Terms and concepts around trafficking in persons and children in migration

Technical Note

Introduction

This technical note on selected terms and key concepts around trafficking in persons and related issues - in particular those pertaining to child migrants - is a response to requests by Country and Regional Offices to assist them with their work to develop effective responses and preventative measures to the issue. The intention is to provide UNICEF staff with a concise synopsis of definitions and debate around child trafficking and child migration.

While understanding of the issue of human trafficking has advanced, as well as the prevention and response programming around it, definitions and concepts are not consistently shared either by different sectoral actors (such as those working in social welfare, labour, justice, law enforcement etc.,) or even by actors within the same sector. Even among those that are considered “experts” in the area, there continue to be different interpretation of key concepts. Lack of shared understanding or interpretation has been generally acknowledged by practitioners as a major hindrance to successful achievement of results in the work to combat human trafficking whether in the area of research, programming or policy advocacy. Despite a shared adherence to the first internationally defined concept of trafficking in persons and that of child trafficking (some two thirds of the countries in the world have ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children) there continue to be, as mentioned above, major differences in the interpretation and application of this internationally accepted definition.

This technical note is an effort to contribute to enhancing a much needed common understanding or challenges around having a common understanding furthering COs and respective partners, whether governments, international organizations, NGOs, civil society including other agencies.

While many of the terms and concepts presented in this short technical note are referenced to international instruments as well as major publications such as the IOM (2011) “Glossary on Migration”, the Hague Process and UNESCO and the Hague Process work on “People on the Move: Handbook of Selected Terms and Concepts”, there remain concepts that have not been defined in international instruments. These concepts and terms, nevertheless, have evolved within the “anti-trafficking community”, having gained a level of currency and acceptance. However, because they have not been defined nor attempts made to explain, the increasing number of actors working on the issue often tends to use these terms rather loosely and in contexts that were initially unintended that can detract and have detracted from the good intention and work in the sector. Use of words loosely in an undefined manner can have

---

1 The technical note was developed by Susu Thatun and peer-reviewed by colleagues at UNICEF New York, Geneva and Florence. Expression of thanks goes to Clara Sommarin, Francesca Moneti, Jasmina Byrne, Joanne Dunn, Judy Gregson, Jyothi Kanics, Karin Heissler, Kendra Gregson, Lara Scott and Yu Kojima and to Matthew Michaels for formatting. This technical note has not been officially edited.

2 As of 5 April 2012, 147 countries are State Parties to the protocol as per the information posted on UN site at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&a&chapter=18&lang=en)


significant policy and programmatic implications. Choice of words and terminologies and their evolution in response to lessons learnt as well as to changing policy interests at the international level is important as it influences people’s views and informs policy and programmatic responses. These terms and concepts that have gained currency but are not referenced to international instruments are also included in this technical note.

Structure of the technical note

The technical note is divided into three sections. The first section is titled Concepts around the issue; the second is titled People involved and third, Approaches and 3P (Prevention, Protection, Prosecution) responses to combating trafficking.

The terms are not alphabetically ordered but are clustered and organised somewhat topically. For example, concepts around trafficking in persons, child trafficking, cross-border trafficking, internal trafficking are grouped together and child labour, worst forms of child labour, forced labour are clustered together. Also in some instances where further explanation is warranted, brief comments or explanations are given and are distinguished by the green font. These are intended to provide a background and discussions to some of the issues around the concepts and terms.

Given the evolving nature of the issue as well as the progressive understanding of the problem, this technical note should be considered as work in progress that needs to be updated as and when needed. This note is meant to generate greater understanding, awareness and clarity around key concepts and to assist the work to effectively address trafficking in persons especially as it relates to child trafficking and that of children in migration.

A note of caution

While the paper aims to provide clarity around key concepts, it may be worthwhile to recognise that mutual understanding on all concepts continue to be a challenge among agencies as well as within agencies. In these instances, the paper hopes to lay out the on-going discussions around those concepts and allow us to be mindful of the unresolved nature of the discussions and to think through potential political as well as programmatic implications.
I. CONCEPT AROUND THE ISSUE

1. Trafficking in Persons:

According to Article 3 of the Trafficking in Persons Protocol, “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

As mentioned in the introduction, despite the internationally agreed upon definition, there have been differences in its interpretation. One interpretation holds that as a crime or a human rights violation, trafficking can occur without movement. Another interpretation, however, is that the concept of “movement” is one of the key defining characteristics of trafficking and it is the movement aspect that distinguishes it from other forms of exploitation. Those holding the former viewpoint to the language of the protocol whereby the word “or” is used to define the five acts in the definition namely the act of recruitment, transportation, transfer, harbouring OR receipt which means that the protocol does NOT stipulate all the five elements needing to be present to identify an act as that of trafficking. This view, for example is held by the US Department of States. Its 2011 annual Trafficking in Persons Report, it states that, “At the heart of this phenomenon are the myriad forms of enslavement – not the activities involved in international transportation.” Those taking the latter interpretation argues that while the language of the protocol may indicate that movement is not an essential element – they nevertheless hold the view that for programming purposes, it was essential to make “movement” essential to defining trafficking, as otherwise all exploitations would be trafficking. This point of contention is still unresolved and discussion around how best to resolve this is currently being discussed. One possible avenue is to bring this to the attention of the Working Group on Trafficking in Persons comprising member states to the Trafficking in Persons Protocol and based in Vienna who has the mandate to review and make appropriate recommendations on issues that are of direct relevance to the Protocol.

