutely necessary to strengthen labour institutions, including labour inspection and monitoring. It is also important to enforce minimum national employment conditions standards in unregulated work in the informal sector to serve as a complementary system of criminalizing abuse of persons and of discouraging irregular practices. This involves enactment of clear national minimum standards for the protection of workers, national and migrant, employed in sectors where these do not exist such as the sex sector and the domestic sector.

ILO Conventions on such aspects as occupational safety and health, forced labour, and discrimination provide minimum international norms for national legislation. An essential component is the monitoring through labour inspection of 'irregular' employment in the informal sector, in particular to identify and prevent exploitation of children and to detect and stop forced labour situations, as well as to uphold minimum decent working conditions.

4) The Ministry of Labour and the Mobilization of the Social Partners

Since the current approach to trafficking is very much from a criminal law enforcement and crime prevention perspective, the responsible government agencies are normally the

Ministries of Interior, Immigration, Police and Judiciary. Hardly ever are Ministries of Labour involved. Yet, migration today is about work and if the aim is to achieve informed and transparent orderly labour migration systems based on realistic assessments of labour market needs, **Ministries of Labour and the social partners-** workers' and employers' organisations- need to be closely involved. The role of the Ministries of Labour in countries of origin and destination is also in providing employment services, labour inspection and to do the monitoring of private recruitment agencies.³⁰

Again, ILO's Multilateral Framework on Labour Migration includes a principle that states that **"Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented."**³¹

It also states that the following guidelines may prove valuable in giving practical effect to the above principle:

- 6.1. establishing or strengthening national procedures of social dialogue to ensure consultation on all aspects of labour migration, including on the preparation of educational programmes and materials and provision of services and assistance to migrant workers and those considering migrating for work, both men and women, who may have different needs;
- 6.2. facilitating the participation of employers' and workers' organizations in relevant international, regional, national and other forums, including through the establishment of tripartite consultative procedures;
- 6.3. promoting dialogue and consultation with employers' organizations on practical opportunities and challenges they confront in the employment of foreign workers;
- 6.4. promoting dialogue and consultation with workers' organizations on particular concerns posed by labour migration and their role in assisting migrant workers;
- 6.5. involving both men and women migrant workers in dialogue and consultation.

The Ministry of Labour and other Government sectors concerned could invite the social partners to contribute to the combat against trafficking at several levels. For example, at the level of direct action, they could:

➤ **Trade Unions' Organisations:**

- Mobilize and organise migrant workers
- Ensure representation and voice for migrant workers
- Make representation on behalf of migrant workers
- Share information on recruitment and placement of migrant workers between sending and receiving countries
- Conduct legal literacy courses in sending communities
- Play an advocacy role, highlighting the plight of victims
- Provide direct services for victims of trafficking
- Support the establishment of self help groups for victims of trafficking

30 ILO: *Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6 Trafficking of Women and Girls* (Geneva, 2003), p. 49.

31 Convention No. 143 (Arts. 2.2, 4, 7, 12(a), 12(e) and 14(b)); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); Recommendation No. 86 (Paras. 4.2 and 19); Recommendation No. 151 (Paras. 4, 6(b), 7(1), 9, 14, 25(2) and 29).

➤Employers' Organisations:

- Engage in dialogue with authorities
- Engage in Tripartite consultation to assess demand for foreign workers
- Monitor the implementation of labour agreements
- Provide information about the receiving country
- Support and conduct training programmes to prepare for overseas employment
- Support employment creation for prevention of trafficking and the rehabilitation of victims of trafficking
- Encourage associations of recruitment agencies to be socially responsible and aware of the vulnerabilities of female migrants
- Put checks on employers /recruitment agencies with bad records
- Support community initiatives (preventions, reintegration) as part of their social responsibility commitments

5) Bilateral Labour Agreements and Recognition of Diplomas

The ILO has consistently recommended the formulation of bilateral agreements as a means of improving the management of migration flows or promoting orderly labour migration. The advantages of bilateral agreements are that they can be adapted to the particularities of specific groups of migrant, and that both the sending and the receiving State can share the burden of ensuring adequate living and working conditions, as well as monitoring, and more actively managing, the pre- and post-migration processes. The annex to Recommendation No. 86 provides an elaborate model of a bilateral agreement. Several provisions of the two ILO Conventions on Migrant workers (No. 97 and 143) stress their important role.³²

In order to succeed in signing bilateral labour agreements, countries of origin need to establish contacts and relations with counterpart authorities in actual and potential destination countries. It is important to negotiate bilateral labour agreements including provisions as favourable as possible to nationals. Bilateral labour agreements provide the general protective framework and provide an effective means to supervise the migration process and to control recruitment and employment abuses.

