

# Prevention of trafficking in persons : obstacles and opportunities

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Objektyp: **Article**

Zeitschrift: **Schweizerische Zeitschrift für Kriminologie = Revue suisse de criminologie = Rivista svizzera di criminologia = Swiss Journal of Criminology**

Band (Jahr): **14 (2015)**

Heft 2

PDF erstellt am: **17.07.2024**

Persistenter Link: <https://doi.org/10.5169/seals-1050746>

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Andreas Schloenhardt

## Prevention of Trafficking in Persons – Obstacles and Opportunities

### Summary

An integral part of any strategy to reduce – if not eliminate – trafficking in persons involves measures aimed at preventing the crime from occurring. The significance of prevention is also recognised in international law and best practice guidelines, including the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children. The present article\* explores the role of prevention in the fight against trafficking in persons and examines a range of measures aimed to deter offenders and offending, prevent victimisation, and reduce the demand for trafficking.

**Keywords:** trafficking in persons, prevention, UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children.

### Zusammenfassung

Ein zentraler Bestandteil jeder Strategie, um Menschenhandel zu reduzieren – oder gar zu eliminieren –, sind Massnahmen zur Verbrechensprävention. Deren Bedeutung ist auch im Völkerrecht sowie in internationalen Richtlinien zur best practice enthalten, einschliesslich dem Zusatzprotokoll zur Verhütung, Bekämpfung und Bestrafung des Menschenhandels, insbesondere des Frauen- und Kinderhandels zum Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende Kriminalität. Der vorliegende Artikel\* untersucht die Rolle der Prävention im Kampf gegen den Menschenhandel und stellt eine Reihe von Massnahmen dar, welche Täter von Taten abhalten, Viktimisierung verhindern und die Nachfrage nach Handel reduzieren sollen.

**Schlüsselwörter:** Menschenhandel, Prävention, Zusatzprotokoll zur Verhütung, Bekämpfung und Bestrafung des Menschenhandels, insbesondere des Frauen- und Kinderhandels zum Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende Kriminalität.

### Résumé

Une partie centrale de toute stratégie visant à la réduction – voire à l'élimination – de la traite des personnes sont les mesures de prévention de la criminalité. Leur importance est reconnue en droit international public et dans des directives best practice, y compris le protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants. Le présent article\* examine la fonction de la prévention dans le cadre de la lutte contre la traite des personnes et présente un catalogue de mesures qui visent à détourner les criminels des crimes, prévenir la victimisation et réduire la demande à la traite.

**Mots-clés:** traite des personnes, prévention, protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants.

### 1. Introduction

An integral part of any strategy to reduce – if not eliminate – trafficking in persons involves measures aimed at preventing the crime from occurring. This includes policies and programs targeted at stopping offenders from engaging in this crime and addressing the vulnerabilities and root causes that lead to the victimisation and re-victimisation of women, children, and men. Prevention also requires reducing the demand that fuels trafficking to particular destination countries and into particular industries.

The significance of prevention is also recognised in international law and best practice guidelines, including the United Nations *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*.<sup>1</sup> In their quest to combat trafficking in persons, very few countries have, however, to this day, developed coherent prevention policies and programs. Where prevention measures have been implemented, impact and success are not often measurable or otherwise evident.

This article explores the role of prevention in the fight against trafficking in persons and examines a range of measures aimed to deter offenders and offending, prevent victimisation, and reduce the demand for trafficking. Awareness raising, education, and research are also discussed. The goal of this article is to explore

\* The author wishes to thank Dr. Melissa Curley and the other members of the UQ Human Trafficking Working Group for their friendship and support. For further information, visit [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>1</sup> Opened for signature 12 Dec. 2000, 2237 UNTS 319 (entered into force 25 Dec. 2003) [hereinafter *Trafficking in Persons Protocol*]. Article 3(a) of that Protocol defines trafficking in persons as: «the 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 exploitation. 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 organs.»



the advantages and limitations of prevention programs, showcase some promising practices and develop recommendations and strategies to prevent trafficking in persons more effectively and sustainably whilst respecting the rights of trafficked persons.

## 2. Prevention Policies and Programs

Simply put, prevention is aimed at stopping trafficking in persons from happening in the first place. It involves policies and practical programs that precede any offending, reduce the risk of crimes occurring, and stop the potentially harmful effects on individuals and society.<sup>2</sup>

In international law, the *Trafficking in Persons Protocol*, which came into existence in 2000, is the principal and most universally recognised instrument and marks the international community's most comprehensive effort to deal with trafficking in persons in its modern forms. Prevention features as one of the primary purposes of the *Protocol*. Article 2(a) of the *Protocol* specifically states that «the purposes of the *Protocol* are [...] to prevent and combat trafficking in persons, paying particular attention to women and children.» The United Nations Office on Drugs and Crime (UNODC), the «guardian» of the *Trafficking in Persons Protocol*, notes that: «There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimisation, but also promote community safety and contribute to sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens. It has long-term benefits in terms of reducing the costs associated with the formal criminal justice system, as well as other social costs that result from crime.»<sup>3</sup>

The *Protocol* aims to set out a uniform approach to trafficking to be taken by all States

Parties, and to facilitate international cooperation among them. Supplementing the *Convention against Transnational Organised Crime*,<sup>4</sup> the *Protocol* conceives trafficking in persons as a form of organised crime, requiring a coordinated international response including uniform anti-trafficking legislation and the prosecution of offenders. The *Protocol* also contains provisions for the prevention of trafficking and for victim protection.

Article 9 of the *Trafficking in Persons Protocol* specifically seeks to guide States Parties' efforts to prevent trafficking in persons. Article 9(1) broadly requires the development of comprehensive policies, programmes, and other measures to prevent and combat trafficking in persons as well as protect victims of trafficking. Article 9(2) specifically highlights the need to undertake research, information and mass media campaigns to prevent and combat trafficking in persons.<sup>5</sup> Article 9(3) encourages States Parties, where appropriate, to cooperate with non-governmental organisations (NGOs) and other elements of civil society. Article 9(4) calls on States Parties to address the root causes of trafficking in persons, including poverty, underdevelopment, and lack of opportunity. Article 9(5) emphasizes that particular attention should be given to educational, social, and cultural measures aimed at reducing the demand that fosters the exploitation of persons that leads to trafficking.

While there is little controversy about the prevention measures advocated by the *Protocol*, some criticism has been levelled at Article 9, arguing that the victim-focussed prevention articles carry diminished, soft obligations that are subsidiary to those addressing prosecution and criminalisation.<sup>6</sup> The practical consequence of the non-mandatory language is that most countries do not, or not adequately, engage in efforts to prevent trafficking in persons, raise awareness about the causes and consequences, and fail to engage in or contribute to systematic, analytical research about the levels and patterns of this phenomenon.

