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Statutes against Human Trafficking

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Abstract

Human trafficking, believed to be the third-largest criminal activity in the world, is a form of human slavery which must be addressed at the interagency level. Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol).

Keywords: Human trafficking, Human Rights and Human Trafficking, Human trafficking under IPC Crimes, Immoral Trafficking (Prevention) Act 1986.

1. Introduction

Human trafficking, believed to be the third-largest criminal activity in the world, is a form of human slavery which must be addressed at the interagency level¹. Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol)². Trafficking has been defined by united nation convention and SAARC conventions as the moving, selling or buying of women and children for prostitution. So human trafficking is also known as modern day slavery and involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act. Further some provisions have been enacted to prevent trafficking under constitution of India and also under Indian penal code 1860.

2. Meaning and definition of Human Trafficking

The united nation convention against transnational organized crimes, trafficking in persons means “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation³. Article 3 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and children Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of

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¹ <https://www.fbi.gov/investigate/civil-rights/human-trafficking>

² <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

³ Available at [http://www.urbandictionary.com/define.php?term=human percent 20trafficking](http://www.urbandictionary.com/define.php?term=human+percent+20trafficking) 9visited on 29 April 2012).

organs.⁴ In furtherance of it Article 1 (3) of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution states, "Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for financial or other considerations with or without the consent of the person subjected to trafficking."⁵ Human trafficking is known as modern-day slavery. Therefore the International organization SAARC and U.N convention both concludes that human trafficking includes persons who are engaged in recruitment, harboring of persons by means of fraud, abduction and deception. Indian constitution under part III (Fundamental Rights) strictly prohibits human trafficking under article 23 and 24, whereas it is a criminal offence under section 366-A, 366-B, 372 and 373 of Indian penal code 1860. While dealing with Human Trafficking as the violation of Human Rights, it is considered an organized crime which violates various human rights i.e. right to life, right to privacy, right to access health services etc.

3. Some of the Factors Responsible for Human Trafficking

There are many factors which causes human trafficking but some risk factors are as poverty, gender, age, limited educational opportunity, poor governance, political conflict and war, violence, social exclusion, social and cultural structure (power, hierarchy and social order). Apart from it there are some other factors which are encouraging such social evils against women likewise marginalization and discrimination based on ethnicity, race, disability, and religion, Community's tradition of movement and other social practices. Mental health and habitual of alcohol is also contributing for the vulnerable condition of women. One of the main reasons for such crimes against her are considered less educational opportunities and are weaker economically. Gender based violation such as domestic violence, sexual violence and which are linked to social and cultural structures that contribute to the vulnerability of women to human trafficking. Children are also vulnerable to trafficking in persons due to their parents and families' socio-economic situation. Girls are particularly vulnerable to trafficking because in many societies, parents often choose to send girls to work because they believe that education is not as important to girls who will one day marry and leave the parents. Other factors of human trafficking include poor governance, weakened rule of law in transition and post-conflict countries, and economic disruption affected by climate change and natural disasters. The lack of rule of law facilitates criminal activities and

⁴ Available at <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (visited on 30 April 2012).

⁵ South Asian Regional Association Convention on Combating and Preventive Human Trafficking in Women and Children for Prostitution 2002 available at http://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf (dated on 1 may 2012).

creates an environment where human trafficking can flourish. This is particularly apparent in the society with lack of law and order pushes the already vulnerable populations, such as women, children, internally displaced peoples, and war refugees, into situations where they are even more at risk of becoming victims of human trafficking. States and governmental organizations can also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice.

