

FORCED MIGRATION

25

May 2006

review

People trafficking: upholding rights and understanding vulnerabilities

plus

- rule of law in Darfur
- return to southern Sudan
- Pinheiro Principles
- IDPs and clusters
- 'environmental' refugees?
- forgotten crises



published by the Refugee Studies Centre in association
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Forced Migration Review

Forced Migration Review provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Spanish, Arabic and French by the Refugee Studies Centre, University of Oxford.

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Front cover photo

This desperate mother travelled from her village in Nepal to Mumbai, India, hoping to find and rescue her trafficked teenage daughter. "I will stay in Mumbai until I find my daughter or die. I am not leaving here without her."
Kay Chernush for the US State Department



from the editors

This issue could not have been produced without the assistance of Bandana Pattanaik, coordinator of the Global Alliance Against Trafficking in Women. She has greatly helped to broaden our understanding of trafficking in persons and to ensure that the following articles cover aspects of the phenomenon – and responses to it – which are often sidelined.



Corinne Owen

The production and distribution costs of this issue have been supported by grants from Hivos (through GAATW International Secretariat), the Swiss Federal Department of Foreign Affairs and the UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP).

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Apologies for the delay in getting this issue of FMR to you. Distribution of copies of FMR24 to Sudan and neighbouring countries was a complex and time-consuming challenge. Furthermore, the increasing number of articles in each issue of FMR inevitably makes greater demands on our time.

In order to reduce our costs, the Peace Studies Programme of the Social Scientists Association of Sri Lanka is now handling the printing and distribution of the English, Arabic and French editions of FMR.

FMR 26, to be distributed in August 2006, will focus on the displacement of Palestinians – and will be published together with a report on a conference on education in post-conflict reconstruction held in Oxford in April 2006. FMR27, to be published in December 2006, will focus on building the capacity of Southern governments and civil society to assist and protect displaced people. Deadline for submissions: 1 September. Information about future issues is at: www.fmreview.org/forthcoming.htm

With our best wishes

*Marion Couldrey & Tim Morris
Editors, Forced Migration Review*

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Reflections on initiatives to address human trafficking

by Bandana Pattanaik

Many organisations, politicians and celebrities have joined the fight against human trafficking but have they stopped to consider the causes of the phenomenon and the human rights of those affected by it and/or by ill-judged actions to suppress it?

For many, including authors of some of the articles which follow in this issue of FMR, anti-trafficking activities should prioritise strengthening the criminal justice response and enabling those affected to testify against those who have exploited them. Some in the anti-trafficking community focus only on trafficking for purposes of sexual exploitation and naively believe that criminalisation of prostitution would end trafficking. Those who focus on repatriation of trafficked persons or who 'rescue' them from brothels or other workplaces often fail to ask 'victims' whether they want to be stopped from working and sent home - or would prefer to remain if they could find legal, paid employment.

It has recently become fashionable for researchers and activists to address the 'demand' side of trafficking. However, once again, a conflation between 'demand for paid sex' and 'demand for the labour/services of a trafficked person' is seen in many of these studies. If it is not clearly conceptualised, 'demand' can be an extremely problematic term. The pioneering work of Bridget Anderson and Julia O'Connell-Davidson, and the recent work of the International

Labour Organisation on demand, are valuable resources for anyone conducting research or developing programmes on demand.¹

Current international law on trafficking in human beings is shaped by the UN Convention against Transnational Organized Crime and a supplementary Protocol (the Palermo Protocol) to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.² The protocol was adopted by a resolution of the UN General Assembly in November 2000 and came into force in December 2003. It has now been ratified by 97 states. Many major nations - including the US and UK - have only recently ratified the Palermo Protocol. India, Germany, Japan, Indonesia and France are among the major states which have signed, but not ratified. China and Pakistan have done neither.³

The UN Convention on the Rights of the Child (CRC)⁴ - which is almost universally ratified though not by the US - provides the main reference for the situation of trafficked children. The CRC's Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography⁵ draws attention to these serious violations of chil-

dren's rights and emphasises the importance of fostering increased public awareness and international cooperation in efforts to combat them.

For many of us who have worked on human trafficking for several years this is a critical time. We have talked a lot about what we are against; perhaps it is time to state clearly what we are for. Migration is a reality of today's world but it is still unsafe for many people. Paid work is a necessity for everyone and yet many people do not receive fair wages for their work or, even worse, are exploited at their workplaces. Even if we had an ultra-efficient identification system to determine who is trafficked, they would constitute a much smaller number than the migrant workers who also need protection. So if we envision a world where all migrating people can work in fair and safe workplaces, then we must shift our focus to migration and labour and address the crime of trafficking within that context.

In the last two years important initiatives have come from the international community and civil society to understand migration and labour from a human rights perspective.⁶ Migrant rights groups are better organised now and even workers in informal economies are forming collectives. Traditional trade unions are willing to take up the issue of undocumented workers. These are positive signs which must be built on.

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1. Anderson, B and O'Connell-Davidson, J, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, International Organiza-

tion for Migration, www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs_15_2003.pdf
 2. www.ohchr.org/english/law/protocoltraff.htm
 3. www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html
 4. www.unicef.org/crc
 5. www.ohchr.org/english/law/crc-sale.htm
 6. *Report of the Global Commission on International Migration*, www.gcim.org/en/2005;
A Global Alliance Against Forced Labour International Labor Organization www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059



The Global Alliance Against Traffic on Women (GAATW) is a network of NGOs who share a deep concern for the women, children and men whose human rights have been violated by the criminal practice of trafficking in persons. GAATW is committed to work for changes in the political, economic, social and legal systems and structures which contribute to the persistence of trafficking in persons and other human rights violations in the context of migratory movements for diverse purposes, including security of labour and livelihood. GAATW promotes and defends the rights and safety of all migrants and their families against the threats of an increasingly globalised and informalised labour market.

GAATW's human-rights based approach to addressing trafficking issues entails:

- putting the human rights of trafficked persons and those in vulnerable situations at the centre of all anti-trafficking activities
- acknowledging the equality of all persons to exercise, defend and promote their inherent, universal and indivisible human rights
- non-discrimination on any grounds, including ethnic descent, age, sexual orientation or preference, religion, gender, age, nationality and occupation (including work in the informal sectors such as domestic work and sex work)
- asserting the primacy of

principles of accountability, participation and inclusivity/non-discrimination in working methodologies, and organisational structures and procedures

- encouraging self-representation and organisation of those directly affected by trafficking.

GAATW promotes women migrant workers' rights and believes that ensuring safe migration and protecting rights of migrant workers should be at the core of all anti-trafficking efforts. We advocate for living and working conditions that provide women with more alternatives in their countries of origin, and to develop and disseminate information to women about migration, working conditions and their rights. GAATW supports sharing of knowledge, working experiences and working methodologies amongst its members in order to enhance the effectiveness of collective anti-trafficking activities.

We advocate for the incorporation of human rights standards in all anti-trafficking initiatives, including in the implementation of the Palermo Protocol. GAATW strives to promote and share good practices of anti-trafficking initiatives but also to critique and stop bad practices and challenge anti-trafficking paradigms and programmes which ignore human rights.

GAATW is a Bangkok-based collective. Together with other campaigning organisations, we seek to remind states which have acceded

to or ratified the Palermo Protocol that their responsibilities extend far beyond the identification, apprehension and punishment of those guilty of trafficking in persons. Many have overlooked their legal obligations set out in Articles 6 and 7 to:

- protect the privacy and identity of victims of trafficking in persons
- ensure that legal proceedings relating to trafficking are confidential
- provide victims of trafficking in persons information on relevant court and administrative proceedings and assistance to enable their views and concerns to be presented
- work with NGOs and civil society to provide for the physical, psychological and social recovery of victims of trafficking by provision of appropriate housing, counselling, legal information in a language they can understand, medical, psychological and material assistance employment, educational and training opportunities
- ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

www.gaatw.net

Smuggled or trafficked?

by Jacqueline Bhabha and Monette Zard

The UN Convention Against Transnational Organized Crime (TNC) and its two Protocols on Trafficking and Smuggling, adopted in 2000, seek to distinguish between trafficking and smuggling. In reality these distinctions are often blurred. A more nuanced approach is needed to ensure protection for all those at risk.

In recent years the smuggling of human beings across international borders has grown rapidly from a small-scale cross-border activity affecting a handful of countries into a global multi-million dollar enterprise. Although information about human smuggling is patchy and often unreliable, current estimates suggest that some 800,000 people are smuggled across borders every year.

The spread of smuggling needs to be understood in the context of globalisation and greatly increased migration. Prospects of a better life abroad, poverty, economic marginalisation, political and social unrest and conflict are all incentives to move. Global media and transportation networks make movement easier. As push and pull factors encourage increasing numbers of people to migrate, they in turn collide with the many legal obstacles to entry that industrialised countries have put in place.

Two trends are a direct consequence of this. First, as avenues for legal migration have become increasingly restricted, the asylum system has come under pressure as one of the few options that migrants can use. Second, migrants (including asylum seekers) have increasingly resorted to the use of smugglers to facilitate their travel. This compounds their vulnerability to ill-treatment and exploitation.

How have states responded to this flourishing human smuggling industry? To date, policy-making in the migration arena has largely been driven by three different visions. The first views the migrant as a defenceless victim and has generated policies based on human rights and refugee law which seek

to ensure that protection is given to those who need it. A second view – a variant of the first – is the perception of migrants as industrious workers, making a dual contribution through their labour in the destination state and through remittances sent back home. Policies that call for amnesty, regularisation of immigration status and more generally ‘migration management’ derive largely from this perspective.

The third, arguably now dominant, perception of the migrant is one that sees him or her as a security threat to the state or even as a criminal. This has fuelled law enforcement responses – based on criminal law – which attempt to address irregular migration by strengthening border controls and criminalising the facilitators. Whilst human rights and labour rights approaches are primarily concerned with need, or with current conditions in the place of work, criminal law demands attention to motive. It is through this dominant prism that states have responded, embarking on an ambitious international programme of transnational law enforcement, negotiating and adopting with remarkable speed the UN Convention Against Transnational Organized Crime (TNC) and its two Protocols on Trafficking and Smuggling in 2000.¹

A question of choice?

The Protocols distinguish between those who are smuggled and those who are trafficked. Trafficking is defined as “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 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 is undefined but the Protocol specifies that it includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. In such cases, the consent of the victim becomes irrelevant. By contrast, ‘smuggling’ refers to consensual transactions where the smuggler and the migrant agree to circumvent immigration control for mutually advantageous reasons. The smuggling relationship technically ends with the cross-

The Protocols are framed around a central dichotomy

ing of the border. The two critical ingredients are illegal border crossing by the smuggled person and receipt of a material benefit by the smuggler.

The Protocols are thus framed around a central dichotomy: between coerced and consenting illegal migrants, between victims and agents, between innocence and guilt. This dichotomy governs contemporary public policy, dividing the field into two distinct parts. One addresses the protection needs of trafficking victims who are considered to be non-consenting, innocent and deserving. The other addresses the situation of the smuggled illegals – culpable and complicit actors. The latter are considered less deserving of protection and support because of their original motive – the decision to **choose** to migrate illegally. There is also often a gender dimension to this dichotomy in that women and children are more likely to be considered as trafficked whilst men are more likely to be considered as smuggled (although this assumption

is certainly open to question).

The two Protocols thus differ in several key respects, particularly in the protections they afford migrants. Whilst the Trafficking Protocol provides for a broad range of protective measures (though couched in 'optional' language), the Smuggling Protocol contains rather minimal reference to the protection needs of smuggled persons. States are required to ensure the safety of persons that are on board vessels that are searched (art. 9) and they must respect pre-existing non-derogable obligations² under international law, such as the right to life and the right not to be subjected to torture, or to cruel, inhuman or degrading treatment. However, there are no provisions regarding medical, psychological or social recovery, or temporary legal residency, as in the Trafficking Protocol. Moreover, although there is a requirement to provide protection for at risk smuggled migrants, it is very heavily qualified: states should "take **appropriate** measures to afford migrants **appropriate** protection" against violence from smugglers and where their lives are endangered. Appropriate to whom and what? At the same time, the Protocol explicitly endorses the

possibility that states can detain smuggled migrants provided they are afforded the requisite consular access, and it requires states to remove smuggled migrants back to their home countries expeditiously.³

There is thus much to be gained from being classified as trafficked, and much to lose from being considered smuggled. But is this distinction helpful or even workable in practice? There are certainly 'pure' cases of trafficking and smuggling - of children kidnapped without their parents' consent, of migrant workers defrauded from the outset or, at the other end of the spectrum, of completely transparent cross-border transportation agreements where a fee is mutually agreed and the relationship between transporter and transported ends. But the majority of migration strategies and circumstances defy easy categorisation.

First, at the point of departure and at multiple stages of the journey, it may well be unclear which category - trafficking or smuggling - is at issue. Most transported undocumented migrants appear to consent in some way to an initial proposition to travel but frequently *en route* or on arrival

in the destination country circumstances change. States tend to favour looking at consent at the point of departure as an indication of the migrant's 'true intentions'. Rights advocates favour a focus on the ongoing circumstances of the migrant in the destination state as an indication of his or her needs. When should the determination of category be made and by whom?

Second, the distinction between smuggled and trafficked migrants assumes a hard and fast divide between 'consent' and 'coercion' but the distinction between these is complex.⁴ Do persecution, destitution or prolonged family separation amount to coercion? The Trafficking Protocol defines coercion as including not only simple brute force but also "the abuse of power or of a position of vulnerability." Poverty, hunger, illness, lack of education and displacement could all in theory constitute coercive circumstances that induce a position of vulnerability. It remains to be seen, however, whether states and courts will interpret abuse of a "position of vulnerability" so broadly. If they do, many cases currently considered instances of human smuggling will be brought under the Trafficking Protocol. If they do not, then the political

The bodies of Somali and Ethiopian asylum seekers, who were forced to jump off the trafficker's boat, washed ashore in Yemen.





Katy Chernush for the US State Department

This 9-year-old Indian girl was trafficked with her entire family and sold to the owner of a brick-making factory.

point of expanding the concept of coercion beyond mere physical force, fraud or deceit could be lost.

A further complication arises in deciding how to characterise situations of 'mutually advantageous exploitation'. The smuggling fee from China to the US is about \$50,000 per person, to France about \$40,000, yet there is no shortage of takers. The smuggler benefits from his or her profit, and the migrant benefits from gaining access to an employment opportunity, even if the smuggling fee is exploitative. Indeed, many of the employment opportunities that smuggled migrants are keen to access are extremely exploitative in nature. Are these workers smuggled (because they consent) or are they trafficked (because they are transported to be exploited)?

There is no question that smugglers are taking advantage of the smuggled person's desperation or vulnerability but just because the smuggler's offer is exploitative does not necessarily mean that the smuggled migrant is coerced. However, if the smuggled migrant has no other acceptable options, if he or she would starve, or be unable to get medicine for a child unless he or she took up the offer, then the exploitative offer might legitimately be considered coercive. Formal consent in these situations (because the migrant sees no other way out) does not alter the coercive nature of the

agreement. In assessing 'coercion' and 'consent', policy makers and advocates are forced to engage in moral decisions about which types of conduct are acceptable or permissible in a society and which are not. Slavery and slavery-like work are clearly not acceptable but neither is lack of access to essential food, medicine and shelter.

Fourthly, it is worth recalling that legal systems of migration are not immune from abuse and exploitation either.⁵ Workers who migrate into a country under legally sanctioned work permit schemes are often tied to their employer, even if they arrive to discover that the terms of their contract are not what they expected. Their ability to leave, however, is constrained because their immigration status is linked to their employment; leaving might also precipitate claims to repay their travel and recruitment costs. Confiscated passports, unpaid wages and other types of abuse are increasingly being documented by NGOs in these situations. Tolerated because it takes place within the formal economy, such dependency might well be considered bonded labour and thus part of a trafficking situation if it took place within the informal economy.

Conclusion

In focusing on the difficulties inherent in implementing the distinction between trafficking and

smuggling, the authors do not wish to suggest that the approach is not valid or potentially workable. Policy does need to distinguish between those who are vulnerable and those who are not, just as it needs to combine law enforcement and protection approaches. Rather, we are calling for a more nuanced approach that questions some common assumptions about who is smuggled and who is trafficked, and that situates these considerations within a broader context of human rights protection for all migrants, whether regular or irregular. Migration is itself an inherently risky business. Violence, coercion, deception and exploitation can and do occur within both the trafficking and smuggling process, within the formal and informal economy, within the legal and illegal migrant experience. And policy needs to take this into account.

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1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Protocol Against the Smuggling of Migrants by Land, Sea and Air, hereafter referred to as the Trafficking and the Smuggling Protocols. Convention and Protocols available at www.unodc.org/palermo/theconvention.html

2. Rights which cannot be suspended.

3. This represents a lower level of protection for the migrant than the corresponding article in the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMWF): art17(3). www.unhcr.ch/html/menu3/b/m_mwctoc.htm

4. Alan Wertheimer *Coercion*, Princeton: Princeton University Press. 1987.

5. For elaboration of these issues, see Anderson, B and O'Connell-Davidson, J, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, International Organization for Migration, www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs_15_2003.pdf

Business community acting to end human trafficking

by Aleya Hammad

While the prime responsibility for eliminating human trafficking rests with governments, a successful global strategy requires engagement of a wide range of stakeholders, including NGOs, the security sector, the public – and the business community.

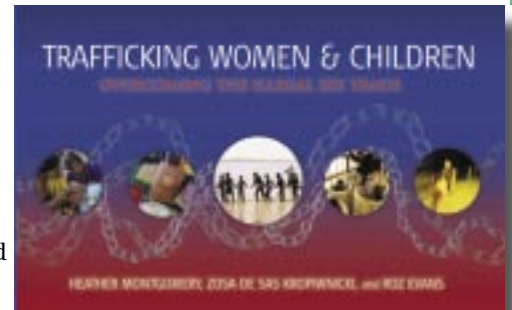
While the prime responsibility for eliminating human trafficking rests with governments, a successful global strategy requires engagement of a wide range of stakeholders, including NGOs, the security sector, the public – and the business community.

On 23 January 2006 in Athens the Suzanne Mubarak Women's International Peace Movement (SMWIPM)¹ launched the 'End Human Trafficking Now' initiative to rally the business sector to join the global campaign against human trafficking. Business leaders gathered at a meeting hosted by the Greek Ministry of Foreign Affairs and co-sponsored by the International Organization for Migration, the UN Development Fund for Women (UNIFEM),² the UN Office for Drug Control and Crime (UNODC),³ the World Bank, the Geneva Centre for the Democratic Control of Armed Forces (DCAF)⁴ and the Foundation for the Child and the Family.

In Athens corporate leaders signed up to seven Ethical Principles against Human Trafficking:⁵

- zero tolerance towards human trafficking
- awareness-raising campaigns and educational activities
- mainstreaming anti-trafficking in all corporate strategies
- ensuring the compliance of personnel
- encouraging business partners to apply the same ethical principles
- advocacy to urge governments to strengthen anti-trafficking policies
- wider sharing of good practice.

A Working Group of business leaders was constituted and charged with disseminating the Ethical Principles and soliciting sustained involvement of the business community. The SMWIPM is responsible for coordinating and facilitating the Working Group.



Aleya Hammad is a founding member and member of the Board of SMWIPM. Email: aleya@hammad.com. For more information, or to be involved in the End Human Trafficking Initiative, contact SMWIPM, PO Box 2161, CH-1211 Geneva 1, Switzerland. Email: info@gcwdp.org Tel: +41 22 741 7784.

A background document, *Trafficking Women and Children, Overcoming the Illegal Sex Trade*, was produced for the Athens roundtable. Sponsored by the SMWIPM, it was published by the Refugee Studies Centre, University of Oxford. To obtain a free copy, please contact SMWIPM.

1. www.womenforpeaceinternational.org
2. www.unifem.org
3. www.unodc.org
4. www.dcaf.ch
5. www.womenforpeaceinternational.org/Events/Files/Ethical_Principles_against_trafficking.pdf

15-day course on forced migration: Kolkata, India, 1-15 December 2006 organised by the Mahanirban Calcutta Research Group (MCRG)

The MCRG's annual course is aimed at younger academics, refugee activists and others working in the field of human rights and humanitarian assistance for victims of forced displacement. The course will be preceded by a two and a half month long programme of distance education including nationalism, ethnicity, partition and partition-refugees, national regimes and the international regime of protection, political issues relating to regional trends in migration in South Asia, internal displacement, the gendered nature of forced migration and protection framework, resource politics, environmental degradation and other aspects relating to forced displacement. The course will emphasise the experiences of displacement, creative writings on refugee life, critical legal and policy analysis, and analysis of relevant notions such as vulnerability, care, risk, protection, return and settlement.

Applicants must have three years' experience in related work or hold a post-graduate degree in Social Sciences or Liberal Arts, and be proficient in English. Fee: INR 3000/ for candidates from South Asia; US\$300 for those outside South Asia. MCRG covers accommodation/other course expenses. Applications must be received by 31 May and include a recommendation letter and 500-1000 words on the relevance of the course to the applicant's work. Applications to mcrg@mcrg.ac.in or by post to MCRG, FE-390, Ground Floor, Sector-III, Salt Lake City, Kolkata 700106, West Bengal, India. See www.mcrg.ac.in for more details.

Where are the victims of trafficking?

by Richard Danziger

*There needs to be a common understanding of **who** the victims of trafficking are. Only then can the international community hope to improve its record in identification and protection of such individuals.*

While there is a common understanding of what trafficking in persons is, there are still sharp divisions over the understanding of who the victims of trafficking are, with governments on one side of the divide and NGOs and international organisations on the other. In short, there is a grave problem of definition – not of the sort to keep academics and others busy writing papers and attending conferences but, rather, one of a very practical kind. For it involves interpretation by policy makers and, most importantly, practitioners on the ground – both from government agencies and civil society.

An introductory seminar or workshop on trafficking always begins with a presentation of the definition in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime.¹ In many instances this is juxtaposed with migrant smuggling as defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the same Convention. Assuming that participants in this hypothetical workshop are from various government institutions as well as NGOs, the hope is that this will be a first step toward more specialised technical cooperation that may eventually lead to improvements in legislation, the establishment of joint government and NGO referral mechanisms, training of law enforcement officials in appropriate investigative techniques and, of course, development of protection and assistance structures in support of trafficked persons.

The capacity-building process described above has been successfully undertaken by the International Organization for Migration

(IOM) and others in many parts of the world. The intended results have been produced many times over and a large number of states – whether or not they have ratified the Trafficking Protocol – can be applauded for having established anti-trafficking mechanisms and good practices. Italy, for example, has comprehensive legislation with provisions for protection that are supported by working structures on the ground. Ukraine has extensive NGO coverage throughout the country that can claim success in reintegrating several hundred trafficked individuals. The USA has a system in place to grant residence status to trafficked persons and, where considered necessary, their families. Yemen, with the support of UNICEF and IOM, is providing protection and assistance to trafficked children and their families.

The list goes on but, while encouraging in comparison to the situation that existed five years ago, many gaps still remain, and almost universally the protection offered hovers below the minimum standards recommended, for example, by the United Nations High Commissioner for Human Rights. It should also be asked whether such developments have contributed to human beings being less vulnerable to being trafficked today than five or ten years ago. In the absence of any reliable data, one has to look at the various global estimates of trafficked persons by international organisations and the US government, all of which remain in the hundreds of thousands and none of which indicates any measurable decrease in the problem.

Perhaps the most important question we are confronted with is whether there have been any improvements in our capacity and

ability to find and identify victims of trafficking. Despite the many efforts made in this area by several NGOs and international organisations that have developed a number of good practices and shared these with others, the fact remains that the number of trafficked individuals who are identified as such remains very low.

Identification difficulties

There are many reasons why it is so difficult to identify trafficked persons. The criminal, illicit nature of the phenomenon precludes easy access to them. When they do escape from traffickers, the social stigma attached to being a prostitute or having been deceived into working in slave-like conditions may prevent them from coming forward and admitting to authorities, NGOs or family that they were trafficked. And even where those involved in the fight against trafficking do improve their capacity for identification, the traffickers have the resources and flexibility to change their *modus operandi* and stay a step ahead of police and assistance agencies.²

Too often victim identification is based on simplistic impressions

But there is another important reason for the poor record in identification of trafficked persons and here we go back to the issue of definition. The definition in the Trafficking Protocol is widely recognised and accepted, and indeed an increasing number of State actors at all levels have become aware of trafficking in persons as a significant global problem and a major human rights issue that needs to be confronted head on. This definition, coupled with appropriate training, should allow law enforcement agencies, immigration departments and others to better identify victims. The definition, broken down as it is into three components – mobilisation (recruitment, transportation, harbouring), means (coercion, de-



ception) and exploitation - is quite succinct and easily understandable in its description of trafficking as a **process** (though the absence of an explicit reference to trafficking within borders is a notable weakness³) but the problems begin when we start to try to define or describe the **victim**.

The most generally recognised area of confusion is that between trafficking in persons and human smuggling or other forms of irregular migration. Why, in the presence of two separate international Protocols on Trafficking in Persons and Smuggling in Migrants, each with a clear definition of the crime and, by consequence, the victim - in the case of trafficking the individual, in that of smuggling the state - is there still such a problem in distinguishing between the two?

The irregular migrant has infringed a country's admission rules. While the trafficked individual may also have infringed a

admission rules he or she has done so because of coercion or deception. Whether or not that person knew they were committing an illegal act is immaterial. The act was part of a process that from beginning to end had only one goal: that of exploiting the victim.

Regrettably, most trafficked persons are, in the eyes of society if not the law, suspect. They are illegal immigrants. They are prostitutes. They live and work on the margins of society, often in close proximity to criminal elements. This puts them at a distinct disadvantage when coming into contact with law enforcement or immigration officials even if such officials are trained in victim identification. This is of course also why we advocate for interviews of trafficked persons by

police to take place in the presence of a third party who can provide legal advice and psychological support. Unfortunately, there are still far too few instances where this third party counselling is present and many victims continue to go unidentified.⁴

At the other end of the spectrum there are those who are only too ready to define a wider array of irregular migrants as victims of trafficking. While it is true that irregular migrants may suffer at the hands of smugglers or have certain basic rights violated by destination States, this advocacy approach can further contribute to the notion that trafficking in persons is just one more migration issue rather than primarily a gross violation of human rights - a form of slavery usually occurring within a migration context.

There is no question that identifying victims - when they are found - is a difficult task. It can involve a

painstaking process of interviewing a person who may be ashamed or traumatised or still under the psychological control of the trafficker. It takes time to properly identify a victim, time that a law enforcement official may claim he does not have. It takes time because trafficking is a process, a continuum of actions leading to exploitation and not just a single event such as crossing a border illegally. Too often victim identification is based on simplistic impressions rather than as a result of a methodical process aiming to discover if the person's experience meets the Protocol definition.⁵

If identifying trafficked persons is already a major challenge today, the situation will only get worse with the increasing diversification in trafficking both with regard to the forms of exploitation and the profile of the victims.⁶ In Europe in particular, where trafficking is still largely considered within the context of sexual exploitation, the potential for errors in identification will only grow when confronted with victims trafficked for forced labour who may be male and non-European. But in other parts of the world too, as awareness of trafficking for non-sexual forms of exploitation increases, it is equally important to ensure that persons who suffer serious exploitation are not automatically considered to be trafficked, even while ensuring their rights are protected.

Improving identification and protection

There is no quick or easy solution to strengthening our ability to identify trafficked persons but there are two fields of action that would contribute to improved identification as well as protection.

It is essential that we increase efforts to ensure that the Protocol's definition of trafficking in persons is the one that is not only understood by all but also applied in practice by all those actively involved in combating trafficking. All entities likely to come into contact with trafficked persons (law enforcement, immigration, labour unions and inspectors, health and social services) need

IOM's Programme Coordinator Dr Samnang visits schools in Cambodia to raise awareness of the dangers of trafficking.

to be made aware of the issues, and specialised units within these bodies need to be trained in victim identification. This needs to be done in a systematic way rather than on an ad hoc basis as is often the case now.

Concurrently, those whose primary concern is protection of the rights of trafficked persons should also advocate for the rights of all migrants. This may not in and of itself directly contribute to better identification but the danger in ignoring broader migrant rights in the currently highly charged migration environment is that, by eliciting acceptance of the fact that a trafficked person is a victim, we risk further demonisation of those not recognised as victims. And that in turn will further compromise the protection of those victims of trafficking who - regrettably but invariably - will fail to be identified.

While we continue to develop more effective tools for victim identi-

fication, a rights-based approach should condition the treatment of all irregular migrants. This does not imply that identified victims of trafficking should be treated according to a lowest common denominator. Their special psychological, physical and social needs in both the immediate and long term must be met, their physical security guaranteed and their traffickers severely punished as befits the horrendous nature of the crime. At the same time all irregular migrants should be given the opportunity to demonstrate protection needs and, where these exist, receive appropriate protection. Such an approach, with the implicit building of trust it involves, would almost certainly lead to more trafficked persons coming forward and identifying themselves. And then, perhaps, we may begin to have better answer to the question "Where are the victims of trafficking?"

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For further information about IOM's anti-trafficking programmes, see: www.iom.int/en/what/counter_human_trafficking.shtml

1. www.unodc.org/unodc/en/crime_cicp_convention.html
2. *Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, IOM Geneva, 2004. www.iom.int/DOCUMENTS/PUBLICATION/EN/balkans_trafficking.pdf
3. The Council of Europe Convention on Action against Trafficking in Human Beings explicitly refers to trafficking as "national or transnational". This article focuses on transnational trafficking.
4. A majority of trafficked persons being assisted through IOM-funded reintegration programmes in Ukraine were identified after arrival back in their country. Many had been deported from the country to which they were trafficked.
5. Anti-Slavery International describes "a shelter in Albania to which all women departing to Italy and found in irregular collecting points were referred by the local police, being 'labelled' as trafficked." www.antislavery.org/homepage/resources/PDF/Protocoltraffickedpersonsokit2005.pdf
6. Regional Clearing Point, Rebecca Surtees, 2005, *Second Annual Report on Victims of Trafficking in South-Eastern Europe*, IOM Geneva www.iom.int/DOCUMENTS/PUBLICATION/EN/Second_Annual_RCP_Report.pdf

Internal trafficking

by Susan Martin

Trafficking of people within countries has been relatively neglected. Should those who are internally trafficked be regarded as IDPs?

The trafficking of people for sexual exploitation and forced labour is one of the fastest growing areas of international criminal activity and one that is of increasing concern to the international community. Generally, the flow of trafficking is from less developed to more developed regions and countries. While much of the attention on trafficking has focused on those who cross international borders, trafficking within countries is also very common. Victims of forced prostitution usually end up in large cities, sex tourism areas or near military bases, where the demand is highest. Victims of forced labour may be found throughout a country, in agriculture, fishing industries, mines and sweatshops.