## 3. Preventing Offenders and Offending

In theory, one of the most effective ways to prevent trafficking in persons is to stop offenders long before they recruit their victims and set up their trafficking schemes. This involves ad-

<sup>2</sup> See also Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 195.

<sup>3</sup> UN ECOSOC, *Action to promote effective crime prevention*, UN Doc E/Res 2002/13 (24 July 2002) Annex: 'Guidelines for the Prevention of Crime' [I.1].

<sup>4</sup> Opened for signature 12 Dec 2000, 2225 UNTS 209 (entered into force 29 Sep 2003).

<sup>5</sup> See also *Convention against Transnational Organised Crime*, art. 31(5).

<sup>6</sup> Fredette K., Revisiting the UN Protocol on human trafficking, *Cardozo Journal of International & Comparative Law*, 17 (2009) 101, 128; Taran P., Human rights of migrants, *International Migration*, 38 (2000) 7, 8; Gallagher A., Human rights and the new UN Protocols on trafficking and migrant smuggling, *Human Rights Quarterly*, 23 (2001) 975, 991–992.



dressings and identifying the reasons why offenders choose to engage in trafficking and reducing the (perceived) benefits they may gain from their criminal activity.<sup>7</sup> This can be achieved through proactive prevention or through prohibition.

### 3.1 Proactive Prevention: Targeting Would-be Traffickers

Proactive prevention is concerned with targeting traffickers and the factors that lead them to engage in trafficking. It involves «the identification of potential or known source states and liaising with emigration and law enforcement agencies in such states to expose trafficking rings before they are able to lure their victims into their deceitful enterprises.»<sup>8</sup>

Compared to other crime types, no research has been undertaken about how such intervention strategies may work or about whom they should be aimed at in the context of trafficking. Such work is further complicated by the fact that traffickers do not form a uniform group and come from diverse backgrounds, live in a great range of locations, and do not fit a single stereotype that could be the focus of proactive prevention strategies.

#### 3.1.1 Offender profiling

Offender profiling (or criminal profiling) is an investigative tool used by some law enforcement and intelligence agencies to outline the characteristics of the type of offender who commits certain crimes in order to predict and prevent possible offending. In the context of trafficking in persons this would involve establishing the general characteristics (background, behaviour, methods et cetera) of traffickers and, on that basis, seek to stop would-be traffickers from committing such crime.<sup>9</sup>

One characteristic shared by some, but not all, of the persons implicated in trafficking in persons for the purpose of commercial sexual exploitation, is the fact that several perpetrators have a long-standing involvement in the sex industry, with some accused operating brothels for some time. It also crystallises that several perpetrators maintain close ties to the country of origin of the victims, and sometimes come from the same background and/or nationality.<sup>10</sup> While it is recognised that traffickers do not always fit into homogenous categories, such information helps to build the profile of one of several types of perpetrator. Similar informa-

tion for persons involved in other forms of trafficking is, however, presently not available.

A further characteristic of several persons implicated in trafficking is the fact that they, too, were once themselves victims of trafficking. While the reasons and circumstances for the transition from victim to trafficker differ from person to person, it has been noted that «the factors that make people vulnerable to being trafficked may also make people vulnerable to becoming traffickers.»<sup>11</sup> This observation makes it all the more important that persons who have been identified as victims of trafficking are given opportunities to leave the trafficking environment and be comprehensively (re-)integrated into alternative lines of work if the wish to do so. «Breaking the cycle of trafficking», notes UNODC, «requires not only preventing victims from being re-trafficked but also preventing victims from becoming traffickers themselves.»<sup>12</sup>

The difficulty with profiling is that it is often based on characteristics such as nationality, gender, ethnicity, and language and thus has the potential to be used in discriminatory ways (or at least to be perceived that way). Offender profiling may also result in the creation of stereotypes, which, in turn, may lead atypical offenders to be overlooked.

#### 3.1.2 Reducing viability

One of the principal reasons why known traffickers choose to engage in trafficking in person is their desire to gain financial or other material benefits from the exploitation of others.<sup>13</sup> Consequently, a further way to prevent trafficking is to reduce the profitability of this crime. This can be achieved through criminalisation, law enforcement, seizing of assets and proceeds of crime, but also by measures that address the more general market factors of industries in which trafficking in persons takes place.

7 Cf. UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 419.

8 Burn J. et al, *Combating Human Trafficking: Australia's Responses to Modern Day Slavery*, *Australian Law Journal*, 79 (2005) 543, 545.

9 UN.GIFT, *Profiling the Traffickers* (Background paper to the Vienna Forum to fight Human Trafficking, Vienna, 13–15 Feb 2008) 2.

10 See further, Schloenhardt A., Jolly J. M., *Trafficking in Persons in Australia: Myths and Realities*, LexisNexis, 2013, 32–35.

11 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 468.

12 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 468.

13 Wheaton E. et al, *Economics of Human Trafficking*, *International Migration*, 48 (2010) 114, 117.



Complicating such efforts is the fact that most of the professions and industries in which cases of trafficking have been identified are, in and by themselves, not illegal but fundamental to the basic functioning of society. Outlawing the lines of work in which trafficked persons have been found is thus not a feasible consideration; neither are suggestions to lower minimum wages to make the reliance on cheap – including exploitative or forced – labour unnecessary.

In this context, it should also be noted that not all instances of trafficking in persons are motivated by the perpetrators' desire to maximise financial or other material gain. Many traffickers are driven by a desire to exercise control over the lives of their victims, severely restrict their freedoms, and, in some cases, abuse them verbally and physically. In other cases, the traffickers use the victim for their own sexual gratification, rather than profiting from commercial sexual exploitation.

### 3.1.3 Prevention through Prohibition

In the context of trafficking in persons, the debate about prohibition has centred predomi-

nantly on suggestions to abolish all forms of prostitution, adult entertainment, and other forms of commercial sex work. There is a widely held view that the legalisation of prostitution creates the demand for trafficking and that only a ban on all forms of sex work would lead to the end of trafficking in persons.<sup>14</sup> Led by the belief that «prostitution is so exploitative of women that [no] woman could ever be said to have freely engaged in prostitution,»<sup>15</sup> some authors see no difference between exploitation of prostitution and prostitution itself,<sup>16</sup> and liken brothels to «prisons and concentration camps».<sup>17</sup> «Prostitution and sex trafficking», writes Dorchen Leitholdt of the Coalition against Trafficking in Women International, «are the same human rights catastrophe, whether in local or global guise. Both are part of a system of gender-based domination that makes violence against women and girls profitable to a mind-boggling extreme. Both prey on women and girls made vulnerable by poverty, discrimination, and violence and leave them traumatised, sick, and impoverished. Both reward predators sexually and financially, strengthening both the demand and criminal operations that ensure the supply.»<sup>18</sup>