4. Types of Human Trafficking

There are many types of human trafficking such as: Trafficking for forced labour; Trafficking in women for sexual exploitation; Commercial sexual exploitation of children in tourism; Trafficking for tissue, cells and organs; and People smuggling⁶. *Forced labor* involves victims being compelled to work very long hours, often in difficult conditions, and to hand over the majority if not all of their wages to their traffickers. Forced labour crucially implies the use of coercion and lack of freedom of choice for the victim. In many cases victims are subjected to verbal threats or violence. Servitude is the state of being completely submissive to and controlled by someone more powerful. Domestic servitude involves the victim being forced to work in private households. *Sexual exploitation* involves abusive sexual acts performed without a victim's permission. Women, men and children of both sexes can be victims. Victims are often provided with false travel documents and an organized network is used to transport them to the destination country, where they find themselves forced into sexual slavery and held inhuman conditions and constant fear and Commercial sexual exploitation of children in tourism. According to ECPAT International, (End Child Prostitution and Trafficking) defines that the commercial sexual exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, under age of 18 years. Trafficking in humans for the purpose of using their organs, in particular kidneys, is a rapidly growing field of criminal activity. In many countries, waiting lists for transplants are very long, and criminals have seized this opportunity to exploit the desperation of patients and potential donors. The health of victims, even their lives, is at risk as operations may be carried out in clandestine conditions with no medical follow-up⁷. Like drugs and arms trafficking, human trafficking is a market driven criminal industry that is based on the principles of supply and demand. Many factors make children and adults vulnerable to human trafficking. However, human trafficking does not exist solely because many people who are vulnerable to exploitation. Instead, human trafficking is fuelled by a demand for cheap labor or services, or for commercial sex acts. Human trafficking is increasing due

⁶ <https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>

⁷ <https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>

to demand of sex. Individuals who buy commercial sex acts create the demand for sex trafficking. Many sex buyers may be unaware, ill-informed, or in direct denial of the abusive realities of sex trafficking situations as they exist within the broader sex trade. When sex trafficking is present, victims are often subjected to violence, threats, controlling behaviors, false promises, lies, and manipulation perpetrated by the traffickers/pimps. Popular media, including certain books, movies, television shows, and music, sometimes glamorize and romanticize the commercial sex industry without properly acknowledging the presence of sex trafficking. The victims of trafficking not discuss their situation with customers or ask for help because they are trained by their traffickers to lie and keep up the act. In places and communities where there is a demand to buy sex, sex traffickers directly respond to the demand by seeking to offer a "product" to be sold for profit. To sex traffickers, the "product" they sell are the women and children. States and governmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice⁸. Millions of men, women and children are victims of human trafficking for sexual, forced labor and other forms of exploitation worldwide and global crime and the financial conditions of individuals take an immense role on individuals and communities. It also takes place wherever there is a need for cheap labor, sex, and money; States Parties has to take all appropriate national, bilateral and multilateral measures to prevent: The inducement or coercion of a child to engage in any lawful sexual activity; The exploitative use of children in prostitution or other unlawful sexual practices; and use of children in pornographic performances and materials. Men, women and children are victims of human trafficking for sexual, forced labor and other forms of exploitation. Human Trafficking is the recruitment, transportation, transfer, harboring or receipt of persons by the threat or use of kidnapping, forced, fraud, deception or coercion, or by giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, and for the purpose of sexual exploitation or forced labor.⁹

5. Protection against Trafficking under Constitutional Laws

Human trafficking is mentioned under article 23 and 24 of Indian constitution which prohibits beggar and forced labor and there should be no discrimination on basis of religion, race and sex. Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence

⁸Available at "<http://www.soca.gov.uk/about-soca/about-the-ukhtc/an-overview-of-human-trafficking/types-of-human-trafficking> 9(visited on 30 April 2012).

⁹Available at "<http://siteresources.worldbank.org/extra-development/Resources/244362> (visited on 28 April 2012).

punishable in accordance with law.¹⁰ Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on ground only of religion, race, caste/ class or any of them¹¹. Article 23 embodies to declaration first is that traffic in human beings; beggar and other similar forms of forced labour are prohibited. The prohibition applies not only to state but also to private person, bodies and organizations. Second, any contravention of the prohibition shall be an offence punishable in accordance with law. Traffic in human beings deals with both men and women. Here the word beggar means involuntary work without payment. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous work. Employment of children below the age of fourteen years in any factory or mine or other hazardous occupation is forbidden. This provision also relates with the provisions of directives in article 39(e) and (f).

In *M.C.Mehta*¹² and *Bandhua Mukti Morcha's* case¹³ noted that menace of child labour was wide spread. Therefore it issued directions in the context of employment and exploitation of children in Savakis, prohibiting employment of children below the age of fourteen year making arrangement for their education by creating a fund and providing employment to the parents and it gives opportunity to consider that bonded labor system exists and must take appropriate steps to abolish.

