

# Lesson Series 15: Trafficking in Persons

## Introduction

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This is a series of two lessons, based on the publication *Human Rights and Trafficking in Persons : A Handbook*, published by the Global Alliance against Trafficking in Women (GAATW), Bangkok 2001, henceforth called “*the Handbook*”, for the production of which Lin Chew of AHRC was one of the advisors.

Trafficking in persons is in itself a many faceted phenomenon. To begin with, trafficking occurs in situations where many basic human rights deprivations are prevalent. Many more physical and psychological violations are committed against the victims by traffickers which often have far-reaching consequences and which affect the whole further lives of the victims. Even after a person has escaped from traffickers she requires protection against eventual reprisals from the traffickers, as well as measures which ensure that the authorities responsible for addressing the different aspects of the problem do not further jeopardize her rights as she seeks redress and tries to put her life together again.

Taking action against trafficking means taking action to defend and promote the basic economic and civil rights of women, men and children, as well as action to reform and improve the government and legal institutions and systems which should protect and guarantee access to and enjoyment of these rights by all, without any form of discrimination.

## Lessons:

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1. Defining “trafficking in persons”: understanding causes and consequences in a human rights framework
2. Human Rights Action against trafficking
  - i. Prevention: defending and promoting basic economic and civil rights
  - ii. Prosecution: ensuring that state and legal systems work to effect redress, as well as protect the rights of victims in the judicial process
  - iii. Protection of the human rights of trafficked persons, as laid out in “*Human Rights Standards for the Treatment of Trafficked Persons*”

(This series will be sent out in 2 parts. Lesson 1 is sent out now. Lesson 2 will be sent out in the next mailing.)

## **Lesson 1: Defining “trafficking in persons”: understanding causes and consequences of trafficking in a human rights framework.**

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### **A. Brainstorming about trafficking in your own country**

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Consider the following cases (adapted from the Handbook,) which illustrate “trafficking in persons” :

#### **Case of Rachel**

Rachel from Benin City, Nigeria, was approached by a man and asked if she would like to go abroad and earn money by selling cosmetics. She agreed and was taken to Italy by via Ghana.

Once in Italy she was taken to a house and forced to work as a prostitute. The madam at the house told Rachel that she owed 90 million lire for her travel expenses, and that she would be expected to pay that back at the rate of 300 000 lire (US\$132) per day. She would also have to pay 50 000 lire (US 22) a month for room and board and 200 000 lire (US\$90) to rent the corner where she would wait for customers.

In order to earn all this money, Rachel had to service at least 10 customers per day, and work about 22 hours on the street. If she did not manage to earn enough, she was beaten, which happened repeatedly, until she managed to escape, with the help of an Italian NGO.

### **Case of Maria**

In Bolivia, Maria had worked as a domestic worker since age 7. At 29, she met an American, Robert. He offered her a job in his house in the United States. He promised to pay her US\$ 320 per month and to provide health insurance. He also promised that she would be able to study, visit friends and travel with his family. He arranged a visa for her and paid the travel costs.

Maria soon realised that Robert had lied. He forced her to work 6 days per week, and between 12 and 16 hours per day. She frequently also worked on her days off. She was paid only US \$220 per month, in spite of the long hours of work, and did not receive any health insurance.

Robert even took away Maria's passport, and she was not allowed to leave the house without the family. She was forced to work even when she was ill, and even when seriously ill she was not taken to the doctor. Once someone visiting the house raped her, but her complaint was ignored by the family.

Finally Maria managed to escape with the help of a neighbour, who had noticed her problems.

### **Questions for Discussion**

1. What, according to you, are the essential elements of "trafficking"? (For what purposes are people trafficked; under which circumstances can it happen?)

2. Do you know of similar cases in your village / town / city / country?
3. What is being done about these cases, as far as you know?
4. Is there a clear definition and policy regarding “trafficking” in the laws of your country?

### **B. An Internationally Accepted Definition of Trafficking: Human Rights or Crime Prevention?**

For a long time, there has not been consensus about what constitutes “trafficking” and this had an effect on the measures that were taken to stop trafficking. In most cases nothing was done, simply because the relevant authorities did not understand the problem fully, and there was no clearly defined “crime” which could be prosecuted effectively. Victims were also not protected by law and many did not report what happened to them for fear of reprisals from the traffickers, or because they did not trust the authorities to do anything to help them.