Many authors contend that these views are not supported by credible evidence and fail to grasp the substantial diversity and variation in sex work.<sup>19</sup> Others have rejected these views more strongly. Bridget Anderson and Julie O'Connell Davidson, for instance, remark that: «The idea that the entire commercial sex market should be eradicated in order to tackle the problem of trafficking for prostitution, is as draconian and wrong-headed as the idea that it is necessary to eliminate demand for carpets in order to address the problem of forced and child labour in the carpet industry.»<sup>20</sup>

Suggestions that «[c]ountries that have legalised or regulated prostitution are those into which the highest numbers of foreign women are being trafficked»<sup>21</sup> are not supported by evidence in many places. In contrast, the vast majority of research and expert opinion shows that decriminalisation of sex work has reduced the levels of exploitation and has meant that support groups are able to assist sex workers more effectively, while trafficking is much more likely to occur in unregulated and illegal forms of sex work.<sup>22</sup>

As a result, calls for the prohibition of prostitution and for further restrictions on legal sex work would be counterproductive. Similarly,

<sup>14</sup> See, for example, Sullivan M., *Making Sex Work*, Spinifex, 2007, 219; Catholic Women's League, Submission No 20 to Joint Committee on the Australian Crime Commission, Parliament of Australia, *Inquiry into the trafficking of women for sexual servitude* (2004) 2–3; Smith L., Healy Vardaman S., The Problem of Demand in Combating Sex Trafficking, *International Review of Penal Law*, 81 (2010) 607, 612; Raymond J., Ten Reasons for not Legalizing Prostitution and a Legal Response to the Demand for Prostitution, in: Farley M. (ed.), *Prostitution, Trafficking, and Traumatic Stress*, Haworth Press, 2003, 315, 316–317.

<sup>15</sup> Malone L., Economic Hardship as Coercion under the Protocol on International Trafficking in Persons by Organized Crime Elements, *Fordham International Law Journal*, 25 (2001) 54, 90; cf. Abramson K., Beyond Consent, Towards Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol, *Harvard International Law Journal*, 44 (2003) 473, 474–475.

<sup>16</sup> Jeffreys E., Anti-trafficking Measures and Migrant Sex Workers in Australia, *Intersections: Gender and Sexuality in Asia and the Pacific*, 19 (2009) [3]; Anderson B., O'Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 10; Yen I., Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation, *Journal of Criminal Law & Criminology*, 98 (2008) 653, 665, 681–682.

<sup>17</sup> Leidholdt D., Prostitution and Trafficking in Women, in: Farley M. (ed.), *Prostitution, Trafficking, and Traumatic Stress*, Haworth Press, 2000, 167, 172.

<sup>18</sup> Quoted in Sullivan M., *Making Sex Work*, Spinifex, 2007, 185; see also Leidholdt D., Prostitution and Trafficking in Women, in: Farley M. (ed.), *Prostitution, Trafficking, and Traumatic Stress*, Haworth Press, 2000, 167, 170.

<sup>19</sup> Weitzer R., Sex Trafficking and the Sex Industry, *Journal of Criminal Law & Criminology*, 101 (2012) 1337, 1338.

<sup>20</sup> Anderson B., O'Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 10–11; see also Jeffreys E., Anti-trafficking Measures and Migrant Sex Workers in Australia, *Intersections: Gender and Sexuality in Asia and the Pacific*, 19 (2009) [5].

<sup>21</sup> Raymond J., The New UN Trafficking Protocol, *Women's Studies International Forum*, 25 (2002) 491, 499 (commenting on the regulation of prostitution in NSW and Victoria).

<sup>22</sup> See further, Pearson E., Australia, in: *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW, 2007, 28, 51–52.



suggestions to bar foreigners from employment in the sex industry are not supported by any evidence showing that such a move would in any way reduce the risk of trafficking of foreigners into that industry.<sup>23</sup> Instead, because several aspects of the sex industry such as escort services (also called outcall prostitution) and street prostitution are not or only rudimentarily regulated in most countries, it has been recommended that greater legalisation and regulation should be explored as a way to prevent and combat trafficking in persons and protect sex workers more effectively.<sup>24</sup> Berta Hernández-Truyol and Jane Larson have drawn a similar conclusion: «Sexual labour – like other low-status labour – would likely still be underpaid and exploited even if it were not illegal. But the prostitute’s almost complete isolation from the law’s protections – civil, criminal, and constitutional – would end. [...] Illegality drives much of the industry into the shadows, shielding business practices from scrutiny under ordinary legal standards.»<sup>25</sup>

### 3.2 Regulating Irregular Migration

Trafficking in persons is one form of irregular migration. «[R]estrictive or limited legal migration options», suggest some authors, «lead to people engaging with and to be incited into a trafficking situation.»<sup>26</sup> Marie Segrave and Sanja Milivojevic further argue that «women’s negligible opportunities for legitimate transnational migration options – particularly women from developing nations seeking short-term low-skilled employment – produce harms that are attributable not only to the «traffickers» but also to the myriad nations [...] that enforce highly restrictive border enforcement regimes.»<sup>27</sup>

Frequently motivated by a desire to better their lives and those of their families, or to escape from situations of poverty, marginalisation, or repression, victims often knowingly enter into agreements with traffickers who, unknown to the victims, will lead them into exploitative conditions in destination countries. «Human trafficking is possibly the worst human development outcome linked to increasing global mobility», note Gergana Danailova-Trainor and Frank Laczko.<sup>28</sup> Other research has pointed «to the conclusion that in the vast majority of cases, «trafficking» is a corrupted mode of migration, that transforms very specific migratory projects, such as the desire to accumulate savings or support one’s depend-

ants by migrating to work, the dream of securing a better future for one’s children by sending them to be raised and educated abroad, the desire to transform one’s life by marrying «well», and so on, into nightmares. It is therefore important to recognise that the individuals concerned had good reasons for migrating, which is why the adverse publicity, and even personal experience regarding the dangers associated with undocumented migration are rarely enough to stop people from taking the risk.»<sup>29</sup>

#### 3.2.1 Legalisation of irregular labour movements

One way to prevent certain forms of trafficking involves the legalisation of labour movements and other forms of migration that are presently illegal or otherwise not open to would-be victims of trafficking. Such initiatives, if developed and instituted wisely, have the potential to limit, if not eliminate the services traffickers can offer, thus reducing their profit margins and «smashing their business model». Here, ideas can be borrowed from best practice guidelines and other «toolkits» to combat other forms of irregular migration, such as migrant smuggling. In this context, UNODC points to policies on legal migration, employment and job mobility networks, temporary work visas, and harmonisation of migration laws and labour markets as «promising practices».<sup>30</sup> Such initiatives could also increase the remittance flow to countries of origin, thus enhancing development and alleviating poverty in places most vulnerable to trafficking.<sup>31</sup>

23 Simmons F., David F., The Road to Effective Remedies: Pragmatic reasons for treating cases of «sex trafficking» in the Australian sex industry as a form of «labour trafficking», *Anti-Trafficking Review*, 1 (2012) 60, 67.