If quotas are established, countries of origin could make sure that enough jobs for women migrants are included in bilateral agreements signed with countries of destination. Quotas could be based on labour market assessments on the demand for women migrants in countries of destination in such sectors as care for the elderly, care for children, nursing in general, teaching and other female-related jobs. If possible, these quotas should comprise 50% men and 50% women jobs.

The signing of agreements including the recognition of diplomas of nationals in countries of destination could be a very important way (of course accompanied by bilateral agreements covering quotas for female-related jobs) to contribute to the reduction of trafficking by increasing the number of women migrating to perform a middle-skilled or highly-skilled occupation.

³² ILO: *Migrant Workers*, Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 1999), International Labour Conference, 87th Session, 1999. p.34.

6) Employment Contract

The use of model employment contracts for the recruitment, placement and employment of migrant workers is another important means of preventing fraudulent and abusive recruitment and trafficking. ILO recommends States to “maintain a system of supervision of contracts of employment between an employer, or a person acting on his/her behalf, and a migrant for employment”. Convention No. 97 (Article 5 of Annex 1 and Article 6 of Annex II) lists the employment contract as one of the essential documents which are to be provided to the migrants prior to their departure from the sending country and intended to give him/her adequate information on working conditions. The employer is required to draw up the employment contract in writing and submit it for approval to the competent authority in the sending country prior to the prospective migrant’s departure. It is highly recommended that the migrant worker has signed a contract before leaving the country. Model employment contracts should include the following minimum conditions:

- ✓ Description of the job, site of employment and duration of contract;
- ✓ Basic monthly salary, including benefits and allowances, as well as rates of overtime pay;
- ✓ Non-cash compensation and benefits, including free food and accommodation;
- ✓ Regular working hours, rest days and holidays;
- ✓ Maternity leave, particularly when covered by national legislation;
- ✓ Transportation to the country/place of employment and return, including repatriation;
- ✓ Employment injury and sickness compensation, and emergency medical and dental care;
- ✓ Social security rights and obligations;
- ✓ Valid grounds for termination of contract;
- ✓ Dispute settlement.³³

The employment contract should be a written document in a local language that the migrant worker understands. The contract should be signed by both the migrant and the employer to ensure that each worker who goes abroad for employment has in her/his possession a valid and legally enforceable document showing the agreed terms of employment. Many governments of countries of origin also require that (i) the employment contract is verified or authenticated by their embassy in the destination country, including checks on the credibility of the employer; and (ii) migrant workers register their employment contract with the relevant authorities. In addition, emigration clearance is not given to the worker unless the terms of contract comply with the relevant provision of the country’s legislation.³⁴

7) A Labour Market Information system or service on Jobs at Home and Abroad

An informed and transparent labour market information system or service on existing jobs at home and abroad can be one of the most effective ways to fight trafficking. It is highly recommended that States of origin provide migrant workers with accurate information to assist them in their search for employment. It is also important to gather and organize information on matters related to employment, working and living conditions abroad in order

³³ ILO: *Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6 Trafficking of Women and Girls* (Geneva, 2003), p. 70.

³⁴ Op.cit, p.70.

to prepare potential migrant workers or support their decision to migrate. ILO Conventions on Migrant Workers consider that States should provide or fund the provision of information or other assistance to migrant workers or ensure the existence of such services, and monitor them and, where necessary, intervene to supplement them.

It is necessary to provide migrant workers with useful pre-departure information on who to contact in case of urgent need, legal rights, administrative formalities, and other information on cultural differences, social and health services, etc. If possible, specific information programmes or services should be directed towards female prospective migrants. Due to the particularly vulnerable position in which many female migrants can find themselves, information systems or services can prevent women from finding themselves in a position where they are likely to be exposed to abuse and exploitation.

What some major sending countries have done is to put together databases available through internet and providing (within the Employment Service, the Migration Department or other Governmental Institution) a single information system on jobs available within the country and abroad. The database can include the **list of recognised honest private recruitment agencies** and their contact details, vacancies available through these private employment agencies, existing signed **bilateral agreements and their quotas with occupations available**, and the **names of companies involved in direct recruitment** for jobs abroad.

This central registry or database can also comprise the names of those persons who have already found a job in a foreign country, a copy of the contract, the full address of the recruitment agency, name of recruitment agent, full address of employer and other useful information in case of grievance. If that person's information (name, last name, address, age, sex, name of the employer abroad and private intermediary) can be easily accessed in embassies in countries of destination, the work of labour attachés is facilitated in case of abuses suffered by the migrant worker.

