



Trafficking in Persons

Trafficking in Persons as a Human Rights Issue

Trafficking in persons - the illegal and highly profitable recruitment, transport, and sale of human beings for exploitative purposes such as forced labour or services, slavery or slavery-like conditions, prostitution, sexual exploitation or servitude - needs to be addressed as a severe and multi-faceted human rights issue. Various human rights violations occur at different stages of the trafficking cycle.

Firstly, trafficking often emerges where already many human rights deprivations are prevalent. Root causes for trafficking include poverty, discrimination, violence and the general insecurity often related to armed conflict. Hence, anyone may fall victim to human traffickers. However, around 80 per cent of victims are women and children since they are often marginalized and disproportionately affected by these root causes. Secondly, the phenomenon of trafficking in persons comprises a range of human rights violations. The most common ones are the right to personal autonomy, the right not to be held in slavery or servitude, the right to liberty and security of person, the right to be free from cruel or inhumane treatment, the right to safe and healthy working conditions and the freedom of movement. Thirdly, trafficked persons who escape their situation are subject to serious human rights violations at the hands of governments. Most governments' traditional policies give priority to detention, prosecution and expulsion of trafficked persons for offences related to their status, including violation of immigration laws, prostitution or begging. Often victims are treated as "disposable witnesses" whose sole value is their ability to assist in trafficking prosecutions.

Past experiences show that this policy has the effect of further victimizing the victims. Once the trials are over, the victims are sent to their home countries without further support, for example, no assistance is provided for their reintegration in the society, which makes them particularly vulnerable to being re-trafficked.

The human rights framework for anti-trafficking work

Substantially the human rights framework for trafficking draws upon international human rights standards and principles, which have been encoded in international treaties, covenants and protocols. The Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) proclaim that "no-one shall be held in slavery and servitude". The International Covenant on Economic, Social and Cultural Rights (1966) in its Articles 6, 7 and 9 recognizes the right to work as well as to just and favourable working conditions.

Since December 2000, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime serves as a legal framework for national legislation. The protocol is setting the standard for what acts constitute the crime of trafficking, and standardizes the severity of punishment for such acts. The definition of trafficking contained in Art. 2 of the Protocol serves nationally and internationally as a reference for defining the crime. Furthermore, the Protocol provides benchmarks on preventive policies and effective human rights measures to protect the victims. However, unlike the criminal provisions, which are obligatory on State Parties, the human rights protections remain merely discretionary under the Protocol.

The Protocol contains provisions that are intended to ensure that trafficked persons are not treated as criminals but as victims, and therefore entitled to specific human rights protections. These include, in particular, temporary resident status and temporary shelter, medical and psychological services, access to justice as well as compensation or restitution.

Other relevant instruments include, among others, the Convention on the Protection of All Migrant Workers and Their Families (1990), the Convention on the Elimination of All Forms of Discrimination against Women (1979) as well as the Convention on the Rights of the Child (1989). The Council of Europe Convention on Action against Trafficking in Human Beings (2005), which entered into force in February 2008, constitutes an important step towards the creation of standards in promotion and protection of human rights of trafficked people and foresees the establishment of an independent monitoring system. Furthermore, the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the UN High Commissioner for Human Rights (2002) serve as a framework and reference point for efforts to prevent trafficking and protect the rights of trafficked persons.

Human rights based approach to anti-trafficking work

All people working with trafficked persons need to be concerned with the basic rights of victims of trafficking. It is vital to shift the working paradigm from one of criminal sanction to human rights promotion. Further, the consequences of trafficking have to be addressed by promoting the human rights of trafficked persons. The use of trafficked persons solely as an instrument for the prosecution of the crime is neither just nor lawful.

Rights become real only when people are able to secure or realize them. The best strategies are those which enable the affected people - the victims of trafficking - to express their own grievances and to act on their own behalf. Empowerment, self-representation and participation of those affected by trafficking are fundamental principles for a human rights based approach. To uphold these principles, mechanisms to reduce secondary victimization of trafficked persons through public institutions and law enforcement agencies must be in place. Assistance and support for trafficked persons enable them to regain control over their lives and reduce the risk of re-trafficking. It also contributes to an effective prosecution of traffickers, as the recognition and protection of the rights of trafficked persons are an important incentive for victims of trafficking to report to the authorities and give testimony. However, the absence of adequate and targeted group specific assistance and support in combination with discriminatory practices, which especially affect women, often prevents trafficked persons from reporting to the authorities and may subject them to further trauma and re-victimisation. Finally, a human rights-based approach opposes anti-trafficking measures that adversely affect or infringe upon the human rights of trafficked persons or other affected groups. This approach requires that human rights are at the core of any anti-trafficking strategy. It integrates the principles of universality, indivisibility and non-discrimination of human rights into legislation, policies and programs.

Primary fields of action

A rights-based approach includes strategies to prevent trafficking, to prosecute traffickers and to protect the human rights of trafficked persons. Primary fields of action include:

- Preventive measures focusing on the various dimensions of the context where trafficking occurs.
- Identification of trafficked persons and traffickers.
- Adequate law enforcement responses, including ensuring that efforts to punish traffickers are implemented within a system that respects and safeguards the rights of the victims to privacy, dignity and safety.
- Support for all (potentially) trafficked persons despite any irregular immigration status, and along with protection from reprisal and harm.
- Special measures for the protection and support of special target groups, such as child victims of trafficking.
- Access to adequate medical and psychological care and other social services during the period of temporary residence to ensure the well-being of trafficked persons.
- Provision of temporary residence visas (including the right to work) for trafficked persons during any criminal, civil or other legal actions as well as provision of the right to seek asylum.
- Participatory research, analysis, evaluation and dissemination.

Literature & Links

Anti-Slavery International (2002): Human Traffic, Human Rights.

Redefining Victim Protection: <http://www.antislavery.org>

Global Alliance against Trafficking in Women (GAATW)

(2001): Human Rights and Trafficking in Persons.

A handbook: <http://www.gaatw.org>

Legislationline: <http://www.legislationline.org>

Office of the High Commissioner for Human Rights:

<http://www.unhcr.ch/html/initinst.htm>

A human rights based approach to reintegration

In Romania, the slow and socially burdensome transition from a centrally planned economy to a market economy has provided impetus for Romanians to search for employment abroad. The transition has led to a drastic and lasting decline in the number of jobs available in the domestic labor market, leaving young women especially vulnerable to seemingly promising opportunities abroad. Hence, many fall prey to trafficking syndicates. The non-governmental organization Reaching Out Romania (ROR) provides a long-term reintegration program to women and girls trafficked for sexual exploitation including shelter, counseling and support. The specific needs of each victim are carefully assessed and monitored from the moment they enter the program. Besides mere accommodation, ROR accompanies the victims through extensive counseling, psychological, medical, educational and vocational assistance as well as life skills training. If needed, the support continues to be provided when victims leave the shelter.

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