24 Schloenhardt A., Cameron L., Happy Birthday, Brothels! Ten Years of Prostitution Regulation in Queensland, *Queensland Lawyer*, 29 (2009) 194, 206, 219; cf. Anderson B., O’Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 11.

25 Hernández-Truyol B., Larson J., Sexual Labor and Human Rights, *Columbia Human Rights Law Review*, 37 (2006) 391, 439.

26 Steele S., Trafficking in People: The Australian Government’s Response, *Alternative Law Journal*, 32(1) (2007) 18, 20; cf. Berman J., Biopolitical Management, Economic Calculation and «Trafficked Women», *International Migration*, 48(4) (2010) 84, 94.

27 Segrave M., Milivojevic S., Auditing the Australian Response to Trafficking, *Current Issues in Criminal Justice*, 22 (2010–11) 63, 75.

28 Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 38.

29 Anderson B., O’Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 8.

30 See further, UNODC, *Toolkit to Combat Smuggling of Migrants*, United Nations, 2010, Tool 9.3, 10–13.

31 Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 57.



### 3.2.2 Special visas for foreign sex workers?

The debate about a relaxation of immigration laws to alleviate the need of would-be migrants to resort to traffickers has centred predominantly on suggestions to allow foreign sex workers to migrate lawfully on temporary visas. Despite the legalised or decriminalised status of sex work in some countries, migrants wishing to work in this industry presently do not have access to the types of visas that workers in other industries have. It is for this reason that some advocacy groups and individuals contend that foreign women should be allowed to enter destination countries with legalised sex industries on a special visa that would permit them to take up employment in the sex industry. Such a visa could be conditional upon obtaining sponsorship from an employer to ensure that the visa-holders have the means to survive and to protect them from exploitation.<sup>32</sup> This would also provide some mechanisms to create a balance between demand and supply. Elena Jeffreys, then President of Scarlett Alliance, an Australian sex workers association, argues that: «Access to appropriate visa frameworks would cut out the role of the third party agent in the country of origin, making traffickers and middle men redundant. [...] Migrant sex workers are being exploited by migration agents who profit from their inability to access appropriate visas independently. Sex worker advocates know that adopting a human rights approach to sex worker migration and mobility will decrease the risk of exploitation and improve access to education and support, but the moral hysteria attached to sex work is a barrier to change.»<sup>33</sup>

In most countries, suggestions to create a separate visa class for sex workers, or otherwise facilitate the migration of sex workers, remain lofty goals that entail several practical difficulties and face fierce resistance from a great number of opponents. Chief among those are reli-

gious organisations and individuals that reject any legalisation of sex work whatsoever.<sup>34</sup> For example, Mary Sullivan, suggests that: «[I]n practice, traffickers would simply apply for these visas on behalf of women as they do for tourist visas. The women would remain vulnerable to force and coercion and still end up in sexual servitude as the conditions which make people vulnerable to traffickers remain unchanged. Traffickers would be even freer to manipulate our immigration laws to ensure their high profits. By providing work visas, the [...] Government would, in effect, assist traffickers by allowing them to operate within the law.»<sup>35</sup>

A further concern in this context is that the creation of alternative visa classes would not adequately address those instances of trafficking in which victims are deceived about the nature of work they are required to perform after arrival in the destination country or situations in which victims are kidnapped or trafficked into the country clandestinely.<sup>36</sup> Cases of labour trafficking, which frequently involve victims entering the destination country on appropriate visas, also cast doubts over suggestions that new visa classes would prevent trafficking in persons on a wider scale.

## 4. Preventing Victimization and Re-Victimisation

Central to any strategy to prevent trafficking in persons are those measures that prevent women, children, and men from falling victims to trafficking and re-trafficking. Addressing the causes and circumstances that lead to victimisation and re-victimisation is perhaps the single most important way to fight trafficking in a durable fashion, difficult as such undertakings may be. Seen this way, preventing victimisation and re-victimisation involves measures aimed at supply reduction, i.e. reducing the pool of persons vulnerable to trafficking. This highlights the fact that trafficking in persons most often involves irregular migration from less developed to more developed countries, from poor to rich areas within or across national borders, and places trafficking in persons into the wider context of development and international aid.

<sup>32</sup> Australia, Parliamentary Debates, Senate, 20 June 2005, 76 (Kerry Nettle); cf. Joint Committee on the Australian Crime Commission, Parliament of Australia, *Inquiry into the trafficking of women for sexual servitude* (2004) 58 [4.67]–[4.70].

<sup>33</sup> Jeffreys E., *Scarlett Alliance Brings Sex Worker Migration to Canberra*, *Australian Feminist Law Journal*, 28 (2008) 195, 199–200.

<sup>34</sup> See, for example, Catholic Women's League, Submission No 20 to Joint Committee on the Australian Crime Commission, Parliament of Australia, *Inquiry into the trafficking of women for sexual servitude* (2004) 2–3.

<sup>35</sup> Sullivan M., *Making Sex Work*, Spinifex, 2007, 222.

<sup>36</sup> Joint Committee on the Australian Crime Commission, Parliament of Australia, *Inquiry into the trafficking of women for sexual servitude* (2004) 58–59 [4.71].



#### 4.1 Addressing Specific Vulnerabilities, e.g. Gender Inequality

Identifying and addressing the specific and often very personalised vulnerabilities that lead individuals into situations of trafficking and exploitation is a very complex undertaking that defies single or simplistic solutions. The available information relating to the background of victims of trafficking in persons demonstrates that there is a very wide and diverse spectrum of situations in which victims are recruited and that a great number of factors lead victims to make contact with traffickers or, vice versa, lead recruiters to target individual victims. Generalisations on this point run the risk of creating stereotypes and labelling some individuals as incapable of making choices about their own lives. The UN Special Rapporteur on Trafficking in Persons also notes that «such prevention measures may disproportionately impact on certain groups, including women and individuals from specific countries, ethnicities or geographic regions.»<sup>37</sup>

Accordingly, efforts to prevent trafficking in persons in individual cases or in specific situations need to be informed by the particular circumstances and environment of the individual person concerned, rather than adopting blanket prevention strategies that ignore those factors. Such efforts need to be coupled with the dissemination of accurate information about the tactics used by traffickers so that the persons most likely to be lured into a situation of trafficking «gain a more realistic view of illegal migration and the perceived net benefit of illegally migrating decreases.»<sup>38</sup>

Gender inequality and gender-based discrimination exacerbates women's vulnerability to trafficking in persons: «Women comprise the bulk of victims detected globally, which suggests that being a woman in many parts of the world is connected to those vulnerabilities that lead to victimisation through trafficking in persons», notes UNODC's *Global Report on Trafficking in Persons 2012*.<sup>39</sup>

In many countries, women have few, if any opportunities to gain secondary or higher education, access to vocational training, or find employment in the labour market. Gender stereotypes often perpetuate the difficulties which women experience and tend to leave them with little choice but to work in less secure, less profitable positions for lower wages than men.<sup>40</sup> Other research has shown that «there is some

evidence suggesting a correlation between the number of victims trafficked out of a country and the level of female youth unemployment in that country.»<sup>41</sup>

If women are single mothers or the oldest or only child in a larger family, they often experience additional pressure to support their families by working long hours in conditions that would otherwise be unacceptable. Further fueling the vulnerability of women are circumstances in which women feel that they cannot ask for help from the authorities or feel otherwise marginalised, with no place to go and no one to turn to. Such situations make women particularly vulnerable to recruitment by traffickers who lure them with the promises of a better life, higher income, and greater opportunities.

