

1.2 Prevention

Crime prevention

According to the *Guidelines for the Prevention of Crime ECOSOC Resolution 2002/13, Annex*, crime prevention “comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.” Effective crime prevention requires increasing the risks and punishments for those committing the crime, and reducing its rewards. Accordingly, criminal justice measures are important components of a comprehensive response to effectively prevent trafficking in persons and smuggling of migrants, alongside measures to a) reduce vulnerability of individuals and communities, and b) to reduce opportunities for offenders to commit crimes including through measures relating to demand and c) to create a climate in which the crime and the attitudes that put people at risk are seen as unacceptable.

The UNTOC and Protocols contain prevention measures including awareness raising, border controls, carrier provisions, document provisions, training and addressing demand. UNODC’s human rights-based and gender-sensitive approach, requires that these measures proactively promote, respect and protect human rights and advance gender equality. Upholding the do no harm principle means that prevention measures should not detract from enjoyment of human rights, whether by victims of trafficking, smuggled migrants, witnesses, accused persons, convicted persons, or others. Guarding against harm also means making sure that crime prevention efforts do not detract from other prevention work, such as efforts to improve access to livelihoods, to counter discrimination and vulnerability, and to provide people vital pathways and opportunities to migrate safely or seek asylum.

Restrictions of movement

Particular human rights and gender issues arise when movement of vulnerable populations is restricted in the name of preventing trafficking in persons and smuggling of migrants. Such interventions can have rights reductive and gender-discriminatory implications, and have been frequently shown to increase the risk and vulnerability of people to being pushed into the hands of organized crime networks. An example is policies that restrict cross-border movement to prevent trafficking of would-be migrants that instead divert them into irregular migration channels that may be facilitated by smugglers or traffickers. Another example is efforts to intercept and disrupt smuggling operations, that prevent people from fleeing conflict, violence or persecution in the absence of safe and regular options for doing so, forcing them into the hands of more organized criminal networks. These outcomes are contrary to the purposes of the Trafficking in Persons and the Smuggling of Migrants Protocols. The measures set out in article 11 of both to ‘strengthen’ borders, are aimed at preventing and detecting traffickers and smugglers. These and other provisions must be interpreted and applied in accordance with the respective savings clauses (article 14 and 19 of the Trafficking and Smuggling Protocols respectively). Any regulation of entry of non-nationals across the borders of a State as a part of prevention strategies must therefore be in accordance with due process, *non-refoulement* and the prohibition of collective expulsions.

Non-discrimination

Importantly, prevention measures must themselves be non-discriminatory. Gender dimensions are present in the context of discriminatory migration and asylum policies. As the Committee on the Elimination of Discrimination against Women has pointed out, such policies may impact on women

and girls fleeing from crisis or conflict zones, including through increased border control, refusal or entry, pushbacks, expulsions or detention, that heightens vulnerability to exploitation, including due to their increased need to use the services of smugglers and other criminal networks to facilitate their movement and evade border controls³⁸. Examples of discriminatory policies include those introduced under the auspices of preventing exploitation and abuse that serve instead to prevent women from migrating for work or migrants from changing employers, entrenching the discrimination against them and their vulnerability to exploitation³⁹.

The OHCHR Recommended Principles and Guidelines on Human Rights at International Borders states (at paragraph 8) that:

The principle of non-discrimination shall be at the centre of all border governance measures. Prohibited grounds of discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, nationality, migration status, age, disability, statelessness, marital and family status, sexual orientation or gender identity, health status, and economic and social situation. Any differential treatment of migrants at international borders shall be in lawful pursuit of a legitimate and proportionate aim. Specifically, measures taken to address irregular migration, or to counter terrorism, human trafficking or migrant smuggling, shall not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds, and regardless of whether or not they have been smuggled or trafficked.