The establishment of a database easily available and backed up with enough dissemination of the information contained in this database could be complemented with other promotional media means such as posters, radio campaigns, pamphlets, etc.

The **Philippine** Overseas Employment Administration (POEA)'s website provides safe migration information to potential migrant workers by listing all licensed recruitment agencies that potential migrants should refer to and by providing on-line information on job vacancies abroad, as well as the list of the Philippines Embassies and labor attaches. It also informs on how to avoid illegal recruitment asking potential migrants to check with the POEA the name of the recruitment agency against the list of agencies licensed by the POEA and to check with the POEA Accreditation Branch if the recruiter has a current job order. The POEA also informs potential migrant workers that the legally allowed placement fee is equivalent to one month salary exclusive of documentation and processing costs, and warns them not to pay any placement fee unless they have a genuine employment contract. In addition, the POEA instructs them not to accept a tourist visa, but to demand a working visa and not to be enticed by advertisements requiring them to reply to a Post Office (P.O.) Box, or to enclose payment for processing of papers. Lastly, the POEA tells potential migrant workers to avoid training centers and travel agencies who promise overseas employment.³⁵

35 <http://www.poea.gov.ph/html/tips.htm>

8) Gender-sensitive Employment and Vocational Training Policies and Programmes

If a real and long-term solution wants to be found in the combat against women trafficking, it is crucial to address the employment situation of women and to check if employment policies do not include any discriminatory practices against women. It is essential for women to access in equal terms employment and vocational training opportunities. To achieve this, employment and training policies at the national level should be aware of providing equal opportunities to men and women.

Gender mainstreaming employment policies should be supplemented by alternative livelihood schemes in large sending communities of trafficking victims and by employment-intensive development policies whenever necessary.

9) A Standards-Based Approach

The promotion of a standards-based approach to criminalize trafficking and exploitation while ensuring protection of migrants' rights is another very significant issue to be considered within this anti-trafficking package. A *standards-based approach to combating trafficking and exploitation of migrants*, together with protecting basic rights of all migrants includes adopting and utilizing the 'Palermo' Convention and its Protocol on Trafficking in Human Beings, complemented by the ILO³⁶ and UN Conventions on migrant workers³⁷. A total of 76 different States have now ratified or signed one or more of these three complementary standards; a number of European countries ratified one or both of the ILO Conventions. The point of establishing legal rights and policy standards is to ensure social legitimacy and accountability, which can only be ensured by a foundation in the rule of law.

ILO's Multilateral Framework on Labour Migration states that **"The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions,³⁸ and the relevant United Nations human rights Conventions"**.

It also mentions that **"All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments"**.

36 Account should be taken in particular of the underlying principles of the Migration for Employment Convention (Revised), 1949 (No. 97) ratified by 46 countries, and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) ratified by 19 countries, and of accompanying Recommendations Nos. 86 and 151. Texts and related information available on the ILO website, at www.ilo.org/ilolex

37 The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by 34 countries and signed by 15 others. Texts and related information available on OHCHR website www.unhchr.ch

38 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); Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

In addition, it states that “**National law and policies should also be guided by other relevant ILO standards in the areas of employment, labour inspection, social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants**”.³⁹

In particular, labour laws should cover sectors where women migrants are concentrated. Amendment and enforcement of laws and regulations covering the rights of women migrant workers are necessary. For example, prosecution should be enforced in the case of recruitment agents and employers/sponsors identified as having violated their contractual obligations and having committed abuses. In addition, flexibility in changing sponsors (without imprisonment and deportation) could be introduced in cases of workers complaining of abuses.

10) Other areas of work

In order to contribute to the reduction in the number of trafficked women, for example, some additional measures taken by Governments and IGOs on both sides of the migration process, could include the following:

Countries of origin:

- the building of a reputable image of the national worker among governments and employers of destination countries;
- the provision of the necessary number of labour attachés in Embassies abroad to deal with complaints and urgent needs of national workers abroad.

Countries of destination:

- the enactment of practical measures including public advocacy and awareness-raising to cover prevention, protection, rights-restoration, recovery and healing services addressing victims of trafficking. It is important to undertake awareness-raising campaigns aiming at changing and avoiding behavioural practices such as withholding passports, withholding of wages, and physical, sexual and psychological abuses;
- the establishment of institutions such as a commission comprising Government authorities, concerned Embassies, IGO’s, NGO’s and other international and national bodies to discuss, identify and find solutions to workers’ issues of concern. This national body could be monitoring the treatment given to workers, in general, and to women migrant workers in particular by recruitment agents, sponsors, police and national security officers;
- the regularisation of undocumented migrant workers.