It is for these reasons that many prevention strategies place particular emphasis on eliminating gender inequality and empowering women. A great range of measures have been proposed in this context that are designed to lift the economic and social status of women and their participation in the workforce, not just in the context of preventing trafficking in persons. These include, for example:

- Ensuring equal access for women to primary, secondary, and tertiary education, vocational training, and job counselling;
- Promoting and supporting women's self-employment and entrepreneurship;
- Advocating equal sharing of family responsibilities between women and men;
- Combating gender-based violence;
- Ensuring full participation of women in society, public and political life;
- Eliminating patriarchal structures that discriminate against women; and

<sup>37</sup> UN General Assembly, Human Rights Commission, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Australia (17–30 November 2011)*, UN Doc A/HRC/20/18/Add.1 (18 May 2012) 17 [70].

<sup>38</sup> Wheaton E. et al. Economics of Human Trafficking, *International Migration*, 48 (2010) 114, 135.

<sup>39</sup> UNODC, *Global Report on Trafficking in Persons 2012* (United Nations, 2012) 25.

<sup>40</sup> American Bar Association, *An Introduction to the Human Trafficking Assessment Tool*, ABA, 2005, 116; Chuang J., Redirecting the Debate over Trafficking in Women, *Harvard Human Rights Journal*, 11 (1998) 65, 68–69; Segrave M., Order at the border: The repatriation of victims of trafficking, *Women's Studies International Forum*, 32 (2009) 251, 255; see also, Segrave M., Milivojevic S., Sex Trafficking – A New Agenda, *Social Alternatives*, 24(2) (2005) 11, 13; Malone L., Economic Hardship as Coercion under the Protocol on International Trafficking in Persons by Organized Crime Elements, *Fordham International Law Journal*, 25 (2001) 54, 91.

<sup>41</sup> Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 54.



- Ongoing monitoring of the situation of women and girls to formulate effective policies and practical measures to eliminate gender inequality.<sup>42</sup>

It should be noted, however, that the rhetoric about special vulnerabilities runs the risk of patronising and marginalising women and labelling them as victims rather than as autonomous human beings. This has been particularly the case in the debate about female sex workers. A great range of authors and organisations view «all types of sexual commerce as institutionalised subordination of women, regardless of the conditions under which it occurs.»<sup>43</sup> Such remarks are particularly unhelpful and paternalistic, ignore the realities in which trafficking occurs, and «risks treating women as victims, incapable of making choices about their bodies and their means of migration.»<sup>44</sup>

#### 4.2 Eliminating the Root Causes of Trafficking

Analyses of the main source countries of trafficking in persons have shown that beyond the immediate circumstances and motivations of victims and traffickers lay a great range of root causes that contribute to the occurrence of trafficking and the vulnerability of victims. These underlying and structural causes have far-reaching implications of which trafficking in persons is one of many. Frequently, these root causes are related to the political, socio-economic, demographic, and environmental conditions that induce or encourage migration generally, pushing persons out of some countries and pulling them towards certain destinations. The existence of historical or political ties between countries, prior migration by relatives and friends, and the presence of overseas diaspora add a further complexity to the intricate web of international migration of

which irregular migration, including trafficking in persons, is merely one form.<sup>45</sup> Danailova-Trainor and Laczko succinctly summarise these issues: «At the country level, poor economic, political and social infrastructure, which leads to poverty, conflict and bad governance provides fertile soil for criminal activity and forces some people with limited access to resources to leave and look for opportunities elsewhere. Governance issues such as transparency, accountability and equitable and efficient use of public funds are critical as they influence the allocation of resources and services in a community; those living in poverty tend to have limited access to these benefits, further reinforcing their vulnerability to trafficking. These people are often forced to travel through irregular channels and dangerous routes and may become victims of trafficking. Some leave developing countries, seeking work in more prosperous states, others fall victim to trafficking in their own countries. Relative individual poverty, unemployment, gender discrimination, ignorance, and aspirations for a better life provide incentives to people vulnerable to trafficking to take risk and fall prey to recruiters, transporters and other participants in internal and international trafficking networks.»<sup>46</sup>

It is for this reason that strategies to prevent trafficking in a sustainable way must take account of and address the broader issues of development, poverty reduction, illiteracy, political stability and governance, institution building, and education which, in combination, can improve equality, local job prospects, thus reducing the sway traffickers and their promises of a better life abroad may hold.<sup>47</sup>

The problem with such strategies is that they lack specificity and that in many, if not most cases, suggestions to eliminate the root causes of trafficking are ambitious goals and political statements that are easy to make but difficult to follow by concrete action. Consequently, any serious attempt to stop trafficking must include integrated development strategies that address the general circumstances which induce emigration from the source country as well as the specific factors which cause certain individuals or social groups to be particularly vulnerable and exposed to trafficking in persons.

The broader issues of development, poverty reduction, illiteracy, education et cetera are not unique to trafficking in persons and trigger a

<sup>42</sup> See further, UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 426–429.

<sup>43</sup> Weitzer R., Sex Trafficking and the Sex Industry, *Journal of Criminal Law & Criminology*, 101 (2012) 1337, 1338.

<sup>44</sup> Malone L., Economic Hardship as Coercion under the Protocol on International Trafficking in Persons by Organized Crime Elements, *Fordham International Law Journal*, 25 (2001) 54, 67–68.

<sup>45</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 424. For a comprehensive summary of the literature on the push and pull factors of trafficking in persons with extensive references see, for example, Wheaton E. et al, Economics of Human Trafficking, *International Migration*, 48 (2010) 114, 121.

<sup>46</sup> Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 46.