Other points to note are the differences between the concepts of trafficking in persons, sale of children, slavery and smuggling. Confusion over these, when applied in practice, or when misapplied as in victim identification or perpetrator identification can have negative consequences.

2. Child Trafficking:

According to Article 3 c of the Trafficking in Persons Protocol, Child trafficking refers to the recruitment, transportation, transfer, harbouring or receipt of persons under 18 years of age for the purposes of exploitation.

The difference between trafficking in persons (often referring to both adult and child trafficking) and that of child trafficking is that in defining the latter, the means used to achieve the end outcome of exploitation, such as deception, threat, use of force or other forms of coercion, fraud or abuse of power, does not need to be given consideration when

---

determining whether or not a case is trafficking. In other words, this means that the consent of a child victim of trafficking to the intended exploitation becomes irrelevant, even if none of the above means have been used to prove a trafficking case. This definition takes into consideration, sensitivities around the age of a child and recognises the child’s evolving capacity.

However, it is important to note that while the means is not necessary nor important to identify cases of trafficking for the purposes of prosecution, it is nevertheless highly significant for those involved in providing support and protection to the child victims, as the means used can often impact the severity of the trauma experienced by the child. Support for a child who is trafficked through the use of coercion or force will differ from a child who is deceived as his or her need may differ according to the means (or the degree of severity that is involved in the means) that is used. Responding to child trafficking from a child centric perspective means that we will not be in the position to ignore the means used.

3. **Internal trafficking** (see also cross border/transnational trafficking):

Trafficking that occurs within the national borders of a country.

In the initial stages of responding to the issue, many actors understood the issue as applying only to situations that are transnational. This misconception is understandable as the Protocol on Trafficking comes under the Convention of Transnational Organized Crime.

4. **Cross border/ transnational trafficking** (See also internal trafficking):

Trafficking that takes place across an international border. This can take place between neighbouring countries or beyond neighbouring countries to other parts of the world.

5. **Exploitation:**

*According to the Trafficking in Persons Protocol*, exploitation 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.

Examples of exploitation noted in the definition of the Trafficking in Persons Protocol are examples and not an exhaustive list. New forms or more likely newly recognised forms of exploitation have in the past several years come to light such as boys and men being trafficked onto fishing boats, both girls and boys as well as the elderly and persons with disability being trafficked into begging among others.7

With regard to “the removal of organs” in the above definition, a distinction is made between trafficking of organs and trafficking of people for the purpose of organ removal.

---

According to the Open-ended Working Group on Trafficking in Persons the scope of the Protocol does not allow for the Member States to take on the issue of trafficking of organs for the purposes of trafficking of the organs but only on the issue of trafficking of people for the purpose of organ removal.

6. Sexual exploitation (of children):

The Trafficking in Persons Protocol does not define sexual exploitation. Article 34 of the Convention on the Rights of the Child makes specific reference to the duties of States Parties to protect the child from all forms of sexual exploitation and sexual abuse. Particular reference is made to prevent:

- the inducement or coercion of a child to engage in any unlawful sexual activity,
- the exploitative use of children in prostitution or other unlawful sexual practices, and
- the exploitative use of children in pornographic performances and materials.

The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse defines sexual exploitation through listing a set of criminal behaviour that includes:

- sexual abuse,
- offences concerning child prostitution,
- offences concerning child pornography,
- offences concerning the participation of a child in pornographic performances,
- corruption of children, and
- solicitation of children for sexual purposes.

The terms “exploitation of the prostitution of others” and “sexual exploitation” are the only terms in the definition of trafficking in the Trafficking in Person Protocol that were intentionally left undefined. This was because some 100 plus countries that negotiated on the Protocol were unable to agree on the definitions of these two terms as different countries have different laws and policies on adult sex work and many countries showed reluctance to sign on to the Protocol if that required them to change their prostitution laws. As such these terms were left undefined. (For more details see the links at http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723 )

7. Sale of children:

(Article 2, Optional Protocol to the CRC on the sale of children, child prostitution and child pornography)

Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration

While there are similarities, the concept of the sale of children is not synonymous with trafficking in children. Sale of children does not specify “exploitation” as the end purpose.

---

8 This group is made up of Member States to the Convention on Transnational Organized Crime and is represented at the global level and meets in Vienna once every two years to formally review the status of the implementation of the Convention and its protocols.
8. **Smuggling:**

According to the Article 3 (a) of Protocol against the Smuggling of Migrants by Land, Sea and Air, “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

The legal and conceptual distinction between trafficking in persons and smuggling of migrants is important. Key distinctions are (1) trafficking may occur internally as well as across international borders whereas smuggling always takes place across international borders (2) trafficking is considered a human rights violation and a crime against individuals whereas smuggling is seen as crime against the state. (3) Profit made by smugglers are often one-off (payment made for one time smuggling) whereas profit made by trafficking is on-going (continuous) as profit from exploitation increases on an on-going basis. However, there is often an overlap between the two as a person who has opted to be smuggled, may end up in an exploitative situation which under the Protocol’s definition is identified as a trafficked person.