Recognising the growth in trafficking operations, states adopted

the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,¹ which supplements the UN Convention against Transnational Organized Crime. At the same time, they adopted the Protocol against Human Smuggling. These instruments require international cooperation in combating smuggling and trafficking and encourage states to pass measures for the prevention of those who have been trafficked. The trafficking protocol entered into force on 31 December 2003 and the smuggling protocol on 28 January 2004. While the smuggling protocol refers only to movement across international borders, the Trafficking Protocol applies to trafficking that is purely domestic.

Internal trafficking shares many common elements with internal

displacement and one could argue that internal trafficking victims are internally displaced persons (IDPs). The Guiding Principles on Internal Displacement describe IDPs as "persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence...and who have not crossed an internationally recognized international boundary." The Handbook for Applying the Guiding Principles on Internal Displacement makes clear that "the distinctive feature of internal displacement is coerced or involuntary movement that takes place within national borders. The reasons for flight may vary and include armed conflict, situations of generalized violence, violations of human rights, and natural or human-made disasters."²

Human trafficking involves forced or coerced movements. Sometimes people are kidnapped outright and taken forcibly to another location. In other cases, traffickers use



Escaping desperate conditions of forced labour and political repression at home, these Burmese labourers look to commercial fishing in Thailand as a way to a better life.

deception to entice victims to move with false promises of well-paying jobs such as models, dancers or domestic workers. In some instances, traffickers approach victims or their families directly with offers of lucrative jobs elsewhere. After providing transportation to get victims to their destinations, they subsequently charge exorbitant fees for those services, creating debt bondage. What begins as voluntary movement ends up coerced.

Internal trafficking and internal displacement intersect in other respects. Persons who have been internally displaced by conflict, violations of human rights and natural or human-made disasters are more vulnerable to trafficking. IDPs often lack family and community networks as well as economic opportunities, making them vulnerable to promises of better situations elsewhere. The Guiding Principles call for protection of IDPs from slavery, including sale into marriage, sexual exploitation and forced labour of children. Conflict also precipitates direct forms of trafficking. Internally displaced children who are abducted or forcibly recruited as soldiers, for example, are also victims of trafficking, as are those who are coerced into forced labour or prostitution. A sudden increase in trafficking for sexual exploitation often occurs when peacekeeping forces are deployed in conflict

zones. While one of the responsibilities of these troops may be to protect IDPs, their use of brothels may contribute to both internal and international trafficking.

The victims of trafficking resemble IDPs demographically. While there is no single victim stereotype, a majority of trafficked persons are believed to be under the age of 25, with many in their mid to late teens. Most are believed to be female. Fear among customers of HIV/AIDS has driven traffickers to recruit younger women and girls, some as young as seven. Victims of severe forms of trafficking face many of the abuses faced by other IDPs. They are often subject to cruel mental and physical abuse in order to keep them in servitude, including beating and battering, rape, starvation, forced drug use, confinement and seclusion. Once victims are brought to their destinations, their identity documents are often confiscated. Many victims suffer trauma and are exposed to sexually transmitted diseases, including HIV and AIDS.

Taken together, the Guiding Principles on Internal Displacement and the Trafficking Protocol provide for a broader framework for addressing the needs of internal trafficking victims than either does on its own. As binding international law ratified by more than 90 countries, the Trafficking Protocol requires states to take

specific actions to prevent trafficking and prosecute traffickers, including those who prey on the internally displaced. Moreover, state parties must endeavour to provide for the physical safety of trafficking victims. The Protocol encourages (but does not require) state parties to adopt provisions to address other problems faced by trafficking victims: "Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons." By contrast, the Guiding Principles are not binding international law (although drawn from human rights and humanitarian law) but they are more detailed than the Protocol in setting out the type of measures that are needed to protect and assist those who have been internally displaced by traffickers, including principles related to longer-term solutions such as return, local integration or resettlement.

In some respects, internal trafficking is to transnational trafficking what internal displacement is to refugee movements. Although the numbers of those displaced internally are larger than those forced to move internationally (and the same is probably true of trafficking), international attention, legal frameworks and institutional responses have tended to come into play in a more robust way when the victims have been forced to cross borders. Certainly, constraints of sovereignty make it far more difficult to address trafficking as well as other forms of displacement when they occur within national boundaries. Understanding the interconnections between internal trafficking and internal displacement is a first step, however, towards developing a more comprehensive approach to these twin scourges.

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The trafficked child: trauma and resilience

by Elzbieta Gozdzia, Micah Bump, Julianne Duncan, Margaret MacDonnell and Mindy B Loiselle

In order to address the particular needs of child survivors of trafficking, much more needs to be known about their background, experiences and hopes.

Human trafficking for sexual exploitation and forced labour is believed to be one of the fastest growing areas of criminal activity. Child victims are particularly vulnerable but there is little systematic knowledge about their characteristics and experiences. They are often subsumed under the women and children heading without allowing for analysis of their special needs. Many writers use the word 'children' but focus on young women - and research on trafficked boys is non-existent. Limited knowledge impedes identification of child victims of trafficking, obstructs provision of appropriate, effective services and limits prevention of repeat victimisation.

This article presents preliminary findings from interviews with service providers in the US refugee foster care and unaccompanied minors (URM) programmes concerning 36 unaccompanied child survivors of trafficking, ranging in age from 12 to 17. Twenty-six were trafficked for sexual exploitation, four for domestic servitude, three for a combination of sex and domestic servitude and three for labour (including the only boy).

Background

While there are no orphans in this group, one of the children had been abandoned at birth. Twelve children reported lack of close relationships with parents, particularly with fathers, due to death, illness, parental separation or other problems. Eleven children had been sent to live with relatives or family friends. Very few children reported physical abuse from family members. Despite tenuous family relationships, many children remain attached to their relatives.

Extreme poverty drove many of the girls to migrate. In some

situations, parental illness compounded already dire economic circumstances and placed even more pressure on the children to contribute to the family's income. In other cases, family breakdowns resulting from death or divorce left the children vulnerable.

In some cases, the idea to migrate came from the girls, while in other situations a family member, friend or trafficker posing as a trustworthy individual planted the idea. In most cases, the girls' decision to migrate resulted from their desire to help their family financially or escape a difficult family situation. In virtually all cases the information on 'travel' to the U.S. was obtained from known individuals: relatives, family friends or other trustworthy persons. On a few occasions, girls migrated to follow 'boyfriends' who ended up trafficking them. When the idea to migrate came from others, it was usually presented as a favour. Traffickers told the children they could give them an opportunity in the US to earn money. They may have also engaged the parent with promises of a better life for the child. When the idea to migrate came from a family member, it was presented as a way to help the child 'pay back' or support parents.

The journey

It is hard to get detailed descriptions of the children's journey to the US. Given the stresses and trauma involved in migration this is hardly surprising. Clearly, most journeys are harrowing. Some survivors describe it as the worst part of the entire ordeal. One terrified girl reported that her trip to the US in the company of another girl and ten mostly adult males took six weeks. She hinted that sexual advances had been made but that one man had protected her. Hav-

ing been turned back at the Texas border both girls wanted to return to Honduras but were afraid to say so. The next attempt worked and they came over the border by hanging on to the underchassis of a truck.

URM staff often avoid asking questions about the children's migration experience for fear that if they are subpoenaed this information might be used by the traffickers' defence team. Law enforcement agencies provide only limited information regarding migration and trafficking circumstances of the child survivors. Caseworkers' ability to tailor individual treatment plans is therefore severely hindered. Given that dealing with these experiences is essential to survivors' post-trafficking adjustment, receiving a child in care with no information as to her history or factors precipitating trafficking makes initial engagement and subsequent treatment extremely difficult.

Perceptions of victimhood

The children's treatment in trafficking situations varied considerably depending on the type of trafficking and their relationship to the traffickers. Girls with kinship ties to their 'employers' could keep money they earned and were often treated better than girls who could not claim such relationships. Reportedly, the latter group had all their income confiscated. Some girls reported relative freedom while others had to endure horrific physical and mental abuse and forced prostitution.

Understanding the children's perception of their identity as victims plays an important role in post-trafficking adjustment. None of the children were overtly happy but some did not see themselves as having been mistreated. Children who cooperated with the perpetrators or enjoyed aspects of their experiences (such as pretty clothes, freedom, boyfriends,

drugs or alcohol) may have been more susceptible to trauma and more resistant to therapy. Thus, their self-identity, understanding of their situation and subsequent goals may have conflicted with the goals of service providers and law enforcement officers. Clear identification of someone as a perpetrator has been correlated with less traumatic aftermath in studies of molested children. In situations where the perpetrator was a relative or a boyfriend, there may be a feeling of greater betrayal resulting in a higher likelihood of a traumatic response. The situation was even more complex in cases where the traffickers were family members. The survivors were hesitant to speak openly of the situation for fear of implicating their relatives or reprisals on family members left behind in the country of origin.

The children's lack of identity as victims was closely related to their expectations about coming to the US. Almost all of the children were highly motivated to migrate to the US in the hope of earning money. Many of them had compelling reasons to send money home and had to repay smuggling fees. Typically, the children's desire to earn money does not change once they are rescued. Obviously, URM programmes reflect US laws requiring children to attend school, defining the age of employment and number of hours a minor child is allowed to work, and requiring a work permit. These restrictions may run counter to many children's goals and lead to a struggle as they adjust to their new lives. These issues have long-term consequences for the children's commitment to education and affect their desire to remain in care.

The children's reluctance to see themselves as victims stood in sharp contrast to the perceptions of service providers who referred to the children as victims, often because the law conceptualises them as victims. However, many caseworkers emphasised the children's resilience and appreciated our deliberate use of the term 'survivors'. While we recognise the legal necessity to use the term 'victim,' therapeutically speaking the identity of a 'victim' may be counter-productive.

Trauma and treatment

The concept of 'trauma' is equally ambivalent. A relatively small number of children in this sample meet the criteria of Post-Traumatic Stress Disorder (PTSD). Some children presented no psychological disturbance, while others exhibited symptoms of depression. Indeed, depression was the most common diagnosis. The cultural issues regarding appropriate expression of emotion are important in their treatment but are unevenly addressed. Trafficking experiences and resulting psychological consequences must be viewed within the child's cultural, social and historical contexts. Indeed, service providers may cause trauma when these contexts are not taken into account.

To mitigate the psychological consequences of trafficking, children were offered a wide range of treatment options: individual or group therapy, counselling by a torture treatment specialist, and dance and art therapy. Initially, many children refused to avail themselves of psychological services but programme staff was persistent. Eventually, most children were in treatment. Many programmes clearly wanted all children to participate in therapy and were convinced about the efficacy of this treatment. Some followed their agency's protocol as to the appropriate use of therapy and the children's interest and willingness to attend sessions. Other programmes' decisions depended on the availability of resources. In most instances, decisions were influenced by what services were available and/or reimbursable.

Many social workers reported that the children in their care took a significant amount of time to bond, even when matched with linguistically and culturally competent caseworkers. Furthermore, once established, the relationship was often more intense than is typical. Many of the children imbued the social workers with powers and knowledge that they did not (and could not) have. The concept of *in loco parentis* was often exacerbated. The social worker had to be an extraordinary advocate with complex and encumbered systems, including

in many cases the immigration authorities, social security and public assistance services as well as attorneys for both the child and the prosecution.

Recommendations

In order to enhance assistance to child survivors of human trafficking it is important to:

- place children in stable care as soon as possible, for patience and consistent presence of the caseworkers are crucial to bonding with the child
- be flexible: children's perception of their situation may be at odds with the perception and plans of service providers
- ensure small caseloads and consistent care
- use culturally competent - preferably bilingual and bicultural - therapists able to respect the cultural and personal identity of their clients and recognise their strengths
- balance the conflicting needs of law enforcement and service providers regarding information sharing
- encourage law enforcement staff to train caseworkers about the type of information that is likely to be subpoenaed and used against the child as well as how to ask and record sensitive information without jeopardising the child's safety
- enable caseworkers to train law enforcement staff regarding the importance of understanding the child's history in order to maximise placement stability.

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Civil society response to human trafficking in South Asia

by Faisal Yousaf

In South Asia civil society organisations have led the way in encouraging governments to address the problem of human trafficking. A coordinated regional response by both governments and civil society organisations is urgently required.

Trafficking in South Asia is complex and multifaceted, both a development and a criminal justice problem. The main destination of people from South Asia is the Middle East but many stay within India and Pakistan. There is extensive trafficking of women and girls from Bangladesh to India, Pakistan, Bahrain, Kuwait and the United Arab Emirates. UNICEF estimates that up to half a million Bangladeshis have been trafficked in recent years and that up to 200,000 Nepali women and girls are working in India's sex industry.¹ A small number of women and girls are trafficked through Bangladesh from Burma to India. Young boys from South Asia are trafficked to the UAE, Oman and Qatar and forced to work as camel jockeys.

South Asian governments have been slow to acknowledge global concerns about human trafficking. The countries in the region have repeatedly been rebuked by the US State Department for failure to tackle human trafficking.

Every major anti-trafficking initiative in the region has been civil society-led. NGOs have carried the main burden in reaching out to trafficked persons, providing health and legal assistance, raising public awareness, steering the national legislative initiatives and providing training and technical assistance to law enforcement and border control authorities. However, civil society involvement is quite recent and they can only provide limited services.

Key challenges are:

- absence of a joint regional strategy by civil society organisations to combat trafficking
- duplication in civil society programmes and activities: more agencies focus on awareness raising than on provision of assistance or repatriation of trafficking victims
- only a few organisations provide repatriation assistance to the victims of trafficking: one study found only ten out of 250 trafficking-focused agencies are engaged with repatriation
- lack of a coherent regional donor/funding approach and existence of several parallel anti-trafficking programmes
- major donor-supported anti-trafficking programmes in the region often only target specific countries, ignoring others in which traffickers also operate.

Some South Asian civil society organisations have pioneered innovative and creative practices which are potentially replicable across the region and further afield. Particularly impressive are the programmes of CHILDLINE India,² the Bangladesh Counter Trafficking Thematic Group,³ the Nepal Human Rights Commission,⁴ Pakistan's Insar Burney Welfare Trust⁵ and Sri Lanka's Centre for Women's Research (CENWOR).

There is an urgent need to:

- develop new legal and institutional frameworks to promote regional cooperation, especially through the South Asian As-

sociation for Regional Cooperation (SAARC)

- advocate for the establishment of an office of Rapporteur on Trafficking in Women and Children at SAARC and at the national level, like the one already existing in Nepal
- conduct more in-depth research into the demand that underpins sexual abuse and exploitation of children
- develop compatible national and regional databases of abused, exploited and trafficked children with information on age, gender and nationality
- encourage private sector involvement in regional initiatives: MTV Europe and Microsoft's cooperation with the Canadian Police Service to share online access to information on child predators is a good example of what could be done.
- promote cooperation between civil society organisations and national law enforcement agencies
- develop policies and institutional mechanisms especially to repatriate victims of trafficking in a dignified and safe manner
- encourage inter-regional exchange visits and trainings, particularly with eastern European states
- train civil servants to make government schemes more gender sensitive.

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Perceptions, responses and challenges in South Asia

by Bandana Pattanaik

Amidst the hype of globalisation-driven South Asian prosperity, the plight of the landless, illiterate and chronically poor remains forgotten. Among the most vulnerable losers are those who migrate in search of better livelihoods.

The problem of human trafficking in the region is not new. Millions of South Asian indentured labourers moved to European colonies – some as far flung as Fiji – in a way which would today be labelled as trafficking. In the colonial era, ‘trafficking’ referred exclusively to the movement of white women to the colonies to provide sexual services. In 1949 the earliest UN convention on trafficking did not define it but instead relied on this previous understanding as it sought to eliminate ‘immoral trafficking in women’. None of the South Asian countries signed or ratified this convention but their laws have maintained this moral fervour. Persistent failure to clarify the law has often served to legitimise police brutality against women working in the sex trade.

In the 1970s initial concern about trafficking was linked exclusively with prostitution and sexual exploitation. Feminists spearheaded the anti-trafficking movement, driven by concerns about sex tourism in South-East Asia, the stationing of large numbers of US military personnel, mail order brides and women crossing borders for prostitution and/or work in the entertainment industry. When South Asian activists started to analyse the situation in their region it was cross-border prostitution – particularly of Nepali and Bangladeshi women and girls lured to Indian brothels – and child sexual exploitation by tourists in Sri Lanka which were cited. Women’s rights and child rights groups in the region started networking, providing assistance to trafficked women and girls and pressing for action to address the problem.

In the 1990s, as more women migrated for work and found themselves trapped in debt bondage or slavery-like conditions, the need to unambiguously define trafficking as a prerequisite to ending it became clear. Some feminists still wanted to focus only on prostitution – arguing that its abolition would stop trafficking – but most analysts and activists began to conceptualise trafficking as a broader phenomenon linked to globalisation, unequal terms of trade, migration and labour. Researchers have drawn attention to three main confusions in the literature on trafficking in South Asia – the conflation of trafficking with prostitution, trafficking with migration and women with children – and consequent implications for programmes.

Among the many South Asian groups making a concerted effort to broaden understanding of trafficking among the public and policymakers is the Bangladesh Thematic Group.¹ Several sex workers’ rights agencies have also challenged the mainstream understanding of ‘exploitation’ and argued that not all women in prostitution are ‘trafficked’. Some have called for legalisation or decriminalisation of prostitution. Some organisations have consistently used the UN protocol definition of trafficking in their own initiatives. These include programmes with the camel jockeys of Bangladesh and Pakistan, the interstate brick kiln workers of India, the internally displaced women of Nepal forced into prostitution and women forced into marriages in India. However, much of the anti-trafficking initiatives in the region still remain limited to trafficking into prostitution.

The last decade has seen an increased number of programmes and projects in the region although their impact on the lives of women and their families has yet to be studied. Shelters in both the countries of origin and destination are always full to capacity and assistance programmes fail to meet women’s needs. The legal process of repatriation is often long and traumatic, forcing women to remain idly in shelters when they could be receiving training or engaging in income-generation projects. Upon return the women face rejection from families, stigma from communities and difficulty in finding employment.

The ‘raid, rescue and repatriate’ approach to removing girls and women from brothels and sending them ‘home’ often simply disrupts their lives and adds to their suffering. There are disturbing reports of human rights violations in many shelters. Several cases of women returning to the same brothels or taking up prostitution elsewhere have also been reported. Very few trafficking cases ever reach South Asian law courts and in no cases have trafficked victims received any compensation. Simplistic measures to prevent trafficking have sometimes resulted in repressive practices to ‘intercept’ women at national borders, thus preventing their lawful migration.

In 2002, after years of discussion, the South Asian Association for Regional Cooperation (SAARC) – a regional body bringing together the governments of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – agreed a convention on trafficking. Ignoring civil society representations, it defined trafficking solely as the enforced movement of women and children for the purposes of commercial sexual exploitation. The SAARC Convention² is thus far more limited in scope than the UN’s Palermo Protocol.³ No South Asian countries have ratified the Palermo Protocol (although India and Sri Lanka have signed it).

In the absence of comprehensive national or regional initiatives, innovative and empowering programmes have been launched by civil society activists. South Asia has a vibrant civil society, a long tradition of people-centred advocacy and articulate women's rights movements. Among the many initiatives which deserve mention are:

- India's National Domestic Workers Movement. Since domestic work is not recognised as work under India's labour laws, and national legislation does not include trafficking for domestic work, the movement uses other available legal measures to provide some redress to those affected.⁴
- Shakti Samuha - an organisation created by young women trafficked into India and deported back to their home country. Working against all odds, the small group now has several programmes including a shelter for trafficked girls in Nepal.⁵
- Prostitutes' rights groups, some of whom have taken up the issue of trafficking. Durbar

- Mahila Samanwaya Committee in Calcutta, for example, is a holistic initiative led by the affected community. DMSC is working to stop forced prostitution and entry of children into prostitution and runs a gamut of health, education and cultural programmes.⁶
- Durjoy Nari Sangha in Bangladesh runs similar schemes and, like other NGOs, challenges simplistic understandings of 'exploitation' and stands up in dignity against human rights violations.⁷
- The Jainaseni anti-trafficking network in the eastern Indian state of Orissa is combating the growing problem of women being trafficked for forced or bogus marriages, urging official action and assisting women who have returned to their parental homes following abuse and exploitation.

US State Department shrinks space for debate

The issue of prostitution is a thorny one which has caused bitter

divisions among feminists world wide. HIV/AIDS and trafficking have made prostitution a topic for public debate but opinion remains divided. The emergence of prostitutes' rights groups in South Asia has brought new voices into the discussion. Many civil society agencies see this as a positive development and evidence of democracy and empowerment. However, in the last few years, the role of the US State Department's Trafficking in Persons Report⁸ has impacted negatively on this discussion. Although in its domestic law the US recognises the broad definition of human trafficking and has adequate legislation to address it, internationally its policies show a bias against efforts to encourage or listen to the voices of prostitutes' rights groups. The 2005 TIP report is blatantly biased in its reporting of efforts by the government of Maharashtra state to close dance bars in Mumbai. It endorses government misrepresentation of these bars as 'dens for trafficking and other criminal activities.' In fact, an independent women-led study found that

'Repatriation' of unaccompanied Cambodian children who had been trafficked to Thailand to beg on the street.



women who worked as dancers in the bars were not trafficked into the profession. None of the 500 women they interviewed said they were forced to dance or otherwise lured into the work. The women talked about the opportunities the bars provided to escape from poverty and were proud of their ability to earn a living. Only six of the women turned out to be non-Indian but, as Nepalis, they did not need permission to enter and work in India.

many anti-trafficking schemes will only pay lip service to human and gender rights

However, despite the facts, moral outrage generated by populist politicians has led to over 50,000 women losing their livelihoods. Human rights groups have expressed concern at this example of how the anti-trafficking framework can be deployed by powerful states to push their own ideological agenda. The TIP report, which grades countries into four tiers according to US evaluation of their anti-trafficking measures, allows the US government to impose sanctions against those who are placed in tier three. Such 'defaulters' are given a six-month grace period prior to imposition of US sanctions. It appears that the grading is often affected by political considerations and support given to US foreign policy objectives. In many countries it is apparent that at the end of the six-month warning period governments launch hastily organised and well-publicised schemes which do hardly anything to improve the lives of trafficked persons or migrants.

Complexities of approach

Anti-trafficking approaches need to acknowledge the complexities involved. Some of the points made in the preceding article by Faisal Yousaf invite further debate:

- In referring to trafficking in persons as a criminal justice issue, it must be remembered that the criminal justice framework is, in most countries, still being developed and people are unable to seek legal redress.
- Repatriation is not a magic

bullet, however sensitively it is implemented (and it rarely is). Rejection by families and communities and lack of opportunities lead to a high rate of return of so-called victims to the places of 'exploitation'. Civil society advocacy for the right of the trafficked persons to stay in the country of destination if they want to – and most do want to – should be heeded.

- It is important to distinguish between adults and children and also between those who have been trafficked and those who might have made a decision to work in the sex industry.
- Many programmes which claim to be gender-sensitive are only so on paper.
- Many of the organisations cited by Faisal Yousaf have indeed done good work but in some cases this has been undone by recent political pressures or insensitive external support.

Challenges

Many researchers have pointed to the practical difficulties of determining who is a trafficked person and who is an economic migrant. Some elements of trafficking have been found in the lives of many internal and cross-border migrant workers but in the absence of adequate laws to protect the rights of migrants and trafficked persons, anti-trafficking measures would only result in deportation and unwanted media interest.

SAARC has recently appointed a task force on trafficking which is supported by the International Organization for Migration and Western donors. SAARC's emphasis remains on law enforcement, creating a regional police force to apprehend human smugglers and improving extradition procedures. Unless the SAARC convention is amended little can be done to improve the lives of those affected by trafficking or by measures to respond to it.

Migration and labour policies in South Asia must be developed from the perspective of those who

migrate. Immediate steps should be taken to reduce the number of people forced to migrate by misguided development policies. Bilateral labour agreements within the region and with destination countries should be created with a view to protecting the rights of migrant workers. It is time to end gender inequality and the attitude that girls, women and working-class people are dispensable commodities. Women's legal rights to property should be recognised and implemented. Women's citizenship should not be dependent on the endorsement of their male guardians.

In a recent consultation meeting all the South Asian member organisations of the Global Alliance Against Traffic in Women agreed to work to expose the development policies of governments which are rendering many people homeless and jobless, to address the crises in governance which are allowing manipulation and muzzling of national human rights commissions and to urgently address the rise in divisive religious fundamentalism which threatens to further restrict women's freedom. GAATW members argue that trafficking is a consequence of many factors and unless the root causes are urgently addressed, many anti-trafficking schemes will only pay lip service to human and gender rights.

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1. See Aftab Ahmed, 'Using a dynamic, interactive and participatory process to develop and redefine the human trafficking paradigm in Bangladesh' in *Trafficking and prostitution reconsidered: new perspectives on migration, sex work and human rights* by Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik, Paradigm Publishers, 2005. Online at: www.iom.int//DOCUMENTS/PUBLICATION/EN/Full_BangladeshTrafficking.Rpt.pdf
2. www.saarc-sec.org/old/freepubs/conv-trafficking.pdf
3. www.ohchr.org/english/law/protocoltrafficking.htm
4. For more information email Jeanne Devos: jeanne@bom8.vsnl.net.in
5. www.shaktisamuha.org
6. www.durbar.org
7. www.care.org/getinvolved/iampowerful/stories/story.asp?story=2
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Mekong sub-region committed to ending trafficking

by Susu Thatun

In October 2004 six countries - Cambodia, China, Laos, Myanmar/Burma, Thailand and Vietnam – joined hands in the battle against human trafficking in the Greater Mekong Sub-region (GMS).

Trafficking within the GMS has a number of distinct forms:

- trafficking from Cambodia, China, Laos and Myanmar/Burma to Thailand for labour exploitation, including the sex trade
- trafficking of children from Cambodia to Thailand and Vietnam for begging and lately from Vietnam to Cambodia, Laos and Thailand for the same purpose
- trafficking of women and girls from Vietnam, Laos, and Myanmar to China for forced marriage, and boys for adoption
- domestic trafficking of kidnapped children in China for adoption and of women and girls for forced marriage
- trafficking of women and girls from Vietnam to Cambodia for the sex trade.

Trafficking also takes place to Malaysia, Japan, Taiwan, Hong Kong, Europe, the US, Australia and the Middle East. Thai women have historically been those most frequently trafficked outside the region but, as these women become less vulnerable, traffickers have also been targeting people from China, Myanmar/Burma, Vietnam and elsewhere. The willingness of Western couples to pay a considerable sum to fast-track the adoption process in Cambodia has led to a new trafficking market for stolen babies.

The resurfacing of modern-day slavery in the guise of human trafficking had caught the attention of governments in the region by the late 1990s. As the severity of the crime began to be recognised, programmes and projects mushroomed. However, the increase in the number of interventions was not accompanied by a decrease

in the severity of the problem. More actors did not necessarily lead to concerted actions but rather added to disarray in the whole spectrum of anti-trafficking initiatives. In recognition of this and the transnational nature of the problem, governments came to appreciate the need for a coordinated regional approach.

The memorandum of understanding which established COMMIT (Coordinated Mekong Ministerial Initiative against Trafficking) is the result of intensive and extensive consultations. The COMMIT process began as a series of informal discussions between representatives from several of the GMS governments in mid 2003. During three roundtable discussions the governments overcame challenges to reach a groundbreaking agreement that was to become the blueprint for collaboration to combat trafficking in the GMS. The MOU represents the governments' recognition that trafficking in persons impacts the human security and the human rights of the individual and that in many ways trafficking is a direct result of lack of human security and has to be addressed at the individual, societal, national, regional and international levels. The 34 articles specifically refer to the need for governments to work together with international organisations and NGOs to close all avenues of exploitation.

Innovative features of COMMIT

COMMIT is a high-level policy dialogue in a sub-region where all governments have realised that they cannot combat trafficking effectively on their own. Combining

efforts on prevention of trafficking, protection of victims and their repatriation and reintegration, and prosecution of the criminals responsible, COMMIT is the superstructure on which a cohesive and comprehensive anti-trafficking response is being built.

COMMIT is the first regional instrument making a serious effort to institutionalise a multi-sectoral approach to ensure that the obligations and commitments made in the MOU and the subsequent Sub-regional Plan of Action (SPA) are translated into actions in a timely manner and in accordance with agreed international norms and standards. The COMMIT Secretariat is located in the Bangkok-based UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP).

The COMMIT process:

- acknowledges that marginalised populations have special vulnerabilities that must be addressed
- highlights the importance of strengthened guidelines and mechanisms for identification of victims and linkages between better identification and treatment of victims and more effective law enforcement
- stresses the role that migration policy (including bilateral migration agreements) can play in combating trafficking
- recognises the need for increased efforts in application of labour laws and monitoring of labour recruitment companies
- is nationally and regionally-owned: GMS governments initiated the process and are taking the lead in identifying the problem of human trafficking and setting policies, activities and timelines. Their strong sense of pride and ownership in COMMIT is evident in the prominent way that this process has been highlighted in international fora.
- is characterised by inclusion and participation. UNIAP has



hosted seven technical roundtables bringing together 16 anti-trafficking actors in the GMS region – UN agencies, NGOs and inter-governmental organisations. They have significantly contributed to development of the Sub-regional Plan of Action and its 11 thematic projects.¹ ■ is based on a clear rights-based and ‘victim-centred’ approach. The COMMIT MOU explicitly bases its definition of trafficking on the Protocol to Prevent, Suppress and Punish Trafficking

in Persons (Palermo Protocol)² supplementing the UN Convention on Transnational Organized Crime. COMMIT is bound by principles enshrined in the Universal Declaration of Human Rights and such other key human rights documents as the UN Convention on the Rights of the Child,³ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴ and the fundamental conventions of the International Labour Organization.⁵

COMMIT provides a potential model for other such agreements around the world. However, it is still in infancy and its lessons are yet to be fully documented. To what extent the structures established will stand the test of time and onslaught by violators and traffickers searching for loopholes depends on those who are supporting the process. In its capacity as the COMMIT Secretariat, UNIAP will continue to do its utmost to do justice to the ideals of the process, placing at its centre and at all times the task of protecting the rights of trafficked persons.

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Cambodian children are now regularly taught about the dangers of trafficking.