Promoting worker rights and safer migration pathways

Sustainable Development Goal 8 concerns the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Such measures remove incentives for labour exploitation, and abusive working- conditions that can impact migrant smuggling and trafficking in persons. Targets in pursuit of that goal include the eradication of forced and child labour and trafficking, protecting labour rights including those of migrant workers, and increasing access to financial services. Goal 8 also explicitly promotes gender equality, with indicators that refer to ‘full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’ (8.5) and protection of labour rights and promotion of safe and secure working environments ‘for all workers, including migrant workers, in particular women migrants, and those in precarious employment’ (8.8).

Demand for labour or services of trafficked or otherwise exploited persons is reduced or removed where workers are organised and where labour standards for wages, working hours and conditions, health and standards are routinely and effectively monitored and enforced. Accordingly, policies and practices that promote safe migration in line with economic and demographic realities, complemented by policies and practices that protect the rights of workers, including the right to organize, reduce incentives, opportunities and demand for traffickers and smugglers.

³⁸ Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [24]

³⁹ Rebecca Napier-Moore, Protected or put in harm’s way? Bans and restrictions on women’s labour migration in ASEAN countries (ILO and UN Women, 2017)

International labour laws relevant to prevention of trafficking and smuggling

Criminal justice responses to trafficking in persons and smuggling are inextricably linked to social justice approaches. International Labour Organization (ILO) Conventions are relevant towards improving labour standards and thereby reduce the opportunity for exploitation including in the context of trafficking in persons. In the context of migration that may involve victims of transnational trafficking, and indeed migrants risking the use of unscrupulous smugglers to access exploitative labour markets, Objective 6 of the *Global Compact for Safe, Orderly and Regular Migration*, becomes relevant in explicitly pointing to facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work, as important components of migrant worker protection. The eight fundamental ILO Conventions are:

- Freedom of Association and the Protection of the Rights to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Significantly, the Protocol of 2014 to the Forced Labour Convention, 1930, refers explicitly to forced labour as well as trafficking in persons for the purpose of forced labour. The Worst Forms of Child Labour Convention, 1999 (No. 182) explicitly requires the elimination of trafficking of children. Additional ILO Conventions that are of significant importance, particularly to addressing trafficking in persons, include:

- Labour Inspection Convention, 1947 (No. 81)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (No. 189)

For more information on ILO Conventions, see *Rules of the Game: An Introduction to the standards-related work of the International Labour Organization* (ILO, 2019).

Among the relevant human rights are:

- The right to work and to just and favourable conditions of work (UDHR art 23; ICESCR arts 6, 7, 10; CRPD art 27; ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work)
- The prohibition of slavery, forced labour and trafficking of persons (UDHR, art 4; ICCPR art 8; CEDAW art 6; CRC arts 34-36)
- Equal rights of women in relation to employment (CEDAW art 11; ILO Conventions No. 100 and No. 111)
- Prohibition of child labour (CRC art 32, ILO Convention NO. 182)
- Equal labour rights of migrant workers (ICRMW art 25)

Addressing vulnerability

States have a legal obligation to prevent human rights violations, including those that lead to vulnerability to human trafficking and migrant smuggling. The focus here is on the persons vulnerable to falling into the hands of criminals rather than vulnerability to perpetrating crime. Many of the same issues that make people vulnerable to trafficking and smuggling, however, also apply to low-level traffickers and smugglers. People may become involved in smuggling of migrants because they lack viable alternative sources of income and come from marginalized communities where migrant smuggling is less stigmatized and perceived as less harmful than other crimes (such as drug smuggling). Such actors may subsist on income they derive from their role in smuggling, without fully understanding the organized criminal dimensions of their activities. People who are investigated and prosecuted as traffickers may also hail from marginalized and vulnerable groups. Traffickers may even be prior or concurrent victims of trafficking themselves; experience as a victim of trafficking or other serious crime can increase vulnerability to becoming a trafficking offender⁴⁰.