9. **Slavery:**

Article 1 of Slavery Convention defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

Article 1 of the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery further refers to the following institutions and practices as those similar to slavery which includes debt bondage, serfdom -

Debt bondage, serfdom or practices whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person; or any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

(See, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, at http://wftrt.info/humanrts/instree/f3scas.htm)

10. **Child Labour:**

According to ILO Bureau of Library and Information Services 2007 http://www.ilo.org/dyn/elsurvey/lfsurvey.home

(a) **Child Labour:**

Child labour is labour that is performed by a child who is under the minimum age specified for that kind of work (as defined by national legislation, in accordance with accepted international standards), and that is likely to impede the child's education and full development.
(b) **Hazardous work:**

Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, known as hazardous work.

According to ILO Convention 138 minimum age differs according to different types of employment as follows:

- age 15 for ordinary work
- age 18 for hazardous work
- age 13 for light work

For developing nations the minimum age for different categories of work is 1 year lower than the standard given. Article 32 of the CRC calls upon States Parties to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

The above indicates that child’s work and child labour are not the same. Not all work carried out by children can be considered child labour. Some work which contributes to the family that teaches children a sense of responsibility and family values that do not impinge on the child’s education or take time away form play and that in contrast build up a child’s mental and moral character are work that do not fall into child labour category.

(c) **Worst forms of child labour (WFCL):**

*According article 3 of ILO ‘Worst Forms of Child Labour Convention’, No. 182, WFCL include:*

1) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

2) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

3) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and

4) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

It should also be noted that the recruitment or use of children by armed forces and armed groups is prohibited under international human rights law, international humanitarian law and international criminal law, including Article 38 of the CRC; the Optional Protocol to the CRC on the involvement of children in armed conflict; the African Charter on the Rights and Welfare of the Child; Additional Protocols to the

---

Geneva,\textsuperscript{10} and the Rome Statute.\textsuperscript{11} Additionally, the Paris Commitments and Paris Principles are non-binding international standards developed by a broad range of stakeholders\textsuperscript{12} in February 2007 which provides guidance for the protection and well-being of children associated with armed forces or groups, based on best practices and lessons learned from field experiences. The Paris Principles, notes that “Recruitment” refers to, “compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force or armed group.” It further notes that, “Unlawful recruitment or use” is recruitment or use of children under the age stipulated in the international treaties applicable to the armed force or armed group in question or under applicable national law.”

(d) \textbf{Forced labour or compulsory labour:}

\textit{According to Article 2 of ILO Convention Concerning Forced or Compulsory Labour No. 29}, it refers to all work or service which is exacted from any person under the menace of any penalty and for which the said person had not offered himself voluntarily.

(e) \textbf{[Forced] Begging (including forced child begging):}

“Begging is a range of activities whereby an individual asks a stranger for money on the basis of being poor or needing charitable donations for health or religious reasons. Beggars may also sell small items, such as dusters or flowers, in return for money that may have little to do with the value of the item for sale.”\textsuperscript{13}

Begging by children may be considered as child labour, depending upon the circumstances. When a child is begging of his or her own “free will” (it is a contentious term as the term \textit{free will} does not take into consideration the extent to which it is less of choice and more of the circumstances), he or she should not be considered as being engaged in child labour, as begging \textit{per se} is not a production activity, and money received from begging is not “income” but a “transfer” under the UN system of National Accounts Rev. 1993. However, where the child is forced to beg (either by parents, or by an adult after being trafficked, or by the institution where the child studies or resides, in return for upkeep and under the menace of penalty), it would be considered child labour and classified as forced child labour. It would also amount to child labour, should the child be employed by an adult for a wage to beg and/or collect donations. Child begging is defined as child labour, if either the child is controlled by anyone else and/or the child is exposed to moral, physical or mental hazard. It could also be argued that children exposed to begging are by nature exposed to such hazards.

\begin{itemize}
  \item \textsuperscript{10} Additional Protocol I, Article 77(2) and (3); \textsuperscript{10} AP II: Art. 4 (3).
  \item \textsuperscript{11} Rome Statute: Art. 8 (2)(b)(xxvi) and 8 (2)(c)(vii). See also Statute of the Special Court for Sierra Leone: Art. 4 (c).
  \item \textsuperscript{12} The guidelines were developed through participation of: States, human rights actors, humanitarian actors, development actors, military and security actors (state and non-state), associated organizations, including UN organizations, other intergovernmental actors, national and international organizations and community-based organizations.
\end{itemize}
(f) **Debt bondage (also referred to as bonded labour):**

According to article 1 (a) of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, debt bondage refers to the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

It basically refers to work performed under conditions of servitude. As a form of modern slavery, under which workers sign contracts to work for a specific period of time, for which they are paid only with accommodation and sustenance, or these essentials in addition to limited benefits such as cancellation of a debt, or transportation to a desired country. Debt bondage is a well-known form of indenture.

11. **Supply factors (see also push factors):**

A concept borrowed from economic analysis and applied to the analysis of trafficking. In this context, trafficked people are often referred to as forming the “supply” side of trafficking. For example, a community (or country) with high levels of unemployment for its population may be considered to have an abundance of “supply” of working age people (men, women, girls and boys) with unemployment, poverty and lack of alternative for livelihood, which can form a part of the supply side factors.

Lack of access to education, gender biases and other related values, practices and weakness in systems and structures can also be part of the supply factors. Supply factors mostly refer to vulnerability factors that pushes people away from their home community.

12. **Demand factors:**

As in the case of the “supply factor” it is also a concept borrowed from economic analysis and applied to the analysis of trafficking. The demand can be viewed from three levels. Employer demand (employers, owners, managers etc.,) consumer demand (people engaged in sexual exploitation, corporate buyers in manufacturing etc.,) and third party demand (the recruiters, agents, transporters who participate knowingly in the process of trafficking).