1. These involve: regional training; identification of victims and apprehension of perpetrators; national plans; multi-sectoral and bilateral partnerships; legal frameworks; safe and timely repatriation; post-harm support and reintegration; extradition and mutual legal assistance; economic and social support for victims; addressing exploitative brokering practices; cooperation with tourism sector; coordination, monitoring and evaluation.
2. www.iom.int/germany/other_language/palermo-protocol-eng.html
3. www.unicef.org/crc
4. www.un.org/womenwatch/daw/cedaw
5. www.ilo.org/public/english/standards/norm/whatare/fundam/

Anti-trafficking challenges in Nepal

by Shiva K Dhungana

Agencies working to combat trafficking in Nepal need to develop a more coherent and collaborative strategy.

It is thought that up to seven thousand Nepalese girls are trafficked to India every year, primarily for prostitution, and that 200,000 Nepalese women, mostly aged between ten and twenty, work in Indian brothels.

Reflecting the long relationship between Nepal and India, and designed to facilitate trade and transit between the two countries, the open border agreement enables traffickers to easily transport victims from Nepal to India, where

brothels in Mumbai and other cities are eager to buy them – especially teenage girls believed to be HIV-negative. India’s growing sex industry makes young Nepalese women vulnerable to trafficking. Increased Nepalese labour migration through irregular channels to third countries has further exposed women to rights violations by employers. Poverty and conflict-induced displacement in Nepal – Maoist insurgents now control 80% of the country – have driven some two million Nepalese

to work abroad. The rise in the number of people desperate to leave the country has widened opportunities for traffickers.

Nepal’s Human Trafficking (Control) Act 1986 made human trafficking punishable by imprisonment of up to twenty years and a penalty equivalent to the amount of money involved in the transaction. It provides protection against buying and selling of human beings but does not cover recruitment by deception or for the purposes of bonded labour within and outside the country. It also ignores the issues of separating a person from their legal guardian for the



March against trafficking.

intention of selling without taking that person out of the country and has no provision for punishment of the person buying the victim. A national task force set up in 2001 to coordinate and implement a national anti-trafficking plan has foundered due to chronic under-funding. Nepal's constitution prohibits "traffic in human beings, slavery and serfdom or forced labour in any form." The government has signed various international accords - including the Beijing Platform for Action,¹ the Convention on the Elimination of All Forms of Discrimination Against Women,² the UN Convention on the Rights of the Child³ and the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.⁴

Both Nepal and India are signatories to regional and international anti-trafficking conventions but have initiated no bilateral discussions to combat trafficking. Suspension of Nepal's parliament in October 2002 and the declaration of a state of emergency by King Gyanendra have stifled discussion of social policy and consideration of a draft law to tighten anti-trafficking mechanisms. Poor law enforcement means that few cases are reported and even fewer resolved. Informants and witnesses are subjected to bureaucratic procedures that often delay police action until too late to save the victim. Many informants fear retaliation from trafficking syndicates and hardly any traffickers are punished. In the extradition treaty between India and Nepal trafficking is not listed as one of

the crimes for which criminals can be extradited.

Nepalese NGOs have been instrumental in raising awareness of the scale of trafficking and supporting victims. They have organised rallies and worked

with Indian NGOs and law enforcement agencies to rescue women trapped in brothels in India. However, some of those who claim to protect the rights of trafficked women may end up further restricting them. There are allegations concerning lack of freedom of movement, violence and lack of right to self-determination in some rehabilitation centres for trafficked women. Efforts to prevent trafficking often limit women's right to voluntary migration. There is also a tendency among NGOs to encourage girls to stay in their villages. However, conflict, lack of economic opportunity and the attraction of urban life often drive young women to migrate to urban areas. Anti-trafficking programmes that focus on encouraging adolescent girls to stay in villages may not be relevant to their needs and aspirations.

NGOs are based in major urban centres and even before the insurgency prevented them from travelling to rural areas were often reluctant to work with community-based organisations. As a result many programmes are top-down and welfare-oriented. There is an urgent need to work with communities on rights-based approaches and to begin the long-term task of combating stigmatisation of trafficking survivors and those with HIV/AIDS.

The three anti-trafficking networks in Nepal have ideological and political differences which give rise to conflicting messages and duplication of activities. The National Network Against Girl Trafficking (NNAGT) and the Alliance Against Trafficking and Sexual

Exploitation of Children (ATSEC) equate trafficking with sex work and migration, and take a welfare approach, including advocating tighter restrictions on women's travel. The Alliance Against Trafficking in Women and Children in Nepal (AATWIN), by contrast, de-links trafficking from sex work, migration and HIV, and is beginning to develop a safe migration emphasis.

It is recommended that:

- anti-trafficking networks in Nepal coordinate their activities and work with regional networks to advocate bilateral and multilateral action against trafficking
- Nepal adopt the Palermo Protocol definition of trafficking, to include those who are trafficked for purposes other than prostitution
- anti-trafficking organisations devise longer-term programmes to change social attitudes and support safe migration
- women and other would-be migrants are informed prior to departure on their foreign employment and immigration rights
- decision makers throughout the judicial and police systems be trained to improve their sensitivity and awareness
- donors work with communities to build local capacity and establish legal procedures for protection and redress
- evaluations be undertaken to assess the effectiveness of trafficking interventions
- more be done to provide care and support to those who return home, those who are unable to return and those who are HIV-positive.

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1. www.un.org/womenwatch/daw/beijing/platform/plat1.htm
 2. www.ohchr.org/english/law/cedaw.htm
 3. www.unhcr.ch/html/menu3/b/k2csrc.htm
 4. www.saarc-sec.org/old/freepubs/conv-trafficking.pdf

UNHCR's role in combating human trafficking in Europe

by Malika Floor



An estimated 100-500,000 persons are trafficked annually into Europe. Human trafficking in general is on the increase. New EU and external border countries have become important transit routes and are increasingly becoming destination countries as well. The phenomenon of re-trafficking has also been reported as a growing trend. While the great majority of persons trafficked to and within Europe are women and girls for the purpose of sexual exploitation, the trafficking of children includes boys for begging and street vending, and men for other types of exploitative labour.

UNHCR has consistently expressed the view that persons who experience sexual violence or other gender-related persecution should have their claims for refugee status considered under the 1951 Convention Relating to the Status of Refugees. UNHCR is not the principal organisation working on combating the trafficking of humans but because of the interlinkages between asylum, migration and trafficking, some of the victims of trafficking may be refugees. UNHCR is primarily concerned with two categories of trafficking victims: refugees and other persons of concern to UNHCR who may fall prey to traffickers looking to take advantage of their vulnerability, and people who have been trafficked – some of whom can be recognised as refugees under the 1951 Convention and thereby in need of and entitled to international protection. UNHCR's efforts to combat trafficking in Europe are often implemented in cooperation with national governments, other intergovernmental organisations and NGOs.

The possible connection between trafficking, asylum and vulnerability of refugees and asylum seekers to human trafficking is linked with the phenomenon of smuggling and irregular entry to a country of

asylum. In an environment of tightening visa regimes, restrictive asylum policies and stricter border control, some refugees may resort to desperate and even illegal measures in their search for a safe asylum country and can be deceived by traffickers. Some victims of trafficking may only become conscious of the difference between smuggling and trafficking after departure to or upon arrival in the destination country, when the deception linked to trafficking becomes readily apparent.

UNHCR is concerned about human trafficking as a human rights violation, which can under certain conditions amount to a crime against humanity or a war crime in the context of armed conflict. Some trafficking victims, in particular but not exclusively women and children, can be defined as refugees under the 1951 Convention if a well-founded fear of persecution based on at least one of the Convention grounds is established. Victims of trafficking may qualify for international refugee protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers' potential retaliation.

A claim for international protection from a victim of trafficking can thus arise in two distinct circumstances: where the victim has been trafficked from abroad and seeks the protection of the host state or where the victim, having been trafficked within national territory, manages to extricate her/himself and flees abroad in search of international protection. When assessing asylum claims by victims of trafficking it

is always necessary to establish a well-founded fear of persecution and a causal link to one or more of the 1951 Convention grounds – for reasons of race, religion, nationality, membership of a particular social group or political opinion.

A recently published study, *Combatting Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe*, analyses UNHCR's engagement in combating human trafficking in Europe¹. Regional and country-specific data on statistics and trends, national legal frameworks and implementation arrangements are presented for 33 of the 42 countries covered by UNHCR's Europe Bureau. The report is designed to deepen regional and in-country cooperation with partners such as the Office of the High Commissioner for Human Rights (OHCHR), the newly appointed UN Special Rapporteur on Human Trafficking in Persons, especially in Women and Children, the Organization for Security and Cooperation in Europe (OSCE), the International Organization for Migration (IOM), United Nations Children's Fund (UNICEF), the Council of Europe (CoE) and international and local NGOs.

Responses to trafficking

A recent proliferation of legislative reforms within European countries means that most countries have now introduced laws specifically designed to combat the trafficking of humans. When countries include an anti-trafficking law in their national criminal code it is not necessarily in sync with either the Palermo Protocol or with the Council of Europe definitions and therefore there is no common

Areas of UNHCR involvement in Europe:	No of countries
Development of anti-trafficking laws	8
Membership of anti-trafficking coordination fora	8
Training and capacity building	22
Pre-screening and referral	6
Prevention	11

standard. Punishment can vary significantly from state to state.

Most European countries have drawn up national action plans to combat the phenomenon. However, the problem is now one of implementation as many of the projects are still run on an ad hoc basis. Human trafficking is an exceptionally dynamic phenomenon where traffickers adapt in response to policies designed to combat it. Thus, action to address inter-linkages between trafficking, asylum, human rights, poverty, organised crime and growth of sex business must be promoted. First and foremost, however, the plight of the victims of this scourge deserves to be the focus of concerted and collaborative attention.

One of the main response actions is establishing safe houses and shelters located either in the countries of transit or destination where victims can be placed following their interception. Shelters also exist in the countries of origin in order to receive returned victims. The number of women and girls in shelters for victims of trafficking is decreasing despite an apparent increase in the number of trafficking cases. A recent report confirms that in countries of transit, shelters are virtually empty, only accommodating local women identified as internally trafficked.² One possible reason is because, typically, victims who choose to stay in shelters are either repatriated to their countries of origin directly or, if they are offered the opportunity to remain in the country for a short period of time, the temporary stay permits are conditional on collaborating with criminal proceedings. Some countries are willing to grant victims a temporary two to three month reflection or recovery period while he/she decides whether or not to cooperate with the authorities. However, victims are often not informed about their right to this reflection or decision period as it is not systematically applied.³ Once women and girls are returned to their countries of origin, without adequate follow-up support they often face the same vulnerabilities that led to their trafficking in the first place. There is a need to protect the victims of trafficking in cases where they

are returned to their country of origin, and more qualitative and quantitative data is needed regarding the numbers of victims who are re-trafficked. There seems to be a lack of adequate support during the reintegration phase for women and children who are returned to their country of origin, and it is mostly left to NGOs without proper involvement or support by governments and law enforcement authorities. It may be that when victims are not informed of their right to seek asylum but rather advised to seek temporary stay, they usually opt for the latter. UNHCR has expressed the view on several occasions that a temporary residence permit and asylum should not be exclusive of each other. Another factor negatively impacting the possibilities of victims of trafficking to seek protection is that they are usually not provided appropriate legal counselling to articulate their asylum claim. There have been a few cases where it is the traffickers who advised their victim to seek asylum as a way of ensuring the victim's stay in the country.

The regional variation in numbers of trafficking victims recognised as refugees throughout Europe is problematic. Victims in different countries who have similar profiles – having been trafficked by the same or similar criminal groups and facing the same threats of persecution if forced to return – are not being equivalently assessed. Some asylum authorities recognise asylum claims by the victims of trafficking but others do not and for this reason many victims might not be able to access international protection. Overall, this inconsistency in granting asylum to the victims of trafficking corresponds to the geographical variations in recognition rates of asylum applications in Europe, where only half of the 42 countries have recognised refugees claiming asylum on gender-related persecution grounds. A 2004 UNHCR study on gender-related persecution in European laws and practice found that only ten of the 42 countries studied systematically granted some form of protection status for asylum cases based on sexual exploitation – Albania, Austria, Belarus, Denmark, France, Germany, Ireland, the Netherlands, Spain and the UK.⁴ The most often established Convention ground is the victim's membership of a

particular social group, although a few applicants were also recognised on the ground of race, religion and nationality.

Available asylum and trafficking data does not record key indicators, such as age, gender, number of victims or country of origin. Available information is primarily collected by government ministries, police departments and NGOs but data is not quantifiable or comparable. Region-wide data obtained through consistent means with reliable partners is desperately needed. Without this information, it is extremely difficult to raise awareness and effectively deal with the protection and assistance needs of the victims.

The main findings of the study indicate that most national and regional activities to combat trafficking have focused on response rather than prevention. The response action has been most pronounced in law development, regional and international standards setting, criminal prosecution of persons involved in trafficking, finding durable solutions to the victims and safeguarding the rights of the trafficked persons. There is an increasing recognition that effective addressing of the phenomena should be multi-sectoral and seek to prevent trafficking by addressing both supply and demand. Responses must be tailored to the needs of individual victims. Addressing supply and demand should entail criminal, legal, medical, rehabilitation and durable solutions dimensions and be respectful of and compliant with the human rights of the victim.

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2. Limanowska, B, *Trafficking in Human Beings in South Eastern Europe, 2004: Focus on Prevention* UNICEF/UNOHCHR/OSCE/ODIHR, 2005 www.unicef.org/ceecis/Trafficking.Report.2005.pdf
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Combating trafficking: the Swiss approach

by the Swiss Federal Department of Foreign Affairs

Switzerland is committed to combating and preventing trafficking in human beings. Effective policy implementation in a federal structure depends on networking, effective information exchange and development of robust cooperation mechanisms.

Trafficking in human beings is a worldwide phenomenon which primarily affects Switzerland as a destination country. The victims are mostly women who are forced into prostitution and exploited. Trafficking in human beings takes place to a lesser extent to exploit labour, for example as domestic staff. The principal countries of origin are the states of Central and Eastern Europe, the Baltic States, Brazil and Thailand. In 2002, the Federal Office of Police estimated that there are between 1,500 and 3,000 victims of trafficking in human beings in Switzerland.

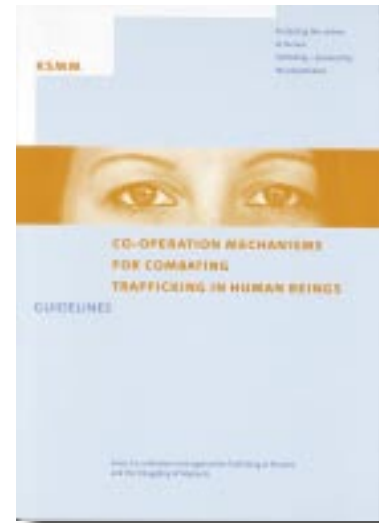
Combating and preventing trafficking in human beings is a declared objective at all levels of the Swiss government. Most recently, on International Women's Day on 8 March 2006 the Swiss foreign minister, Micheline Calmy-Rey, joined with a number of female parliamentarians to launch an appeal to international organisations and authorities to rigorously combat trafficking in human beings.¹

Switzerland's international commitment to combat trafficking in human beings is spearheaded by the Swiss Agency for Development and Co-operation (SDC)² and the Political Affairs Division responsible for human security of the Federal Department of Foreign Affairs.³ Swiss efforts are directed at prevention, voluntary repatriation of victims, training for the public sector and NGOs and emergency aid for victims in non-EU transit or destination countries. Switzerland works with UN agencies and other multilateral organisations and participates in creation of new international standards.

Switzerland's national strategy on combating trafficking in human beings is based on the Additional Protocol to the UN Convention against Transnational Organized Crime (which Switzerland signed in 2002) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (signed by Switzerland in 2000). Switzerland's Federal Council – the seven member executive arm of the Swiss government – has declared ratification of these protocols to be a legislative priority during its current session.

On the domestic front, Switzerland's federal system assigns primary responsibility for combating trafficking in human beings to the country's 26 cantons (states). Although the overriding legal principles are set out in federal criminal law, immigration law and the Victim Support Act, their enforcement and implementation are cantonal responsibilities. Each canton's approach is shaped by differing resource allocation, police enforcement and victim support procedures.

This division of responsibilities allows implementation mechanisms to be adapted to the different requirements and existing situations of each canton. A small rural canton such as Appenzell Innerhoden is affected by trafficking in human beings in a different manner than the large and highly urbanised Canton of Zurich and therefore does not require the same structures. The division of responsibilities is particularly effective if the different players at national and cantonal level are able to benefit from efficient cooperation.



Central coordination

The Swiss Co-ordination Unit against Trafficking in Persons and Smuggling in Migrants (KSMM)⁴ was established in 2003 to harmonise practices and procedures for combating trafficking in human beings. Its principal role is strategic – to improve liaison and networking, to coordinate drafting of statements and reports, to improve statistical records on criminal prosecution and the protection of victims and to provide advice to legislators. The KSMM is attached to the Federal Office of Police and has interdisciplinary expert groups which develop concepts and strategies to be used as a basis for formulating and implementing policies. The KSMM is supervised by a steering committee made up of 17 representatives of the federal government, cantonal authorities, NGOs and international organisations. At the federal level, these are the Swiss Agency for Development and Cooperation, the Directorate of International Law, the political affairs division responsible for human security of the Federal Department of Foreign Affairs, the Border Guards, the Federal Offices of Police, Federal Office of Justice, the Federal Office of Migration, the Office of the Attorney General and the State Secretariat for Economic Affairs. The cantons

are represented by the Cantonal Conference of Heads of Police, prosecuting authorities, gender equality officers and liaison agencies for the Victim Support Act and the Association of Cantonal Migration Authorities.

The non-governmental and inter-governmental agencies belonging to the KSMM in a consultative capacity include the Zurich Women's Information Centre (FIZ) – a special advisory agency for victims of trafficking in human beings⁵ – Terres des Hommes Foundation⁶ and the International Organization for Migration (IOM). Additional external specialists from NGOs are consulted as required. The KSMM thus forms a pan-Swiss information, coordination and analysis centre for the cantons and federal government and a point of contact for international cooperation.

No prosecution without victim protection

KSMM's success is crucially dependent on how closely the different agencies cooperate. Nowhere is this more clearly demonstrated than in the field of victim protection. Statements by victims constitute key evidence for the courts and in most cases are indispensable for convicting perpetrators. However, the victims of trafficking in human beings are not usually prepared to act as prosecution witnesses, whether for reasons concerning violations of their personal and sexual integrity, trauma, threats by the perpetrators or fear of prosecution by the authorities for infringements of immigration law. Immunity from deportation, protection and specific care may increase – or bring about – victims' readiness to make statements. Victim protection and prosecution both complement and depend upon each other. Cooperation between the police, courts, immigration authorities and the responsible public and private victim advice agencies is thus crucial to combating trafficking in human beings effectively.

However, cooperation between the police, courts and immigration authorities on the one hand and victim protection agencies on the other is not automatic due to

their different roles. The police are primarily charged with investigating crime, while victim aid agencies predominantly concentrate on care irrespective of the victim's immigration status. The key to successful cooperation is mutual understanding and an acceptance of these different roles, clearly defined points of contact and well-established, well-understood processes. To create these conditions, mechanisms for cooperation at cantonal level are being developed. Zurich led the way in 2004 and was followed by Solothurn. Berne and St Gallen are in the process of preparing roundtables and initiatives have also been launched in the cantons of Lucerne, Basel-Stadt, Basel-Land and Fribourg.

This approach is supported by the KSMM, using guidelines issued at a national conference on trafficking in human beings in Switzerland in autumn 2005. Cooperation mechanisms identify the responsible agencies, identify who is responsible for cooperation with each agency and clarifies and demarcates their roles and duties. Identifying victims, accommodation, care, residence permits, victim safety, aid for repatriation or a possible extension of stay in Switzerland are examples of the procedures to be specified. Cooperation mechanisms help to promote a climate of trust and accountability between agencies.

Swiss experience in the fields of domestic violence or regulation of prostitution has shown that cooperation is best enhanced by:

- interdisciplinary roundtables involving all the major players
- an official mandate or approval by the political authorities to ensure the process has the necessary legitimacy and that decision are acted upon
- ensuring that nominated representatives have practical experience and their managers are involved
- good logistical organisation from the start.

It is important to distinguish between a core group and a supporting group. Representatives of the prosecuting authorities, the cantonal police, the cantonal

migration office and aid agencies looking after victims of trafficking in human beings belong to core groups because they are directly involved in combating trafficking. Participants in support groups include the cantonal welfare office, the cantonal repatriation advisory service, a lawyer for victims, social or church organisations and gender equality officers.

Broad representation brings additional specialist knowledge into the process and enhances political support for cooperation mechanisms. As soon as the participants have agreed on the principles and procedures of cooperation, the appointed individuals work together on a case-by-case basis in accordance with the agreements made. Ideally, the core and supporting groups should meet at regular intervals, e.g. once a year, so that they can evaluate the cooperation mechanism.

A representative of the KSMM normally attends cantonal roundtables. This aids cooperation between the federal government and the cantons, and shortens communication channels. The KSMM can bring in advice as required and put cantons in touch with experts from the federal government or other cantons. A nation-wide circular from the Federal Office for Migration (FOM) to the cantons on possibilities for victims to remain in Switzerland was discussed at a cantonal roundtable before its entry into effect. The circular explains practice in connection with questions of immigration law involving victims of trafficking in human beings. Its aim is to harmonise hitherto different cantonal approaches.

Now that the concept of the cooperation mechanism is being implemented in more and more cantons, the KSMM is applying itself to continuing professional development. A KSMM task force is preparing specialised training programmes, and a one-week specialist course on combating trafficking in human beings at the Swiss Police Institute is planned for autumn 2006.

Two points must be emphasised on the basis of current experience with cooperation mechanisms in

Switzerland. The first is the identification of specialists in the area of combating trafficking in human beings at the various official agencies. The second is the network of contacts between them, which is essential for combating trafficking in human beings effectively in a federal state. In conclusion, it may be stated that the institutions established in recent years, namely the creation of the KSMM and the institutionalisation of coopera-

tion mechanisms in an increasing number of cantons, have led to significant improvements in combating human trafficking.

This article was prepared by Sebastian Rauber on behalf of, and in close cooperation with, the Federal Department of Foreign Affairs. A longer version is available online at: www.fmreview.org/pdf/swissantitrafficking.pdf. For further information, contact

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OSCE promoting coordination to fight human trafficking

by Helga Konrad

A growing number of participating States of the Organisation for Security and Cooperation in Europe (OSCE) have adopted anti-trafficking laws, amended their criminal codes and/or established national coordination mechanisms to address trafficking in human beings. However, a more sophisticated understanding of human trafficking and a victim-centred approach are essential to tackle this horrendous crime and human rights violation.

National plans of action – and national rapporteurs – are valuable tools in identifying the nature of trafficking and assigning responsibility between government agencies and non-governmental organisations. National action plans must be comprehensive and address all the dimensions of human trafficking – trafficking for sexual exploitation as well as trafficking for labour exploitation, domestic servitude, forced marriages and trafficking in organs. They should also take account of the relatively new phenomenon of internal trafficking. Unless they set out timeframes, delineate responsibilities and specify available human and financial resources, action plans will remain mere paper tigers.

Human trafficking is about the plight and suffering of people and not about criminal transactions in soulless goods. As traffickers ruthlessly exploit the lack of social and legal protection for victims of trafficking, the legalisation of the

status of victims of trafficking is a must. For victims to be able to free themselves from actual or threatened violence they need comprehensive social, economic and legal assistance. This is crucial to effective victim and witness protection strategies.

A central issue is the right of (temporary or permanent) residence for victims in destination countries. Ideally, legal status of residence should be granted irrespective of the victims' ability or willingness to testify in criminal proceedings. Legal status should also imply access to the labour market and entitlement to state welfare benefits and schemes for the compensation of victims of this crime. After a reflection period of at least 30 days (as laid down in the new Council of Europe Convention on Action against Trafficking in Human Beings¹), the authorities should grant a temporary residence permit for at least six months. This should be renewable, with the possibility that victims – if required – may be allowed to permanently remain in the countries of destination.

Victims of trafficking must have the right to refuse to testify, and if they agree to testify, they should be able to do so in a non-confrontational environment. To expose trafficking victims or to force them too early to confront their exploiters may exacerbate trauma. The process of testifying against the trafficker must not re-victimise

them but should be an empowering, positive experience through which victims' rights are protected and promoted.

Child victims of trafficking ought to be automatically granted an extended stay in the country of destination, pending a durable solution. Just as trafficking victims in general, children in particular should never be criminalised for acts arising from a trafficking situation or sent back to their home countries without careful, individualised risk assessment.

Structured and systematic cooperation between law enforcement agencies and NGOs who run victim protection centres has proven effective in the fight against human trafficking. While we must encourage law enforcement and continue to train officers to better identify and refer trafficking victims, we must also significantly strengthen networks of support services so that victims can turn to and access an immediately supportive environment.

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Responsibilities of the destination country

by Cecilia M Bailliet

According to UNHCHR's Recommended Principles and Guidelines for Human Rights and Human Trafficking,¹ human rights must be at the heart of counter-trafficking measures. Destination countries may need to reassess strategies to ensure that they conform to international standards and provide better protection to the victims of trafficking.

Norway's draft Aliens Law does not address trafficking as its drafters believed that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)² did not require them to do so and that existing regulations within the Aliens Law provided sufficient protection. Unfortunately, the law's provisions for a 45-day reflection period and the Minister of Justice's recent announcement of permanent residency for those who provide testimony for criminal cases against traffickers run counter – as do other European and US laws – to UNHCHR's Principles that state that trafficked persons shall not be given protection only on condition of their capacity or willingness to cooperate in legal proceedings. The Principles suggest that the only criteria determining a victim's return should be the risks facing her or her family upon return to her state of origin. Principle 11 states that victims should be offered legal alternatives to repatriation where there would be a significant security risk to their safety or that of their families.³

The 45-day reflection period for victims of trafficking who entered Norway illegally is presented as if to give the victim opportunity to accept practical assistance and counselling from the state. However, it is clearly also designed to allow her to consider helping police investigations and possible prosecutions. Additional pressure is exerted by the fact that, in order for her to obtain a work and residence permit, there must

be a prosecution or investigation ongoing against the traffickers. The woman's needs are treated as of secondary importance. This policy places victims of trafficking in an extremely vulnerable position, with little regard to their need for a permanent solution and right to protection. To date, not one person has chosen to accept the reflection period. This is hardly surprising. To require them to first submit to providing testimony on behalf of the state is effectively asking them to serve another's interest first. The priority should rather be to empower them to secure their own safety and dignity.

There needs to be provision for granting unconditional one-year temporary protection and stay of deportation, based solely on identification as a victim of trafficking. During this period, rehabilitation and psychological support, language classes and vocational training should be available. These should be provided irrespective of the government's intent to prosecute. Trafficked women should be allowed to regularise their immigration status and access the labour market and/or education system.

As part of their protection strategy, countries of destination may focus on projects to return victims to their countries of origin but this leaves much to be desired. Primary emphasis is placed on sending women back to dysfunctional states where reintegration is difficult and security not easily guaranteed.

Often, there is no follow-up or monitoring of those organisations working with returnees; many victims appear to disappear. Return often results in re-trafficking (estimated in 50% of cases). Norway is now to appoint a Return Attaché to follow up those returned in order to ensure their safety.

Protection versus prevention?

Victims of trafficking are often from marginalised communities denied access to educational and employment opportunities or subject to social exclusion due to their gender, ethnicity, nationality or religion. The Palermo Protocol⁴ states the need for a comprehensive international approach to trafficking that addresses prevention and human rights protection issues. In addressing protection issues, it calls upon states to consider implementing measures to provide employment, education and training opportunities, as well as other aspects of assistance. States are called upon not only to penalise violators but also to provide support to victims. In other words, Palermo defines the notion of protection as requiring socio-economic measures – i.e. a human rights orientation. As is the case with most issues involving women's rights, it is precisely these types of guarantees which are the most pressing and have the most potential for restoring equality, freedom and dignity to victims.

"States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."

Article 9, Palermo Protocol



a quota for 5,000 permits per year to be issued to persons trained as nurses who have a job offer and official authorisation but the quota is not being filled. In 2004 and 2005, only 1,500 permits were issued. The government could utilise this quota to regularise the situation of these women.

Indeed, the UN Guidelines also call for the adoption of labour migration agreements. The Norwegian government's Plan of Action Against Trafficking specifically states that the Ministry of Foreign Affairs and NGOs will inform potential victims of viable legal immigration alternatives. There has been little discussion of this proposal and yet it is precisely this that needs to be expanded to reach those considered at risk of recruitment, re-trafficking or retribution.

Protection approaches for victims of trafficking working in Norway require a solution with a human rights-labour law perspective. Trafficked women's lack of choice in employment is a violation of their human rights, because a woman can never be considered to have consented to debt bondage or slavery. Indeed, Palermo reiterates that the consent of the victim is irrelevant, given the situation of exploitation. In order to restore freedom of choice of employment, the state should offer – as for other classes of migrants – access to vocational training or retraining programmes as well as information on employment possibilities.

Governments should work with NGOs and employers to identify in their home countries those women at risk of trafficking – or of being re-trafficked. They should then be enabled to enter the country legally in order to do work for which they are trained and Norway has an obvious demand. Financial support may be given to educational institutions abroad in order to enable them to meet accreditation standards, to educational institutions in Norway willing to take on these women as students and to institutions providing necessary language training and other skills.

CEDAW, Palermo and UNHCR's Principles all call upon countries to address prevention by taking into account such factors. Thus, there is an alignment between the strategies of prevention on behalf of potential victims and protection of actual victims. States need to strengthen the linkages between their policies in each area so that they are developed harmoniously.

To prevent recruitment, governments need to promote education, access to property and a better standard of living within the country of origin. Norway has supported information campaigns and programmes to strengthen women's rights in society in Africa and Asia. This focus on the long-term development of women's rights may, however, be more relevant to women coming of age in a decade or two when (optimistically) the rule of law is re-established, economic prosperity achieved and discriminatory social frameworks dissolved. A shorter time frame is needed for present victims of trafficking, whose prevention needs are immediate and lie in the country of destination, not in the country of origin. They need durable protection from re-trafficking as well as integration within a society that will permit

each victim to enjoy greater equality and to fulfil her potential as an individual within society.

Immigration alternatives

The UN High Commissioner's Guidelines call for the modification of repressive immigration and migrant labour laws in order to reduce the need for irregular migration. Countries of destination often believe that immigration will decrease as a result of restrictive measures both with respect to asylum and regular migration channels. The reality is different. The consequence of restrictive policies is that migration is driven underground. The Ministry of Local Government in Norway, for example, announced a drop in the number of asylum seekers just as a social service centre in Oslo⁵ reported a two-fold increase in the number of foreign women working as prostitutes.