#### **Human Rights**

The United Nations addresses trafficking in persons as an issue of human rights. The Special Rapporteur on Violence against Women, Radhika Coomaraswamy is mandated by the UN Commission on Human Rights to investigate and report on trafficking in women, its causes and consequences and to suggest strategies to eliminate trafficking globally. In her last report to the CHR, (E/CN.4/2000/68, 29 February 2000), she elaborated the need for a new and unambiguous definition of trafficking which is based on respect and defense of the human rights of all persons.

11. ...”new understandings of trafficking derive from an assessment of the current needs of trafficked persons in general, and trafficked women in particular. New definitions must be specifically tailored to protect and promote the rights of trafficked persons, with special emphasis on gender-specific violations and protections.”

She proposed a definition of trafficking, which should comprise the following elements:

13. Documentation and research shows that trafficking occurs for a myriad of exploitative purposes to which trafficking victims have not consented, including but not limited to forced and /or bonded labour, including within the sex trade, forced marriage and other slavery-like practices. It is the non-consensual and exploitative or servile nature of the purpose with which the definition concerns itself. ... . The common elements are the brokering, accompanied by the exploitative or servile conditions of the work or relationship in which the trafficked person ends up, coupled with the lack of consent in arriving at that position. The structure of the trafficking

definition must distinguish trafficking as a separate violation from its component parts.

The definition, which Coomaraswamy proposed and which was accepted by the CHR, is:

*“Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:*

*(i) By threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:*

*(ii) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).”*

*14. Subsection (1) of the definition covers all persons involved in the trafficking chain: those at the beginning of the chain, who provide or sell the trafficked person, and those at the end of the chain, who receive or purchase the trafficked person, hold the trafficked person in forced labour and profit from that labour. Criminalizing the activities of all parties involved throughout the process of trafficking would facilitate efforts to both prevent trafficking and punish traffickers.*

And she emphasises again:

17. In order to address the exigencies of modern manifestations of trafficking in women, the definition of trafficking focuses on “forced labour or slavery-like practices”, rather than narrowly focusing on prostitution or sexual exploitation. Documentation on trafficking patterns reveal that trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships.

The common elements found in all of the trafficking patterns are:

- (i) the lack of consent;
- (ii) the brokering of human beings;
- (iii) the transport; and
- (iv) the exploitative or servile conditions of the work or relationship.

Thus, any definition of trafficking must capture these elements.

### **Crime Prevention**

However, the definition which now carries the most international authority is that which is used in the *UN Protocol to Prevent, Suppress and Punish trafficking in persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime*, adopted by the UN General Assembly in November 2000.

It is one of two Protocols attached to the Crime Convention; the other one deals with smuggling in persons. The Convention and the Protocol are clearly focussed on crime control. Their strong law enforcement provisions will help governments to organise and share information about organised crime, increasing their ability to find and prosecute traffickers

The stated purpose of the trafficking protocol is: (art. 2):

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

All of the provisions of the Convention apply to the Trafficking Protocol. The two instruments together contain numerous provisions to protect and assist trafficked persons who agree to become witnesses. However, they do almost nothing to protect the rights of trafficked persons who are NOT witnesses or complainants in a trafficking case. In fact, the law enforcement provisions of the Protocol are mandatory state obligations while the protection and assistance provisions in the Protocol are only discretionary. Governments that sign the Protocol “shall consider measures” or “shall endeavour to” provide protections and assistance “in appropriate cases”. It is unfortunate that the protection provisions are so weak but governments were almost unanimous in their opposition to mandatory language regarding rights protections.

To date this protocol has been signed by more than 80 governments, and they are then bound to integrate the provisions of this Protocol, in the framework of the Provisions of the Crime Convention, into domestic legislation, and to implement the recommendations contained therein.

The definition in the Protocol is as follows:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability (interpretative note {63}) or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of

*exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation (interpretative note {64}), forced labour or services, slavery or practices similar to slavery (interpretative note {66} on illegal abortions), servitude or the removal of organs (interpretative note {65});”*

Interpretative note (63) : “The *travaux préparatoires* should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”

Interpretative note (64): “The *travaux préparatoires* should indicate that this Protocol addresses the exploitation of prostitution and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of the prostitution of other’ or ‘other forms of sexual exploitation’ are not defined in the Protocol. The Protocol is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.”