As with the supply factors, demand factors can include values, attitudes and practices of individual as well as perceived collective practices and attitudes by society at large as well as weaknesses or gaps in protective systems and structures.

13. **Pull factors (see also demand factors):**

Attractive conditions or elements such as employment opportunities, better working conditions, better access to education, access to various forms of liberty including political stability, and a way of life that pull or draw people to a certain place.
14. **Push factors (see also supply factors):**

Undesirable conditions or elements such as poverty, discrimination, family breakdowns, gender-based violence, instability, lack of access to education or for social mobility or a way of life that push people to leave their place of residence for another. They overlap with the “supply” factors.

15. **Root causes (See also vulnerability factors and contributing factors):**

In the trafficking context, the term root causes refer to the main reasons that lead people to become trafficked. Traditionally, poverty was noted as one of the root causes of trafficking. However, years of implementing anti-trafficking projects have led to the realisation that while poverty is an important element, it alone does not explain why some “poor” people are trafficked and not others. A combination of a number of elements (such as poverty, situations of armed conflict and other emergency situations / situations of political unrest and instability, lack of employment opportunities, lack of information, domestic violence, persecution, various forms of discrimination or weak protection laws) can cause extreme vulnerability (see vulnerability factors) while the trigger that sets the trafficking event in motion will differ from one person to another. It should also be noted that given their evolving capacity and experience, children are particularly more vulnerable when exposed to these situations. At this point in time, it is increasingly becoming clear that the term “root causes” is no longer appropriate and instead “contributing factors” seems to better reflect the nature of causalities behind trafficking.

16. **Contributing factors (See also root causes):**

This is a more recently used terminology and comes as a reaction to the deterministic undertone of the term “root causes” that often refer to poverty, lack of access to education, information, employment opportunity; skillsets; family break downs and the recognition that “these causes” and trafficking were not necessarily directly linked.

The term contributing factors take all the factors referred to in what is traditionally referred to as “root causes” but instead of entirely attributing the end result of trafficking to all these factors, considers them as creating to a situation of vulnerability. This is in recognition of the subtleties involved and the role these “factors” play in bringing about a situation of trafficking.

17. **Vulnerability (factors):**

This refers to factors that make people – especially women and children vulnerable to trafficking. In literature, vulnerability has been defined as “exposure to contingencies and stress and difficulty in coping with them” (Chambers 1989). Different individuals depending on his or her background, age, gender, ethnicity, level of education, living in an armed conflict or emergency situation, displaced, separated or unaccompanied, (lack of ) access to information, migratory status, socio-economic status amongst others as well as individual coping mechanism have different threshold of tolerance to “contingencies and stress” and hence levels of vulnerabilities will differ. At the same time, it is important to note that
different aspects of these vulnerabilities may interact differently and form other forms of vulnerabilities.

18. Children at risk (of being trafficked):

Children at risk of being trafficked, somewhat overlaps in meaning with children who are vulnerable to trafficking, although they are not identical. In some literature, the terms “at risk population” and “vulnerable groups” are used interchangeably.

For example, in some parts of the world where construction of highways have brought villages closer to the highways - thereby making big cities more accessible - it may be possible to say that children in these villages are “at risk of being trafficked”. However not all are “vulnerable” to being trafficked as individual elements of vulnerability will intersect with each other differently. While the risk factor in this particular instance remains the same for all the young people, individual vulnerability will differ. In may be interesting to note that in some literature, risk has been identified as “presence of one or more factors, which could be physical/biological, social etc.,) that increases the probability of negative outcome for persons (or children as the case may be).

19. Agency:

Reference to a person having agency refers to a person being in the position to make decisions and having the means to act upon these decisions. When a person loses his or her agency, it refers to a situation where the person’s freedom to make these decisions becomes void. The meaning of the term ‘agency” somewhat overlaps with the meaning of the term “empowerment” (See below).

In the work that is done to combat child trafficking, it is important to recognise the child’s capacity to exercise agency is very much in accordance with his or her evolving capacities. While this may sometimes depend on the child’s biological age, it would also be case-specific and depend on other factors such as the child’s socio-cultural environment as well as the child’s own and family experiences in life and their world view.

20. Empowerment:

There is no one single definition on how empowerment is defined. UNICEF emphasises the issue of access, awareness of causes of inequality, capacity to direct one’s own interest and taking control and action to overcome obstacles to reducing structural inequality (UNICEF, Women’s Equality and Empowerment Framework, 2001). A review of definitions of empowerment reveals both diversity and commonality. Most definitions focus on issues of gaining power and control over decisions and resources that determine the quality of one’s life. UNDP focuses on inequalities in economic and political participation and decision-making power and power over economic resources (UNDP 1995). While most definitions look at structural inequalities that affect entire social groups rather than on individual

---

characteristics, empowerment can be recognized at a personal level that involving a sense of self-confidence and capacity; relational, implying ability to negotiate and influence relationship and decisions.

21. **Best interests of the child:**

This is one of the key principles in the CRC to ensure that in all actions concerning children, “the best interests of children shall be a primary consideration”. While the definition of “the best interests of the child” is not given, the CRC and General Comment No. 6 make a number of references to the “best interests” of children in different contexts including in the context of children deprived of their family environment (Article 20) and to situation of displacement (GC No. 6 Para 19 – 22). Furthermore, paragraph 53 of GC No. 6 emphasises the need to not return children to the countries of origin unless it is in their best interests and appropriate measures for their protection have been taken.