6. Human Rights and Human Trafficking

All human beings have the right to live as human beings. Human rights already exist in society. They are known as inalienable rights which cannot be transferred to others. The concept of human rights aims at protection of rights like right to life, liberty and property. These rights are attributed to human beings irrespective of class, caste, gender, color and religion. Article 3 of UDHR provides everyone has the right to life, liberty and security of person. Further Article 4 prohibits to be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5 no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The preamble of Indian constitution also empowers the central and state government to eliminate human rights violation in the country. In spite of these international and national declarations and resolutions, human rights are violated in different countries all over the world. In Indian society, due to the social barriers such as casteism, untouchability, patriarchy, disparity, superstition, religious exploitation and class variations, human rights are violated. The weaker sections groups are facing the

¹⁰ The Constitution of India, Article 23

¹¹The Constitution of India, Article 24

¹²*In M.C.Mehta v. State of Tamil Nadu* (AIR1996 6 SCC 756), *In Bandhua Mukti Mocha v. Union of India* AIR (1984 SC 802).

problems of identity crisis, deprivation, discrimination and atrocities. Violence on human beings in any form results in violation of human rights. Human rights of dalits and women in general are normally violated by high castes and powerful communities to practice and exhibit patriarchy and casteism. But human rights of women are violated extremely and in peculiar form. Women are in worst position than others, in terms of sex ratio, wages, employment, occupation, assets, education, health, social mobility and political participation.¹⁴ Sex trafficking is a grave violation of human rights and a form of violence against women and children. Sex trafficking violates women's right to life, liberty and security of person. The fundamental individual right to life, liberty and security of person is reflected in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, Chapter II, Article 3 provides for the right of women to be free from violence within both the public and private spheres, specifically listing trafficking in persons as a form of violence against women it involves the knowledge or agreement of state agents. Sex trafficking is often referred to as modern-day slavery. Many countries have ratified various international conventions that create obligations to prohibit slavery and slavery-like practices. While some sex trafficking situations may not involve the permanent ownership historically associated with slavery, they can involve exploitation and deprivations of liberty that render the situation tantamount to slavery. Slavery-like practices that can manifest in sex trafficking situations, including servitude, forced labour, debt bondage, and forced marriages, are also prohibited. Some acts of sex trafficking involve conduct that can be understood as a form of torture, inhuman or degrading treatment, which is prohibited under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 5 of the UDHR and Article 7 of the ICCPR.¹⁵

7. Human trafficking under IPC Crimes

Human trafficking is the recruitment, exploitation of human being whether a child or women. It may be through forced labour, domestic servitude and sexual exploitation and these offences punishable under sections 366-A 366-B, 372 and 373 of IPC 1860 so both are co-related.

¹⁴Ms. Prabha Tirmare, Senior Faculty Member, College of Social Work, Available at <http://www.sasnet.lu.se/pdf/timmarepaper.pdf> (visited on 6 may 2012).

¹⁵Available at A G:\Sex trafficking is a grave violation of human rights and a form of violence against women and children.html (visited on 7 may 2012).

a. Procurement of Minor Girl¹⁶: This section makes procurement of minor girl a punishable offence. It states that whoever by any means induces any minor girl under the age of eighteen years to go from any place or to do any act with the intention that such girl may be forced or seduced to illicit intercourse with another person or with the knowledge that it is likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment extending up to 10 years, and shall also be liable to fine. Where a woman who may not have attained the age of eighteen years earns her living by prostitution by offering herself to others promiscuously for money, and in her profession she is encouraged or assisted by the accused, the accused cannot be held guilty until the requisite intention or knowledge is proved on his part. In *Ramesh v. state*,¹⁷ section 366-A makes procurement of minor girl a punishable offence. It states that whoever by any means induces any minor girl under the age of eighteen years to go from any place or to do any act with the intention that such girl may be forced or seduced to illicit intercourse with another person or with the knowledge that it is likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment extending up to 10 years, and shall also be liable to fine. Where a woman who may not have attained the age of eighteen years earns her living by prostitution by offering herself to others promiscuously for money, and in her profession she is encouraged or assisted by the accused, the accused cannot be held guilty until the requisite intention or knowledge is proved on his part. The offence under section 366 A is cognizable, non-bailable and non-compoundable, and is triable by Court of Session. 679 cases were reported in the year 2010 as compared to 237 such cases in 2009, accounting for 186.5 percent increase over 2009. West Bengal has reported 200 such cases indicating a share of 29.5 percent at National level followed by Bihar (152) (22.4 percent). An increasing trend was observed in these cases during the last three years.¹⁸