Several measures can be taken to address the factors that render people vulnerable to both crimes. In the case of children, comprehensive measures are needed to address their special needs and particular rights, including birth registration, passport and visa regulations in relation to children, improved access to educational opportunities, and protection of children from violence and abuse. In short, UNODC's criminal justice response should be integrated as part of the multi-disciplinary and nuanced response required, taking into consideration inter-connected factors such as economic disparity, conflict and displacement, environmental factors, poverty,

natural and manmade disasters; disability; and discrimination based on factors such as sex, age, ethnicity and gender.

Gender-based approaches to addressing vulnerability include addressing those factors that make men, women, boys and girls vulnerable to human trafficking and migrant smuggling, especially considering the existence of factors that make women and girls disproportionately vulnerable to human trafficking. In its recent General Comment on trafficking in women and girls in the context of migration, the Committee on the Elimination of Discrimination against Women includes as a root cause of trafficking (and sexual exploitation) “(a) systemic gender-based discrimination creating the economic and social injustice experienced disproportionately by women and girls; (b) situations of conflicts and humanitarian emergencies, including, consequent displacement; (c) discrimination in migration and asylum regimes; and, (d) the demand that fosters exploitation and leads to trafficking⁴¹.” The Committee on the Elimination of Discrimination against Women also drew attention to the plight of women and girls living in rural and remote areas, who are particularly vulnerable to being trafficked and forced into labour as well as into child and/or forced marriage and other harmful practices. Among the factors the Committee pointed to, are the economic hardships of rural life, unpaid work burdens due to stereotypical gender roles, inequality, as well as barriers to access to social services and identity documents owing to lack of infrastructure and services. The Committee stressed the need to economically empower rural women and raise their awareness of risks, as well as by ensuring that legislative and policy responses to trafficking address the challenges rural women and girls. It also pointed to the need to provide gender-sensitive training to the judiciary, police, border guards and other law enforcement officials and social workers in

⁴⁰ See Female victims of human trafficking for sexual exploitation as defendants: A case law analysis (UNODC, 2020) 20, available at: https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf

⁴¹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [18]

rural areas⁴².

Addressing demand in the context of trafficking in persons

Guideline 7 of the OHCHR Recommended Principles and Guidelines on Human Rights and Trafficking in Persons emphasizes that prevention strategies should take into account demand as a root cause of trafficking, including by 'analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.' The obligation to address the demand that fosters exploitation is also captured in article 9(5) of the Trafficking in Persons Protocol.

In the context of trafficking, there is significant interest in the factors that contribute to demand for products produced and services provided by victims of trafficking. Given the diversity of forms that trafficking can take, addressing demand requires different responses that must be based on clear and evidence-based understandings. For instance, demand for brides fuelling trafficking into forced marriage requires wholly different measures to those required to tackle forced labour resulting from demand for cheap goods by reducing labour costs. In the former case, complex economic, social, cultural, societal and structural factors must be confronted, including poverty, discrimination, gender inequality and violence against women⁴³. In the latter, demand can be addressed by reducing profits - and therefore incentives - for traffickers. Examples include measures to ensure fair and ethical recruitment of workers to reduce their vulnerability to exploitation, and in many cases it will also be appropriate to engage consumers (whether individuals or public or private entities), to purchase goods and services that have not been produced or

42 See Committee on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women, UN Doc CEDAW/C/GC/34, 4 March 2016.

43 Interlinkages between Trafficking in Persons and Marriage: Issue Paper (UNODC, 2020) 89, available at: https://www.unodc.org/documents/human-trafficking/2020/UNODC_Interlinkages_Trafficking_in_Persons_and_Marriage.pdf

provided by exploited people.