**UNHCR Guidelines on Determining the Best Interests of the Child (2008)** makes it clear that any assessment or determination of the best interests must be based on the individual circumstances of an individual child and must consider the child’s family, its situation, the situation of the country of origin, various vulnerabilities, including those related to safety and risks.

22. **Origin (also source or sending) communities:**

Location from where a person begins his/her journey - where she or he has resided either permanently or for a period of time.

Migrant Workers Convention refers to the term “State of Origin” to refer to the state of which the person concerned is a national.

23. **Destination (also receiving) communities:**

The target community at which the migrant or the facilitator (the person or group that facilitates the journey) plans to end the journey. However, as with the “transit” below, transit can turn out to be a place of destination for a number of reasons.

The Migrant Workers Convention makes reference to the “State of Employment” where the migrant worker is to be/is/ has been engaged in a remunerated activity.

24. **Transit:**

Location where a person who has already left his/her original place of residence passes for a period of time before continuing the journey. Sometimes a place of transit can, due to various reasons end up being the destination.

The term “State of Transit” is used in the Migrant Workers Convention to mean any state through which the person concerned passes on any journey to the State of Employment or from the State of Employment to the State of Origin or habitual residence.
25. **Migration:**

The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification. (IOM, Glossary on Migration, 2011)

26. **Forced migration:**

A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects). (IOM, 2011)

27. **Regular Migration:**

Migration that occurs through recognized, legal channels. (IOM, 2011)

28. **Illegal migration (see also irregular migration; undocumented migration):**

*See Irregular migration below.*

29. **Irregular migration (see also illegal migration):**

Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the “illegal migration” to cases of smuggling of migrants and trafficking in person. (IOM, 2011)

30. **Migrants with Irregular status (often referred to as irregular migrants):**

According to the 1990 UN Migrant Workers convention, reference is made to migrant workers that are “non-documented” or “in an irregular situation” as persons not complying with the conditions to “be authorized to enter, to stay and to engage in a remunerated activity in the state of employment pursuant to the law of that State and to international agreements to which that state is a party (Article 5).
IOM (2011) defines irregular migrant as a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than unauthorized or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation). The term “irregular” is preferable to “illegal” because the latter carries a criminal connotation and is seen as denying migrants’ humanity.

II. People involved

1. Smuggler:

An intermediary who moves a person by agreement with that person, in order to transport him/her in an unauthorized manner across an internationally recognized state border (IOM, 2011).

While the Protocol against the Smuggling of Migrants by Land, Sea and Air does not define a smuggler, it defines smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

Note that in many languages the conceptual differences between smuggler and trafficker and that of smuggling and trafficking is not made. This lack of differentiation which often results in referring to both the concepts as “illegal trade in people” or “illegal selling and buying of people” has been a major source of challenge in effectively addressing the issue of trafficking. The concept of exploitation which is at the heart of trafficking is often side-lined or not taken into consideration.

2. Trafficker:

As per the Protocol’s definition, a trafficker is a person who commits any conduct that combines any listed action (recruitment, transfer, transport, harbouring or receipt) and means (threat or use of force or coercion, abduction, fraud, 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 and) and is carried out for the listed purpose of exploitation. (Legislative Guide for the Implementation of the Protocol, year of publication unspecified)

3. Broker (also facilitator):

There is no legal definition of the term but it has been widely used in the trafficking context to refer to people who undertake actions comparable to employment agencies (where regulated employment agencies do not exist or are barely functional) linking those seeking

---

15 Actors defined in this section include those where misconceptions on technical grounds have led to dire consequences such as “brokers” who were identified as traffickers and smugglers who were identified as traffickers or where confusions still exist. It does not however include such actors and parents or government officials who may have been complicit in the process.
jobs with those that are in search of people with a certain skillset. They charge a fee to either party or both but more likely to those seeking jobs for providing the link up services. The fees can go up or down depending on the market. While some brokers or facilitators may be informed of the exploitative nature, others are not. If they are aware of the exploitative nature, then by definition they would become complicit to the crime of trafficking and may depending on their involvement be even be proven to be a trafficker. In many developing countries, however, where markets and institutions are weak and where opportunities for employment rely heavily on words of mouth, brokering has been one traditional way or less formal way through which people have found work.

It is important to point out that the terms broker, trafficker and smuggler are not the same. Confusion with these concepts can lead to derailment in the process of prosecution and in ensuring justice for the victim as well as the accused.

4. **Victim of trafficking** \(^{16}\)(also survivor or trafficked persons):

Persons who have been trafficked or still are in a trafficking situation, i.e., still in a situation of exploitation. In interpreting the Protocol in conjunction with the main Convention on Transnational Organized Crime, the reference to victims of trafficking in articles 6, 7 and 8 of the Protocol has been explained as an effort by the drafters to ensure additional assistance and support for victims of trafficking (Legislative Guide for the Implementation of the Protocol, year of publication unspecified). In the initial phases of anti-trafficking work, it was found that actions were taken against those trafficked persons who lacked valid travel documents, appropriate working visa or stay permits. While they may have violated administrative offences by their lack of proper documentation, penalties brought against them were criminal. To ensure that trafficked persons were not penalised or punished, emphasis was given to the “victim” side of the situation – that the trafficked person was a victim of crime(s) and the need to clearly distinguish it from the offender side. Recommended Principles and Guidelines on Human Rights and Human Trafficking states Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. The term victim therefore is used more from a criminal justice approach to trafficking to ensure their right to be protected and to seek compensation.