<sup>47</sup> Burn J. et al, Combating Human Trafficking: Australia's Responses to Modern Day Slavery, *Australian Law Journal*, 79 (2005) 543, 545.



great range of socio-economic, demographic, and other consequences. Moreover, «[t]he challenge in promoting an anti-trafficking development policy is that the evidence needed for programme design, monitoring and evaluation is limited.»<sup>48</sup> As such, development assistance delivered through general development aid programs may also, directly or indirectly, remove or alleviate the economic, political, and social conditions that make trafficking possible. For example, general initiatives designed to improve gender equality and reduce violence against women simultaneously address factors that contribute to the vulnerability of women to trafficking in persons.<sup>49</sup>

It should also be noted that development aid, measures to improve governance, and alleviate poverty are no panacea to prevent trafficking in persons. Research conducted by Danailova-Trainor and Laczko confirms that: «While poverty is often argued to be a root cause of trafficking, trafficking does not necessarily occur from the poorest countries [...]. Moreover, the poorest people in the countries of origin may not be those most likely to migrate and thus most vulnerable to trafficking. Development strategies, on the other hand, often aim at poverty alleviation in the world's poorest countries or target social groups at the bottom of the income distribution within those countries as the programme beneficiaries.»<sup>50</sup>

Their research also points to several other studies which reveal that the persons deemed most at risk of trafficking in countries of origin are not objectively poor compared to other parts of the population, but rather perceive themselves to be poor. Furthermore, the authors found no correlation between the countries most widely seen as the main places of origin of trafficked persons and their ranking on the human development index, their levels of poverty, or the measures of income or gender inequality in those countries.<sup>51</sup> This is not to suggest that development aid and other measures to reduce poverty are irrelevant, but to reinforce the view that further research is needed to identify the specific causes and conditions that lead to trafficking in individual sending countries and to tailor more specific aid programs in response.

### 4.3 Re-Victimisation

Victims who have been rescued from or otherwise exited a situation of trafficking will fre-

quently return – voluntarily or involuntarily – to their place of origin and consequently encounter the same environment and conditions that made them vulnerable to trafficking in the first place. Even if their traffickers have been arrested and convicted, for many returning victims, re-trafficking is a real prospect, especially if they are met by social stigmatisation and isolation.<sup>52</sup>

Re-victimisation is an actual and potential concern that is widely acknowledged in the literature and in international best practice guidelines.<sup>53</sup> Galma Jahic and James Finckenaue further suggest that cases of re-victimisation account for a «significant fraction» of cases that remain undetected as the ability to re-victimise implies an ability on behalf of the perpetrator to arrange a series of constant trafficking and exploitation enterprises undetected.<sup>54</sup>

Accordingly, the strategies and practical measures designed to prevent persons from falling victim to traffickers are of equal importance in the prevention of re-victimisation. Moreover, education, training, return, and re-integration measures should be designed to remove victims from the environment and circumstances that led to the trafficking situation and equip them with the necessary skills and know-how to avoid re-trafficking and recognise situations of potential re-victimisation. This also involves addressing any fear or resentment for government authorities that may leave victims predisposed to re-victimisation.<sup>55</sup>

48 Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 62.

49 Australian Government, *Australian Government's Action Plan to Eradicate Trafficking in Persons* (2004) 7.

50 Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 47; see also, McSherry B., Kneebone S., Trafficking in Women and Forced Migration, *International Journal of Human Rights*, 12 (2008) 67, 71.

51 Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 48–51.

52 Steele S., Trafficking in People: The Australian Government's Response, *Alternative Law Journal*, 32(1) (2007) 18, 21.

53 See, for example, Joint Committee on the Australian Crime Commission, Parliament of Australia, *Inquiry into the trafficking of women for sexual servitude* (2004) 18–19 [2.58]–[2.60].

54 Jahic G., Finckenaue J., Representations and Misrepresentations of Trafficking in Persons, *Trends in Organized Crime*, 8 (2005) 24–40; see also, Schloenhardt A., Loong M., Return and Reintegration of Human Trafficking Victims from Australia, *International Journal of Refugee Law*, 23(2) (2011) 143, 154.

55 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 165; Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32.



## 5. Demand Reduction

Trafficking in persons is seen by many as a crime that is driven by demand. Like other forms of organised crime, it involves the offer and provision of an illicit service that responds to a specific demand in a given consumer population.<sup>56</sup> Demand can be separated into consumer demand and derived demand. People who are active or passive purchasers of products or services of trafficked persons can generate consumer demand. Those seeking to profit generate derived demand, typically the traffickers or exploiters who wish to keep labour prices down and profits up.<sup>57</sup> UNODC similarly differentiates between «employer demand», «consumer demand, corporate buyers or household members», and «third parties involved in the process» of trafficking and facilitating exploitation.<sup>58</sup> «The notion of «demand» for the labour/services of a «trafficked» person», note Anderson and O'Connell Davidson, «can thus embrace a broad and diverse range of motivations and interests. It can refer to an employer's need for cheap and docile labour, or to consumer demand for cheap goods and/or services, or for household labour or subsistence, or to any or all of these.»<sup>59</sup>

### 5.1 Reducing Consumer Demand

Those using the services provided or performed by victims of trafficking in persons play an important role in preventing and detecting this phenomenon and they should be integrated in any anti-trafficking strategy. Consumers who buy the services offered by trafficked persons include, in a general sense, those who pay for sex with a person who has been trafficked and those who purchase goods that have been manufactured or harvested cheaply due to the use of forced labour. It may also include parents who illegally adopt a trafficked child to save the time and costs of regular adoption channels, and persons who buy the kidney of another person who has been trafficked for the purpose of organ removal.

The reason for shifting attention to the consumers of trafficking is the simple assumption that a reduction in or elimination of demand will in turn reduce or eliminate supply, thus taking away the incentives of (would-be) perpetrators to engage in trafficking in persons in the first place. To achieve these ends, most sources suggest raising greater awareness about the realities of trafficking in persons and the human rights and needs of victims among the likely consumers of forced labour and sexual services, thus communicating the message that they «may be buying indentured labour».<sup>60</sup>

#### 5.1.1 Demand for sex trafficking

As with all efforts to combat trafficking in persons, the main focus has been on reducing the demand for sex trafficking by encouraging men who use sex workers to actively ensure that they are not buying women who are trapped in situations of trafficking.<sup>61</sup> In this context, many sources conflate trafficking in persons for commercial sexual exploitation with the sheer existence of prostitution: «The conclusion of the trafficking process is a paradigmatically gendered transaction, which the male buyers call sex or prostitution while the women and children bought liken it to sexual harassment or rape».<sup>62</sup> Similarly, Yen assumes that: «[T]he male demand for commercial sexual services stimulates and sustains the mushrooming sex trafficking industry. [...] [T]he sexual desires and preferences of the male customers who purchase commercial sexual acts [...] influence and direct all aspects of sex trafficking, from the type of girls that are recruited to the location of the brothels.»<sup>63</sup>

<sup>56</sup> Cf. Wheaton E. et al, Economics of Human Trafficking, *International Migration*, 48 (2010) 114, 119; Burn J. et al, Combating Human Trafficking: Australia's Responses to Modern Day Slavery, *Australian Law Journal*, 79 (2005) 543, 546; see also, Smith L., Healy Vardaman S., The Problem of Demand in Combating Sex Trafficking, *International Review of Penal Law*, 81 (2010) 607, 607.