“(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used (interpretative note {68})”

Interpretative note (68): The *travaux préparatoires* should indicate that Subparagraph (b) should not be interpreted as imposing any restriction on the right of accused persons to a full defense and to the presumption of innocence. They should also indicate that it should not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the State or public prosecutor, in accordance with domestic law (...).”

NGOs who had followed negotiations process and taken part in lobbying governments for better provisions and clear language in the definition came away with mixed feelings. The many compromises made to come to a conclusion makes it necessary for human rights advocates to understand fully the background to the language in the definition used in the protocol. Hence the following commentary,

#### **Commentary on Definition of Trafficking in the UN Protocol**

(By the Global Alliance Against Trafficking in Women, who was part of the Human Rights Caucus, which lobbied at the Crime Commission meetings in Vienna to obtain the best possible Protocol and definition.)

The Trafficking Protocol contains the first international definition of “trafficking in persons”. It takes a different approach to trafficking from that contained in the 1949 Convention, which focused only on prostitution and considered all prostitution, voluntary and forced, to be trafficking.

The Protocol recognises the existence of voluntary prostitution and forced prostitution. It intentionally does not define the phrase “exploitation of prostitution of others or other forms of sexual exploitation” because government delegates to the negotiations could not agree on a common meaning. All delegates agreed that involuntary forced participation in prostitution would constitute trafficking, but the majority of governments rejected the idea that voluntary, non-coercive participation by adults in prostitution constitutes trafficking.

In order to ensure the greatest number of signatories to the Protocol, delegates agreed to leave the phrase undefined and add the following explanation: “The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.

Thus, the Trafficking Protocol expressly permits states to focus only on forced prostitution and other crimes involving force or coercion and does not require governments to treat all adult participation in prostitution as trafficking. Governments that want to focus on crimes involving force or coercion in prostitution and other forms of labour do not even need to include the phrase “exploitation of prostitution of others or other forms of sexual exploitation” in their domestic law. The terms “forced labour or services, slavery or practices similar to slavery, servitude” will cover all situations including forced participation in the sex industry.

Furthermore, forced labour, slavery and servitude are defined in international law and those definitions can be incorporated into domestic legislation. As “exploitation of prostitution of others or other forms of sexual exploitation” is not defined in international law, governments would have to develop clear definitions for their criminal codes. If they do not define the phrase or define it unclearly, then convictions will be difficult because prosecutors will not know what they have to prove. Clear criminal law definitions are essential to the rule of law and the rights of the defendant.

If a government insists on using language such as ‘sexual exploitation’, we should encourage them to use the following definition so that sexual exploitation, like any other form of labour exploitation, requires the use of

force or coercion etc.: “‘sexual exploitation’ means the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials is under the age of 18, sexual exploitation shall be deemed to exist.

### Questions for discussion:

Having studied the definitions,

1. Do you think they cover all the cases of trafficking you know of?
2. Are they useful in helping you to understand what constitutes trafficking?

### C. Consequences of trafficking: human rights violations

This section is adapted from the Handbook, pages 52-56)

#### **1. Crimes Committed by Traffickers**

Read the following cases and try to list the crimes committed in each case.

Do you know cases where other crimes have been committed which are not mentioned here?

#### **The Case of Domitila**

Domitila left her home and family in the Dominican Republic to accept a job as a housemaid in Spain. However the job as a maid was not what she was promised. On arrival, her employer took her passport and the return ticket away. The employer warned Domitila if she did not obey her orders, she would call the police to deport her. Her employer made her work long hours every day till late at night and gave her hardly any food to eat. She forbade Domitila from having any contact with the neighbours, or neighbour’s servants. She could not stay in touch with her family. Her employer never paid Domitila at all.

When Domitila became ill for several days, and in such terrible pain that she could not work, the employer got very angry. She drove Domitila for several hours and dumped her on the road. Domitila walked until she lost consciousness. She woke up in hospital. The police questioned her but Domitila had no papers, could not tell them where the house was located or the name of the family since she had never left the house and did not know the full name of the employer because she is illiterate.