A number of victims of trafficking in Oslo say that they were trained as nurses in the Ukraine but were unable to find work in the Ukraine and thus became vulnerable to trafficking. Destination countries need to respond creatively to such findings. The Norwegian Ministry of Local Government set

Conclusion

Trafficking is violence against women. The goal of anti-trafficking measures must be to re-establish victims' rights to equality, security, liberty, integrity and dignity. This requires:

- immediate amendment to Norway's draft legislation and to existing national guidelines in order to offer real protection and solutions in the form of an extended one-year temporary protection with access to application for permanent residency (including labour market and educational

integration)

- education of those working within the legal system to address trafficking victims' rights and needs as primary concerns rather than secondary interests
- the creation of a fund to strengthen financing of 'joined-up' prevention and protection polices
- inter-agency focus groups to address regular immigration alternatives for persons at risk of trafficking.

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2. www.un.org/womenwatch/daw/cedaw/cedaw.htm
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4. www.ohchr.org/english/law/protocoltraffic.htm
5. Pro Sentret, a national resource centre on all matters related to prostitution. www.prosentret.no

A safe return for victims of trafficking

by Eline Willemsen

The Dutch focus on the expulsion of undocumented migrants hinders the protection of victims of trafficking.

Although reliable figures on trafficking are hard to come by, the Dutch National Rapporteur on Trafficking estimates that each year some 3,500 women are trafficked into the sex industry in the Netherlands. However, only 400 of them were registered as victims of trafficking by the Dutch Foundation against Trafficking in Women (STV), of whom only five per cent pressed charges against their traffickers - partly because the Dutch Trafficking Victims Protection Act (known as the 'B9 regulation') offers them very little protection and security. If victims press charges, the B9 regulation grants them a temporary residence permit and entitlement to a social allowance, shelter, legal assistance and counselling. It also prescribes

charges, the risks of reprisals, either in the Netherlands or against family members back home, are high. After a legal case is concluded, and a victim is no longer of use to the Dutch authorities, she is repatriated. Only if she can prove that her life will be in danger if she returns home will the Dutch authorities - in some cases - grant a permanent residence permit.

Legalisation of prostitution in October 2001 has led to a shift from prostitution in sex clubs and window brothels towards street prostitution and escort services, further adding to the isolation and vulnerability of sex workers. Though detection of victims might have become more difficult, there is no evidence that the legalisation of prostitution has led to more trafficking.

For many women who have 'B9 status' the prospect of return is fraught with fear. It is not uncommon to find women who have had B9 status for up to seven years and who now feel more at home in the Netherlands than in their country of origin. Interviews with victims of trafficking found that the majority were very fearful of returning. Having put their traffickers behind

bars, they expect reprisals - for trafficking networks are international and family addresses are known by traffickers. There is also a risk that relatives may stigmatise them as prostitutes or attack, even murder, them for the 'dishonour' they are seen to have brought upon their families.

One of those interviewed said: "How can I think about a possible return, when I have no idea about the unpleasant surprises that destiny has in store for me back there? How can I go back when I don't know what to expect from the traffickers? How can I go back when I probably won't ever be accepted again into society?"¹

Interviewed women cite lawlessness, lack of safety and failure of the police or the authorities to protect them in their home country. Having left home in order to remit funds, it is often difficult, if not impossible, to return empty-handed. Employment prospects at home are often bleak, especially for women from ethnic minorities.

Empowering victims of trafficking

In order to help victims of trafficking who apply for residency, the Foundation against Trafficking in Women has developed a checklist for social workers and lawyers to ensure that all stay or return

the prospect of return is fraught with fear

a three-month reflection period but, regrettably, the police do not always respect this.

Women who, out of fear, choose not to support prosecutions, or whose information is insufficiently detailed for use by prosecutors, have no formal right to protection and are expelled immediately. For women who do decide to press

options are considered when processing applications to remain.

Bonded Labour in the Netherlands (BLinN), a joint initiative of Humanitas and Oxfam Novib, supports and empowers victims of trafficking, regardless of their status, in a variety of ways:

- capacity building: facilitating 'buddy contacts', a peer group for psychosocial counselling, temporary financial support and information dissemination
- individual support: finding appropriate alternatives for women through education and training
- advocacy at policy level for a human rights-based approach
- building alliances with other NGOs and establishing international networks to ensure successful return and a better future for the victims in their country of origin.

It is important that:

- repatriation should preferably be voluntary and only after an assessment of needs and risks has been done – to date, the Dutch government has not done this.
- trafficked women should not be regarded simply as 'illegal migrants': failure to acknowledge them as trafficked and exploited is a continued violation of their human rights.
- if victims return, NGOs should make contact with them prior to return and they should receive long-term assistance in the country of origin: currently, if help is provided, it is only for a few months.

In cooperation with NGOs such as the La Strada network² and international organisations such as the International Organization for Migration, BLinN assists many women from Eastern Europe and

West Africa. A new project aims to build international alliances and to identify partners in African countries to welcome and support returning victims of trafficking. In consultation with women who have B9 status in the Netherlands, BLinN will look at the rehabilitation needs of victims returning to Africa. It is hoped that this pilot project will help empower returning women, give them a new future and prevent them from being re-trafficked. If women are not provided with better opportunities in their home countries, they will remain an easy target for traffickers.

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Fighting human trafficking in southern Africa

by Saori Terada and Paul de Guchteneire

In southern Africa, trafficking of persons is a sensitive topic, frequently associated with irregular migration, prostitution or child labour. It is often approached in an ideological way without tackling its roots.

Little is known about the root causes and magnitude of the trafficking phenomenon in southern Africa. Available information suggests that both internal and cross-border forms of trafficking are prevalent. Children are predominantly trafficked within their country of origin. The International Organization for Migration has documented internal trafficking of children in South Africa and external trafficking from Mozambique, Angola and the Great Lakes region to South Africa, primarily to serve the needs of the highly sophisticated regional sex industry.¹

While the existing body of knowledge serves to raise public consciousness it is still not robust enough to support comprehensive programmes to address its mul-

tipole dimensions. Limited understanding about the relationship between migration and trafficking has not yet brought about any consensus on the underlying forces and their impact on the wellbeing of children and women. Without adequate explanation, policies tend to shift stance and direction. It is vital that the struggle against human trafficking adopts a different approach from that of trafficked goods – such as drugs and small arms.

Best practices to fight human trafficking require a holistic approach sensitive to issues of poverty, vulnerability, livelihoods, gender, class and ethnicity. UNESCO hopes to encourage a more results-oriented approach and promote dialogue between policymakers, grassroots organisations and scholars. Trafficked persons, returnees and their families must be involved in initiatives to protect their human rights. Reports on research to understand the socio-cultural, economic and legal factors leading to human trafficking in Lesotho,

Mozambique and South Africa will be published in 2007.

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Paul de Guchteneire (p.deguchteneire@unesco.org) is Chief of the UNESCO International Migration Section (www.unesco.org/shs/migration) which aims to promote respect for migrants' rights and to contribute to the peaceful integration of migrants in society.

See *Poverty, Gender and Human Trafficking: Rethinking Best Practices in Migration Management* by Than-Dam Truong, UNESCO, 2006: <http://unesdoc.unesco.org/images/0014/001432/143227e.pdf>

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Nigeria: human trafficking and migration

by Victoria Ijeoma Nwogu

Readmission agreements between Nigeria and migrant destination countries fail to comply with international standards for the protection of migrants' and trafficked persons' rights.

Longer life expectancy and low fertility rates in developed countries have spurred demand for migrant workers. With a huge and predominantly young population in search of a better life, Nigerians constitute the largest population in a growing flow of migrants from developing countries. However, reluctance by policy makers in receiving countries to recognise and facilitate immigration has fuelled human trafficking. The great majority of those who are trafficked are migrant workers who originally chose to leave home in search of an improved standard of living but – when faced by restrictions on immigration – are forced to turn to traffickers and smugglers.

A key dimension of trafficking-migration is the need for protection of the rights of migrant workers. Protection has potential to greatly reduce trafficking and empower migrants to use legal means to get themselves out of abusive/exploitative situations. If migrant workers are protected, they can go to authorities to claim non-payment of wages and report abusive employers without fear of immediate deportation, thus helping to stop trafficking and reduce workplace exploitation.

Human trafficking rife in Nigeria

UNICEF estimates that profits from human trafficking in West Africa are only exceeded by trade in guns and drugs. Nigeria's international trade in people can be seen as an extension of domestic trafficking, which is extensive. Poor families have traditionally sent boys and girls they have trouble feeding - or cannot provide a future for - to work in wealthier homes. Some-

times, this is benign – a form of fostering that gives the child a better start in life – but sometimes it is thinly-veiled slavery.

Children from Nigeria's southern and eastern states are trafficked to Nigerian cities and other West African countries for exploitation as domestic servants, street hawkers and forced labourers. Children from Togo and Benin are trafficked to Nigeria for forced labour. Over twelve million children are engaged in child labour in Nigeria. The Women's Consortium of Nigeria has found that a large percentage of these children are trafficked victims.¹ Most of Nigeria's 36 states have not endorsed the federal government's Child Rights Act.

The US State Department notes that Nigeria is a major source, transit and destination country for trafficked women and children.² Nigerians are trafficked to Europe, the Middle East and other countries in Africa for the purpose of sexual exploitation, forced labour and involuntary domestic servitude. Nigerian girls and women are trafficked for sexual exploitation to Europe – particularly Italy (where there may be 10,000 Nigerian prostitutes), Spain, Belgium and the Netherlands – and other African countries. They leave Nigeria via well-established trading routes, often by road across the Sahara. Girls start out thousands of dollars in debt to the traffickers and before departure may be taken to witch doctors and sworn to repay their debt and keep quiet. The witch doctors typically keep a lock of their hair or some toenail clippings and warn them that they

will die if they break their oath. Once they have paid off their debts, many are denounced to the authorities and sent penniless back to Nigeria. Trafficking-related corruption is a serious obstacle to Nigerian anti-trafficking efforts. Investigations into the alleged complicity of law enforcement officials in trafficking activities have not led to prosecutions.

Trafficking of persons between nations of the Economic Community of West African States (ECOWAS) is extensive. UNICEF reports that children are trafficked both in and out of Benin and Nigeria. A protocol allowing for the free movement of persons – as long as they have authorised documentation – between ECOWAS states has contributed to regional growth but has also encouraged the growth of transnational crimes, including trafficking. Corrupt and inept border officials allow people to cross frontiers without documentation and their movements go unrecorded.

profits from human trafficking in West Africa are only exceeded by trade in guns and drugs.

Bilateral agreements

Nigeria has endorsed most international instruments on human trafficking and has played a key role in ECOWAS anti-human trafficking initiatives.³ In addition Nigeria has entered into various bilateral agreements and memoranda of agreement on immigration matters with individual countries within and outside Africa that relate directly to the problems of human trafficking, forced labour and migration in general. In entering into these bilateral agreements Nigeria has overlooked the importance of negotiating better conditions of admittance and residence for its migrant labourers. The agreements focus mostly on procedures for repatriation of Nigerian nationals.

Among the countries with which Nigeria has signed agreements are:

Italy: In theory, Italy is committed to ensuring that trafficking victims who denounce their abusers and testify against them will be given the same scale and type of protection as those who speak out against the Mafia. In practice, there is vagueness and ambiguity. There has been a recent wave of repatriation of Nigerian girls (mostly victims of human trafficking) from Italy. The agreement does not make any specific mention of human trafficking, nor clarify the conditions under which victims of human trafficking are repatriated. Deported women have claimed they were denied the opportunity to take advantage of legal provisions. Many Nigerian women deported from Italy have harrowing tales to tell of the indignities they suffered. Detained in holding centres prior to being put on flights to Nigeria, they are not allowed to return to places of residence to collect clothes and others belongings they have acquired during their stay.

Spain: The agreement with Spain does refer to victims of human trafficking and provides guarantees that those repatriated may take with them any legally acquired personal belongings. The agreement specifies joint measures to combat illegal migration, facilitate repatriation, exchange information on trafficking networks and establish skills acquisition centres in Nigeria for those who have been repatriated and mechanisms for legal access of Nigerian workers to Spain. The extent of actual implementation of this agreement is still vague.

UK: A memorandum of understanding refers to the joint need to combat human trafficking and address the poverty which drives Nigerians to entrust their fate to traffickers. Recognising the need for greater sensitivity of UK immigration and law enforcement officers, it is less condescending than the other agreements - which all assume a one-way flow of technical assistance with Nigeria always at the receiving end. It calls for common strategies to

ensure the protection of trafficked persons and technical and institutional capacity building to prevent trafficking, protect victims and prosecute offenders. It also refers to programmes to provide counselling for the physical, psychological and social recovery of trafficking victims. In reality, however, the human rights standards are hardly applied during the process of repatriation of Nigerians trafficked to the UK.

Benin: Concern about smuggling, cross-border crimes, human and drug trafficking and illegal immigration led Nigeria and neighbour state Benin to sign an agreement in 2003 to work together to identify, investigate and prosecute agents and traffickers and return victims to their country of origin. Both governments have been preoccupied with repatriation and neglected the human rights of trafficked persons. A notorious case involved a large group of Beninese children found working in illegal stone quarries in Ogun State in 2003 who were repatriated without proper investigation of their circumstances, wishes and best interests. Some had been trafficked to Nigeria at such a young age they had lost all contact with their homes.

Recommendations

- Nigeria should ratify all the necessary ILO Conventions for the protection of the rights of migrants and their family members.
- The ECOWAS Protocol on Free Movement of Persons should be strengthened to prevent it from serving as a stumbling block to the protection of migrants' rights and prevention of human trafficking.
- Nigeria should negotiate bilateral agreements to protect Nigerian migrants and regularly review implementation of the agreements.
- Nigerian consular offices in destination countries should provide information to migrants about their rights and how to seek help.
- Governments of destination countries need to enact and enforce laws which criminalise

and punish forced labour and regularise the status of immigrants.

- Governments of destination countries should honour commitments made in bilateral agreements to offer capacity-building and institutional support to Nigerian government agencies charged with tackling the problem of human trafficking.
- Governments of destination countries should guarantee the humane treatment of victims of human trafficking during repatriation, specifically allowing them to leave with their personal belongings.
- Labour and social welfare inspectors in destination countries should be encouraged to take action when they find extreme working conditions and immigrants in urgent need of medical care.
- Law enforcement officers in destination countries handling smuggling, labour abuse and sexual abuse cases should be trained to identify trafficking and to develop more positive attitudes towards victims of human trafficking.

For many Nigerians, migration holds the key to better economic opportunities but a large number of those who migrate face abusive and exploitative conditions without effective access to legal protection. Migrant women are particularly vulnerable.

Destination countries must do more to guarantee the rights of migrants in conformity with international standards. In Nigeria, it is vital to increase public understanding of the rights of women and children and the consequences of trafficking.

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Brazilian trafficking: soap opera versus reality

by Luciana Campello R Almeida, Luiza Helena Leite and Frans Nederstigt

More than a hundred years after slavery was formally abolished in Brazil, a modern-day version thrives.

The trafficking of women, especially for commercial sexual exploitation, both inside Brazil and to Europe, the United States, Japan and elsewhere, seems highly organised. In addition, many poor Brazilians are 'trafficked' into forced labour within Brazil, mostly to remote agricultural estates in such vast sparsely populated interior provinces as Pará and Mato Grosso.

Taken far from their homes in the impoverished north-east, enslaved labourers are told on arrival that they owe money for their transport, accommodation, food and equipment and that they must work to pay back the debt. This debt, the inaccessibility of the huge farms and frequent threats and armed violence from employers trap the workers in an acute form of debt bondage akin to slavery.

Brazil's dramatic level of social inequality and lack of work opportunities are the push factors leading Brazilians to leave their homes and their country. Once abroad, Brazilian girls, young women and an increasing number of transvestites often find themselves in situations of human rights violations involving debt bondage, sexual abuse and other forms of violence, limiting basic liberties and the right to freedom of movement.

The issues of international human trafficking and smuggling have been aired on national television for the first time via enormously popular and influential soap operas. A recent one followed the fortunes of a woman with dreams of becoming a ballet dancer. Answering an advertisement to work in Greece, she soon finds her passport is taken away and she is forced into prostitution. In another soap opera the female lead dreams

of life in the US and decides to pay a coyote (people smuggler) to help her get there. Unrealistically romantic it may have been but the programme stirred national debates about human smuggling and alerted newspapers to the number of Brazilians who die on the Mexican-US border in pursuit of their dream. Unfortunately, the distinctions between migration (through illegal means), human smuggling and human trafficking are often not made by the media, leading in turn to unclear political debate and strategies to confront those issues.

Government starts taking action

In reference to the confrontation of slavery-like practices within Brazil, the labour ministry's mobile anti-slavery teams of the government of President Luiz Inácio Lula da Silva managed to free thousands of forced labourers. In 2003 at least 5,100 people were freed. According to the International Labour Organisation, Brazil has now become a model for other countries to follow. A National Action Plan against forced labour brings together all anti-forced labour initiatives to ensure coordination (though unfortunately this does not yet encompass anti-trafficking).

The government has also started dealing with human trafficking on a number of fronts and involving a range of ministries. In 2002 the Ministry of Justice and the United Nations Office on Drugs and Crime initiated a partnership to develop a project to combat international trafficking in women for sexual exploitation purposes. It will be renewed this year. Brazilian police have teamed up with foreign agencies to conduct sting opera-

tions which have disrupted several networks trafficking women to Europe. Posters and leaflets are being distributed at border crossings and airports and the government is funding capacity building and campaigns to prevent would-be victims from being seduced into sex slavery.

However, policymakers need to note that:

- Despite recent changes, Brazilian legislation - which now explicitly defines internal and external trafficking of both men and women, adults and minors - only mentions trafficking for the purpose of prostitution.
- Official and media attention has ignored the difference between forced prostitution and sexual exploitation on the one hand and voluntary prostitution on the other: there is a risk that sex workers may be persecuted (or their work criminalised) in the guise of combating human trafficking.
- Foreign governments and NGOs may be using the combating of human trafficking to pursue their own agendas: the US, for example, has recently pressured Mexico to require Brazilians to obtain a visa to enter Mexico.
- When there is a lack of possibilities to migrate legally - and an excess of push factors - people in vulnerable situations will be more likely fall prey to human traffickers.

Anti-trafficking measures should focus on the definition as used in the Palermo Protocol. Legally effective in Brazil since February 2004, this international instrument acknowledges that exploitation is the key element in the concept of human trafficking, including - at a minimum - the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Despite the recent changes in the Brazilian Penal Code, the legal concept of human trafficking still leaves much to be desired. Although the Palermo Protocol had already entered into force in Brazil before these changes were introduced, the new Brazilian definitions of international and internal human trafficking do not focus on exploitation but instead on prostitution. Legal changes do not encompass other forms of human trafficking, such as forced labour – which is subject to separate

legislation. Legislation on human trafficking is also still deficient in protecting trafficked people from exploitation and stigma and lacks clarity on the identification, assistance and reintegration of victims.

The recently implemented good practices on combating forced labour within Brazil, as well as the ratification of the Palermo Protocol, should prompt Brazilian politicians and the media to clarify their concepts and promote joint action based on the Palermo Protocol's

broader definition of human trafficking.

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Ricky Martin Foundation campaigns to end child trafficking

The foundation set up by Puerto Rican superstar, Ricky Martin, is working to raise awareness on ways to prevent child trafficking and to assist its victims.

More than half of trafficking victims worldwide are children, forced into pornography, prostitution and labour servitude. Human trafficking is an unscrupulous market that generates around \$10 billion annually. "In order to combat one of the cruellest problems in the world today, we must create alliances," says Ricky Martin, UNICEF Goodwill Ambassador¹ and twice Grammy Winner.

In 2004 the Foundation established 'People for Children' – a global anti-child trafficking initiative to raise public awareness and influence public policy. A year into the campaign, the Foundation and the US Department of Health and Human Services (HHS)² worked together to run a public awareness campaign, in Spanish and English, promoting a free phone service for victims of human trafficking in the US and Puerto Rico. This offers support for victims and enables members of the public to provide information against traffickers. In March 2006 the Foundation, International Organization for Migration (IOM) Colombia and Colombia's Inter-Institutional Committee against Trafficking in Persons launched a new campaign, 'Don't Let Anyone Shatter Your Dreams'.

This encourages the media to raise public awareness and provides advice hotlines. A similar campaign is being run in Ecuador. The hotlines have received more than 14,800 calls from people seeking advice or information or reporting a case of human trafficking.

The Foundation is also working with Microsoft on a campaign promoting child internet safety, featuring Ricky Martin in two educational videos in English, Spanish and Portuguese. As Angel Saltos, President of the Foundation, explains: "The videos will initially serve teachers, parents and children across Latin America but our commitment is global." In 2006 the Foundation is launching a new campaign, called 'Call and Live!', in collaboration with the InterAmerican Development Bank and IOM to undertake awareness raising and protection in several countries in the Americas.

by Bibiana Ferraiuoli Suárez

The Foundation has seen some promising results of its advocacy work. In late 2005 Ricky Martin and CNN International Reporter Christiane Amanpour denounced trafficking on the US prime-time show, Oprah. Viewers were exhorted to urge their congressional representatives to prioritise eradication of child trafficking. Three months later the US passed a new law, the Trafficking Victims Protection Reauthorization Act.

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1. www.unicef.org/protection/index_23840.html
2. www.hhs.gov

Ricky Martin, Carolina Aranha (General Manager, Microsoft-Brazil) and Angel Saltos (President, Ricky Martin Foundation) announce partnership to combat child safety online in Latin America, December 2005.



Ricky Martin Foundation

Human trafficking in Lebanon

by Sigma Huda

The UN Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, especially Women and Children, recently visited Lebanon.

Lebanon has a significant problem of trafficking in persons that particularly affects foreign women recruited as domestic workers and foreign women in the sex industry. The trafficking of Lebanese and foreign children into street begging and sexual exploitation is a quantitatively smaller but no less serious problem.

Large numbers of migrant women come to Lebanon to serve as domestic workers in private households. NGOs estimate that there are between 120,000 and 200,000 domestic migrant workers in a country of only four million people. Sri Lankan women are the largest group, followed by Filipinas and Ethiopians. The government fails to exercise due diligence in protecting them from exploitation and abuse:

- The authorities confiscate passports on arrival and hand them to employers who retain them to control their 'investment' of \$1,000-2,000 for the agency charge and the airfare.
- Without passports, women are liable to arrest, criminal conviction as an undocumented migrant and deportation.
- Women generally sign a contract prior to departure for Lebanon but on arrival find themselves forced to sign another contract for a significantly lower salary; only this contract has legal validity in Lebanon even though it was concluded in a situation characterised by deception and duress.
- Domestic workers are not allowed to change employers during their stay.
- They are excluded from the protection of the country's Labour Code and its regulations on working hours and holiday entitlements.
- Officials condone restrictions on movement and turn a blind

eye to frequent beatings of maids.

- Hardly any attempts to prosecute employers for deprivation of liberty, withholding of wages or even sexual assault result in convictions.
- Abusive and exploitative employers often succeed in making unfounded allegations of theft against runaway workers who, after being convicted for theft and illegal presence in Lebanon, may have to wait months for an NGO or fellow national to help them return home.

Thousands of women from the Ukraine, Russia, Belarus and Moldova provide sexual services in nightclubs catering to affluent Lebanese and Gulf tourists. Many have been made to believe that they would be expected to perform striptease dances but find on arrival in Lebanon they are expected to have sexual relations with customers. The visa system designating the women as 'artists' facilitates the deception. They are often kept in the sex industry through a system of debt bondage. Many women do not receive any income until the impresario has recovered his actual or supposed costs of recruitment and transfer. After six months the women are rotated to a nightclub owner in Syria or another Mediterranean country and the debt game starts again. Women in the unregulated sex sector – Sudanese or Iraqis escaping conflict or domestic workers who have fled abusive employment and have no other option – are deprived of any state protection and are extremely vulnerable to exploitation.

Street children and other children from marginalised backgrounds are also exploited as beggars by organised groups of adult handlers who take a large share of their income. Having been moved

out of a zone of relative protection into an area of vulnerability they must be considered to be internally trafficked children.

Law enforcement officials and civil servants lack a clear understanding of the concept of human trafficking, failing to distinguish it from the cross-border smuggling of migrants. They are unaware that persons can be trafficked despite having valid visas.

Lebanon's invitation to me to undertake a mission, together with recent indications of high-level government recognition of the need to pay attention to trafficking in persons, are encouraging. However, the government's commitment to address the trafficking situation has yet to translate into the necessary legal and institutional reforms. My key recommendations are that:

- the government should enhance national and international cooperation, adopt legal reforms to criminalise all forms of trafficking, strengthen labour laws and identify, protect and safely repatriate trafficked persons
- sending countries should offer effective consular protection to their nationals in Lebanon, preferably on the basis of bilateral agreements on migration concluded with Lebanon
- civil society, human rights organisations, the media, trade unions and the international community need to challenge the discriminatory attitudes which contribute to exploitation of migrant workers, foreign women in the sex industry and street children.

Since October 2004 Sigma Huda, a Bangladeshi lawyer, has been the UN Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, especially Women and Children. Email: sigmahuda@gmail.com The report of her mission to Lebanon was published in February 2006 and is online at: www.ohchr.org/english/issues/trafficking/visits.htm

Ethiopian women increasingly trafficked to Yemen

by Marina de Regt

Few know about the large numbers of Ethiopian women who migrate to the Middle East to take up domestic work.

“**M**ay what happened to me not happen to you,” begins a letter sent to *Gebetta*, a magazine for Ethiopians in Yemen. Many women have written to *Gebetta* with testimony of how they were trafficked to Yemen to be employed as domestic workers. They speak of deception, isolation, maltreatment, heavy workloads, unpaid salaries, confiscated passports and physical and psychological abuse. Many regret ever deciding to leave and advise other women not to follow in their footsteps. But the flow of young Ethiopian women desperate to improve their lives and those of their families continues to grow.

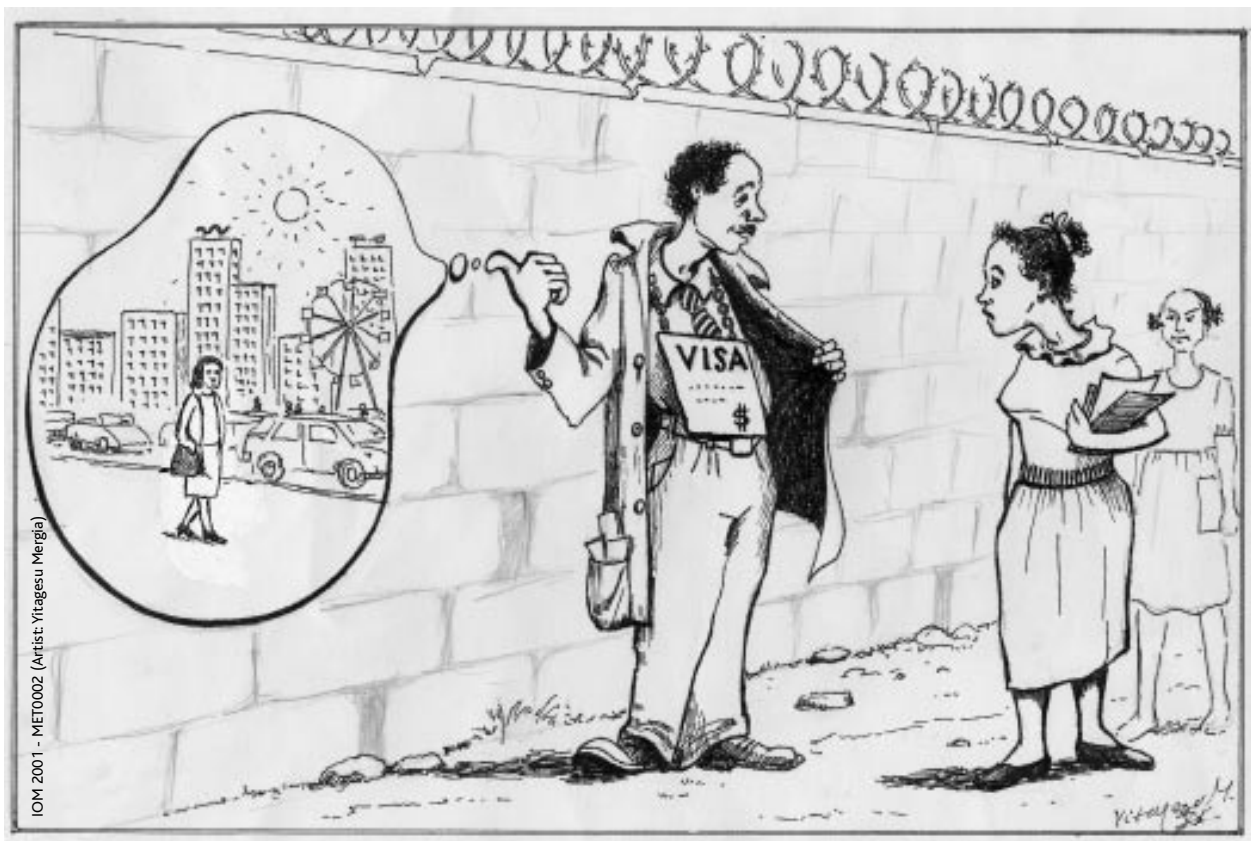
Until the early 1990s few Ethiopians – except those of Muslim/Arab origin – were interested in going to the Middle East. After the overthrow of the authoritarian regime of Mengistu Haile Meriam

in 1991, Ethiopians were given the right to free movement. Lebanon, Saudi Arabia and the Gulf States have subsequently become major destinations for Ethiopian women in search of a better future.

Even a relatively poor country such as Yemen attracts many female Ethiopian migrants who take up paid domestic work. Changing family structures, the increased educational levels of Yemeni women, the growing number of employed women and changing attitudes towards domestic work explain the increased demand for domestic labour in Yemen. Socio-cultural constraints prevent Yemeni women from working as domestics – so migrant women meet the demand. Wealthier Yemenis prefer to employ Asian women but middle-class families predominantly employ Ethiopians because they are available and

seen as good domestic workers. Somali refugee women also work as domestics but, unlike Ethiopians, do not generally ‘live in’.

Many Ethiopian women come to Yemen on tourist visas and find work via relatives and friends. Those illegally recruited by agents and employed on a contract basis are particularly vulnerable. All of the many recruitment agencies that arrange Ethiopian women’s employment as domestic workers to the Middle East are non-registered and can be considered traffickers. Women are approached by the traffickers themselves or are introduced to traffickers through friends, neighbours and relatives. Trafficked women themselves are sometimes even involved in recruiting other migrants. Traffickers are often either of mixed descent – having a Yemeni father and an Ethiopian mother – or are Yemenis born or brought up in Ethiopia. The Yemeni authorities lack the capacity to control the



IOM 2001 - MET0002 (Artist: Yitagesu Mergia)

Poster by Ethiopian artist, Yitagesu Mergia, for an IOM counter-trafficking information campaign.

activities of illegal recruitment agents and it is often the case that traffickers are able to use influence with people in power to ensure that any legal actions against them are halted.