<sup>57</sup> UN Conference of the Parties to the United Nations Convention against Organized Crime, Working Group on Trafficking in Persons, *International cooperation in combating trafficking in persons with respect to: addressing supply and demand; and capacity-building and awareness-raising*, UN Doc CTOC/COP/WG.4/2011/5 (2 Aug 2011) [12], [13].

<sup>58</sup> UNODC & Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2009) 16, 71; UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 457.

<sup>59</sup> Anderson B., O'Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 10.

<sup>60</sup> McSherry B., Kneebone S., Trafficking in Women and Forced Migration, *International Journal of Human Rights*, 12 (2008) 67, 82; Smith L., Healy Vardaman S., The Problem of Demand in Combating Sex Trafficking, *International Review of Penal Law*, 81 (2010) 607, 618; Wheaton E. et al, Economics of Human Trafficking, *International Migration*, 48 (2010) 114, 131.

<sup>61</sup> Smith L., Healy Vardaman S., The Problem of Demand in Combating Sex Trafficking, *International Review of Penal Law*, 81 (2010) 607, 621.

<sup>62</sup> Leidholdt D., Prostitution and Trafficking in Women, in: Farley M. (ed.), *Prostitution, Trafficking, and Traumatic Stress*, Haworth Press, 2000, 167, 168.

<sup>63</sup> Yen I., Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation, *Journal of Criminal Law & Criminology*, 98 (2008) 653, 655–656, 665.



On the other hand, some authors question the very notion of a demand for trafficking, arguing that «there is no reason to assume that ‹trafficking› actually meets a specific demand for a trafficked person’s labour/services. [...] It makes more sense to assume that the niceties of international and national law on trafficking, and the nature of a person’s journey into vulnerability and bondage, are irrelevant to those who exploit or consume labour/services.»<sup>64</sup>

### 5.1.2 Prohibiting and restricting demand

Several authors advocate the idea of criminalising consumer demand by creating offences for persons who pay for or otherwise purchase services or goods that involve instances of trafficking.<sup>65</sup> Such suggestions have mostly focused on criminalising men who knowingly or recklessly pay for the services of sex workers who are in a situation of trafficking.<sup>66</sup>

There are many limitations and objections to measures that demonise customers and criminalise demand. Firstly, such measures have only been advocated in the context of male demand for female sex work, but «are rarely applied to any other sector – consumers who buy the product of the labour of ‹trafficked› women, children and men in the form of t-shirts, diamonds, processed meat etc. are not normally identified as part of the ‹trafficking chain› [...]»<sup>67</sup> Secondly, suggestions to criminalise consumers also ignore the fact that in many cases of trafficking the customers are those who first become aware of the situation of trafficking and report their observations to the authorities. Frequently the customers are the only persons outside the trafficking network to whom victims have contact and who they can ask for assistance. Indeed, there are many tales of customers who, once they became aware of the victim’s situation, initiated rather heroic efforts resulting in the rescue of the victim and the arrest of the traffickers. Demand reduction should not have the effect that «customers are being vilified as traffickers».<sup>68</sup>

There has been no systematic research into the demand that drives trafficking in persons and into the diverse consumer populations that may come into contact with victims of trafficking. The role that consumers and the general public play in this context – as potential saviours and exploiters of victims of trafficking – has not yet been explored. For this reason, further research is needed that analyses the factors

that generate demand for trafficking in persons in specific industries.

## 5.2 Demand for Donor Organs

Insofar as trafficking for the purpose of organ removal is concerned, identifying and reducing demand requires a different approach.<sup>69</sup> The demand for this type of trafficking is driven primarily by a combination of the lack of sufficient donor organs, long waiting periods, and the uncertainty about available supply.<sup>70</sup> Impacting upon demand for trafficked donor organs is the unwillingness of many people to donate their organs pre- and post-mortem.<sup>71</sup> Religious, ethical, and medical concerns of potential donors are often augmented by family members who may be asked to consent to the organ transplant of a deceased donor. The available evidence demonstrates that the next of kin frequently overrule the registered wishes of the deceased person to donate.<sup>72</sup>

«The key challenge in reducing the demand for illicitly trafficked organs and trafficking in persons for the purpose of organ removal», notes UNODC’s *Toolkit to Combat Trafficking in Persons*, «is balancing the interests of organ recipients with those of organ donors.»<sup>73</sup> The *Toolkit* further discusses the issue of demand reduction and, in this context, notes that: «Members of the medical and health-care sector must act to ensure that organs are not procured through financial transactions. Tourist

<sup>64</sup> Anderson B., O’Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 9.

<sup>65</sup> See, for example, Wheaton E. et al, *Economics of Human Trafficking, International Migration*, 48 (2010) 114, 131–132; Haynes D., *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers, Human Rights Quarterly*, 26 (2004) 221, 260–261.

<sup>66</sup> Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 166; Pfuhl C., *Die Nachfrage nach Opfern von Menschenhandel – Einführung einer Strafvorschrift?*, *Juristische Rundschau*, 7 (2014) 278–286.

<sup>67</sup> Anderson B., O’Connell Davidson J., *Is Trafficking in Human Beings Demand Driven?*, IOM, 2003, 10.

<sup>68</sup> See further, Weitzer R., *Sex Trafficking and the Sex Industry, Journal of Criminal Law & Criminology*, 101 (2012) 1337, 1361–1365.

<sup>69</sup> See generally, UN.GIFT, ‘Human Trafficking for the Removal of Organs and Body Parts’ (Background paper to the Vienna Forum to fight Human Trafficking, Vienna, 13–15 Feb 2008) 12.

<sup>70</sup> See further, Schloenhardt A., Garbutt S., *Trafficking in Persons for the Purpose of Organ Removal, Criminal Law Journal*, 36(3) (2012) 145–158.

<sup>71</sup> See generally, UN ECOSOC, Commission on Crime Prevention and Criminal Justice, *Preventing, combating and punishing trafficking in human organs*, UN Doc E/CN.15/2006/10 (21 Feb 2006) [27].

<sup>72</sup> See further, Thomas S. et al., *Understanding organ donation in the collaborative era, Internal Medicine Journal*, 39 (2009) 588–594; Kerridge I. et al, *Death, dying and donation: organ transplantation and the diagnosis of death, Journal of Medical Ethics*, 28(2) (2002) 89–94.