5. **Survivor of trafficking (see also victims of trafficking):**

Those social and civil society institutions working with the victims of trafficking, however, hold the view that the term victim symbolizes powerlessness, helplessness, not being in control of the situation or of themselves. They hold the view that instead of “victims” of trafficking we should use the word “survivors” of trafficking as it connotes positively their strength to overcome adversity and as it symbolizes, power, choice, healing and ownership over themselves and their situation.

---

\(^{16}\) Other concepts that may be of relevant are “potential” “presumed”, “alleged”, “assumed” victims of trafficking. They are not further elaborated as they appear to be self-evident.
6. Trafficked persons:

A terminology that neutralizes the logic and arguments behind the concepts of survivor and victims while objectively presenting the situation of the person who has been trafficked.

7. Children on the move (child mobility; child migrants; children impacted by migration):

The term children on the move have been popularized over the past several years and can be found in many of UNICEF and Save the Children’s documents and recently ILO and IOM. While a mutually agreed upon definition of the term is lacking, the UN special Rapporteur on the Human Rights of Migrants have defined children on the move as “migrant children taking an active part in the migration process, particularly at the passage and arrival stages in countries of transit and destination. They may be found, inter alia, migrating with their family members or independently, to seek opportunities at both the educational and employment levels. They may also be found entering host countries to rejoin migrant members of the family, being relocated or sent by families to stay with relatives or friends in third countries or, sent by family members to find work abroad and send part of their earnings home”.

(A/HRC/11/7; 14 May 2009).

Save the Children UK have defined it to refer to “those children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement might place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence’. ‘Children on the Move’, is not a new category of children. It is an umbrella definition that brings together many categories, into which children who are moving are divided”. (Save the Children UK Mobile Assessment Tool for Children on the Move, 2010).

The term “children on the move” (COM) has been used in documents to refer to child migrants. The term can also be seen used inter-changeably with terms such as “child mobility” and “children impacted by migration”. Documents dealing with “children on the move” appear to explain its position (rather than the concept) via juxtaposing itself with “trafficking” and how it differs from the concept of trafficking. While the use of the term “children on the move” appears to provide some distinctions between itself and trafficking, the interchangeable use of the term “children on the move” with other terms such as “child mobility” “children impacted by migration” can be confusing. For example, the term “mobility” denotes both geographical and social movement and “children who are impacted by migration” goes beyond children who themselves have experienced migration to children who have never themselves migrated but are nevertheless impacted by parents migrating.

8. Children left behind:

While no definition is given, excerpts from a number of studies on “children who have been left behind” indicates that it refers to the category of “children who have been left in his or her place of usual domicile by one or both parents who have migrated”.

The appropriateness of this terminology needs to be reflected as it can lead to the kind of labeling and stigmatization that we do not want to encourage. The term has the potential to create an emotional and psychological void, a sense of abandonment in the children whose
parents have had to migrate for a number of reasons. It may also create negative emotions from the child towards the parents or from society towards the parents. In some countries the media have noted to demonise parents especially mothers who have migrated to work abroad in order to make ends meet. This may lead to “double victimisation” of parents who are already struggling with the separation from their children and stress of workplace in an unfamiliar land.

9. **Unaccompanied children (sometimes referred to as unaccompanied minors):**

As defined in General Comment 6 of the Committee on the Rights of the Child, *these are children, who have been separated from both parents* and *other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so*. See also the “Inter-agency Guiding Principles on Unaccompanied and Separated Children” at [http://www.ecdgroup.com/docs/lib_004784237.pdf](http://www.ecdgroup.com/docs/lib_004784237.pdf).

10. **Separated children:**

As defined in General Comment 6 of the Committee on the Rights of the Child, *these are children, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives*. These may, therefore, include children accompanied by other adult family members. See also the “Inter-agency Guiding Principles on Unaccompanied and Separated Children” at [http://www.ecdgroup.com/docs/lib_004784237.pdf](http://www.ecdgroup.com/docs/lib_004784237.pdf).

### III. Approaches and 3P responses to combating trafficking

#### a. Approaches

Important to note that most of these approaches are not mutually exclusive. In particular, the human rights based approach, when fully applied, will analyse and address immediate, underlying and basic causes as well as the roles, responsibilities and capacities of all actors with respect to the rights of persons. It will then be, by definition, systemic, multi-sectoral and will include the analysis of relevant social norms.

1. **Human Rights-based approach:**

As per the *Recommended Principles and Guidelines to Human Rights and Human Trafficking* (2002), the primacy of human rights takes the centre stage in all interventions to combat human trafficking. The three principles stated there highlight the human rights of affected people to claim their rights and the responsibility of duty bears to undertake their obligations. These three principles are as follows:

(a) The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
(b) States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

(c) Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked and of migrants, internally displaced persons, refugees and asylum-seekers.

2. **Victim-centred approach:**

This approach was developed in the early days of the adoption of the Trafficking in Persons Protocol, as a reaction to a strong law enforcement measures taken against trafficked persons because of lack of proper travel documents, work permit etc., It was also a reaction to what was seen as the instrumentalisation of trafficked persons (as witnesses) to gain successful prosecution. This approach was popularised by those working to support the victims of trafficking to regain their dignity, self-respect and become empowered. This approach held the view that unless the rights and the welfare of the victims were put at the centre of all anti-trafficking interventions and unless the voices of the victims were heard, it would have little impact. It is also often referred to as one of the rights based approaches to trafficking.