*(source: Fundacion Esperanza, Colombia)*

### **The Case of Delia**

Delia, from a small village in Southern Romania, was offered a short-term contract for a job in a flower shop in Germany by a friend, Matache. Matache promised to organise everything: passports, visas, and employment contract. Delia would earn 100 Deutsche marks per day, and be free to come home whenever she wanted. However, when they arrived in Germany, Matache gave her passport to a man who met them in exchange for some money. Delia realised what was happening, but when she tried to move away a gun was pulled on her. She was taken to a house and locked inside. When Delia tried to resist, she was raped and beaten by two men.

For some time, they forced Delia to have sex with several men per day, and forced her to use drugs. There were other women working in the house but they were not allowed to communicate with each other. All the women were forced to take contraceptive pills, and anyone who got pregnant was forced to have an abortion.

Traffickers commit serious crimes in the process of trafficking and especially at the workplace or site where the victim is being held in a forced labour, servitude or slavery-like condition. Those crimes include:

- Assault and Battery
- Rape
- Torture
- Abduction

- Sale of human beings
- Unlawful detention
- Murder
- Deprivation of labour rights
- Fraud

All countries have laws against these crimes, thus all countries have some laws that can be used to prosecute traffickers. Some countries have specific legislation concerning trafficking, or at least concerning trafficking into prostitution, such as:

- Thailand (measures in prevention and Suppression of trafficking in Women and Children Act (1997),
- Ukraine (Article 124 (1) Criminal Code on “trafficking in people)
- Netherlands (Article 250ter Penal Code)
- USA (HR 3244 Victims of trafficking and Violence protection Act of 2000)

India, Bangladesh, Malta, Portugal, Japan, Colombia, Peru, Nigeria and Sudan also have specific provisions on trafficking in persons.

However, although all countries have laws concerning crimes committed by traffickers, and though some traffickers commit all of these crimes, few traffickers are ever prosecuted or punished for any of the crimes listed above. More commonly, traffickers are punished under migration-related laws that are less serious offences and carry less severe sentences. Additionally, traffickers who traffic women into the sex industry are prosecuted under laws relating to prostitution rather than laws relating to the real and serious harm done to victims.

## **2. Human Rights Violations Committed by Governments**

### **Case of Dinah**

Dinah, a Cambodian woman moved to Thailand to work in a sewing factory. An agent promised her good wages and assured of the legality of work in Thailand. Upon arrival in Bangkok with

the agent, she was taken to a factory where she was forced to work 12 hours every day except Sunday, was given no freedom to go outside and never received any wages. Dinah was 'rescued' during a police raid on a factory, but soon after at the police station was arrested for her illegal status (working without a permit). Her employer was arrested for the illegally low salary she paid the workers, but not for the abuses she inflicted upon them e.g. illegal confinement. During investigations, Dinah was provided with no translator, which meant the investigation took longer. During this time she was held in a detention centre, slept on the floor and only received 2 meals per day. At the court hearing Dinah was found guilty of working without a permit. The fine was \$US100 but since she did not have money, she had to stay in jail for 3 months instead. Then she was sent to the detention centre for deportation. The court trial for the employer began after Dinah's deportation, so she had no ability to participate in the proceedings.

The human rights of trafficked persons are violated extensively by governments. It is a common misunderstanding that traffickers harm victims and governments rescue and protect them. Although trafficked persons suffer serious criminal violations at the hands of traffickers, more often than not, once they are released from the slavery-like or forced labour conditions, they are subject to serious human rights violations at the hands of the government, as we can see in Dinah's case.

In cases like Dinah's, the trafficked person is treated more like a criminal than a victim, without any consideration to what the trafficked person has just been through by being trafficked. Existing research shows that it is in this area of treatment of trafficked persons where there is an urgent need for human rights protection for victims of trafficking. In treatment also, human rights violations are most visible, and we can more directly hold our governments accountable to the role they play in the trafficking in persons.

#### **a. Direct accountability**

Trafficked persons are vulnerable to arrest, detention and deportation because destination countries are unwilling to recognise that they are victims of crimes. Destination countries view trafficked persons as undocumented migrants who entered illegally and/or worked illegally. Trafficked persons are particularly subject to arrest, detention and deportation if they were trafficked into the sex industry. Trafficked persons often do not have the chance to lodge complaints, seek damages, assess whether it is safe to return home, collect their belongings or apply for asylum. In these cases, the trafficked person is treated more like a criminal than a victim.