Debt bondage

Women who have borrowed money from the agent or broker may end up in debt bondage, required to work long periods before they are able to pay off their debts. Many women have great difficulty leaving their employers and agents and physical abuse is common. Employers and agents often confiscate the women's passports and forbid them to leave their place of employment unaccompanied. This makes it impossible for women to look for better jobs, to escape or to have contact with other Ethiopians. Trafficked women may, however, become aware of their rights and decide to run away and find better jobs. Some families therefore prefer to employ young rural Ethiopian women as they are thought to be more malleable and less likely to leave. As a result, traffickers in Ethiopia are purposely recruiting young uneducated women from poor families in rural areas, convincing them with stories about high salaries and educational opportunities.

there are enormous challenges to be overcome in order to protect trafficked women and migrant and refugee domestic workers.

With assistance from the International Organization for Migration, the Ethiopian authorities have made an effort to control trafficking of Ethiopian women to the Middle East. Since July 2004 women who want to migrate to the Middle East can only do so when their migration and employment are organised via a legal agent, recognised by the Ethiopian Ministry of Labour and Social Affairs. The agent has to make sure that the employer signs a contract, pays the ticket and health insurance for the domestic worker, and pays her a monthly salary of at least \$100. The agent is responsible for

solving any disputes between the women and their employers and finding alternative employment. However, the bureaucratic procedures involved in legal migration are so time-consuming that many prefer to use traffickers, despite the major additional costs. Ethiopian embassies in receiving countries often lack the capacity to control the activities of traffickers. As a result, illegal agents continue their business without regulation.

Domestic workers who run away from their employers find it relatively easy to integrate into the growing Ethiopian community in Yemen and often move in with other Ethiopian women and find work as freelance domestic servants. Freelancers earn higher salaries but are responsible for their own living costs and work and residence permits. Many such women continue to live in Yemen without documentation or permission. While undocumented migrant domestic workers in Saudi Arabia, the Gulf States and Lebanon run the risk of being arrested and deported, government control in Yemen has been weaker.

Yemen is the only country in the Arabian Peninsula that has ratified the 1951 Refugee Convention and where Somalis are recognised as refugees.¹ Controls are tightening, however, as Yemen responds to the increasing number of people illegally crossing the Red Sea to Yemen – a two-day journey for which people pay around \$50 – and to pressure from the US to enforce stricter border controls to prevent terrorism.

The Yemeni government regularly announces that it will arrest and deport everyone who does not have a residence permit. Non-legal residents will not be allowed to leave Yemen without paying a penalty for the time that they did not have a residence permit. This means that many Ethiopian women who work as freelancers are unable to return to Ethiopia, even

temporarily. So while the mobility of trafficked contract workers may be restricted because they are not allowed to leave their employer's house unaccompanied, the mobility of freelancers is restricted because they are in most cases undocumented and therefore unable to leave Yemen.

Supporting migrant domestic workers in Yemen

In Yemen there are no official organisations that defend the rights of migrant domestic workers. Their embassies in Sana'a are the only place to which they can turn. The embassies, however, are often unable to effectively solve their problems.

A support group for migrant and refugee domestic workers in Yemen was established in March 2005. Its main objectives are:

- networking and research to gather and share information
- awareness raising on and empowerment of domestic workers
- lobbying and advocacy to put the issue on the policy agenda

The network is but the first step. In Yemen, as elsewhere in the region, there are enormous challenges to be overcome in order to provide national systems to protect trafficked women and migrant and refugee domestic workers. Fortunately, international organisations such as the International Organization for Migration and the International Labour Organization² take the issue very serious. Together a change can be made.

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1. See Nesya H B Hughes (2003) 'Yemen and refugees: progressive attitudes', FMR 16 www.fmreview.org/FMRpdfs/FMR16/fmr16.12.pdf

2. In 2005 the International Labour Organization financed a mapping study on migrant domestic workers in Yemen, which will hopefully lead to concrete actions.

Trafficking: immigration or human rights concern?

by Beth Herzfeld, Sarah Green, Sarah Epstein and Christine Beddoe

Leading UK agencies have urged the UK government to do more to protect the victims of trafficking.

Hundreds of women, children and men are trafficked from Africa, Asia and eastern Europe to the UK each year, lured into sexual exploitation and for other forms of forced labour, including domestic slavery, agricultural work, packing and construction. Despite the significance of this problem, trafficked people have no guaranteed protection or support in the UK.

One recent case clearly illustrates this. In September 2005, UK police raided the Cuddles 'massage parlour' in Birmingham. They found 19 women from Lithuania, Albania, Moldova, Romania and Thailand, whom they believed to be victims of human trafficking. The women's documents had been confiscated and they were locked in a house by day and brought to Cuddles at night. Cuddles was secured with an electric fence and police found a sawn-off shotgun and batons on the premises.

Even though the police suspected the women inside were trafficked, their treatment of the women differed depending on whether they were from the European Union or not, reflecting the UK's tendency to approach trafficking from the immigration angle rather than as a crime committed against a person. Those who were non-EU citizens were held in Yarlswood Immigration Removal Centre and the EU citizens were released. Until the Home Office was challenged on this issue, none of the women was offered the opportunity to receive medical help, appropriate legal advice or safe accommodation. Soon after, the Home Office announced that six of the women would be removed the following day - wholly inappropriate treatment for suspected victims of traffick-

ing - action which was only halted after pressure.

Concerns over the UK government's treatment of trafficked people are heightened by the fact that it has not signed up to any international standards that would provide at least minimum levels of protection and support to trafficked people. It has not signed the EU Council Directive on short-term residence permits, which stipulates that trafficked people should be informed of "the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to co-operate with the competent authorities." Nor has it signed up to the further-reaching Council of Europe's European Convention on Action Against Trafficking in Human Beings¹, the first international standard which provides guaranteed minimum standards of protection for trafficked people, including a reflection period of at least 30 days to stay in the country to receive emergency medical assistance, legal advice and safe shelter.

No reflection period in the UK

Without a reflection period, trafficked adults from non-EU countries face immediate deportation. This is neither in the interests of the trafficked person, who may be re-trafficked, or of the police, who will lose the opportunity to gather valuable information and possible witness testimony, which would help them combat trafficking in the long term. The reflection period is also crucial to being able to evaluate whether a trafficked person's life is in danger if deported

or whether they may be subjected to rape, torture or some other form of punishment. Traffickers frequently punish the individual for cooperating with the authorities, as a warning to others, as a punishment for getting caught, or for not paying back the money they owe.

Norway, the Netherlands and Belgium all have a reflection period for people suspected of having been trafficked, which has helped increase the number of prosecutions against traffickers in these countries. Children's charities agree that the best interest of the child should always be the guiding principle in relation to safeguarding trafficked children, including the provision of leave to remain and reflection periods.

Limited support

The UK provides only limited support for women trafficked into prostitution. The Home Office funds the London-based Poppy Project² but only for 25 adult places, with access provided under narrow criteria, which includes their already having been prostituted in the country and having agreed to cooperate with the authorities. The need for spaces has often exceeded availability, and the criteria exclude many trafficked women who need help. There remains no protection, care or support for children trafficked into the UK despite the continued call for 24-hour safe house care. There is also no specific assistance for people trafficked into forced labour in the UK.

In addition, there is no provision for specialist services to help trafficked children. These children continue to go missing from under-resourced local authority accommodation whilst many others are exploited for their labour and never come to the attention

of the authorities. Child protection authorities have a poor record in information sharing and the specialist knowledge required to both identify and combat child trafficking.

In January 2006 the UK government launched a public consultation on its national action plan against human trafficking. As part of this process, four leading charities – Amnesty International, Anti-Slavery International, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK) and UNICEF UK – have urged the government to:

- join the 25 nations which have already signed the European Convention on Action Against Trafficking in Human Beings
- sign the UN Convention on the Protection of the Rights of All Migrant Workers and Their Families³, the most comprehensive international standard protecting migrants' rights
- ensure that the proposed national action plan includes a commitment to: a) a guaranteed minimum reflection period for all trafficked people; b) specialist support and medical assistance; c) specialist safe houses for child and adult victims of trafficking; and d) the

right to a temporary residence permit if deemed at risk.

For more information, contact:
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Sarah Green, Amnesty International UK (www.amnesty.org.uk); sarah.green@amnesty.org.uk;
Sarah Epstein, UNICEF UK (www.unicef.org.uk); sarahe@unicef.org.uk or **Christine Beddoe, ECPAT UK** (www.ecpat.org.uk); ecpatuk@antislavery.org.

1. www.coe.int/T/E/human_rights/trafficking
2. www.poppyproject.org
3. www.unhchr.ch/html/menu3/b/m_mwctoc.htm

Discarded/washed up clothing on a common migration and trafficking route between North Africa and Spain.

Do you have your passport?

In February 2006 the UK police and travel industry launched a joint campaign against sex trafficking – Operation Pentameter – in which police patrol major ports, handing out information and contact numbers for people who suspect they are being trafficked. It will be supported by a poster campaign asking questions – in a number of languages – such as: Do you have your passport? Do you know who you are meeting? Did you arrange your own travel?

Operation Pentameter is one of a number of measures in the UK to address trafficking for sexual exploitation. By contrast, even though trafficking people to the UK for forced labour is a criminal offence and a significant problem, there are no official measures being taken to help or protect those – including children – who have been trafficked in this way.



Combating trafficking in the UK

by Wendy Young and Diana Quick

While the full extent of trafficking to the UK is not known, combating it has become a national priority in order to protect the victims, prosecute traffickers and raise public awareness to prevent it happening. Policy-makers must realise that trafficking cannot be addressed through the lens of migration control.

Because migration is such a controversial issue in the UK, the approach to trafficking has at times overemphasised law enforcement at the expense of the protection needs of the victim. The UK has tended to address trafficking as an issue of migration control rather than as a human rights problem. This has led to the deportation of trafficking victims, especially women, without adequate consideration of their safety and well-being. The threat of deportation has jeopardised the effective prosecution of traffickers, as it affects the quality and availability of testimony from victims. Tightening restrictions on the asylum system which threaten the ability of refugees to access protection have pandered to popular anti-asylum sentiments without adequately considering the obligation of the UK under international, regional and domestic law to protect those with a well-founded fear of persecution.

The UK government is making efforts to legislate against trafficking. The Nationality, Immigration and Asylum Act 2002 created for the first time an offence of trafficking – but only in cases of prostitution. The Sexual Offences Act 2003 incorporated this provision and expanded it to address other forms of sexual exploitation. It also criminalised the commercial sexual exploitation of children, the penalty for which can be life imprisonment. The Asylum and Immigration Act 2004 extended the definition of trafficking under UK law beyond sexual abuses to other forms of abuses, such as forced labour and domestic servitude.

However, there are concerns that implementation of anti-traffic-

ing laws may be hindered by the increasing restrictions on access to the UK asylum system. Ironically, the more states make it difficult for asylum seekers to access their territories, the more likely it is that individuals may be at risk of trafficking, as those desperate to leave their home countries will become susceptible to the force, fraud and coercion commonly employed by traffickers.

Right to protection

UK efforts to combat trafficking have not been unified into an effective, comprehensive strategy that prevents, deters and punishes trafficking and has the rights and protection of trafficked persons as its centrepiece. Only a few trafficked persons have been granted refugee status or humanitarian protection in the UK on the basis of their trafficking experience – and then, in almost all cases, only when they successfully appealed. The lack of an explicit form of protection for trafficked persons under UK law, combined with the barriers to asylum and humanitarian protection, means that trafficked persons remain vulnerable to deportation. There have been reports of trafficked persons being returned to their home countries before they even had a chance to apply for asylum or humanitarian protection.

Asylum is critical to the protection of trafficked persons. They may have been trafficked because they were attempting to escape a situation of armed conflict or human rights abuses that would qualify them for refugee status, regardless of their trafficking experience.

The fact that they were trafficked could render them eligible for asylum if they would be at risk of being re-trafficked if returned and if their home country is unable or unwilling to help them.

The prosecution of traffickers apprehended by the UK authorities has brought mixed results. Insufficient protection is offered to trafficked persons who cooperate with prosecutors and there is no guarantee of anonymity when a victim testifies in court.

Unlike the US, the Netherlands, Italy and certain other destination countries, the UK has not adopted legal mechanisms to ensure the protection of trafficking victims, either on a short- or long-term basis. There is no provision for a reflection period during which the victim can recover from her trafficking experience and make decisions about the future, nor is there any specific relief from deportation tailored to trafficking victims that would allow them to remain temporarily or permanently in the UK if return is not viable. Instead, a trafficked person must apply for asylum which, if granted, allows the person to remain in the UK permanently, or humanitarian protection or discretionary leave which are provided for defined periods.

Asylum is critical to the protection of trafficked persons

Social service providers and law enforcement agencies are concerned that children are trafficked to the UK in order for adults to exploit them to access welfare benefits, claiming them as their own children. These children reportedly are often severely neglected while being thus used. They may be denied education and health care and are vulnerable to other forms of exploitation, such as forced domestic work. There is no programme in the UK designed to address the specific protection

needs of trafficked children. There are serious doubts that mainstream child welfare services in the UK can fill the void.

The UK maintains a 'white list' of countries it believes respect human rights. NGOs working with trafficked persons point out that several of the countries on the white list are also source countries in the trafficking context. A Romanian woman trafficked to the UK was told to return home to appeal her denial of asylum because Romania is on the white list. There have also been a number of cases of re-trafficked women from Albania – also on the list.

Trafficking victims may have to defend themselves against criminal charges for having used false documents to enter the UK. This approach ignores the reality that traffickers often force their victims to use false documentation in order to avoid detection at ports of entry. UK law does not provide a waiver that would exempt trafficked persons from document fraud charges. This provision may not only undermine the ability of trafficked persons to gain asylum but may also inhibit their willingness to present themselves to authorities.

The burden of offering protection and assistance should not fall solely to local authorities but be centrally funded.

A safe house programme funded by the UK Home Office has restrictive criteria. To obtain access to mental and physical health services, education and skills training provided by the Poppy Project, women must prove they have been trafficked for sex work – despite the fact that UK law has now acknowledged other forms of trafficking as a crime – and have engaged in prostitution in the UK. After four weeks, continued support is conditional on cooperating with prosecutions.

Trafficking will not end, and will probably continue to increase, unless effective strategies are developed that prevent communities

at risk from becoming vulnerable, that protect and assist trafficking victims so that they are safe from retaliation from their traffickers and are not at risk of re-trafficking or other abuses, and that bring the full force of the law against traffickers to send a strong message that those who engage in this crime will be fully prosecuted.

Recommendations

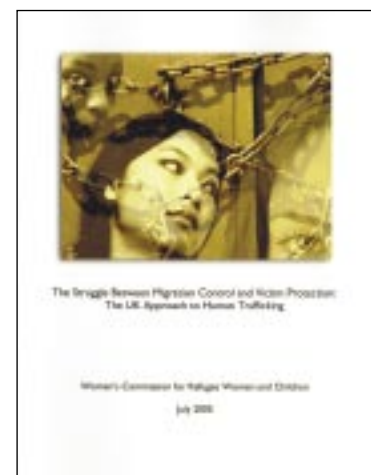
The Women's Commission recommends that:

- Efforts to combat trafficking should centre on the rights and protection of the victim.
- Trafficked persons should never be penalised for the use of false documents and trafficked children never be forced to participate in legal proceedings against their traffickers.
- Protection for trafficked persons should be provided if there are indications that they may be at risk of re-trafficking if returned to their home country, or if they have a well-founded fear of persecution for reasons that meet the refugee definition.
- A short-term reflection period must be provided to give trafficked persons an opportunity to decide what they wish to do next, including whether to cooperate with the authorities and whether to seek asylum in the UK.
- Agencies that may have contact with traffickers or trafficked persons should develop effective information sharing and work on a national strategy to combat trafficking.
- If the UK persists in the development of a safe country list, it must at a minimum allow women and children from such countries full consideration of claims based on gender or age persecution.
- The UK should create short- and long-term residence permits explicitly for the protection of trafficked persons who cannot return safely to their home countries.

- The burden of offering protection and assistance should not fall solely to local authorities but be centrally funded.
- Law enforcement officials must be supported to enhance their capabilities to identify trafficked persons and prosecute traffickers.
- Assets seized from traffickers should be used to support victim protection and assistance programmes.

At the time of writing Wendy Young was director of external relations at the Women's Commission for Refugee Women and Children. Diana Quick is director of communications at the Commission (www.womenscommission.org). Email: diana@womenscommission.org.

Their 2005 report, *The Struggle Between Migration Control and Victim Protection: The UK Approach to Human Trafficking*, is online at www.womenscommission.org/pdf/UK_Trafficking.pdf



Human smuggling and trafficking resources

See Forced Migration Online's online resource summary at: www.forcedmigration.org/browse/thematic/humanst.htm and research guide at: www.forcedmigration.org/guides/fmo011/

UK victims of trafficking

by Bob Burgoyne and Claire Darwin

Analysis of court cases shows how hard it is for victims of trafficking to win the right to remain in the UK. Case law is inconsistent and more research and data collection are urgently needed.

UK legislation is improving capacity to prosecute traffickers but there has been no enhancement of protection for the victims. The Home Office argues that the current ad hoc system for providing temporary protection while offences are being investigated is adequate. In fact, protection is only likely to be granted in high profile cases and only to those who are useful witnesses to trafficking crimes. There are no procedures in place and no right of appeal against a refusal to grant protection. Consequently, most victims of trafficking have no option but to make an application for asylum or 'humanitarian protection'.¹

We have analysed ten court cases used to serve as precedents for subsequent cases to identify the bases on which an applicant may remain in the UK and the kind of evidence trafficking victims are required to present to win their cases.

Case law is inconsistent on the relevance of membership of a 'social group' (an important category in the 1951 Refugee Convention). In the case of a woman from Kosovo it was accepted that she belonged to a particular social group of "women forced into prostitution against their will". It was also agreed that an Albanian woman was a member of a social group from a region where customary practice allows the kidnapping of young women for brides. However, the Asylum and Immigration tribunal judged that no "women in Tajikistan, or any subgroup of them ... can constitute a particular social group".

Of the cases examined, no appeals were allowed on the basis of a risk of re-trafficking or on the basis

that victims may be at risk of revenge by former traffickers. In the case of a Nigerian victim, although it was accepted that as a teenager she might be at risk of re-trafficking if returned to her home area, it was found she could be relocated elsewhere in Nigeria. The case of a woman from Tajikistan was dismissed because it was considered that Tajik law was sufficiently tough and because, at the age of 28, she was over the age usually targeted by traffickers. In the case of a young Kosovar it was decided that she was not at risk of re-trafficking because of local legislation and the willingness of the UN Interim Administration in Kosovo to investigate such cases.

Some victims of trafficking are forced to pay their traffickers the price of travel to the UK, even if this journey was forced upon them by others. If a victim of trafficking is able to escape the trafficker, that debt may remain unpaid. The young Nigerian victim escaped her traffickers but was told she owed them \$40,000. As with the issue of possible re-trafficking, this argument was dismissed on the grounds that she could hide from her trafficker by moving elsewhere in Nigeria.

When there does not appear to be any evidence one way or another on the risks to trafficking victims in certain countries, the tribunal assumes that no such risks exist. This is unfortunate, particularly in relation to countries where the lack of an independent press can mean that objective reports are hard to come by. Where evidence does exist the tribunal tends to be persuaded by 'official' reports (such as those of the US State Department) and sceptical of claims

to the contrary even by nationals of the country concerned. Reporting about the scale and forms of human trafficking is scarce and there is an urgent need for further research and systematic data collection.

It is a standard objection to an asylum application that the applicant would be safe if they simply moved elsewhere in their country of origin. Such a relocation, however, should not be "unduly harsh". In trafficking cases, the characteristics of the particular country of origin is critical. A country as large as Nigeria may well afford the opportunity for internal relocation whereas a small country such as Albania may not.

a new mechanism to protect the victims of trafficking is urgently needed

In the absence of specific measures to access temporary protection in the UK, trafficking victims have no choice except to apply for asylum. However, the chances of a trafficking victim being able to prove that they would qualify for asylum or humanitarian protection under UK law are very limited. If the UK is serious about confronting trafficking, a new mechanism (outside the asylum system) to protect the victims of trafficking is urgently needed. It remains to be seen whether a recently announced public consultation² will lead to one.

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1. Formerly known as 'exceptional leave to remain', this allows temporary stay in the UK for applicants whose safety is at risk if returned to their homeland but who are unable to meet the rigorous criteria under the refugee definition in the 1951 UN Refugee Convention and 1967 Protocol.

2. www.homeoffice.gov.uk/documents/TacklingTrafficking.pdf?view=Binary

Promoting the rule of law in Darfur

by Sarah Maguire and Maarten G Barends

Rule of law programmes usually take place after conflicts have ended. However, UNDP is pioneering a major initiative amidst ongoing conflict in Darfur.

In recent decades, strengthening the rule of law has become one of the central objectives – and prerequisites – of international development assistance. UN agencies (most notably UNDP), the development banks and some bilateral donors are conducting rule of law programmes in an increasing number of countries. These are often described as ‘access to justice’ or ‘justice and security sector reform’ and have a range of objectives.

Launched in September 2004, the UNDP Rule of Law Programme in Darfur marks an important step towards mainstreaming rule of law programming in all situations of armed conflict. Implemented jointly by UNDP, the International Rescue Committee (IRC) and a variety of Sudanese civil society and academic institutions – and funded by the UK and the Netherlands – it consists of five sets of activities:

- rule of law and human rights training for government officials and community members
- support to paralegal groups composed of internally displaced and other war-affected persons
- establishment of a local legal aid network
- establishment of legal information centres
- public symposia on rule of law related issues.

UNDP has completed rule of law and human rights training for over 10,000 law-enforcement officials, prison wardens, judges, security officials, soldiers, traditional authorities, tribal leaders, lawyers, civil society representatives, IDPs and host communities. This training aims to change attitudes and perceptions about rule of law and human rights, and to instil again in Darfuri society a sense of doing what is right, based on shared

cultural values, universal ethics and international standards.

Considering that Darfur – like the rest of Sudan – has no tradition of paralegals, the experiment is working well. Operating out of UNDP Justice and Confidence Centres the paralegals are trained to support and respond to the legal needs of communities, foster reconciliation and confidence building between IDPs, host communities and local authorities and engage the authorities in pro-active protection. Paralegals help members of their communities to explain their problems and to decide whether to seek assistance from camp police, lawyers, international organisations or traditional leaders who facilitate community-based mediation. In order to remove any suggestion of confrontation with the authorities, in some instances the paralegals are referred to as ‘community mobilisers’. They are clearly trusted by their own communities and have managed to develop positive relationships with local police and government authorities. For instance, a woman paralegal from Abu Shuk camp was selected by her peers to represent the IDP communities at recent peace negotiations between the government and the Darfuri rebel groups in the Nigerian capital, Abuja.

The paralegals create role models for others in their communities. They are proof that IDPs are neither passive nor ‘victims’ but can take control, become knowledgeable, have access to authorities and win trust from government officials, community leaders and international organisations.

“I was just outside [the camp] when I saw a person having an argument with some police officers. It looked like he was being harassed by the police. I recognised the per-

son from [the camp]. I knew from my training as a paralegal that this was a restriction on his [freedom of] movement. I approached the police officers and told them that I was a [paralegal] in [the camp], that I knew the person they were talking to and that they should let him go as he was doing no harm. The police said that they knew we had had human rights training and they let the person go with me.”

“Two people were abducted... When we heard about it, we knew what to do because of our training. We went ...and talked to the Humanitarian Aid Commissioner. The people were released after eight days.”

“A sheikh came to us because he was worried about what was going on in a particular household in the camp. We found that a 14-year-old girl had been held prisoner by her father for months. Her hands and feet were bound so tightly that she later had to have an amputation. We went to the police who released her and charged the father. Before we started work here, there was no way the sheikh would have gone to the police.”

Access to justice is further enhanced by the establishment of the UNDP Legal Aid Network, a network of Darfuri lawyers who take on cases referred to them by, among others, the paralegals. Despite the ongoing conflict and although severely compromised, the justice system has not completely collapsed. Lawyers are currently dealing with over 70 cases representing marginalised persons (usually IDPs) in a variety of civil and criminal cases. Rights of representation have been secured in North Darfur’s Special (Public Order) courts. Social workers are available to give evidence in cases of rape to prevent the women being accused of adultery later.

The network not only supports individuals in need of legal assistance but also challenges the system to ensure it starts living

up to basic legal standards. In close collaboration with Darfuri academic institutions, UNDP has organised Rule of Law seminars each of which has attracted an average of 200 lawyers, local authorities, students and IDPs. Discussions are increasingly open and frank. Topics covered include Sudanese domestic law and international human rights, customary mechanisms of peaceful conflict resolution and the relevance of the Comprehensive Peace Agreement¹ to the Darfur conflict. Furthermore, UNDP has organised a number of political debates, inviting local representatives of Sudanese political parties to present their views on political solutions to the Darfuri conflict. Through these seminars UNDP aims not only to raise awareness of rule of law and human rights principles (notably freedom of speech and assembly) but also to build confidence and foster reconciliation.

In Sudan, law students are taught by professors with little access to information, study from books that are out of date and have no access to legal libraries. Establishment of Legal Information Centres in the capitals of the three states in the Darfur region will provide much needed information to government authorities, legal

practitioners, students, academics and the general public. The centres should increase awareness of international and national law, and enhance capacity among paralegals, lawyers, judges and prosecutors to translate these principles into reality.

It is equally important for communities to be aware of their rights as it is for government officials and other duty-bearers to be conscious of their responsibilities. Targeting only one group does not produce sustainable effects and can increase tensions or cause harm.

Challenging the critics

The UNDP Rule of Law Programme has not waited for a peace agreement or even a ceasefire. Some may ask whether it is appropriate and relevant to be conducting a rule of law programme when humanitarian needs are still great, massive violations continue to be committed and recovery is not even on the horizon. The partners in the programme argue that:

- Human rights are universal: all people have the same rights, whatever their current situation or origins. People do not cease to need and deserve access to justice once they become vic-

tims of war. The fact that local authorities are often incapable or unwilling to protect war-affected populations makes the need to address the rule of law vacuum all the more urgent.

- It is likely that the Darfur crisis will eventually be resolved and people will make a fresh start in or near their original communities. If the foundations of the rule of law have not been established this cannot happen.
- The impact of the empowerment of paralegals will be long-lasting: wherever they subsequently go they will take their skills and knowledge with them and promote a culture of human rights.
- Actions to address even small grievances are important. Issues of widespread, systematic discrimination can affect the lives of a community just as much as torture or arbitrary detention.

The international community has saved lives in Darfur but humanitarian agencies are all too aware that living on humanitarian assistance can be disempowering and create passivity and dependence. Income generation projects, skills and literacy programmes and participative approaches all endeavour to address this. The Darfur



programme has demonstrated that, with support and necessary protection, people can and do take action to protect themselves and their communities.

It is now conventional wisdom that armed conflict is not linear and that opportunities for conflict resolution and prevention of escalation and further outbreaks exist at every stage and that they are not restricted to the parties to the armed conflict. The rule of law may be described as a direct alternative to the rule of force. It is self-evident that equipping a community with the information and tools with which to negotiate along the lines of entitlement and responsibility – rather than by physical force – and to bring them together along lines of common interest can only promote peace building and conflict transformation.

Lessons learned

The UNDP Rule of Law Programme in Darfur has needed to evolve in response to a fast-changing context. It has sought to be imaginative and creative while maintaining the highest standards possible. A self-evaluatory and self-critical approach at all stages of the programme cycle ensures that the programme continually strives for greater impact and sustainability.

All aspects of the programme have considered issues of gender equality and prioritised combat-

rights do not disappear even where they are not realised

ing discrimination against women. Training has addressed the multiple threats faced by women, there are female members of paralegal groups and women are urged to attend seminars and to speak out. Establishing a programme ‘from the ground up’ – trusting the views and experience of the affected community and ensuring that women have the space and opportunity to contribute fully – is crucial. It means that a Rule of Law programme can identify appropriate entry points, develop innovative strategies for overcoming obstacles and work towards gender equality, both as an end in

itself and as a pre-requisite for the realisation of all human rights.

Reducing the rate of sexual and gender-based violence is a crucial indicator of the value of a programme such as this. The presence of international lawyers has opened up space for Darfurians to discuss a range of hitherto ‘sensitive’ topics. When women and men are increasingly prepared to address issues of domestic violence, for instance, it indicates that taboos are giving way to a culture of human rights and recognition that no issue is too controversial or sensitive to be addressed.

The programme has needed to strike a careful balance between being risk aware and risk averse. The programme entered the arena of the protection crisis in Darfur in a timely way, building up slowly but resolutely and closely involving government partners, civil society organisations (including Darfuri academic institutions) and the wider international community. Relationships are being forged with Islamic religious leaders with a view to conducting training in basic human rights principles, working through Sufi values and ethics.

The strategies and mechanisms developed by the lawyers and the paralegals are creative and imaginative. Working against enormous obstacles – Sudan’s non-ratification of some key international human rights instruments,² an under-resourced justice system and a lack of separation of powers between the judiciary and the executive – the lawyers, nevertheless, continue to find ways to influence the justice system.

Programmes such as this must not raise unnecessary expectations, particularly amongst displaced people. The rule of law and human rights training contains a central message: that rights do not disappear even where they are not realised. The people of Darfur have suffered greatly. They know that what has happened to them is wrong, and explaining the wrongs within the framework of international law shows them that the international community agrees with them.

The international community is increasingly cognisant of the universal relevance and importance of the rule of law. The UNDP Rule of Law Programme in Darfur demonstrates that rule of law activities can and should be an important component of humanitarian assistance and conflict transformation and prevention. It is to be hoped that the programme will pave the way for the full mainstreaming of rule of law activities amidst armed conflict and in the early stages of recovery.

Lawyers working with the programme have been arrested and detained on numerous occasions but have been released after clarifying their association with UNDP. Increased visibility of UNDP and its ‘back donors’ provides some degree of protection. However, continued explicit high-level support from the UN mission and the diplomatic community is essential.

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This article is written in a personal capacity and does not necessarily represent the views of the UN or any other organisation.

For more information about the training provided by the programme, see J Aguetant, *Towards a culture of human rights in Darfur*, FMR24 www.fmreview.org/FMRpdfs/FMR24/FMR2423.pdf

1. The agreement between the Government of Sudan and the Sudan People’s Liberation Movement which ended Sudan’s North-South conflict and paved the way for creation of the Government of National Unity in September 2005. See FMR24, www.fmreview.org/FMRpdfs/FMR24/FMR24contents.pdf

2. Sudan is not a State Party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Inhuman and Degrading Treatment amongst others.