The linkage between poor enforcement of **labour laws and protections** for workers and that can result in their exploitation emphasises the role that robust labour laws, policies and practices plays in preventing trafficking. Here, making the cost of non-compliance outweigh the cost of compliance is a strong method to address the demand for exploitable labour. The implementation of the International Labour Law framework, including by ensuring that recruitment practices are fair and ethical (and comply with ILO's General principles and operational guidelines for fair recruitment and the Dhaka Principles on Migration with Dignity), and strengthening the role that labour inspectors play in entering places of work, can prevent bad labour from descending into situations of forced labour and human trafficking⁴⁴.

Many countries have also taken steps to address exploitation in the **supply chains** of large corporations. Here, those States that host corporate headquarters bear significant responsibility, including by introducing legislation with reporting requirements that apply extraterritorially to operations and supply chains abroad. Examples of legislative responses include the California Transparency in Supply Chains Act (2010), the UK Modern Slavery Act (2015), the Duty of Vigilance law of France (2017), and the Modern Slavery Act (2018) of Australia among others.

Such legislation sets out due diligence and transparency requirements for companies fulfilling certain criteria, calling for disclosure and transparency of certain categories of information on particular issues, such as modern slavery, child labour or forced labour and/or across a range of issues, including labour and human rights issues. Such

44 Also see: E4J University Module Series: Module 7: Prevention of trafficking in persons, <https://www.unodc.org/e4j/en/tip-and-som/module-7/key-issues/demand-side-strategies-discouraging-or-prosecuting-demand.html> and Preventing Trafficking in Persons by Addressing Demand (ICAT, 2014).

requirements are more effective where they are mandatory, supported by mechanisms to monitor and enforce them, and result in legal consequences for non-compliance. The effective implementation of the UN Guiding Principles on Business and Human Rights can further serve to prevent human rights abuses in business practices and proactively engage them in their protection, including by providing access to remedies for people whose rights have been abused.

States have been repeatedly called upon to also address the demand for trafficking in persons for the purpose of **sexual exploitation**, particularly of women and girls, by putting in place or enhancing preventative measures including legislative and punitive measures to deter exploiters of trafficked persons (including public officials), and providing better protection for victims, particularly women and girls.⁴⁵ The Committee on the Elimination of Discrimination against Women calls on States to address demand as a root cause of trafficking, including by confronting cultural attitudes, beliefs, norms and stereotypes regarding male domination and the need to assert male control or power, patriarchal gender roles, male sexual entitlement, coercion and control that drive demand for sexual exploitation of women and girls⁴⁶. The General Assembly has also called on governments to eliminate sex tourism demand, especially for children, through all possible preventative actions including legislative measures, policies and programmes, and encourages UNODC and others to promote travellers to support the fight against trafficking. The Committee on the Elimination of Discrimination against Women has emphasized that a gender-transformative approach is needed to confront the structural and systemic conditions that deprive women and girls of their fundamental

rights and increase their risk of being trafficked⁴⁷. Beyond the situation of women and girls, trafficking prevention efforts must pursue equal enjoyment of human rights by people of all genders.

Addressing demand in the context of smuggling of migrants

Demand is also fuelled by factors such as economic hardship, conflict, and persecution that may mean that people must be mobile in order to seek out safety or even asylum. In these cases, where safe and regular options are lacking, demand for smuggling services to facilitate both leaving a place and entering another, may increase. In cases where people have no choice but to use smuggling services, smugglers may be able to increase the fees they demand. Threats to human security therefore increase demand for smugglers, in some places, resulting in people considering smuggling services to be part of legitimate businesses, with smugglers providing valuable services to people in need. The fact that smugglers sometimes deliver their 'clients' safely to their destination means that awareness raising campaigns that simplistically portray all smugglers as violent and dangerous criminals may lack veracity and be largely ineffective. In other cases, smugglers may drive demand by smugglers themselves, who market their services and particular destinations to a target audience of would-be migrants.

Prevention measures to address demand for smuggling services then, requires efforts to effectively managed migration policies, economic development and livelihood opportunities in countries of origin, and humanitarian protection measures to allow provide people with viable choices to being smuggled.