¹⁶Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

¹⁷ *In Ramesh v. state* (1963) 1 Cr Lj 16 (sc)

¹⁸Available at <http://ncrb.nic.in/CII2010/cii-2010/Chapterpercentage206star> (visited on 30 April 2012).

b. Importation of Girls from Foreign Country¹⁹: This section punishes importing of girl under 21 years of age from a foreign country. It says that whoever imports into India from any country outside India or from the state of Jammu and Kashmir any girl under twenty one years of age with the intention that she may be either forced or seduced to illicit intercourse with another person or with the knowledge that it is likely that she will be either forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment extending up to ten years, and shall also be liable to fine. The offence under the section is cognizable, non-bailable and non-compoundable, and is triable by Court of Session.

c. Selling Minor for Purpose of Prostitution²⁰: Illicit intercourse in this context means sexual intercourse between persons not united by Marriage, or by any union which is recognized by the law or custom of the community. This Section applies to children under the age of 18, regardless of marital status and whether they were involved in prostitution before the act. Selling or letting to hire of a minor for prostitution has been made a punishable offence under this section. The section says that whoever either sells, or lets to hire, or otherwise disposes of any person under eighteen years of age with the intention that such person shall at any age be either employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose, or with the knowledge that it is likely that such person will at any age be either employed or used for any such purpose, shall be punished with simple or rigorous imprisonment for a term extended up to ten years, and shall also be liable to fine. There are two explanations for this section. The first says that when a women under the age of eighteen years is sold, let for hire, or otherwise disposed of either prostitute or to any person who keeps or manage a brothel, the person so

¹⁹ Whoever imports into India from any country outside India or from the state of Jammu and Kashmir any girl under the age of twenty one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

²⁰ Whoever sells lets to hire, or otherwise disposes of any person under the age of eighteen years With intent that such person shall at any age be employed or used for the purpose of prostitution Or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be Punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

disposing of such women shall be presumed to have done so with the intention that she will be used for prostitution, unless contrary is proved to the satisfaction of court. The second explanation says that the word illicit intercourse means sexual intercourse between persons, who are not married to each other, or they are not united by any union or tie does not amount to marriage, is recognized by the personal law or custom of the community to which they belong, as constituting quasi-marital relationship between the two. The offence under this section is cognizable, non-bailable and non-compoundable, and is triable by Court of Session.

d. Buying Minor for Purpose of Prostitution²¹: There are two explanations for this section. The first explanation says that any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtain possession of a female under the age of eighteen years, shall, until the contrary is proved, be presumed to have obtained possession of such female with intent that she shall be used for the purpose of prostitution. The second explanation says that the word illicit intercourse means sexual intercourse between persons, who are not married to each other, or they are not united by any union or tie does not amount to marriage, is recognized by the personal law or custom of the community to which they belong, as constituting quasi-marital relationship between the two. The Offence under this section is cognizable, non-bailable and non-compoundable, and is triable by Court of Session.

This section penalizes buying, hiring or otherwise obtaining possession of a minor for the purpose of prostitution. It says that whoever buys hires or otherwise obtains possessions of any person under the age of eighteen years with the intent that such person at any age be either employed or used for the purpose of either prostitution or for illicit intercourse with any person for any unlawful or immoral purpose, or with the knowledge that is likely that such person at any age will be so employed or used, shall be punished with simple or rigorous imprisonment for a term extending up to ten years, and shall also be liable to fine. The offence under this section is cognizable, non-bailable and non-compoundable, and is triable by Court of Session. In 2010, 78 cases of Buying of girls and 130 cases of Selling of girls for Prostitution were reported in the country and 32 and 57 cases are reported in 2009. West Bengal (48) and Maharashtra (27) have accounted for 96.2