Reflections on the early disarray in Darfur

by Larry Minear

How has the international community acquitted itself since the beginnings of orchestrated violence in Darfur in early 2003? Why did it take so long to gear up and why were humanitarians so unequal to the challenges posed by the crisis?

Analysis of six evaluations provided by member agencies of the Active Learning Network for Accountability and Performance (ALNAP) of their own performance helps provide some answers.¹ Reviewing the six evaluations I was struck by the pervasive sense of frustration and failure. No agency viewed its own response or that of the system as adequate.

The slowness of the international response casts doubts on the capacity of the humanitarian system to deliver effective protection and assistance in major high-profile emergencies. It took some 12 to 18 months from the outbreak of the crisis in early 2003 for humanitarian operations to become firmly established. Programmes were slow off the mark due to the size and remoteness of Darfur, the delicate state of North-South peace negotiations, competition from higher profile emergencies elsewhere and, most significantly, access barriers created by the government of Sudan. As the number of the accessible population in need rose, agencies found themselves running to catch up, or even to stay in place. Aid was concentrated in areas under government control.

One positive development was that, from the outset of the crisis, agencies – energised by concern about violence against women – highlighted the need to prioritise protection. Médecins Sans Frontières-Holland noted that violence rather than malnutrition or ill health was the “overwhelming cause of death.” That said, there was much confusion regarding responsibility for providing protection. The UNICEF study noted

that “no UN agency has a clear protection mandate for IDPs” and in mid 2004 the UNHCR evaluators reported that there was “no consistent protection strategy” in and around refugee camps in Chad.

The experience of countless other crises was repeated in the Darfur response. The OCHA-led study commented on the “unsatisfactory performance” of a number of UN agencies and the “relatively small proportion of the NGOs [that are] regarded as effective in terms of their expertise and ability to take advantage of humanitarian access and fill gaps in challenging settings.” Another study commented on the high percentage among its Darfur staff of first-missioners lacking previous field experience. Still another noted that the Darfur response typified the positive “shift in focus in the activity of ‘humanitarian’ agencies from delivery to human rights and protection advocacy.” Aid workers today, it suggested, would rather talk to the Security Council than dig latrines.

The higher priority given to advocacy, however, did not produce the necessary reinforcing action on the political, diplomatic and military fronts. Even on the highly sensitive issue of genocide, parallels to the Rwanda experience drawn by humanitarian and human rights groups generated only limited momentum. In fact, the effort at aid agency headquarters to label what was taking place as genocide was viewed by some colleagues in the field as complicating their sensitive day-to-day work. Certainly the Sudanese authorities reacted negatively to the genocide debate,

viewing it as part of a wider anti-Sudan, anti-Muslim campaign. As someone who has been involved in Sudan issues off and on since my initial posting there in 1972, I was struck by the a-historicity of the approach taken by the agencies to the Darfur challenge. Lessons from the Sudan itself and from other theatres have gone largely unrecognised. One of the UN studies expressed surprise at problems which should have been familiar from other contexts: siting of camps too close to the border, difficulties in enumeration of the refugee population, the need to protect women gathering firewood and problems related to decentralisation of decision making and staff morale.

Aid workers today, it suggested, would rather talk to the Security Council than dig latrines

The evaluations led me to offer the conjecture that after thirty years of high-profile international humanitarian initiatives in the Sudan, the belligerents have done a better job of learning how to manipulate and frustrate humanitarian action than the international community has of using its considerable assets creatively.

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This article is based on a presentation made to the 18th ALNAP Biannual Meeting in December 2005, online at: www.odi.org.uk/alnap/meetings/pdfs/LMinear_darfur_dec05.pdf. The full text of the analysis is a chapter in ALNAP’s Review of Humanitarian Action in 2004, www.alnap.org/RHA2004/pdfs/rha04_Ch3.pdf

1. The evaluations were an interagency study led by OCHA and individual studies by UNHCR, Oxfam, CARE, MSF Holland and UNICEF/DFID.

Abortion care needs in Darfur and Chad

by Tamara Fetters

Given the prevalence of sexual and gender-based violence in Darfur, why are safe abortion services and treatment of complications resulting from unsafe abortions or miscarriages not provided at all refugee/IDP health facilities?

Cases of rape of and violence against women in Darfur and in refugee camps in Chad are well-documented. These occur while women are collecting water, fuel or animal fodder, or during imprisonment. There have also been cases of women being forced to submit to sex in exchange for 'protection' by police officers and male camp residents.¹

Between October 2004 and February 2005, Médecins sans Frontières (MSF) teams in West and South Darfur treated almost 500 women and girls who had been raped – almost a third of whom had been multiply raped. These figures probably represent only a fraction of cases as Sudanese women, like women in other conflict zones, refuse to report forced sex for fear of isolation, abandonment and stigma.

Around one in twenty rape cases will result in unwanted pregnancy. Many others result in desertion by husbands and/or in such chronic health problems as pelvic inflammatory disease, HIV and other sexually transmitted infections. Psychological and physical trauma and malnutrition put rape victims at risk of miscarriage. Lack of access to health and contraceptive services cause women to seek unsafe abortions – with potentially grave complications – rather than carry a child to term.

Violence is systematically used as a weapon of war by the Janjaweed militia, a gross breach of international humanitarian law. Similar acts in Rwanda and Bosnia are now

considered crimes against humanity. The UN, governments and NGOs working with refugees and IDPs are obliged to provide protection from sexual violence. They must ensure that health services can respond to the consequences of sexual violence, that women and girls are informed of their rights and that culturally appropriate treatment and counselling services are accessible to all women who need them.



EC/ECHO/Ivo Freijesen

Abortion is legal in Chad if it is a question of saving a woman's life and protecting her health. Sudanese law allows abortion to save the mother's life, or when the pregnancy is the result of rape which has occurred not more than 90 days before the pregnant woman expresses her wish to have the abortion, or when the child has died in the mother's womb. The legal provisions in both countries

are unambiguous: a Sudanese woman's right to life and health is violated if she is forced to carry to term an unwanted pregnancy resulting from rape.

Standards versus reality

Preliminary assessments of availability of services for survivors of sexual violence in Darfur are disturbing. Human Rights Watch has noted that "despite the existence of clear standards for responding to sexual and gender-based violence... humanitarian agencies are not implementing these guidelines on a systematic basis in Darfur and Chad." HRW found that only one in six agencies providing health services in

the refugee camps in Chad offers emergency contraception, comprehensive treatment of sexually transmitted infections and post-exposure prophylaxis for the prevention of HIV transmission.² Emergency contraception – a higher dosage of hormonal contraceptive pills begun within 72 hours of rape – is an effective, affordable and non-surgical option for the prevention of pregnancy recommended in WHO/UNHCR's *Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Persons*.³ This manual argues that:

- Women have the right to complete information on all pregnancy and termination options including emergency contraception when appropriate.
- Health care providers should be well informed about the abortion laws of the host country and availability (if legal) of safe abortion services.
- Where safe abortion services are not available, women who undergo an unsafe abortion should have access to the full range of post-abortion care,

Displaced child in Kutum, Darfur, taking care of her baby.

including emergency treatment of abortion complications.

HRW notes that the question of access to safe abortion as an option for victims of rape is not openly discussed in any health facility receiving international humanitarian assistance in Darfur, Chad or elsewhere. There has been little or no discussion of how to operationalise WHO/UNHCR standards in a field setting and health providers are left to use their own initiative to find out about local 'safe' abortion services. Humanitarian agencies seem to assume it is not essential to provide abortion services or accurate information for victims of rape in camp or IDP settings. It is likely that US

government anti-abortion policies have contributed to reluctance to provide safe abortion services.

Health providers should, at a minimum, be prepared and able to treat complications resulting from unsafe abortions on site. Performing a uterine evacuation to treat an unsafe abortion, miscarriage or early abortion is one of the simplest and most common surgical procedures in the world. Women are suffering and dying needlessly. The additional cost of providing abortion care to IDP/refugee women is minimal. Change must come from the top in donor and operational agencies. Continued denial of a woman's right to have information about and access to a

safe and legal termination of rape-induced pregnancy is a blatant violation of national laws and international human rights treaties.

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1. UNICEF *The Effects of Conflict on Health and Well-being of Women and Girls in Darfur*. Sept 2005. www.unicef.org/spanish/emerg/darfur/files/sitan_unfpaunicef.pdf
2. Human Rights Watch *Sexual Violence and its Consequences among Displaced Persons in Darfur and Chad*. April 2005. <http://hrw.org/backgrounder/africa/darfur0505/darfur0405.pdf>
3. www.who.int/reproductive-health/publications/clinical_mngt_survivors_of_rape/

Uncertain return to southern Sudan

by Graham Wood and Jake Phelan

Western Equatoria is a focal point for Sudanese refugees returning from neighbouring Uganda, the Central African Republic and the Democratic Republic of the Congo. Arriving with very little, they inevitably compound the poverty of their hosts. Without greater sensitivity, aid could exacerbate deep divisions.

A report from UK NGO Ockenden International investigates the current and potential impact of returns to Western Equatoria, the effects of returns on physical resources, how 'stayees' perceive returnees and the potential fault lines between those who stayed, those who fought and those who left.

The region's recent history is one dominated by movement. Fighting for towns such as Maridi garrisoned by the Government of Sudan (GoS) was particularly destructive and led to the separation of many families. When the Sudan People's Liberation Army (SPLA) took over, relative stability ensued. Yet looting, fear of conscription or abduction by the SPLA, and aerial bombardment by the GoS displaced others. Some people may not have been 'forcibly' displaced but moved to join family or left in anticipation of approaching conflict.

The massive extent of population movement complicates any attempt to define 'returnees' and 'stayees'. People's movements are not one-off, neatly measurable events. A returnee may be an IDP, refugee, combatant or abductee. Although the terms 'returnee' and 'stayee' are fluid and of no analytical value, they can be potentially divisive for those categorised as such by relief agencies, government authorities and local leaders. Notions of 'return' and 'reintegration' are far from straightforward when so many are 'returning' to a new place.

Maridi town is set to attract large numbers of returnees and ex-combatants, placing great demands on very scarce resources. Maridi has large numbers of long-established IDPs, particularly the Bor Dinka. The presence of these Nilotic pastoralists among the agriculturalist Bantu population has been a source of conflict for many years.¹

Cattle belonging to the Dinka cause severe damage to crops and water sources. Ethnic divisions between the 'Bantu' and 'Nilotic' were one cause of the slide back to war in the 1970s. More recently, there has been serious conflict in neighbouring counties between the local population and Dinkas.

Several thousand refugee returnees from the DRC have settled in Ibba, many forced to return by insecurity in the DRC. Returnees have settled peacefully but have placed a huge strain on existing shared resources, and cannot be said to have 'reintegrated' and become self-sufficient.

To date, only a small proportion of refugees have returned to Sudan. There are many threats to stability:

- Small arms are plentiful.
- Water is in short supply as resident populations rise: queues are growing at water points and frustrations between different groups could boil over.
- Those who fought, who were forced to carry military supplies or who suffered from aerial bombardment are unlikely to welcome those who 'ran away', especially if better-educated former refugees are felt to have a disproportionate benefit of

- the dividends of peace.
- HIV/AIDS rates are likely to rise: stigmatisation of returnees could add to tensions.

Returning populations may bring about the impetus for positive social changes. Yet such changes may be seen as foreign impositions and thus be ill-received. The return of displaced people will inevitably bring about profound changes that are likely to raise tensions amidst the confluence of changed identities and social values.

Projections of return numbers drawn up for planning purposes are useful but arguably flawed and there is reason to question assumptions about the scale and timing of anticipated returns. The two main constraints on return identified by a survey carried out by the International Organization for Migration (IOM) – lack of money and of transport – are unlikely to be quickly overcome.

Reintegration is a lop-sided concept, the emphasis firmly on the returnees: the fluid category of the displaced needing to be absorbed by the static, somehow sponge-like host community. Stayees' perceptions of returnees have not received sufficient attention either in academic or policy circles. Yet it is crucial to understand their expectations and concerns in

order to aid the reintegration of displaced people.

If people in receiving communities see tangible benefits of a peace for which they have waited so long, then return and reintegration will be that much simpler. This will particularly be the case if benefits are felt before the population starts to significantly increase and if the ground is prepared in advance for returnees. However, on current trends, this seems unlikely to happen.

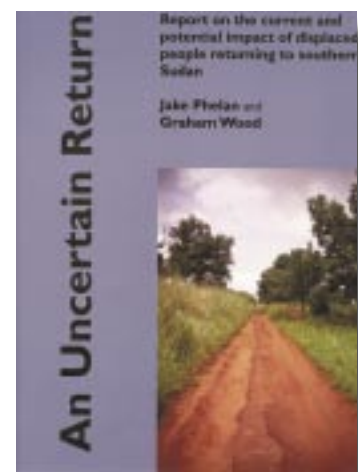
Our research indicates the need for:

- massive external investment in infrastructure
- recognising that homecomings are never straightforward
- abandoning simple categorisations
- supporting local authorities and civil society to develop an environment in which peace is sustained
- providing formal and non-formal educational opportunities for all
- remaining aware of potential for localised conflicts to flare up and have wider ramifications
- ensuring adequate protection for all and ensuring that all displaced people are afforded the choice of if and when to return
- shedding the idea that 'return'

means an end to movement: many retain transnational social and economic links which are vital components of livelihood strategies.

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This article is a summary of their January 2006 report, An Uncertain Return, online at www.ockenden.org.uk/temp/UncertainReturnPDF1.pdf



For latest information on Sudan, see www.reliefweb.int

1. See: 'Assisting the return of displaced Dinka Bor' by Paul Murphy, FMR 24. www.fmreview.org/FMRpdfs/FMR24/FMR2417.pdf

Sudan: uncertain prospects

by Tim Morris

Khartoum's refusal to allow Jan Egeland, the UN Emergency Relief Coordinator, to visit Darfur – and the expulsion of the Norwegian Refugee Council from the troubled region – is further evidence of efforts by the ruling National Congress Party (NCP) to contain international engagement in Sudan.

The Darfur conflict erupted in early 2003 when the Sudanese Liberation Movement/Army and the smaller Justice and Equality Movement took up arms against the Arab-dominated government in Khartoum. The NCP

responded by backing Arab militia known as the Janjaweed. Humanitarian workers estimate that more than 180,000 people have been killed in the violence and nearly two million forced to flee their homes.

Even before Egeland was denied permission to visit Khartoum or Darfur in April 2006, the long-awaited transfer of peace-keeping responsibility in Darfur from the African Union to the UN appeared to be on permanent hold. The 7000-strong African Mission in Sudan (AMIS) has lacked the resources to halt a steady deterioration of the security situation and widespread banditry and human rights abuses from all combatants. UNICEF estimates that in North and West Darfur around half a million people in need of humanitarian assistance cannot

be reached due to ongoing conflict. Insecurity and lack of funding has constrained the expansion of humanitarian programmes into remote and rural areas, potentially exacerbating the 'pull-effect' of camps for displaced people as rural communities abandon their villages.

Egeland described the situation as an "eerie reminder" of 2004, when aid workers were denied access at the point when the situation in Darfur was at its worst. "This is symptomatic of the everyday problems my colleagues face in Darfur, trying to feed nearly three million Darfuris to whom we are a lifeline," he said.

In a grim assessment the International Crisis Group notes that the NCP has kept the international community at bay over Darfur by

facilitating increased chaos on the ground and promoting divisions within the rebels which have brought peace talks in the Nigerian capital, Abuja, to a standstill. It is similarly containing international engagement with the Comprehensive Peace Agreement (CPA) by selectively implementing elements of the agreement without allowing for any weakening of its grip on power – particularly control of oil revenues – or fundamental change in the way the country is governed. The international community has remained largely silent.

Heavy on monitoring but weak on follow-through, the international community – particularly the key countries involved in the negotiation of the CPA – has not yet embraced its role as a guarantor of the CPA, and continues to lack a consistent, coordinated approach

to hold the parties, particularly the NCP, to their respective commitments.¹

On his return from Sudan, Egeland noted that the international community seems "to be slacking on this last leg of the marathon to bring peace and security and prosperity to the biggest country of Africa ... I have seen a waning interest in Sudan this year ... this is really the moment of truth for international compassion and solidarity with Sudan," he said.

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For more information on Sudan, see FMR24 www.fmreview.org/FMRpdfs/FMR24/FMR24full.pdf

1. www.crisisgroup.org/home/getfile.cfm?id=2289&tid=4055&type=pdf&l=1

A refugee family from Darfur outside their tent in Farchana camp, eastern Chad.



New housing, land and property restitution rights

by Scott Leckie

The UN's Pinheiro Principles represent the first consolidated global standard on the housing, land and property restitution rights of displaced people.

“The best solution to the plight of millions of refugees and displaced persons around the world is to ensure they attain the right to return freely to their countries and to have restored to them housing and property of which they were deprived during the course of displacement, or to be compensated for any property that cannot be restored to them. It is the most desired, sustainable, and dignified solution to displacement”.

Paulo Sergio Pinheiro, UN Special Rapporteur on Housing and Property Restitution

Few experiences are more harrowing than being forced from one's home. Every year many millions of people are left with no other option than fleeing their homes, lands and properties against their will. Whatever the cause, displacement is always nasty, always brutish, but all too rarely is it short. Millions of refugees and IDPs who desperately want to return to their original homes are unable to do so because restitution rights are not treated with due seriousness by relevant authorities and international actors.

Until comparatively recently, the land, homes and other possessions of the 'losers' of an armed conflict were widely regarded as part of the 'spoils of war' by the victors. Although the laws of armed conflict expressly prohibit the arbitrary destruction and expropriation of property, the right to restitution for people who have had to leave their homes was largely ignored in practice. Governments and humanitarian agencies alike concentrated their efforts on finding alternative shelter, and

addressing the immediate needs of refugees and the displaced.

The restitution of housing, land and property, however, is rising rapidly up the policy agenda. In recent decades, in post-conflict contexts such as Bosnia-Herzegovina, Kosovo and Tajikistan, in post-authoritarian countries like South Africa or Iraq and in post-communist countries including East Germany, Latvia and Albania, restitution rights have been recognised and laws and procedures developed and enforced. In the process millions of displaced people have been able to return to repossess and re-inhabit their original homes, lands and properties. While many factors may account for the emergence of these new global standards on housing and property restitution rights, perhaps the convergence of national-level restitution programmes, combined with a widening global awareness of the plight of those who have thus far been left behind in the pursuit of restitution rights, were the key driving forces behind the adoption of the Pinheiro Principles.

After years of discussion - and input from experts involved in property restitution programmes in such places as Kosovo and Guatemala - the Pinheiro Principles were formally endorsed by the UN Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. They provide practical guidance to governments, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. They augment the international normative framework in the area of housing and property restitution rights, and are grounded firmly within existing

international human rights and humanitarian law. They re-affirm existing human rights and apply them to the specific question of housing and property restitution. They elaborate what states should do in terms of developing national housing and property restitution procedures and institutions, and ensuring access to these by all displaced persons. They stress the importance of consultation and participation in decision making by displaced persons and outline approaches to technical issues of housing, land and property records, the rights of tenants and other non-owners and the question of secondary occupants.

Applying the Pinheiro Principles

The following cases illustrate how extensive the problem of unresolved restitution claims is and provide examples of situations where applying the Pinheiro Principles may provide a constructive means of facilitating their just resolution.

Afghanistan: Ongoing land disputes, illegal land confiscations of returnee lands, unclear ownership rights, dual legal systems (customary and modern), landlessness, land shortages, discrimination against women, and the prevailing lack of effective restitution procedures have left hundreds of thousands of returnees unable to return home.

Azerbaijan: More than 525,000 ethnic Azeri IDPs, forced to flee their homes and lands during the 1992-1994 conflict over Nagorno-Karabakh, remain displaced. They, and a further 200,000 ethnic Azeris who fled Armenia who have been offered naturalisation within Azerbaijan, still have unresolved housing and property restitution claims.

Bhutan: For two decades some 105,000 Bhutanese refugees have lived in refugee camps in eastern Nepal. Many were arbitrarily



A family sifts through the rubble of their tsunami-devastated home, Galle, Sri Lanka.

stripped of their nationality prior to their expulsion from Bhutan and recent reports indicate that many refugee homes and lands have been officially allocated to secondary occupants.

Burundi: More than 200,000 IDPs and the return of 100,000 refugees have led to dramatic increases in land prices, land disputes and tensions which have prevented the exercise of housing and property restitution rights.

Croatia: More than 100,000 ethnic Serb refugees are unable to return to their original homes in Croatia due to a combination of unwillingness by the authorities in Croatia to remove secondary occupiers from refugee homes and exclusion of Serbs from government housing repair programmes.

Cyprus: Many analysts believe the failure to include mechanisms for restitution of housing and property seized in 1974 led to the Greek rejection of the UN-brokered Cyprus peace plan in 2004.

DR Congo: Dual land systems, inability to access courts to recover property and the occupation of IDP land by secondary occupants continue to prevent sustained return of one of the world's biggest IDP populations.

Iraq: Some 37,000 housing and property restitution claims from those displaced between 1968 and 2003 have been submitted to the Iraq Property Claims Commission (IPCC). The IPCC is under-staffed and under-resourced and has only ruled on 600 cases.

Kosovo: The Housing and Property Directorate in Kosovo, administered by the UN Mission in Kosovo, has issued decisions on almost all restitution claims. However, more than 200,000 Kosovar Serbs remain displaced in Kosovo or in Serbia and Montenegro and thousands of Roma remain displaced and living in appalling conditions.

Liberia: Despite the 2003 peace agreement, many of Liberia's half a million IDPs are prevented from returning home due to land disputes, unequal access by women to inheritance rights and lack of housing in their areas of origin.

Burma (Myanmar): Land confiscations, the intentional destruction of villages and the denial of customary land rights have contributed to the displacement of a million IDPs and around half a million refugees.

Palestine: In what is by far the world's largest unresolved housing, land and property restitution problem, some five million Palestinian refugees retain valid restitution claims over their original homes and lands from which they have been expelled since 1948. These rights have been repeatedly re-affirmed by UN Security Council and General Assembly resolutions. Virtually all Palestinian refugees still possess title deeds, keys, photographs and other evidence proving their housing rights. Many argue that there can be no prospect of a workable peace until outstanding housing and property restitution issues are addressed.

Sri Lanka: Some 350,000 IDPs are still unable to return home as proposals to establish a commission to resolve restitution claims continue to be discussed.

Sudan: The North-South peace agreement is being implemented but the lack of restitution mechanisms, emerging land disputes, discrimination against women and non-recognition of customary rights are preventing many returnees from returning to their original homes and lands.

Tibet: Some 125,000 refugees in India and Nepal retain housing and property restitution rights to their former homes and lands in areas under Chinese jurisdiction since 1959.

Turkey: At least two million Kurds who were forcibly relocated or fled violent conflict in eastern Turkey remain internally displaced. Despite numerous judgments in their favour by the European Court on Human Rights, most have not been able to return to their original homes and lands.

Western Sahara: After three decades of displacement in camps in Algeria, over 100,000 Sahrawis continue to retain restitution claims to their former homes, lands and properties.

The Centre on Housing Rights and Evictions (COHRE) worked with the Watson Institute for International Studies at Brown University – with financial support from UNHCR and the Norwegian Refugee Council – to coordinate the review process which led to formal adoption of the Pinheiro Principles. COHRE is carrying out an extensive series of promotional, training and legal advocacy activities based on the framework provided by the Principles. We look forward to continuing to work together with our partners throughout the world to bring the promise of restitution rights to refugees and displaced persons everywhere.

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UNHCR, IDPs and clusters

by Tim Morris

In December 2005 the Inter-Agency Standing Committee (IASC)¹ endorsed a 'cluster'-based mechanism to address gaps in the humanitarian response to IDP and refugee situations. How will it work?

The cluster approach is evolving in response to a key recommendation of the Humanitarian Response Review, an independent report commissioned by Jan Egeland, the UN Emergency Relief Coordinator.² In September 2005 the IASC Principals³ assigned global sectoral responsibilities to UNHCR and other humanitarian agencies. UNHCR is the designated 'cluster' lead in three areas of conflict-induced displacement: emergency shelter, camp coordination and management, and protection. Each cluster lead has accepted to be the agency of 'first port of call' and 'provider of last resort' within this sector/cluster. The cluster leads are to support UN Resident and Humanitarian Coordinators in ensuring a coordinated response.

The new arrangements, which came into force on 1 January 2006, are designed to provide much-needed predictability and accountability for the collaborative response to IDPs. As far as UNHCR's engagement is concerned, they do not apply to existing refugee operations - or affect UNHCR's core

mandate relating to refugees - but will have far-reaching implications for UNHCR, especially in situations of internal displacement generated by conflict. The potential addition of millions of new beneficiaries is certain to put pressure on the agency's staff and already overstrained financial resources, at least in the short term. However, it may also provide a unique opportunity for UNHCR to re-orient itself as a central agency dealing with conflict-related displacement, potentially drawing in more resources that will benefit both refugees and IDPs.

The IASC considers that it will take a couple of years to put in place the approach at a global level. The new arrangements are being piloted in 2006 in the Democratic Republic of the Congo (DRC), Uganda and Liberia - and should be applied in any new emergency that arises during the year. Although the system was not fully elaborated at the time, the response to the earthquake in Pakistan in late 2005 was organised along the lines of clusters.

A forthcoming evaluation of this operation will provide guidance on how to apply the cluster leadership approach in sudden-onset disaster response. Somalia, where the approach is already being widely used, will be presented as another pilot country to the IASC Principals at their meeting in April. Nepal and Colombia are other possibilities which will be assessed for their feasibility to implement the cluster approach. The IASC Principals have said that the cluster approach will be the framework for humanitarian response in all "major new emergencies".

As cluster lead, UNHCR must ensure that assessments and strategies are in place within the areas of its responsibility. This does not mean that in each and every situation UNHCR will by itself fund or implement all field activities. UNHCR's role is to ensure that other actors take on activities that fall within the cluster to the best of their capacities and that additional funding is secured or at least appealed for. Where capacity gaps exist in the cluster as a whole and where no other actors can realistically respond, UNHCR will have to be prepared to act as a 'provider of last resort' and to carry out priority activities, seeking funds accordingly. UNHCR is to

develop its leadership capacity to carry out its responsibilities in protection, emergency shelter and camp coordination and management.

Implementation challenges

The process which led to formulation of the cluster approach, the Humanitarian Response Review,⁴ resulted from IASC discussions in New York and Geneva. The cluster approach has been HQ-based and

	Cluster	Cluster lead
1	Logistics	World Food Programme
2	Emergency telecommunications	Office for the Coordination of Humanitarian Affairs - OCHA (Process Owner) UNICEF (Common Data Services) WFP (Common Security Telecommunications Services)
3	Camp coordination and management	UNHCR for conflict-generated IDPs IOM for natural disaster-generated IDPs
4	Emergency shelter	International Federation of Red Cross/Crescent (IFRC)
5	Health	World Health Organisation
6	Nutrition	UNICEF
7	Water, sanitation and hygiene	UNICEF
8	Early recovery	UNDP
9	Protection	UNHCR for conflict-generated IDPs UNHCR, UNICEF and Office of the UN High Commissioner for Human Rights (OHCHR) for natural disaster-generated IDPs

its true test lies in the field. Some lessons have already been learned from experience in Pakistan. Each country situation will be different so there is a need for flexibility, based on which agencies are best placed on the ground to respond. Antonio Guterres, High Commissioner for Refugees, has argued strongly for a bottom-up approach to the application of the clusters. The cluster lead approach needs to be adjusted to the reality of the situation by the IASC teams on the ground, and cannot be applied dogmatically. At the same time, the concept of IASC field teams is one that still requires clarification, particularly when it comes to issues like NGO representation and decision-making authority. NGO participation in UN Country Teams remains weak, ad hoc and inconsistent despite recommendations made in the Humanitarian Response Review.

It has elicited support and optimism but also a fair degree of scepticism

While UNHCR is taking the lead in protection, emergency shelter and camp coordination and management, it also intends to be a constructive partner in other clusters where it does not play a lead role. UNHCR will be particularly supportive of the work of the UNDP-led early recovery cluster to deliver sustainable durable solutions and protection in post-conflict and post-disaster situations.

The initiative has been developed very fast and there are still many aspects to be worked on. It has elicited support and optimism but also a fair degree of scepticism.⁵ Some NGOs, including the coalitions represented on the IASC, have expressed concerns that:

- NGOs have not been provided with enough information on what exactly the cluster approach is, why it is being implemented and how they are supposed to support it.
- It is unclear whether an agency designated as 'provider of last resort' will only actually step

forward once it gets required resources: NGOs responding to the Pakistani earthquake were unsure what the term meant.

- The cluster approach is UN-centric and has been developed without sufficient regard to the structures of NGOs or of donors.
- Staff of an NGO engaged in various clusters may find themselves running from one cluster meeting to another.
- Some of the UN agencies that are leading clusters do not have the operational capacity to fulfill assigned roles or experience of working with NGOs.
- There is no cluster for education.
- The role and involvement of national and local NGOs have not been clarified.

The IASC is working on some guidance material that will emphasise simplicity, and stresses that the approach is not about 'more meetings'. OCHA will need to re-orient its role in support of Humanitarian Coordinators to bring together the clusters and ensure that the overall response works.

UNHCR challenges

Introducing the inter-agency cluster leadership approach will require considerable internal rethinking and reorganisation as well as additional resources to ensure that UNHCR can continue to live up to its responsibilities. UNHCR is trying to ensure that its efforts to resource stand-alone IDP operations do not have a negative impact on funding for its refugee and returnee programmes. Ultimately, however, IDP programmes need to become an integral part of UNHCR's fundraising efforts. This will not be a major change as UNHCR already approaches durable solutions programmes in a non-discriminatory and area-based fashion, of equal benefit to refugees, IDPs, host communities and other affected populations. UNHCR needs to ensure that its IDP programmes are, similarly, eventually mainstreamed within a holistic approach.

The Humanitarian Response Review and the resultant cluster leadership approach provide unique opportunities for the international community to improve the delivery of protection and assistance to IDPs by ensuring that critical sectors now have designated lead agencies, where in the past no agency systematically took responsibility.

The approach strengthens one of the three 'pillars' of humanitarian reform led by the Emergency Relief Coordinator: increasing the predictability and effectiveness of the system's response. The other two pillars are expansion of the Central Emergency Revolving Fund – now the Central Emergency Response Fund – and strengthening the system of Humanitarian Coordinators. These reform efforts are meant to mutually reinforce each other to ensure that situations such as the slow and patchy humanitarian response in Darfur will be avoided in the future (as far as the humanitarian community is able to influence the situation). UNHCR will need to approach this new challenge in a spirit of true partnership, engaging and consulting with all major stakeholders including NGOs, donors and host governments.