³⁹ Of particular relevance are the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Labour Inspection Convention, 1947 (No. 81); Labour Clauses (Public Contracts) Convention, 1949 (No. 94); Protection of Wages Convention, 1949 (No. 95); Social Security (Minimum Standards) Convention, 1952 (No. 102); Plantations Convention, 1958 (No. 110); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Policy Convention, 1964 (No. 122); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Minimum Wage Fixing Convention, 1970 (No. 131); Nursing Personnel Convention, 1977 (No. 149); Occupational Safety and Health Convention, 1981 (No. 155); Maintenance of Social Security Rights Convention, 1982 (No. 157); Occupational Health Services Convention, 1985 (No. 161); Safety and Health in Construction Convention, 1988 (No. 167); Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); Safety and Health in Mines Convention, 1995 (No. 176); Maternity Protection Convention, 2000 (No. 183); and Safety and Health in Agriculture Convention, 2001 (No. 184).

IV. Good practices on labour and social protection

Steps have been taken by some Western European countries that are considered best practices through the provision of temporary residence permits to victims of trafficking who testify against their traffickers (e.g. Italy, Austria, Netherlands and Belgium), provision of counselling services, facilitation of support from NGOs, and so on. However these measures do not protect new recruits from the abuse of traffickers⁴⁰

Some of the good practices identified are the following:

1) The U.S. T Visa

The U.S. *Trafficking Victims Protection Act of 2000*, states that victims of trafficking may receive a so-called “T” visa, if they: (i) comply with any reasonable request for assistance in the investigation or prosecution of the traffickers (not required if the person is younger than 15 years old); and (ii) would suffer extreme hardships involving unusual and severe harm upon removal from the U.S.

The length of the visa is specified to be for a period of around three years, when T visa holders can then apply for permanent residence if they (i) have been physically present in the US for a continuous period of at least three year since the date of receiving the T visa; have been a person of “good moral character” during that period; and (iii) have complied with any reasonable request for assistance in the investigation or prosecution or would suffer extreme hardship involving unusual and severe harm upon removal from the U.S. The number of both T visas and permanent visas are both limited to 5,000 per year (this numerical limitation does not apply to family members). The T visa requires, though, both compliance with a “reasonable request for assistance” and extreme hardship, whereas permanent residence requires only one or the other. This reflects the nature of the T visa – its purpose is not just to aid the prosecution, but also to protect the trafficked victim.⁴¹

2) The EU Directive

The European Union Council Directive regarding trafficking provides for short-term residence permits for third-country nationals who are victims of trafficking if they cooperate with the authorities in the apprehension of their traffickers. Prior to receiving these permits, they are given a 30-day “reflection delay” to assist in their recovery, during which they can receive support in the form of shelter, legal advice, medical care and counselling. Those granted residence permits may participate in educational and vocational courses during legal proceedings against traffickers. Some countries, including Austria, Belgium, Italy and the Netherlands, provide temporary residence and work permits to victims who testify against

⁴⁰ Council of Europe; *Recommendation No. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation*, 7. 10th meeting of the Ministers’ Deputies, 19 May, 2000.

⁴¹ U.S. Department of State: *United States Victims of Trafficking and Violence Protection Act, 2000*.

their traffickers. They also provide vocational training, counselling and legal services and assist with obtaining medical care and psychological and social support. 42

However, the directive specifies that the residence permit is only a short-term measure and that it should not be renewed or will be withdrawn if the competent authorities terminate the relevant proceedings or if the authorities consider that the victim does not show a clear intention anymore to cooperate and has not severed all relations with those suspected of smuggling and trafficking offences.

3) Italy's Article 18

In 1998, Article 18 of the Law 286/98 provided for a special residence permit to women victims of trafficking. The special residence permit had the intention to socially protect these women and of recognizing that the person asking for it is an exploited person who needs help, irrespective of her willingness to denounce the exploiters. The residence permit has a validity of six months with possibility for renewal of up to a year. The special residence permit for social protection can be given in the following cases:

- Whenever a woman is in danger “because of attempts to free herself from the subjugation of a criminal association”;
- Whenever a woman is in danger after having given testimony against the exploiters during penal proceedings.