⁴⁵ See for instance, General Assembly resolution 71/167 of 19 December 2016 on Trafficking in Women and Girls.

⁴⁶ Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [29-30]

⁴⁷ Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/GC/38 (6 November 2020) [49]

Prevention challenges for UNODC

UNODC has a key role in supporting States to fulfill their obligations to prevent trafficking and smuggling, while upholding human rights. In practice, protection of rights can pose prevention challenges as smugglers exploit State protection policies to achieve their ends. For instance, smuggling *modus operandi* may abuse asylum procedures, or smuggle pregnant women, children, or other vulnerable people who should not be detained, or by instructing migrants to injure themselves to force rescue and assistance, thereby facilitating their onward smuggling. Smugglers may instruct that vessels be scuttled to force States to rescue them, rather than act to intercept and prevent smuggling incidents at sea. The cold reality that criminals will leverage obligations under international law for their criminal purposes, points to the importance of UNODC's work to support States to prevent these crimes and uphold their sovereignty, without compromising their human rights obligations.

Another challenge emerges from the corruption and/or complicity of State agencies to the perpetration of trafficking in persons and smuggling of migrants. Not acknowledging this reality can serve to endorse or perpetuate harm caused to individuals, including victims, migrants, perpetrators and others who are affected by State corruption.

It is important to understand that UNODC's crime prevention approach is only one component of a wider range of interventions required to combat trafficking in persons and smuggling of migrants. Other actors are working to address the factors that create and exacerbate vulnerability to both crimes that exist outside of the crime prevention framework, including by addressing the human rights violations that result in vulnerability to both crimes. In some cases, criminal justice approaches may not be appropriate. For instance, in situations of parents who sell their

daughter into a marriage or exploit their son in street begging in an effort to secure their child's survival and their own, may not always be effectively or appropriately addressed by criminal prosecution. Caution should also be exercised in efforts to approach conflict prevention through a crime prevention lens; a purely criminal justice approach may detract from humanitarian needs in conflict settings.⁴⁸

Conflict and humanitarian emergencies also exacerbate both trafficking and smuggling, as a wider pool of vulnerable people become available to criminals for exploitation and demand for smuggling services to flee conflict increases. Particularly in relation to trafficking in persons, the Committee on the Elimination of Discrimination against Women and Girls points to the fact trafficking of women and girls is exacerbated during and after conflict and humanitarian emergencies, for a range of reasons including the "normalization" of gender-based violence, including conflict-related sexual violence, as an aggravating factor of pre-existing structural gender discrimination against women and girls. Given the inter-linkage between conflict, and trafficking and smuggling, conflict prevention is a means of trafficking and smuggling prevention. Noting the gender dynamics at play, Security Council Resolution 1325 (2000), that formally initiated the Women, Peace and Security Agenda, points to the importance of women in the prevention and resolution of conflicts and the importance of their equal participation and full involvement in all efforts to promote and maintain peace and security. The Resolution also emphasizes the importance of mainstreaming a gender perspective into peacekeeping operations⁴⁹.

⁴⁸ Trafficking in persons in conflict contexts: What is a realistic response from Africa? (Enhancing Africa's Response to transnational organized crime, 2019)

⁴⁹ Thematic Paper on Countering Trafficking in Persons in Conflict Situations (UNODC, 2018) 64

Table: Example of advocacy points [Tool 3.7](#) on prevention

Human rights / gender concern User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	Advocacy point to address concern User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
There is an erroneous perception that preventing migration serves to prevent trafficking in persons and smuggling of migrants	Many victims are trafficked through regular migration channels, or are trafficked internally. Preventing migration can serve to increase demand for smuggling services. Efforts to prevent irregular migration can undermine the right to seek asylum
Gender-responsive approaches are not taken to the design of prevention strategies and activities	Prevention activities that are not gender-responsive are often not calibrated to targeted beneficiaries and are therefore ineffective