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For further information, see *Cluster 2006 - Appeal for Improving Humanitarian Response Capacity* <http://ochaonline.un.org/cap/webpage.asp?Page=1355>

1. A body which brings together eight UN agencies, the Red Cross/Red Crescent Movement, three consortia of NGOs (International Council of Voluntary Agencies, InterAction and the Steering Committee for Humanitarian Response), the World Bank and the International Organization for Migration. For more information on IASC, see: www.humanitarianinfo.org/iasc
2. www.reliefweb.int/library/documents/2005/ocha-gen-02sep.pdf
3. IASC Principals are the heads of all IASC member agencies or their representatives.
4. http://ochaonline.un.org/ocha2006/chap6_6.htm
5. See the October 2005 edition of *Talk Back*, www.icva.ch/cgi-bin/browse.pl?doc=doc00001467 and Gerald Martone, *The IDP quagmire: old wine, new bottles* www.interaction.org/library/detail.php?id=4582

European Commission focuses on 'forgotten crises'

by Simon Horner

DG ECHO, the European Commission's humanitarian aid department, pays special attention to helping the victims of ignored crises which often involve displaced populations living in exile for years or even decades.

Through its Humanitarian Aid service (DG ECHO), the European Commission puts particular emphasis on helping people caught up in 'forgotten crises'. For those who work in international relief the phenomenon is well-known. Some disasters are publicised globally, thanks to the presence of TV crews capable of transmitting stark images of unfolding tragedy into millions of homes across the globe.¹ Other crises – usually chronic situations where there is nothing 'new' to say – go unreported for months or years. The world forgets about them and it becomes more difficult to mobilise resources in favour of the victims.

The Commission's commitment to helping forgotten crisis victims is linked to its policy of providing humanitarian aid on the basis of need. DG ECHO's mandate specifically refers to helping those who are most vulnerable. This can only be done by assessing needs as objectively as possible and ensuring that the outcome is reflected in subsequent funding decisions. Clearly, the extent to which others are involved in providing support in a crisis is an element in the 'needs' equation. A high profile sudden disaster with many victims may prompt a big response from donors, private contributors and relief agencies while a creeping crisis (caused, for example, by drought) can struggle to attract both funding and the involvement of operational agencies with the expertise to spend the money effectively.

In view of the link between the visibility of a given humanitarian situation and the amount of aid its victims are likely to receive, forgotten crises merit special attention. This is why the Commission's

Humanitarian Aid department has developed a methodology for identifying such crises – and also why it is the main donor in many of the world's least prominent humanitarian hotspots.

Long-term displaced get forgotten

It is not surprising to find that human displacement is often a central element in the world's forgotten crisis zones. The media will report large numbers of people on the move and the events that prompted them to flee, because this is a 'dynamic' story. The situation of those living in supposedly temporary places of refuge for months, years or even decades – whether as refugees or IDPs – is less newsworthy because, by definition, it is static.

Camps for displaced people that have been around for a long time are different from those hurriedly erected to provide shelter in the early days of a sudden crisis. The rows of army-style tents that many people associate with refugees are likely to have been replaced by more solid structures, built with local materials (where available) and perhaps even resembling the homes of local people. Reliable water supplies, sanitation systems and other public facilities will have been gradually installed. In time the camp takes on the air of a settled community. In this absence of a 'crisis atmosphere', some people may be misled into questioning whether the situation is still a humanitarian one. Perceptions such as this add to the problems of agencies such as UNHCR, the World Food Programme (WFP) and the UN Relief and Works Agency for Palestine Refugees (UNRWA) who are trying to support the long-term displaced.

EUROPEAN COMMISSION



Humanitarian Aid

Three rarely publicised crises involving long-term displacement, where the Commission provides substantial assistance, are found in Algeria, Nepal and Thailand. Large refugee populations from neighbouring countries are concerned – between 100,000 and 200,000 people in each case.

Sahrawi refugees

Around 150,000 Western Saharans have been living in scattered camps around the Algerian city of Tindouf for more than three decades.² Daytime temperatures can reach 60°C in the summer. There are sudden blinding sandstorms and recurrent water shortages. Between 2000 and 2005, the Commission provided the Sahrawis with more than €66 million in humanitarian aid, making the EU far and away the largest donor. The funds have been used for a range of actions including the financing of a food buffer stock in case the WFP food pipeline is disrupted – which can happen if donor funding runs short. The Commission has provided drugs and supplies and training for Sahrawi health workers and has paid for supplementary food to diversify the refugees' diet beyond the standard provision of cereals, pulses, oil and sugar. The Commission has also supplied tents which, for cultural and climatic reasons, remain a feature of camp life in the Algerian desert. The Sahrawis' nomadic heritage is reflected in their tradition of living under canvas. In the baking heat of summer, when brick buildings rapidly turn into ovens, tents provide more bearable conditions.

In February 2006 the usually arid region of Tindouf was struck by torrential rains and there was widespread flooding. Three of the Sahrawi camps were particularly badly affected and an estimated 50,000 people were left homeless. Many brick structures literally dissolved. The Commission responded within 48 hours with fast track 'primary emergency' funding of €900,000. This covered urgent needs including the distribution of emergency food and the provision of tents, plastic sheets, blankets and mattresses. Sadly, even the highly unusual phenomenon of flooding in the Sahara elicited minimal media interest.

Camps in Nepal and Thailand

In Nepal internal political disputes – conflicts between the King and the parliament and fighting between government forces and Maoist rebels – do occasionally hit the international headlines. These generate humanitarian needs that the Commission tries to help address. The country's 'other' crisis, however, involving people mainly of Nepalese origin who were expelled from Bhutan, is rarely reported. The 106,000 refugees in Nepal – a figure equal to roughly 15% of the total population of Bhutan – have been living in seven refugee camps for 15 years.³ Discussions be-

tween the Bhutanese and Nepalese governments on a durable solution for the refugees have reached a stalemate, leaving the refugees in legal limbo.⁴ As the Nepalese authorities expect the Bhutanese refugees to remain in camps and not engage in economic activities outside them, the refugees have no other option but to depend on external assistance. For the past five years, the Commission has provided €2 million in humanitarian funding annually to meet the basic needs of the camp residents, in particular supporting the efforts of WFP and NGO partners. It has also channelled €4.9 million through UNHCR.

Donor support is also vital for the 150,000 Burmese refugees living in temporary camps just inside Thailand. Burma/Myanmar has been ruled by a military junta since 1962 and has been plagued by ethnic conflict, with reports of serious human rights violations. The prolonged humanitarian crisis suffered by the people of Burma is largely unknown. The difficult political and economic situation inside the country – where DG ECHO also funds programmes targeting the most vulnerable – means that there is no immediate end in sight to decades of exile. The refugees are completely dependent on external aid for food, education

and health services. Since 2000, humanitarian aid worth almost €41 million has been provided by the Commission for the camp residents. ECHO supports the distribution of basic food items – rice, mung beans and soybean cooking oil – on which 75,000 people depend. Basic health needs are met through ECHO-funded clinics run by local medical staff, and through the supply of drugs and medical equipment.

In each of the above situations, the populations concerned are stuck in their host countries, awaiting the resolution of the dispute or crisis that forced them to leave their homes. In some cases, their mobility is restricted, they are excluded from local job markets or they have difficulty accessing education and health services. Their plight may be chronic, rather than acute, but they still have basic needs without the means to cater for them. Humanitarian aid is about showing solidarity with and helping the most vulnerable and preventing suffering. We have a duty not to forget the victims of the world's forgotten crises.

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1. See G R Olsen, N Carstensen and K Høyen 'Humanitarian crises: testing the 'CNN effect'', FMR16 www.fmreview.org/FMRpdfs/FMR16/fmr16.13.pdf
2. See R Farah 'Western Sahara and Palestine: shared refugee experiences', www.fmreview.org/FMRpdfs/FMR16/fmr16.7.pdf and articles on pp58-60.
3. See R Gazmere and D Bishwo 'Bhutanese refugees: rights to nationality, return and property', FMR7, www.fmreview.org/FMRpdfs/FMR07/fmr7.7.pdf
4. See personal testimonies on back cover.

Sahrawi refugees



Western Sahara: time for a new track?

by José Copete

Traditional diplomacy has failed to resolve the Western Sahara conflict. Is it time to adopt a multi-track approach to Africa's last decolonisation dispute?

Half a century after the UN General Assembly demanded a self-determination referendum, the Western Sahara conflict remains as insoluble as ever. In 1975 the rapid withdrawal of Spain – which had amalgamated the territory into a single colony since the late nineteenth century – prompted Morocco and Mauritania to occupy and partition the territory. Most of the indigenous population sheltered from the war in four refugee camps in neighbouring Algeria. Under military pressure from the Frente Polisario – the independence movement launched in 1973 – Mauritania withdrew in 1979, leaving Morocco as the only occupier.

Denying Moroccan and Mauritanian claims, the International Court of Justice declared in 1975 that the Sahrawi population had a right of self-determination. Spain remains the de jure administrative power. Western Sahara is on the UN list of Non-Self-Governing Territories. The Sahrawi Arab Democratic Republic (SADR), a government-in-exile proclaimed by Polisario in 1976, is recognised by 48 – mostly small – nations.

Despite a ceasefire brokered in 1991 by the UN, no settlement has been achieved. Morocco remains in occupation and refugees are yet to return. The referendum, originally scheduled for 1992, was planned to give the indigenous population the option between independence or inclusion with Morocco but has not taken place. The emphasis on 'traditional diplomacy' (Track I in peace-building parlance), carried out exclusively by official leaders representing the SADR, the Moroccan and other governments, the UN and its peacekeeping mission MINURSO,¹ has left no space for 'bottom-up' participation of civil society actors. Actors have simply focused on two activities – efforts

towards holding of the referendum and provision of humanitarian aid to the 165,000 Sahrawi refugees in camps near the Algerian city of Tindouf. Absence of indigenous empowerment has built a non-participatory peace process increasingly dependent on official leaders.

In other contexts many international relief NGOs have combined peace promotion with humanitarian assistance. However, in the case of the Sahrawis they have simply provided humanitarian aid. This focus on relief to inhabitants of the refugee camps has diverted attention from the needs of other vulnerable Sahrawi populations – the IDPs remaining within the occupied territory or self-settled refugees in third countries such as Mauritania and Spain.

In the current situation, after the postponement of the referendum by Kofi Annan and rejection of the proposals made by former US Secretary of State James Baker, the peace process is close to collapse. Recent demonstrations in the cities of Laayoun and Smara – in which hundreds of Sahrawi have demanded respect for international law, the holding of the referendum and independence – show the existence of a vulnerable community long forgotten. If the international community and the Moroccan government receive these demands with continued indifference or repression, violence is likely.

It is now necessary to:

- link aid to peacebuilding and explore new peacebuilding strategies
- adopt a multi-track perspective involving participation from non-official sectors of society such as traders, university and research centres, mass media, NGOs, political parties and unions and grassroots communities
- recognise the international and transnational dimensions of



EC/ECHO/Khaled Halouane

Saharawi refugee camp

the Sahrawi people: a complex of refugee camps, NGOs, associations, individuals, tribal fractions, institutions, routes of humanitarian aid and political tourism, political solidarity movements, Frente Polisario delegations, Sahrawi Republic embassies, liaison committees and task forces, all of which contribute to survival in the refugee camps.

Different communities now share the disputed land – indigenous Sahrawis and Moroccan settlers encouraged to settle in Western Sahara. Interaction among them and with any returning returnee population could be fraught with tension. Since the dispute began the Western Sahara has become a major transit point for African migrants en route to Europe.

The recent developments in the territory and the UN failure to resolve the conflict are not unrelated. It is time to stop thinking of the Western Sahara conflict as beyond resolution and to explore a participative strategy, a multi-dimensional post-settlement and post-return strategy, involving protection, reconciliation, transitional justice and development.

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For further information on Western Sahara, see: www.arso.org

1. UN Mission for the Referendum in Western Sahara www.un.org/Depts/dpko/missions/minurso

Holidays in peace: Sahrawi children visit Spain

by Gina Crivello, Elena Fiddian and Dawn Chatty

Thousands of young Sahrawis spend summer holidays with Spanish families. The Vacaciones en Paz hosting programme has grown into a transnational network which allows Sahrawi youth to partially offset the hardships of their daily lives as refugees.

As Spanish colonial rule ended in 1975, Morocco took control of Western Sahara, triggering a conflict which resulted in mass displacement of Sahrawis to camps around the southern Algerian city of Tindouf. Thirty years on, the conflict remains unresolved.¹ An estimated 150,000-200,000 Sahrawis are almost entirely dependent on humanitarian aid.

Vacaciones en Paz ('Holidays in Peace') is organised by the Unión de Juventud de Saguia el Hamra y Río de Oro (UJSARIO)² - the youth organisation of the Polisario Front - in partnership with some 300 Spanish solidarity associations (Amigos del Pueblo Saharaui).³ Every summer since 1988 between 7,000 and 10,000 Sahrawi children have come to live with Spanish families.

Many return year after year to the same families. While in Spain they receive medical care, clothes, toys, gifts for their families in the camps, food items, school supplies and money. Most return home with cash and some families additionally send money throughout the year. Host parents report that children often come with specific family requests and may return home with pressure cookers, solar panels and sewing machines - provided either by host families or local solidarity associations.

For some host or Spanish families, financial support is the most important form of solidarity they can offer. After hosting a child for three consecutive years, a mother explained:

Every year we take a collection from friends, family and

neighbours; even for Easter and Christmas we do the same. I feel very responsible. It's almost as if my greatest responsibility is economic.

Many hosts stress the wider community impact of their support, believing that the money, food and goods they send have potential to improve the wellbeing of both individual children and their families. However, some hosts who have visited the Sahrawi camps are concerned that they may have contributed to socio-economic differences there. A host noted:

If we consider that 10,000 children come to Spain every year and if every child returns with €100 or even €50, you do the calculations... this has generated an economy... Eight years ago these little stores you now see didn't exist. Now, instead of going to buy from the Algerians who go to Tindouf, these families go to Tindouf to buy the products so they can set up their own stores ... it's clear that in the camps there are social classes now. The family that has five kids who come to Spain has an economic status that is higher than a family who has two kids at home who don't come.

On arrival in Spain each child receives a medical examination. Most show signs of iron-deficiency and malnourishment and others are diagnosed with more serious ailments such as kidney stones or eye irritations. Families and support organisations often cover medical and dental expenses or the cost of eyeglasses. Children

with serious medical conditions requiring longer-term or invasive treatment may stay on in Spain after the summer programme ends.

Many parents stress the emotional impact of hosting:

- "I love my daughter with all of my heart."
- "It's been a very positive and enriching experience."
- "I have been able to help someone in need and it motivates me to be a better person."
- "Hosting a child is not charity. It's a privilege and an act of justice."
- "A boy, smiling at you when he has learned something, when he can explain something to you in your mother tongue, it's lovely, it's something that makes it worth the effort."

A small number of hosts are interested in fostering children in order to offer them education in Spain, as long as families in the camps support the idea.

However, there are also negative experiences. One parent complained of lack of respect towards the Catholic religion. Two Sahrawi girls reported being smacked by members of previous host families. Many children reported they were generally satisfied with host families but did not develop emotional attachments with them.

Several trips are organised each year to enable Spanish families to travel to the refugee camps and visit the children they have hosted. Some hosts find the visits to be emotionally taxing.

Their behaviour there is influenced by their customs and traditions, so out of respect they can't or don't express their feelings... Here he's very open and caring... he's called us mummy and daddy without us having to say anything... But when you get there, you're desperate to

hug him and see him... forget it. When we speak with him on the phone, he's not at all talkative. It's not at all like when he's here.

Some host parents have been politically involved in the Western Sahara issue since the 1970s. Believing it is important to raise the children's political awareness, they may talk with them about the background to the conflict and use maps, photos and books to improve their understanding. One such host commented that:

They consider that they live in Laayoune, but it's not the Laayoune... you know... so we speak with her, show her maps, tell her where her family is from originally, that they have a sea, etc...

UNHCR-sponsored home visits in 2004 allow Sahrawi refugees living in camps near Tindouf to visit family members whom many have not seen for 30 years.

Others seek to discourage the children from wanting to live in Spain and urge them to retain hope of one day residing in the occupied territories which they have never seen.

Some hosts have no political motivations. A first-time host mother

explained that her family's decision to offer hospitality was:

...more for personal and sentimental reasons ... we don't know much about the political situation. At the political level, I feel like we can't do much... In two months, I can make a difference in a girl. I can feed her, make sure she gets the medical attention she needs ... but the political question, it just doesn't interest me much.

The bonds created during the summer holidays are reinforced by repeat hosting, by telephone and written contacts and by the Spanish family's return visits to the camps. These exchanges provide some children with a path for future emigration to Spain, either for study or employment.

Vacaciones en Paz is a window of opportunity for Sahrawi children. Their medical and nutritional needs are attended to, cultural horizons are expanded and many develop deep emotional bonds with their host families. However, Sahrawis have a strong sense of

family loyalty and commitment to the independence struggle. Despite the economic benefits of visiting Spain, all the Sahrawi children we interviewed said they were keen to return to the camps at the end of the summer. Asked about their long-term ambitions, most said they intended to live near their families and did not indicate they would seek to emigrate when they grow up.

This article is based on interviews with a sample of Sahrawi youth and their hosts in Madrid in August 2005. Gina Crivello is a research assistant at the Refugee Studies Centre and Dawn Chatty its Deputy Director. Elena Fiddian is a University of Oxford doctoral student. Emails: ginacrivello1@yahoo.co.uk; dawn.chatty@qeh.ox.ac.uk; elena.fiddian@qeh.ox.ac.uk.

For further information about the research, visit: www.forcedmigration.org/guides/llreport2/

1. See preceding article by José Copete.
2. www.ujсарio.net
3. www.nodo50.org/saharamad



'Environmental' refugees?

by Kate Romer

How should governments support those at risk of displacement from climate change?

For more than thirty years the people of the Carteret Islands – six tiny islands just 1.5 metres high – have struggled to prevent salt water destroying their coconut palms and waves crashing over their houses. In November 2005 the fight was abandoned. The Papuan New Guinean government decided to relocate the entire population to Bougainville, a larger island 62 miles away. By 2015 the islands are expected to be permanently submerged.

Of all developed nations, Australia should be among the first to recognise the enormous potential for large-scale migration and disruption as a result of climate change. The Asia-Pacific region is likely to witness unprecedented migratory movements as a result of rising sea levels and destruction of low-lying islands by increased cyclonic activity. Of the 50 million people expected to have to flee their homes as a result of environmental factors by 2010¹ a large proportion will be in Australia's backyard. Tuvalu, Kiribati, Fiji and Tonga are among the island states which could become uninhabitable. Anticipating population displacement, these governments have negotiated a migration agreement with New Zealand to enable those displaced to move to a safer environment.

According to the International Federation of Red Cross and Red Crescent Societies in their *World Disasters Report 2001*, more people are now forced to leave their homes because of environmental disasters than war. Civil society actors in Australia have joined international lobbies pressuring governments to recognise the group increasingly called 'climate refugees'. A recent publication by Friends of the Earth Australia and Climate Justice argues that Australia has a disproportionate responsibility for creating them – Australia has about 0.03% of the world's population but produces about 1.4% of the world's green-

house gases – and hence an onus to recognise them officially as a separate category of refugee.²

No international or national legislation explicitly recognises or defines 'environmentally displaced persons' and there are no bodies mandated to offer them protection. The Guiding Principles for Internal Displacement³ covers those displaced by natural or human-made disasters. Principles 10-27 detail the protection that should be provided during displacement but this only applies to those who have not crossed an international border. In order to address these gaps advocacy groups are seeking expansion of the term 'refugee'. However, it needs to be asked whether this is the best way to offer protection to those displaced by environmental degradation.

The first key point is that 'environmental/climate refugee' is legally incorrect. A 'refugee' is defined as someone who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" and "is outside the country of his/her nationality". Currently this definition does not include those displaced by environmental factors. Use of the term without any legal expansion of the definition potentially exposes groups and individuals to accusations of naivety and failing to produce a sound legal basis for their argument. Use of incorrect terminology gives governments grounds to disregard advocacy on behalf of the environmentally displaced.

There is also the risk that use of the term 'climate refugee' will reduce the viability and utility of the term for those who are currently eligible for protection under the legal definition of refugee provided by the 1951 Convention. Politicians and the public may judge 'economic' or 'environmental' refugees to be taking illegitimate advantage of refugee protection

mechanisms. In Australia, as elsewhere, this has provided justification for an increasingly narrow definition of the term 'refugee' and has reduced adherence to international standards. Therefore, far from encouraging the government to recognise an expanded group of persons in need of protection, the incorrect use of the term could in fact lead to reduced opportunities for all refugees to obtain recognition and protection.

Given the recognised protection needs of the environmentally displaced in the Asia-Pacific region, as well as the current legal and political obstacles of recognising this group as 'refugees', the following points may serve as a starting point for developing more effective advocacy for the protection of 'environmentally displaced persons':

- develop a clear definition of an 'environmentally displaced person' (EDP) as a basis for advocacy and the development of policy
- encourage governments to recognise the plight of EDPs and support the development of migration agreements to assist potentially displaced persons. New Zealand's agreements with Pacific states could provide an example.
- encourage governments to sign up to and adhere to the Guiding Principles for Internal Displacement and to recognise their applicability to the protection needs of those displaced as a result of climate change within country borders.

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1. UN University's Institute for Environment and Human Security http://www.ehs.unu.edu/index.php?page=12_October_-_UN_Disaster_Day
 2. www.safecom.org.au/FOE_climate_citizens-guide.pdf
 3. www.unhcr.ch/html/menu2/7/b/principles.htm

Is the EU abandoning *non-refoulement*?

by Chiara Martini

The right to seek and enjoy asylum from persecution is under serious threat in the European Union. Fortifying Europe against asylum seekers risks encouraging the illegal labour market and trafficking in human beings.

After six years of decline in asylum applications Europe now hosts only five per cent of the world's refugee population. Only a tiny proportion of the world's 20 million refugees and asylum seekers ever get to Europe. In 2004 the 25 EU countries recorded 19% fewer asylum requests than in the previous year. Focusing on screening out as many applications as possible, and reflecting often unfounded fears of perceived abuse of the asylum system, harmonisation of European asylum policies has moved towards the lowest common denominator.

EU states are implementing the Hague Programme for closer cooperation in justice and home affairs by 2010.¹ This second phase of consolidation of European asylum policy focuses mainly on providing further powers to the state, rather than extending the rights of the individual. The 'fundamental rights' being guaranteed are those of the EU authorities and the various member states to repel those deemed to be illegal immigrants.

There has been progressive diminution of member states' obligations under the Geneva Convention. This is particularly the case with the refugee definition, which has resulted in excluding those at genuine risk of persecution from receiving international refugee protection. Germany and France, for example, exclude from refugee protection individuals fleeing non-state agents of persecution.

Recently developed concepts indicate departure from the principle of *non-refoulement* – the concept enshrined in the 1951 Refugee Convention that refugees should not be returned to places where their lives or freedoms could be threatened.

- The so-called 'safe third countries' are countries to which asylum seekers may be returned without their application having been examined and in which their application is supposed to be examined. This breaches the primary responsibility of the state in which the claim is lodged to provide protection.
- Under the 'accelerated procedures' provision, a wide range of asylum claims – more than 80% according to Amnesty International – are arbitrarily judged to be 'manifestly unfounded'.
- The 'super safe country' concept allows EU states to refuse to examine applications of an applicant who has travelled through a country which has ratified the Geneva Convention and the European Convention on Human Rights and which has an asylum procedure. Since there is no obligation on the 'super safe third country' to process the application, this practice denies asylum seekers the most basic right to be heard and gives rise to the risk that people will be passed indefinitely from state to state.

Responsibilities are not being equally shared among member states. Under the Dublin II Regulation, if it can be established that an asylum seeker has irregularly entered the borders of an EU state that country is responsible for examining the request for asylum. As a consequence, more asylum seekers are either being returned to a state on the periphery of the EU or choose not to lodge a formal asylum claim but instead travel on to another EU state. This provision penalises EU nations with exten-

sive external borders, particularly newly acceded states whose asylum systems are still weak.

The EU is allocating much higher levels of funding to border management/migration control activities – including the costly proposal to utilise biometrics in the Schengen Information System (SIS) and in residence permits – than to the improvement of refugee protection in non-EU countries. Proposals to establish an EU Border Management Agency and EU Border Police could give a legal basis to operations and measures that are already in place.

The second phase of development of a common European asylum policy has seen a radical departure from the commitment made in 1999 by EU leaders meeting in Tampere, Finland, to "work to-

Fortified borders are not working as they are supposed to

wards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*."

Fortified borders are not working as they are supposed to. They do not stop new arrivals and they fuel the illegal labour market and the trafficking in human beings. The EU has to adopt fair and efficient policies – based on genuine minimum standards – which share burdens and responsibilities equally among EU members and which address the root causes of forced migrations.

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1. See Morris T, 'Chequered progress towards a common EU asylum policy' FMR23, 2004 www.fmreview.org/FMRpdfs/FMR23/FMR2307.pdf

Lost without a lawyer

by Nicole Hallett, Maria Beatrice Noguiera, Jessica Bryan and Gemma Bowles

Changes to UK asylum laws have left many asylum seekers without the legal representation they need.

In a small drab office with papers piled to the ceiling, an immigration solicitor explains how difficult it is to work under the new system. "It's impossible," he says. "If I could do it over again, I wouldn't go into immigration law." His thoughts were echoed by most of the solicitors interviewed in 2005 about changes to asylum legal aid work in the UK.

Arguing that costs were escalating and alleging that fraudulent aid practitioners were abusing the legal aid system, the government proposed changes in June 2003 limiting legal aid to five hours per case. The legal aid community mobilised against the changes but their views went unheeded and in April 2004 the new system was implemented. Additionally, solicitors are now not allowed at the initial interview with asylum seekers at the Home Office and a strict limit has been set on payments for medical reports and translators.

A team of researchers from the University of Oxford interviewed solicitors and legal aid practitioners and found disturbing results:

- Most solicitors said it was impossible to prepare a case in five hours. In one reputable law firm the average time per case was 19.6 hours. "Five hours does not take into account traumatic experiences," one solicitor explained. "You have to sit there with a client and talk them through it. You can't tell a woman to stop after an hour if she's only just started telling you about a rape."
- It is so complicated to apply for an extension - and most requests are turned down - that many solicitors stop giving advice once the five hours are up.

- Several admitted they had started providing lower quality advice. "The only role of the solicitor is to write everything the client says ... without any analysis of the situation," one well-established solicitor complained.
- Many practitioners admitted to 'cherry-picking', agreeing to take on only the most straightforward cases, leaving people with complex cases without any legal representation at all.

The biggest long-term effect is likely to be the number and quality of solicitors doing legal aid work. Several small firms thought that bigger firms would get bigger, while small firms would be forced out of business. Many solicitors have already left the field and many others noted a decrease in new solicitors choosing immigration and asylum as their speciality. Almost half of practitioners surveyed by a Law Society report said they planned to leave the field as a result of the changes.

Those interviewed had divergent opinions on who was getting out. Some believed that only conscientious people stayed, while profit-driven firms, big and small, had left. Most agreed that some of the very worst abusers of the system had gone - because of the cuts and tighter audits - and some believed that poor practitioners could benefit from the new regulations. "They actually shield people by allowing them to get away with only spending five hours on a case, collecting their money, and then the clients are on their own. And they can say 'It's not my fault. It's the guidelines,'" said one practitioner.

Those unable to find legal aid either represent themselves or find unqualified advisors, who often charge exorbitant fees for bad advice. One practitioner noted: "Pick up any local paper. There is a classified section with adverts saying immigration advisory, etc. There are places that say that they are a surgeon as well as an immigration advisor as well as a hairdresser." The Law Centre Federation has confirmed "evidence of clients receiving overpriced, poor service from unregistered or unregulated advisors advertising in the local press."

Several practitioners at charity organisations reported an increase in the number of desperate people calling their offices: "We used to have a drop-in service to give

We are simply unable to assist everyone

advice to emergency cases, but we had to change it to a telephone service. We are simply unable to assist everyone." Charitable organisations are turning away large numbers of clients due to lack of time and resources.

While the changes appear to have had the intended effect - a 36% decrease in legal aid expenditure in 2005 and a drop in the number of fraudulent advisors - the changes have had a negative impact on the guarantees of justice and fairness for asylum seekers.

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Local integration: a durable solution for refugees?

by Ana Low

UNHCR supports local integration as one possible solution for refugees who cannot return home. Experience in Mexico, Uganda and Zambia indicates that integration can benefit refugee-hosting communities as well as refugees.

Economically integrated refugees contribute to development of the host country rather than constituting a 'burden'. They become progressively less reliant on state aid or humanitarian assistance and better able to support themselves. Social and cultural interactions between refugees and local communities enable refugees to live amongst or alongside the host population, without discrimination or exploitation and as contributors to local development. Local integration policies can grant refugees a progressively wider range of rights and entitlements generally commensurate with those enjoyed by local citizens. These include freedom of movement, access to education and the labour market, access to public services and assistance, including health facilities, the possibility of acquiring and disposing of property and the capacity to travel with valid documentation. Over time the process should lead to permanent residence rights and perhaps ultimately the acquisition of citizenship in the country of asylum.¹

In all three countries host governments have worked with UNHCR to promote self-sufficiency, legal integration and repatriation for:

- the 46,000 Guatemalan refugees fleeing military persecution who arrived in Mexico in the 1980s.
- many of the estimated 230,262 refugees (80% of them Sudanese) living in Uganda. In 1998 a Self-Reliance Strategy in three of the eight refugee-host-

ing districts was launched to improve the standard of living and access to services of both refugees and members of host communities. It was expanded in 2004 and is to be reviewed in 2007.²

- the large populations of refugees from Angola, DRC, Burundi and Rwanda living in Zambia. [The Zambia Initiative was described in FMR24.³]

The Mexican government did not sign the 1951 Refugee Convention



During activities organised by UNHCR and partners, refugee children draw to express what they like and don't like about living in Mexico.

until 2000 and had no strategies for integrating refugees locally into the population. However, the government did grant nationality to a large number of Guatemalan refugees and refugee children born in Mexico. In contrast, both Uganda and Zambia designed strategies – with UNHCR, implementing partners and donor countries – to foster the development of both refugee and host communities, allowing a certain amount of local integration for refugees through contact with the host community. Neither country, however, has a legal framework for integration or allows refugees to gain citizenship.

Nevertheless, both Uganda and Zambia have prepared draft legislation which offers the possibility of naturalisation for refugees who cannot return home.