3. **Gender-sensitive approach:**

A gender sensitive approach recognizes that women and men, boys and girls differ in terms of their needs, challenges, expectations and that all interventions to combat trafficking need to take these differences into consideration throughout the whole anti-trafficking interventions from prevention, protection to prosecution. In the initial phases of anti-trafficking work, a gender-sensitive approach to combating trafficking was seen as being responsive to the needs of girls and women arising from a narrow understanding that associated trafficking only with sexual exploitation. In recent years there has been recognition that trafficking affects both men and women; girls and boys complemented by the understanding that trafficking takes place in contexts outside of sexual exploitation. This approach is also considered as central to the rights based approach.

4. **Law enforcement approach:**

An approach which is described as putting its primary focus on apprehending the perpetrator and investigating the criminal aspect of trafficking and continues to be seen as an approach that gives little or lesser attention to support the needs of the victims or for them to access their rights. However, it should be noted that advances have been made in the law enforcement sector in the past several years and many law enforcement agencies have protection units that also work on victim protection or else are systematically link with victim support agencies.

The Trafficking in Persons Protocol has been described as law enforcement heavy given it focus on “suppressing and punishing” the crime. Traditionally, the law enforcement approach to trafficking was considered an antithesis to a rights based approach but this dichotomy has blurred overtime as the law enforcement sector has become more responsive.
to the human rights dimension of the victims of trafficking. It is important to recognise that law enforcement and rights-based approach are not mutually exclusive.

5. **Systems approach to child protection** (see also Issue based approach to child trafficking):

This approach is reflected in the *UNICEF Child Protection Strategy* as one of the two interlinked pillars to child protection recognises that trafficking is a symptom of the failure of child protection systems to protect children especially vulnerable children such as those working and living on the streets, migrant children, ethnic minorities, disabled persons. The approach recognises that working to respond to protection needs of children through categorising children, and in this case through the category of child trafficking, can leave the child without access to protection rights facing discrimination and barriers, if she or he failed to be identified as a trafficked child. The approach attempts to ensures that irrespective of their “categories“- whether trafficked, sexually abused, children living and working in the streets - all children should have the right to protection through ensuring that both the formal and less formal systems to child protection are strengthened.

It is also important to recognise that depending on country situation and the priority placed by the country on specific issues, child trafficking can be used strategically as an entry point to a broader systemic response to child protection.

6. **Issue based approach** to combat trafficking (see also systems approach above):

Looking at the issue of trafficking as a single issue delinked from other issues such as child labour, HIV and AIDS, access to education among others. It is increasingly recognised that in order to be more effective we need to move away from issue-based approaches (not just in child trafficking but also in other areas) to a more systems-based (systems strengthening) approach.

7. **Social norms and social change approach to child protection:**

This approach, reflected in the *UNICEF Child Protection Strategy* is one of the two interlinked pillars to child protection, and recognises that children will tend to be protected if there are social rules that reflect that this is important to the community, make this expected behaviour, socially reward those who protect children and socially punish those who do not. It recognises that child protection issues, such as trafficking, may be upheld by discriminatory social norms, including adverse gender norms. It also recognizes that changing harmful norms or creating new positive social norms requires a collective approach that engages entire social groups.

It is important to note that rather than an approach, it is more useful to consider it a perspective that includes the analysis of the societal expectations and interactions that either favour or impede trafficking. As such, it can strengthen the application of the systems approach.
8. **Multi-sectoral approach (see also partnership approach):**

This approach breaks away from a single sector approach, such as the social welfare ministry taking on the responsibility to combat trafficking, or the home affairs or the immigration authorities or the border guards taking on the responsibility. It sees the complexity of the issues involved and recognises that no single sector or agency or ministry can work on its own to address the issue. Under such an approach governments as well as international organisations have set up inter-ministerial or inter-agency task forces or coordinating bodies to ensure a coordinated response among different actors responsible for different aspects of anti-trafficking work.

No actor would deny the significance of working through a multi-sectoral approach (as one of the many approaches) but very often many actors also find it cumbersome, time consuming and unproductive. A number of actions can be taken to minimise this, including development of roles and responsibility, clear structure, level of representation, expected outputs etc., among others.

9. **Partnership approach:**

Similar to the multi-sector approach, this approach recognises that work to combat trafficking cannot be undertaken alone – by a single ministry, agency or by a single country. The issues involved cut across different sectors such as labour, social welfare, law enforcement, foreign affairs, immigration, civil society, education sector among others. As such a partnership needs to be built systematically to address the issue from all its aspects. Partnerships can be formal or informal.

10. **National Referral Mechanism (NRM):**

While NRM is often referred to as a framework or a mechanism, in essence it advocates for a multi-sectoral approach. According to the *OSCE Office for Democratic Institution and Human Rights’ National Referral Mechanisms (NRM) Handbook*, NRM is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met ([http://www.osce.org/odihr/13967](http://www.osce.org/odihr/13967)).

It is worth noting from a Child Protection Systems perspective, that the NRM framework could (and should) be framed in such a way that it is able to respond to other areas of concern (or categories of children such as children living and working in the streets, migrant children etc.), thereby enhancing its utility and efficiency. Active participation of survivors of trafficking would also be considered essential in such a framework.
b. 3 P responses

These 3 P responses covering prevention; protection and prosecution are considered standard anti-trafficking responses and they reflect the key sections of the Trafficking in Persons Protocol. Others have added a 4th P and refers to it as representing “Partnership” while others have added an additional “P” to refer to “Policy”.