However, the special residence permit is not limited to the time necessary to prosecute and conclude the criminal proceedings, but has the possibility of becoming a regular residence permit for the purpose of employment.⁴³

V. Conclusions

Trafficking in persons is now a growing menace worldwide, leading to subjection of many thousands of workers, especially young women and even children to forced labour conditions. It is important to be aware that “Over-emphasizing trafficking and taking it out of the migration context is strategically counter-productive in the fight for human rights because (a) trafficking could put migration in a crime control, crime prevention context; and (b) trafficking could be used by governments as a vehicle to develop more restrictive approaches to migration in general”.

Sex-selective or restrictive migration policies and laws often have the consequence of pushing mainly women and girls into seeking illegal channels of migration and making them much more vulnerable to entrapment by traffickers. Since the issue of the demand into the sex sector is a very sensitive one, it is very important to make clear here that the majority of women migrants are **not** looking for a job abroad into the sex sector. They are simply looking for an honest job as nurses, waitresses, cleaners, housekeepers, babysitters, etc. At some point during the migration process, women migrant workers are deceived by traffickers who force them to do sex work.

42 Council of the European Union: *Council Directive on the Residence Permit issued to Third-country Nationals who are Victims of Trafficking in Human Beings or who have been the Subject of an Action to Facilitate Illegal Immigration, who Cooperate with the Competent Authorities*, (Brussels, 17 December, 2003), Article 11.

43 ILO: *Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6 Trafficking of Women and Girls* (Geneva, 2003), p. 81.

This is one of the main reasons why the combat against trafficking should focus on improving migration policies and management linking them closely to labour market and employment policies in both origin and destination countries including measures for strengthening employment services to inform job seekers about job opportunities, as well as strengthening labour institutions, and labour inspection and monitoring of private recruitment agencies. Trafficking cannot be effectively tackled without addressing the root causes of both the supply and demand for trafficked persons or the reasons behind labour market failures (rising unemployment and under-employment and poor working conditions); persistent occupational segregation and the disadvantaged position of women relative to men in the labour market; and why and how informalization, flexibilization and casualization of production and employment relationships is increasing the demand for unregulated migrant workers.

At the same time, it is important to recognize that poverty and high unemployment or under-employment are major root causes of trafficking, and anti-trafficking programmes should emphasize the creation of alternative livelihoods in communities of origin. However, poverty reduction, income generation and employment creation measures can be effective only if they: lead to true economic empowerment of vulnerable men and women; offer viable and attractive alternatives to the potential earnings and working conditions in the destination areas; are sustainable over the longer term in terms of offering continuing access to decent employment; and, are linked to more broad-based social and community development efforts.

Most likely, the number of women migrants in search of employment will continue increasing, especially towards industrialised countries since the root causes pushing most of these women to look for a job abroad will not disappear, at least in the short-term. However, it is not certain that the increasing participation of women in international migration will be concomitant by itself with an improvement in their situation in the labour market. It is therefore important to provide more attention to the protection of female migrant workers.

If development is to be successful, it must make the best possible of women migrants' potential, and migration must be seen as one of the most significant means to achieve this purpose. However, specific political and institutional support is clearly needed at the national, as well as the regional level. ILO's unique tripartite structure could be the ideal forum for discussion on the issue of strengthening women migrant workers' protection through an improvement of migration management.

States may be able to weaken criminal groups more successfully by providing women migrants with incentives to make the right choices in the manner in which they travel and thereby avoid the services of criminal groups. Beyond immediate choices, employment possibilities for women – in both home and host countries – must be generated to broaden or expand their choices for improved employment and livelihood.

Only a comprehensive set of measures to eliminate root factors that make trafficking and smuggling necessary for migration, and profitable for criminal groups will achieve what the UN Protocol against trafficking intends to obtain. These measures include addressing conditions that compel out-migration, reducing widespread demand for clandestine and unregulated labour, and replacing restrictive barriers with regulated legal migratory channels for women. And in the longer-term perspective, assistance programs in skills training, micro-finance and employment creation must be put on the agenda.

Government, employers and trade union efforts will be necessary to guarantee migrant women's fundamental human and rights at work. A number of International Labour Standards address the protection of women migrant workers, notably the *Migration for Employment Convention, 1949 (No. 97)* and the *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)* which call upon States to respect the basic human rights of all migrant workers, male and female. Other Conventions covering the rights of women are the following: No. 3, 4, 41, 45, 69, 100, 102, 103, 111, 122 and 156.

For trafficked women, as well as for other women migrants, it would be advisable if governments, as well as employers and workers' organisations (where they exist) could join efforts to provide them with the necessary tools to uphold protection. The enactment of legislation in most countries following the example of the E.U., the U.S. and Italy seems to be absolutely necessary to advance towards this objective. The issue is becoming pressing since the number of trafficked women is increasing worldwide.

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