**b. Indirect accountability**

The following table, adapted from the *Human Rights Standards for the Treatment of Trafficked Persons* (GAATW *a.o.*), illustrates the specific rights that are violated in the context of trafficking and for which governments can be held accountable, in their failure to eliminate gender discrimination, failure to punish traffickers and failure to address the needs and rights of trafficked persons who have escaped:

| Criminal Violations   | Right   | International Instrument  |
|---|---|---|
| Torture, rape, beating, - physical can also be mental/ threat of violence, psychological                          | Right not to be tortured or submitted to cruel and/or degrading treatment   | Art 5 UDHR Art 7 ICCPR<br>CAT entire convention                                   |
|   | Right to be free from physical violence (rape, sexual assault, domestic violence, forced prostitution, trafficking) | Art 3 UDHR<br>Art 6 ICCPR<br>CEDAW/ entire convention especially Art 2,5,15 & 16. |
| Forced drug or substance abuse  | Right to personal autonomy  | Para 97 BPPA  |
|   | Right to enjoy psychological, physical and sexual health  | Art 12 ICESCR   |
| Threat of reprisals to family members back home   | Right to personal autonomy  | Art 12 UDHR   |
| Forced abortion, no access to contraceptives; women's rights of reproduction and control of her body being denied | Right to personal autonomy  | Para 97 BPPA  |
| Deprivation of food, malnourishment, lack of access to medical and health services                                | Right to enjoy psychological, physical and sexual health  | Art 25 UDHR<br>Art 12 ICESCR  |

| Criminal Violations   | Right   | International Instrument  |
|---|---|---|
| Physical Confinement, confiscation of passport/identity papers, isolation (prohibited from engaging in social contact, interception of letters) | Freedom of choosing residence and moving within own country                           | Art 13(1) UDHR<br>Art 12(1) ICCPR   |
| Overwork, long hours, no rest   | Right to work - freedom from forced labour  | Art 8(3) ICCPR<br>ILO Convention No 29 - entire convention                        |
|   | Right to just and favourable conditions   | Art 23(1) UDHR  |
| Bad conditions of work, poor health & safety measures   | Right to safe and healthy working conditions  | Art 23(1) UDHR<br>Art 7 ICESCR<br>Art 11(f) CEDAW                                 |
| No payment, delayed payment,  | Right to just and favourable remuneration   | Art 23(3) UDHR  |
| Extraction of big fees, payment, debt-bondage   | Freedom from slavery  | Art 4 UDHR<br>Art 8 ICCPR<br>UN SC entire convention<br>UN SCAS entire convention |
|   | Right to be free of imprisonment for debt or failure to fulfill a contract obligation | Art 11 ICCPR  |
| Violation of contract by employers  | Right to equal pay for equal work   | Art 23(2) UDHR  |

**List of abbreviations of international instruments:**

**UDHR:** Universal Declaration of Human Rights      **ICCPR:** International Covenant on Civil and Political Rights      **ICESCR:** International Covenant on Economic, Social and Cultural Rights  
**BPFA:** Beijing Platform for Action      **CAT:** Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.  
**CEDAW:** Convention on the Elimination of All Forms of Discrimination Against Women      **CRC:** Convention on the Rights of the Child  
**ILO No 29:** International Labour Organisation Convention No. 29 Concerning Forced Labour  
**ILO No 105:** ILO No 29: International Labour Organisation Convention No. 105 Concerning Abolition of Forced Labour  
**UNSC:** United Nations Slavery Convention      **UNSCAS:** Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery

**Questions for Discussion:**

1. Does your country have laws against trafficking?
2. Are there other laws, which protect people in your country against the human rights violations described here?
3. If there are suitable laws, are they being implemented? If not, do you know why?
4. What do you think can be done to get more protections for victims of trafficking?

RECOMMENDATION: Study “*Human Rights and Trafficking in Persons: A Handbook*”

Obtainable from GAATW, P.O.Box 36, Bangkoknoi Post Office, Bangkok 10700, Thailand.  
Tel: 662 864 1427/8 ; Fax: 662-864 1637 ; email: [GAATW@mozart.inet.co.th](mailto:GAATW@mozart.inet.co.th) ; [www.inet.co.th/org/gaatw](http://www.inet.co.th/org/gaatw)