In Mexico, refugees arriving in the state of Chiapas were offered land if they agreed to relocate to refugee settlements in other states where services could be provided. In most cases the refugees became at least partially self-reliant. In the case of Uganda, government provision of land enabled a move from refugee camps to refugee settlements, allowing refugees to become self-reliant and selling produce in local markets. Locals have been given access to services in the settlements, fostering social interaction and integration. Zambia also provided arable land for refugees. As in Uganda, they produce enough food for themselves and to sell on the open market, thus building economic links with the local communities.

In Mexico, refugees have the right to work but only once they have either immigration or naturalisation documents. Microfinance was available but only within settlements. In practice refugees often worked illegally on nearby farms and the government turned a blind eye. Uganda allows refugees free access to the employment market. While jobs are scarce for everybody living in Uganda, refugees now have a better chance of becoming self-reliant and locally integrated than those dependent on credit schemes or services provided in camps and settlements. Zambia does not generally allow refugees to work but allows skilled workers access to the national labour market.

Mexico's revolving communal credit schemes – Cajas Comunales de Crédito (CCC) – were particularly successful. Many refugee

beneficiaries applied for credit which they used to set up income-generating projects within their local communities. Zambia has supported agricultural micro-finance schemes. A scheme initiated in 2003 has provided credit to some 120,000 refugees and locals, allowing for a 25% increase in the amount of land cultivated per family. By investing their loans and through their own hard work, the community – refugees and locals – now produce enough food for domestic consumption plus a surplus which they market. Not only has the community become self-reliant but it also earns three times more money than before the initiative.

In Mexico refugee children had their own primary schools in the settlements. Integration was not fostered through joint schooling although older refugee children could attend local high schools. In Uganda, the Jesuit Refugee Service is responsible for running schools in refugee settlements to which local children also have access. Integration is facilitated as refugee children come into contact with local children and locals have improved access to educational services. In Zambia, refugee chil-

dren have unrestricted access not only to primary schools but also – a rare thing in refugee situations – to secondary and tertiary education. Under the Zambia Initiative, UNHCR and bilateral donors provided significant financial support to the education sector, enhancing access to education services from which both local and refugee communities benefited

Participatory approach

A key element of programmes to promote local integration in the three countries has been provision of space for refugees to articulate their needs. In Mexico, refugees chose community representatives who liaised with the government, UNHCR and donors. They facilitated their own return to Guatemala through negotiating the demilitarisation of several conflict zones. Uganda's Local Governments Act encouraged participatory decision-making and led to the establishment of Refugee Welfare Councils to identify and respond to development needs of refugees. In Zambia the participatory approach was taken a step further with the creation of 22 Local Development Committees – with elected refugee and community members – to

identify, implement and manage community development projects.

Conclusion

Repatriation is generally regarded as the preferred solution for refugee populations but other viable options need to be considered when repatriation is impossible. Local integration is one such option. It allows those refugees who cannot or do not wish to repatriate the possibility to enjoy the freedoms and livelihood they would have in their home countries. While there have been implementation problems, the governments of Mexico, Uganda and Zambia should be commended for their efforts to protect and assist refugees by all-inclusive assistance programmes and their commitment to including refugees in national development strategies.

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1. Framework for Durable Solutions for Refugees and Persons of Concern, UNHCR, Geneva, May 2003

2. www.unhcr.org/cgi-bin/texis/vtx/protect/opedoc.pdf?tbl=PROTECTION&id=41c6a19b4
3. See M Watabe 'The Zambia Initiative', FMR24, www.fmreview.org/FMRpdfs/FMR24/FMR2442.pdf

Promoting the female condom to refugees

by Jacqueline Papo

UNHCR and its partners have been providing male condoms since the late 1990s. However, uptake remains alarmingly low. Will the agency be more successful in promoting the female condom, a female-initiated barrier method of contraception and disease prevention?

The public health rationale for condom use in the refugee setting is compelling, as refugees are particularly vulnerable to HIV and sexually transmitted infections (STIs). Social dislocation, economic deprivation, increased sexual violence, lack of access to medical services, increased transactional sex and increased contact with potentially infected populations put refugees, especially

women, at heightened risk.

The female condom is a loose-fitting polyurethane sheath. It has an inner ring, which is inserted into the vagina and keeps the condom in place, and an outer ring, which remains on the outside of the body. Inserting the device correctly takes some practice. The female condom is currently the only available form of woman-

initiated protection against HIV. Produced in the UK, it is about ten times more expensive than the male condom. It is marketed for single-use only, but the World Health Organisation has outlined a cleaning procedure for re-use (up to five times) for cases where resources are limited and no other alternatives for sexual protection are available.

In order to promote the female condom more successfully, experiences were reviewed in thirteen country programmes, and interviews and workshops were conducted with refugees and NGO staff in Kakuma refugee camp, Kenya.

The main outlets for condom provision are through STI and family planning clinics, peer educators and community health workers, and condom dispensers. Many additional potential outlets for condom provision remain unutilised. These include: Prevention of Mother-to-Child Transmission services; support programmes for vulnerable women, the mentally impaired, orphans and vulnerable children, and commercial sex workers; home-based care and supplementary feeding programmes for HIV/AIDS patients; traditional birth attendants and healers; drug shops; links to women's sanitary pad distribution; and dispensers sited in bars, clubs, beauty salons, schools, vocational centres, youth centres, food distribution centres and public latrines.

Uptake obstacles

Most NGO staff and refugees have never seen a female condom. In Kakuma initial reactions varied from enthusiasm, surprise and awe, to scepticism and fear. There is still much distrust and stigma associated with condoms. Stories of women dying because of male condoms lodged inside their vaginas, of men piercing the tip of condoms, of condoms breaking and of Western plots to lace condoms with HIV are common.

There are wide gaps in basic knowledge on HIV/AIDS transmission ("if a man eats a lion with HIV, will he get HIV?"), adolescent development ("how will a young woman's body develop if she doesn't come in contact with men's protein in semen?") and reproductive anatomy ("won't the female condom disappear inside the woman's body?").

Unequal gender dynamics and traditional cultural practices prevent many women from introducing the female condom into their relationships. Many women expressed fear and discomfort at the idea of having to insert it. Previous experience with insertive devices such as tampons, diaphragms or cervical caps is limited and self-touching of genitalia is taboo in many cultures.

It is important to:

- make female condoms available through health-related, as well as non-health-related outlets
- develop posters, diagrams and pamphlets tailored to differing levels of literacy and ethnic/cultural backgrounds
- include men in all awareness-raising initiatives as they often remain the final decision-makers in the bedroom
- help women develop condom negotiation skills, for both casual and steady relationships
- encourage women to exchange tips on female condom use and break taboos associated with sex through group discussions
- promote the female condom not just for high-risk groups but for **all** sexually active men and women who want a method of **dual** protection, against HIV/STIs as well as unwanted pregnancy
- use peer educators and community health workers to access hard-to-reach groups
- train all health providers, peer educators, social workers and workshop leaders on the female condom to ensure they fully understand it and incorporate it in their activities
- consult key community members, especially when courting controversy by introducing condoms in non-health-related fora
- strengthen funding and coordination of condom provision efforts to ensure adequate supplies and avoid re-use of female condoms
- extend activities to include NGO staff as well as host communities
- share experiences among field staff to develop good practice which can also be used to inform the provision of future other female-controlled technologies, such as microbicides.¹

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To obtain a copy of UNHCR's Female Condom Strategy, email hiv aids@unhcr.ch

For online information about the female condom, visit www.female-health.com/ or www.avert.org/femcond.htm, and also download: *The female condom: a guide for planning and programming*, World Health Organisation, www.who.int/reproductive-health/publications/RHR_00_8/index.html.

Many thanks to UNHCR staff in Nairobi and Kakuma, and NGO and refugee key informants in Kakuma camp. Special thanks to Marian Schilperoord, HIV/AIDS Technical Officer, UNHCR Geneva.

1. www.global-campaign.org/about_microbicides.htm

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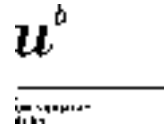
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Georgia must act on promises to end displacement crisis

by Walter Kälin

In December 2005, I undertook an official mission to the Caucasus republic of Georgia. In addition to Tbilisi, I visited the Samegrelo region and the *de facto* autonomous regions of South Ossetia and Abkhazia.

I was shocked by the misery in which thousands of IDPs are still living, more than a decade after the violent fighting that caused them to flee their homes. At the same time, I received firm assurances from the Government that plans are under way to develop and implement a new IDP policy to end their plight through recourse to durable solutions. The main obstacles are the absence of political solutions to regional conflicts and the ensuing widespread feelings of insecurity. As a consequence, return movements are slow – and almost non-existent in some areas. International support for rehabilitation and development investment is hampered.

The sustainable return of persons to the Gali region of Abkhazia is obstructed by administrative measures directed against returnees, by attacks and harassment, as well as by widespread impunity for perpetrators. Even if it has no international significance, the so-called 'Law of the Republic of Abkhazia on Citizenship of the Republic of Abkhazia' of 2005 discriminates against persons of non-Abkhaz origin and may thus create difficulties for returnees. Reportedly, Abkhaz authorities have restricted the use of the Georgian language in schools, with detrimental effects on the provision and quality of education.

In South Ossetia, some IDPs have returned and integrated locally, although many live under deplorable conditions with insufficient

international assistance. I was informed that most prefer not to return to their original homes for fear of discrimination and harassment. A property restitution mechanism for Osset IDPs is sorely lacking, a situation which I urged the Government to remedy without further delay.

In Georgia, almost half the remaining 200,000 IDPs are still accommodated in decaying and sometimes very isolated collective centres which frequently lack running water, electricity or insulation. Their inhabitants often belong to particularly vulnerable and marginalised groups, such as elderly without family support, female-headed households, disabled and severely traumatised persons. The rest of the IDPs continue to live with host families and communities, putting a considerable strain on a population suffering generally from high unemployment and widespread poverty. Many IDPs have no income of their own and thus depend on a monthly state allowance. This allowance currently equals around \$6, which does not afford even the most basic necessities, buying just half a pound of bread per day.

The IDPs' misery can be explained in part by the previous Government's policy of heavily promoting return while making local integration difficult. Also, donors and international organisations have drastically reduced their support for humanitarian assistance, discouraged by inefficient public management of funds, renewed tension and destruction in return areas, little prospect of lasting solutions to the conflicts, and a perceived lack of political will of the Government to tackle the displacement crisis appropriately.

Government officials assured me that the new leadership, elected in 2003, embraced a different approach. Acknowledging the prevailing insecurity and lack of basic infrastructure in return areas, officials informed me of their intention to facilitate the economic and social integration of the displaced into local communities, including through the privatisation of collective centres to the benefit of IDPs.

I expressed my appreciation of this shift in approach, and urged the Government to formalise it in a comprehensive policy encompassing the whole range of political, civil, social and economic rights of IDPs. Under international law, and as enshrined in bilateral agreements between the Georgian and Abkhaz sides, IDPs have the right to return voluntarily to their former homes. But their right to live in safety at the site of their displacement, as well as an adequate standard of living, must equally be ensured, as stated in the Guiding Principles. Crucially, integration and return are complementary, not mutually exclusive: well-integrated people are more likely to be productive and contribute to society, which could give them the strength to return once the time is right.

Walter Kälin is the UN Secretary-General's Representative on the Human Rights of IDPs, co-director of the Brookings-Bern Project on Internal Displacement, and professor of constitutional and international law at Bern University, Switzerland. Email: walter.kalin@oefre.unibe.ch

After the next Human Rights Commission, the mission report will be available online at www.ohchr.org/english/bodies/chr/index.htm. For further information about IDP issues in Georgia, visit the Internal Displacement Monitoring Centre www.internal-displacement.org



Improving standby protection capacity

NRC is working with the Inter-Agency Internal Displacement Division¹ of the UN Office for the Coordination of Humanitarian Affairs (OCHA)² and the Inter-Agency Standing Committee (IASC)³ to develop a standby protection capacity (PROCAP).

Recent reviews of humanitarian response have highlighted protection as a major gap, especially in the rapid deployment of experienced protection staff to strengthen and support UN country teams. PROCAP is a flexible deployment mechanism designed to increase the number of qualified protection personnel available for short-term missions, enhance protection capacity within NGO standby rosters and improve the quality of temporary protection personnel through additional and comprehensive training.

PROCAP will deploy qualified and experienced protection specialists. An emergency team of at least ten Senior Protection Officers will be at the disposal of the UN's protection-mandated agencies - UNHCR, UNICEF, OCHA and the Office of the United Nations High Commissioner for Human Rights (OHCHR). A second tier of 90 trained Protection Officers will be developed in collaboration with existing and new NGO partners. The PROCAP mechanism will seek to better match individual profiles on standby rosters with the needs of UN Country Teams. PROCAP will promote diversity in the pool of available protection officers by supporting increased recruitment of individuals from Asia, Africa, Latin America and the Middle East.

So far, Senior Protection Officers have been deployed to the Democratic Republic of Congo, Somalia and Uganda. Administration and management of PROCAP are being undertaken by an Inter-Agency Steering Committee and a PROCAP Support Unit located within OCHA, Geneva. NRC is contractually administering the core team. Upon a request from

a Country Team member and/or Humanitarian Coordinator, Tier One personnel will be deployed within 72 hours. Deployment of Tier Two personnel will be through established stand-by mechanisms between UN agencies and NGO partners.

For more information, or to apply to join the roster, email procap@nrc.no

Consolidating refugee protection in Latin America

In November 2004 NRC and UNHCR co-hosted a conference in Mexico City at which 20 Latin American countries pledged support for The Mexico Plan of Action - a series of concrete steps to address challenges to the protection of refugees and IDPs in the region.⁴ In February 2006 NRC attended a follow-up meeting in Quito, Ecuador, at which governments, civil society representatives, UNHCR staff and the International Organization for Migration exchanged ideas on how to explore the use of resettlement as a tool to provide protection for displaced refugees in Latin America.

The resettlement part of the Plan was designed to help countries such as Ecuador and Venezuela, where many Colombians take refuge, by offering resettlement places in other Latin American nations. It contains two initiatives - the 'Solidarity Cities' programme for self-sufficiency and local integration and the integrated 'Borders of Solidarity' programme, aimed at improving the capacity of border communities to receive and protect refugees. In a spirit of regional solidarity, other Latin American states have offered to provide a home for some of the refugees living in Colombia's neighbours. Brazil, Chile and Argentina led the way in 2005 by offering resettlement to some 250 Colombian refugees. Mexico and Uruguay have expressed interest in implementing pilot projects. The meeting highlighted the fundamental role played by NGOs in all phases of the resettlement process, particularly with regard to

cultural orientation and psychological support, both prior to departure and during the integration phase.

Erika Feller, UNHCR's Assistant High Commissioner for Protection, noted that the ramifications of regional resettlement go beyond the Americas. "Success with a regional programme here", she noted, "could serve as an impetus to region-wide resettlement schemes in other parts of the world. It will demonstrate that political will, combined with international solidarity and responsibility sharing, can effectively deal with the many constraints resettlement poses in the developing world, especially when it comes to integration. What you are seeking to achieve through this component of the Mexico Plan of Action will undoubtedly assist UNHCR both to realise its global resettlement agenda, and to preserve respect for the institution of asylum in this region and around the globe."

Philippe Lavanchy, director of UNHCR's Americas Bureau, noted that "the resettlement of Colombian refugees is a concrete example of solidarity between states within the Latin American region ... while the Plan promotes South-South cooperation and focuses on the region's capacity to find solutions and share responsibility, North-South solidarity remains key. In this respect, the participation at this meeting of representatives from the US, Canada, Sweden and Norway is especially welcome."

New Secretary-General

Since February 2006 NRC's 1,500 employees in 20 countries have a new boss. Tomas Colin Archer has long experience in leadership and international operations from service at the highest levels of the Norwegian armed forces.

1. www.reliefweb.int/idp

2. <http://ochaonline.un.org>

3. www.humanitarianinfo.org/iasc

4. See: W Spindler 'The Mexico Plan of Action: protecting refugees through international solidarity', FMR24, www.fmreview.org/FMRpdfs/FMR24/FMR2438.pdf



Internet-based IDP network

"Never underestimate the ability of a small group of committed individuals to change the world. Indeed, they are the only ones who ever can." (Margaret Mead)

In all its activities, including training, monitoring and advocacy, the Internal Displacement Monitoring Centre (www.internal-displacement.org) – formerly known as the Global IDP Project – seeks to support civil society initiatives and strengthen its link with communities directly affected by displacement and conflict.

As a first step in supporting the work of civil society actors, and following requests by several IDP community leaders and organisations, the IDMC has agreed to host an international web-based network of national organisations working to advance the rights of internally displaced persons. Membership of this IDP Network, which was launched in February 2006, provides an opportunity for IDP communities and organisations to raise awareness about their work, and enter into dialogue and cooperation with other IDP-related initiatives around the world. IDP Network members also have the opportunity to present a specific aspect of their work and expertise on a special page on the website called 'NGO Perspectives'. The page will function as a means for local groups to share important lessons learned, discuss ways of advocating IDP rights, and identify key challenges facing IDPs and IDP-related organisations. Every three months another Network member organisation will offer its perspectives on the webpage.

Within the framework of the IDP Network, the IDMC plans to organise an international conference with IDP-related civil society groups in 2006. The meeting will define the Network's scope of activities and provide a forum for the exchange of experiences and

development of international and regional partnerships.

Support to civil society actors

In an overall effort to provide more information on IDP-related issues, and to enhance the capacity of local groups to collect and disseminate information, IDMC has decided to support civil society groups researching and producing reports on issues requiring in-depth analysis and investigation. In December 2005, the IDMC supported the Serbian NGO Group 484¹ to prepare a report on the human rights of displaced persons in Montenegro, IDPs and returnees in Kosovo and Roma IDPs. The IDMC also commissioned three local groups – Uganda's Refugee Law Project,² Russia's Memorial³ and the Turkish Economic and Social Studies Foundation (TESEV)⁴ – to assess the implementation of recommendations made by the UN Secretary-General's Representative on IDPs following his country visits. It is hoped that these reports will contribute to raising awareness of the recommendations among state and civil society actors and promoting their use as a framework for addressing outstanding IDP-related issues. All these reports will be made available in relevant languages to facilitate in-country dissemination.

IDP voices

In an effort to amplify the voices of IDPs, the IDMC will collect oral testimonies and make them available through a dedicated web page as well as in reports and other publications. This initiative will be piloted in Colombia in collaboration with Norwegian Refugee Council Colombia, several local

civil society groups, IDPs and Panos London,⁵ an organisation with expertise in working with journalists and other communicators to collect oral testimonies. By giving displaced people the opportunity to speak out in their own words on issues which concern them – rather than having their needs and priorities interpreted by outsiders – the IDMC hopes to contribute to the empowerment of IDPs and civil society organisations and to give a human face to internal displacement. The testimonies will also enable planners and policy makers to more fully appreciate the complex and varied impact of displacement and identify new ways in which to assist those affected.

For more information, visit www.internal-displacement.org or contact Anne-Sophie Lois. Tel: +41 22 799 0706. Email: anne-sophie.lois@nrc.ch

1. www.grupa484.org
2. www.refugeelawproject.org
3. www.memo.ru/eng
4. www.tesev.org.tr
5. www.panos.org.uk

The Norwegian Refugee Council (NRC) works to provide assistance and protection to refugees and displaced people in Africa, Asia, Europe and the Americas. NRC was founded in 1946 in Oslo.

www.nrc.no/engindex.htm

The **Internal Displacement Monitoring Centre** is part of NRC and is an international non-profit organisation that monitors internal displacement caused by conflicts. The IDMC Database provides public information about internal displacement in 50 countries.

www.internal-displacement.org

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The right to return: IDPs in Aceh

by Eva-Lotta E Hedman

Political changes are underway in Aceh but only a small fraction of those displaced by the December 2004 tsunami or by earlier conflict with insurgents have returned home.

In August 2005 a Memorandum of Understanding (MoU) was signed between the Indonesian government and the separatist Free Aceh Movement (Gerakan Aceh Merdeka - GAM). The Aceh Monitoring Mission (AMM)¹ has successfully overseen relocation of Indonesian troops and police and decommissioning of GAM weapons. GAM has publicly disbanded its military wing and is to take part in forthcoming local government elections. Human rights violations have drastically declined.

In this context, it is all the more striking that the lives of IDPs have remained, in important respects, defined by their displacement. Only a small fraction of the more than half a million people displaced by the tsunami in Aceh and Nias Island have become active participants in reconstruction. At the end of 2005, some 80% remain in some form of temporary shelter. Sanitation is often poor and the isolated location of many shelters makes it hard to access jobs and health and education services.

A recent survey of IDPs in host families suggests that such arrangements, which predominantly involve living with relatives, have become more permanent than many had hoped. More than half of those IDPs surveyed have been living with the same host communities or families since the tsunami struck.² The destruction and/or unfinished reconstruction of their house were the most commonly cited reasons for staying so long with host families.

Prior to the tsunami an estimated 120,000 IDPs were forced from their homes by counter-insurgency operations. In the context of post-tsunami Aceh, conflict-induced IDPs have remained largely invis-

ible. In the aftermath of the peace agreement and demilitarisation, however, some have taken action to return to central Aceh where militia groups – not included in the MoU – still enjoy the backing of local businessmen and both civilian and military officials. On 10 December, a collective effort was launched by some 5,000 conflict IDPs in Pidie and Bireuen.³ As transportation promised by local government officials failed to materialise, IDPs turned the planned return into a protest march before eventually boarding trucks and buses for the central highlands where they established camps along the main road.

These conflict-induced IDPs in central Aceh have suffered from food shortages and experienced intimidation and forced relocation at the hands of military and police, as well as interventions by government officials seeking to undermine their collective voice. There have also been reports of violence targeting returning IDPs and/or their property, as well as cases of fighting with local youth or (former) militia in places where local leaders have refused to provide security guarantees. Immediate concerns remain as to the overall conditions in make-shift camps, which have become more difficult to reach and monitor on account of their proliferation and relocation to villages in the central highlands. There are also concerns about the broader issue of security – or lack thereof – especially in communities where no security guarantees have been agreed with local officials.

The Guiding Principles on Internal Displacement assert that authorities have a primary duty and responsibility to establish the conditions, as well as pro-



www.rsc.ox.ac.uk

vide the means, to allow IDPs to return voluntarily, in safety and with dignity. At a minimum, local government officials should declare commitment to upholding and strengthening the peace process, offer security guarantees and, where desired, host *peusujuk* (traditional ceremony of welcome or forgiveness) to foster reconciliation. Safe return and reintegration cannot be achieved without a greater measure of transparency and participation.

As elections approach, AMM and other concerned groups are working to provide space for the Government of Indonesia, GAM and communities to debate their views of the MoU. However, the entire peace process could be derailed by a proposal to redraw administrative boundaries in Aceh which is being debated in the national legislature. Conflict IDPs who wish to return to their communities in the central highlands of Aceh view this development with great anxiety. Government officials pushing for this division of the province may not only be jeopardising the peace process but may also be in violation of the Guiding Principles.

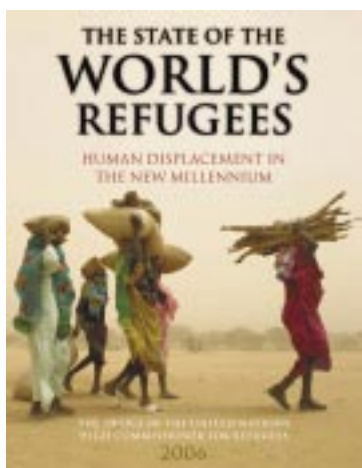
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A longer version of this article is online at: www.fmreview.org/pdf/hedman.pdf

For more information, see the World Bank's Aceh Conflict Monitoring Update www.conflictand-development.org/Home.php and a report from the International Crisis Group: www.crisisgroup.org/home/index.cfm?l=1&id=4049

1. A project of the EU, Norway, Switzerland and five countries of the Association of South-East Asian Nations (ASEAN). www.aceh-mm.org
2. 'IDPs in Host Families Sample Survey Summary Report' www.humanitarianinfo.org/sumatra/reliefrecovery/livelihood/docs/doc/UNORCIDPsin-HostfamiliesSampleSurveySummaryReport-140206.pdf
3. According to the Center for Humanitarian and Social Development, a local NGO in Pidie working with IDPs, some 5,000 names were collected at the outset of the return march. Author's interview, 11 January 2006.

publications

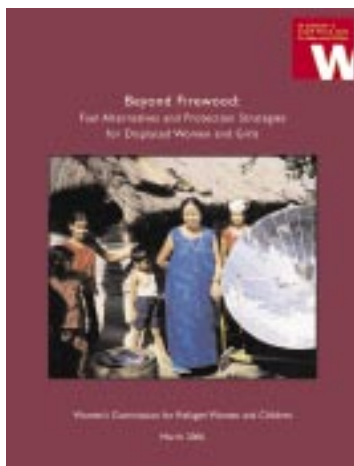
The State of the World's Refugees: Human Displacement in the New Millennium
 UNHCR. March 2006. £16.99.
 340pp. ISBN-10: 0-19-929095-4.



Includes chapters on changes to asylum, refugee security, responding to refugee emergencies, protracted refugee situations, rethinking durable solutions, internal displacement and enhancing responsibility sharing. *Published by Oxford University Press: www.oup.co.uk/isbn/0-19-929095-4*

Beyond Firewood: Fuel Alternatives and Protection Strategies for Displaced Women and Girls

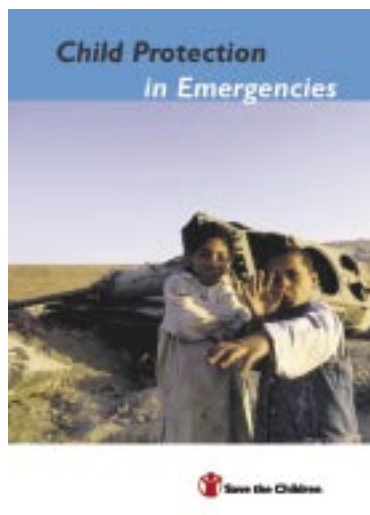
Women's Commission for Refugee Women and Children. March 2006. 56pp. ISBN 1-58030-047-2. Online at www.womenscommission.org/pdf/fuel.pdf



Presents findings of a project to investigate methods for reducing the vulnerability of displaced women and girls to gender-based violence during firewood collection. The project set out to assess alternative fuel options, firewood collection techniques and other protection strategies, appropriate to the local context and in all phases of an emergency. Based on desk reviews of various IDP and refugee situations worldwide and site visits in Darfur and Nepal. *Contact: WCRWC, IRC, 122 East 42nd Street, New York, NY 10168, USA. Tel: +2 212 551-3000*

Child Protection in Emergencies

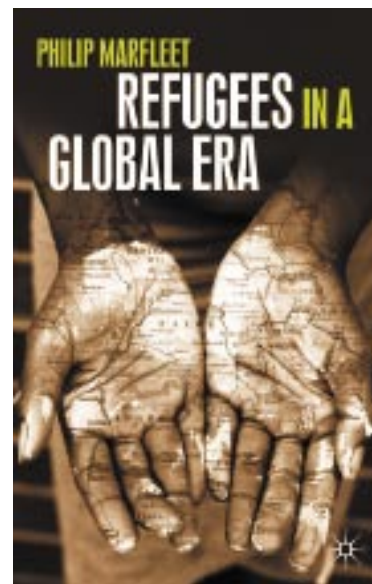
Save the Children Sweden and The International Save the Children Alliance. 2006. 56pp. ISBN 13: 978-91-7321-196-3. Online at http://se-web-01.rb.se/Shop/Archive/Documents/3237_Child%20Protection.pdf



Save the Children believes that child protection activities should target a range of actors, systems, processes and institutions. This report presents the problems, general principles and recommendations for working to achieve the goal of child protection in emergencies. *Contact: Save the Children Sweden, S-107 88 Stockholm, Sweden. www.rb.se Email: info@rb.se Tel: +46 8 698 9000.*

Refugees in a Global Era

by Philip Marfleet. 2006. 344pp. ISBN 0-333-77784-0. £19.99.



Examines the histories and changing patterns of migration and the refugee experience of displacement, flight and the search for asylum. Identifies the conflicts and contradictions inherent in the global system and analyses refugee policy in Europe, North America and Australia. Philip Marfleet is Director of the Refugee Research Centre at the University of East London, UK. *Order via Palgrave Macmillan www.palgrave.com (www.palgrave-usa.com for US/Canada). orders@palgrave.com*

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**IASFM 10 : 18-22 June 2006
 Toronto, Canada**

IASFM 10 is the 10th biennial gathering of the International Association for the Study of Forced Migration (IASFM). Hosted by the Centre for Refugee Studies of York University, Toronto, Canada. For more details see: <http://iasfm10.org/>

Women's voices from the camps of Nepal

In 1989, the Bhutanese government adopted a 'one nation one people' policy to impose the dominant Ngalongpa culture, religion and language throughout the country. The Nepali language of the southern Bhutanese Lhotshampas was banned and Nepali books burned. Peaceful demonstrations in September 1990 sparked retaliatory arrests, detention and torture. Over 100,000 Bhutanese fled to Nepal. Ganga Neupane and Pingala Chhetri, both now in their 30s, have been in exile in Nepal, in camps, for 15 years.

Ganga:

In school in Bhutan, I used to tell my teachers that I would be a lawyer. While I was teaching in the camp school, one of the children asked me what was my ambition. I had no answer for him. The aims of my life have been scattered. Life is so uncertain that we have to live each day as it comes. The governments

of Bhutan and Nepal have not reached an agreed solution. They appear to ignore the problem, dismissing the efforts of those who are struggling to resolve the situation. I feel that if the Bhutanese people had been politically aware – as we are now, a bit – we would never have left Bhutan and the problem would have been solved within Bhutan itself. Living as a refugee for so long is very miserable. We can see no way out.

Pingala:

When we arrived at our refugee camp, I saw plastic roofs blown by the wind. It was so dry and sandy. There was nobody to look after us. There was no food or proper health-care, and many died, especially children. Later, agencies like LWF, CARITAS Nepal, Oxfam GB and UNHCR arrived, providing food, medicine and education. Whenever officials arrived, the flame of our hope to return home grew bigger.

People listened to the radio to hear the news. Even today I can see old people still listening to their old radios with hope in their hearts. I often wonder why we remain unheard and ignored by the world. Innocent people keep dying every day due to lack of fundamental rights, while those promoting human rights keep themselves busy organising human rights programmes and seminars. When we hear of human rights it sounds so good but they are only on paper.

Ganga and Pingala have formed 'Voice for Change', a platform for women in the camps to speak out and to identify practical solutions to their problems. Email: voiceforch@wlink.com.np

We also want to live and progress in life. We are raising our voices for a change in our lives.