1. Prevention (in trafficking):

It involves reducing the vulnerability of a person or a community from being trafficked or becoming victims of trafficking. Effective ‘prevention’ work requires a good identification of what makes a person or a community vulnerable throughout the migratory process, i.e. in place of origin, transit and destination and is not just limited it to interventions in the countries (or communities) of origin. Prevention activities would address factors that contribute to making persons and communities vulnerable to trafficking such as investing in education, addressing gender and other discrimination, creating employment opportunities, awareness raising, developing and implementing relevant legislation among others. They would also address the societal expectations around exploitation as it relates to trafficking and around how people respond to it. They may therefore support manifestations of explicit commitment to social norms that make trafficking more difficult (e.g. adherence to the norm that families should be united and positive social reinforcement for those who support families to do so or that children should be at school and not work) and explicit positions by groups/networks (e.g. collectives of girls, association of teachers, etc) to take actions to prevent trafficking. Prevention work therefore would look at different levels – individual, family, community and the systems and social practices at both the places of origin and that of destination.

2. Protection (identification, tracing; rescue; repatriation or integration in place of destination; reintegration):

Within anti-trafficking work, protection is seen to begin when a victim is rescued; when his or her family is traced until he or she is repatriated and re-integrated, when it has been confirmed that it is in his/her best interest to return to his/her family and community. This involves keeping victims safe from threat, violence and abuse; providing for basic needs: shelter, food, medical and psychological care; providing legal protection that upholds individual rights, confidentiality and provides for judicial redress and witness protection. It also involves promoting positive societal attitudes and behaviours about the treatment of victims (for example by promoting explicit consensus that victims should not be stigmatized).

(a) Tracing:

Tracing involves locating family members, close relatives of trafficked persons for the purposes of re-establishing contact and assessing whether or not family re-unification would be in the best interests of the child (CRC Art. 3; Best interest of the Child Principle).

(b) Return and Repatriation:
This refers to refugees returning to their places of origin, prisoners of war under the Geneva Convention of 1949, civilians in times of war, and diplomats in times of crises, as per the Vienna Conventions on Diplomatic and Consular Relation of 1961 and 1963, respectively.” (IOM, 2011). **Within the trafficking paradigm**, return and repatriation (often used together) and refers to a part of the protection process, whereby trafficked person is assisted, *as far as possible*, to voluntarily return to their homes. In principle, child trafficked persons should only be returned when it is assessed that it is in the best interests of the child as stated above.

Distinctions can therefore be made between voluntary and forced returns/repatriation.

(c) **Reintegration:**

According to IOM Glossary on Migration, reintegration of a person into a group or a process, e.g. of a migrant into the society of his or her country of origin. Reintegration can be further looked at from cultural, economic and social perspectives.

It is important to note that reintegration is more than just accompanying a trafficked child/person home and uniting the child with his or her family. As a “process”, it involves a whole spectrum of activities before and after the “reunification” that includes continued follow-up (monitoring) of the situation of the returned persons including provision of necessary support services. These services could include, depending on the situation of the returned person and his or her family, continued counseling, medical, social and educational support.

(d) **Integration:**

An emerging concept in the anti-trafficking work, borrowed to a large extent from the work in the refugee sector, referring to measures taken to legally and socially bring the those seeking international protection into folds in the country they are provided international protection. In the context of trafficking, where situation of the trafficked person makes it untenable for him or her to be repatriated back to his or her home community and decision are taken to have them settled in the country in which they are trafficked. This concept remains fairly new and controversial and has not been widely put into practice.

**Prevention and Response:** This phrase refers to the dichotomy in child protection interventions (and not just limited to child trafficking) where the term *prevention* is used to refer to interventions that are developed to prevent abuse, violence and exploitation from taking place in the first place. The term *response* is used to refer to interventions that take place *after* abuse, violence and exploitation have occurred and children are brought out of the abusive, violent and exploitative situation for recovery and empowerment. As such the term *response* appears synonymous with the term “Protection” as defined in the Trafficking in Persons Protocol. It may also be useful to note that a number of other agencies working on the issue of trafficking are not familiar with this terminology and have not adopted this use in their vocabulary.
3. **Prosecution:**

In the area of combating trafficking in persons, “Prosecution” is an area of work that goes beyond the actual prosecution of the suspected perpetrators of trafficking to ensuring that justice for the trafficked persons are pursued. This includes awarding of compensation and reparation as well as assistance as needed in psychosocial counselling, legal aid among others.

2 and 3 above or effective prosecution and protection combines to make what is recognised as effective remedy for victims of trafficking as noted by the Special Rapporteur on Trafficking in Persons in her 2011 report\(^\text{17}\) to the General Assembly that focused on the thematic analysis of effective remedy for trafficked persons. According to the report effective remedy includes restitution, recovery, compensation, satisfaction and guarantee of non-repetition as well as ensuring “access” to services including interpretation, legal assistance amongst others.

---

**For more information contact:**

Susu Thatun, Child Protection Specialist, Trafficking and Migration, UNICEF HQ, sthatun@unicef.org
Kendra Gregson, Senior Advisor, Social Welfare and Justice Systems, UNICEF HQ, kgregson@unicef.org

\(^{17}\) [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-35.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-35.pdf)