²¹ Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purposes, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

percent of Buying of Girls for Prostitution and West Bengal has accounted for 88.5 percent of Selling of Girls for Prostitution reported in the country.²²

There are several legislations made to prevent trafficking such as immoral trafficking prevention act 1956 and the difference between human trafficking prevention act 1956 and Indian penal code 1860 are The Penal Code, though ancient, is a comprehensive statute and is the main law relating to crimes in India; it defines offences and prescribes punishments. Complementing the Penal Code is the Code of Criminal Procedure, 1973, which prescribes the procedures that must be followed by police, prosecutors, judges and others in the course of prosecuting criminal cases. While immoral Trafficking (Prevention) Act, 1956 does not directly state that prostitution is illegal, it penalizes the act of prostitution.

8. Immoral Trafficking (Prevention) act 1986

The Immoral Traffic (Prevention) Act or PITA is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United Nations' declaration in 1950 in New York on the suppression of trafficking. The act, also called the All India Suppression of Immoral Traffic Act (SITA), was amended. The laws were intended as a means of limiting and eventually abolishing prostitution in India by gradually criminalizing various aspects of sex work. The main points of the PITA are as follows, a prostitute who seduces or solicits shall be prosecuted. Similarly, call girls cannot publish phone numbers to the public. Sex worker also punished for prostitution near any public place or notified area. The client may also be punished if the sex worker is below 18 years of age. Babus or pimps or live-in lovers who live off a prostitute's earning are guilty of a crime. it is related with the crime of prostitution. The government is legally obligated to provide rescue and rehabilitation in a "protective home" for any sex worker requesting assistance. The Immoral Trafficking Act 1986 is related not only to women but children also. In *Laxmi Kant Pandey's and The Karnataka State Council*²³ the Supreme Court in this case had formulated the normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents to prevent such kind of offence against child. The parents after adopting child especially girl used them for trafficking. The immoral trafficking prevention act and Indian penal code are the form to composite legal code for the prosecution and punishment of traffickers. In 1997 the judgments directed the Government of India, among other things, to prepare a National Plan to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. And the National Plan was drafted in 1998, and

²² Available at [http://ncrb.nic.in/CII2010/cii-2010/Chapter percentage206star](http://ncrb.nic.in/CII2010/cii-2010/Chapter%20percentage206star) (visited on 30 April 2012).

²³ In *Laxmi Kant Pandey v. union of India* (AIR 232, 1987 SCR (1)383) and *In The Karnataka State Council v. society of sister of charity* (AIR 1994 SC 658, 1995 SUPP (4) SCC 529).

provides a comprehensive strategy for the Central and State Governments to address the several issues related to the subject, especially, prevention, rescue, rehabilitation and reintegration. One of the prescriptions of the National Plan was to prepare a special module for sensitization, training and orientation of judicial officials towards the causes of commercial sexual exploitation and the situation of women and child victims. And the Specific areas are (a) empowering provisions of law, (b) a human rights perspective on the rights of the victims of trafficking (c) sensitivity to gender and child rights issues, (d) the protection of the rights of victims of trafficking at the stage of prosecution and (e) expeditious fighting.

Conclusion

Human trafficking and modern-day slavery are umbrella terms – often used interchangeably – that refer to the exploitation of individuals through threat or use of force, coercion, abduction, fraud, and/or deception. It includes the practices of forced labor, debt bondage, domestic servitude, forced marriage; sex trafficking, child sex trafficking, and the recruitment and use of child soldiers, among others. The International Labor Organization estimates that 24.9 million people a year are subjected to forced labor – 16 million in private sector exploitation, 4 million in state sanctioned forced labor, and 4.8 million in sex trafficking. Hence, the most common types of trafficking are forced labor – which includes sex trafficking – and forced marriage. Having worked on these issues since the late 1990s, UNODC has issued a comprehensive strategy setting out the complementary nature of UNODC's work in preventing and combating both human trafficking and migrant smuggling, and defining the immediate priorities for UNODC's future action and engagement on these crimes.

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