<sup>73</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 494.



operators must ensure that they do not support «transplant tourism», which exploits economically desperate people. Tribal, cultural and community leaders must act to make sure that cultural and traditional medical practices are not interpreted in a way that is manifested in interference with people's bodily integrity.»<sup>74</sup>

It is further suggested that countries «increase the supply of organs donated through channels which guard against exploitation by donors who are willing and able to donate their organs».<sup>75</sup>

### 5.3 The Role of the Private Sector

In the context of trafficking in persons, the private sector plays two important roles. On the one hand, the private sector may be – wittingly or unwittingly – involved in the exploitation of victims, thus deriving economic benefits from trafficking. In some cases, private companies may be directly involved in the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation, while in other cases they may be linked to trafficking indirectly through their suppliers, distributors, sub-contractors, or their customers.<sup>76</sup> On the other hand, the private sector is in a unique position to detect, report, and prevent trafficking in persons in ways not available to law enforcement and government agencies. The private sector also frequently has access to individuals, information, locations and resources that are out of reach of official entities.

It is for these reasons that involvement of the private sector in preventing and suppressing trafficking in persons is increasingly acknowledged in international and domestic anti-trafficking strategies. Led by the work of Jonathan Todres, a body of literature has emerged which provides examples and outlines best practice models for private sector involvement. Todres specifically recommends that «governments

can employ the law to incentivise good practices and seek to encourage the private sector to do what it is capable of doing, given its unique position.»<sup>77</sup> The work by UN.GIFT on *Human Trafficking and Business* proposes a six-step action plan for businesses to identify and address risks of trafficking in persons and opportunities to act against it. These include, risk assessment and policy, training, monitoring & measuring impact, taking corrective action, action in the community, and communications and reporting.<sup>78</sup>

#### 5.3.1 Changing consumer behaviour; influencing demand

The private sector, especially those companies dealing with large numbers of customers, can influence demand for goods and services and change consumer behaviour by encouraging ethical shopping. This can be achieved, for instance, by promoting products that are manufactured without the use of forced or child labour, offering services that involve adequately paid and protected workers, or by including charitable donations for anti-trafficking work (as a set figure or a percentage) into sales prices.<sup>79</sup>

#### 5.3.2. Ensuring fair trade and cleaning up the supply chain

A great range of companies, have developed internal policies and codes of conduct to ensure that their supply chains do not involve products, services, or material that involve or have been sourced from situations of trafficking. This is particularly important for companies that obtain their supplies from developing nations in which trafficking, especially forced and child labour, is more rampant and where anti-trafficking laws and enforcement measures may not be well developed or non-existent. In these situations, multinational companies are in a unique position to monitor their supply chains, identify and report forced or exploited labour, and prevent slavery-like practices in their industries. Todres further suggests that private companies may also opt to «invest resources in vulnerable communities that can help strengthen local institutions and facilitate access to health care, education and training programs [...] and build a healthier and better educated workforce locally.»<sup>80</sup>

In 2006, End Human Trafficking Now, an NGO based in Geneva, Switzerland, developed the *Athens Ethical Principles* which have been

<sup>74</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 495.

<sup>75</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 495.

<sup>76</sup> Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 199; see also, UN.GIFT, *Human Trafficking and Business*, UN.GIFT, 2010, 11.

<sup>77</sup> Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 201.

<sup>78</sup> UN.GIFT, *Human Trafficking and Business*, UN.GIFT, 2010, 23–25.

<sup>79</sup> UN.GIFT, *Human Trafficking and Business*, UN.GIFT, 2010, 57–62.

<sup>80</sup> Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 203, 196.



adopted by private companies to «demonstrate their position of zero tolerance towards trafficking» in persons, participate in awareness-raising and education, develop internal strategies and work with suppliers to act against trafficking in persons.<sup>81</sup> These principles are further substantiated by the 2010 *Luxor Protocol* which offers more detailed guidance to private businesses in relation to establishing a zero tolerance policy, engage in public awareness campaigns and education, strategic planning, employee training, supply chain monitoring, governmental coordination, and transparency.<sup>82</sup>

Disclosure legislation in some parts of the United States now also mandates that major companies institute and publicise their policies and measures taken to combat trafficking in persons and forced labour in their supply chain.<sup>83</sup> One significant initiative in this field is the Global Business Coalition Against Human Trafficking (GBCAT), a group of several major global companies that agreed to develop and share best practices to prevent victims of trafficking from entering into their supply chain, develop training programs for staff, and run general awareness raising programs.<sup>84</sup>

### 5.3.3 Brand image/reputation

Acting against trafficking and ensuring that the services and products acquired, manufactured, or sold by a company do not involve exploitation also have important implications for the image and reputation of a company and its brand. The development of internal policies and the publication of codes of conduct often serve to promote the brand image, raise the reputation and profile of the corporation, and provide an «opportunity to have their business practices validated as socially responsible.»<sup>85</sup>

### 5.3.4 Detection and reporting

Certain industries already play an important role in detecting instances of trafficking in persons and in reporting them to relevant authorities. Such reporting is mandatory for some industries, especially where government agencies are dependent on the information provided by certain service providers. This is especially the case in the transport sector where airlines and shipping companies are obliged to report information on passengers and their travel and identity documents, and to flag any irregularities. Many airlines also employ full-time com-

pliance officers to ensure the company meets legislative requirements and avoids fines for non-compliance. The UN *Protocol against the Smuggling of Migrants by Land, Air and Sea* also mandates the development of such measures which, in most countries, equally extend to trafficking in persons and other forms of irregular migration.<sup>86</sup>

### 5.3.5 Sanctions

Sanctions, in the form of fines and other penalties, are a further avenue to gain the private sector's cooperation in anti-trafficking measures. This is the most extreme form of private sector involvement and, perhaps, should be a last resort to ensure cooperation and compliance.<sup>87</sup>

### 5.3.6 Philanthropy and funding

A further way to gain corporate support for anti-trafficking measures is through donations, funding of specific initiatives, or general philanthropy. Indeed, many of the NGOs and community groups involved in combating trafficking in persons have benefited from the generous support of individuals and corporations.

## 6. Awareness Raising and Education

Raising awareness and educating the public about the causes, consequences, and signs of trafficking in persons are important tools to prevent this crime, recognise instances of trafficking by law enforcement agencies and the wider public, enable and facilitate the reporting of cases, and outline relevant government initiatives, support systems, helplines and the like.

The UNODC *Toolkit to Combat Trafficking in Persons* notes that anti-trafficking campaigns should focus on educating people about the true

<sup>81</sup> End Human Trafficking Now, *The Athens Ethical Principles* (2012); see further, Mattar M., Corporate liability for violations of international human rights law, in: Quayson A., Arhin A. (eds.), *Labour Migration, Human Trafficking and Multinational Corporations*, Routledge, 2012, 9, 15.

<sup>82</sup> End Human Trafficking Now, *The Luxor Protocol* (2012).

<sup>83</sup> See, for example, *California Transparency in Supply Chains Act 2012*, S.B. 657, 2010 Reg Sess. (*Californian Civil Code* § 1714.43)

<sup>84</sup> UN.GIFT, *Companies Join Forces to Combat Human Trafficking* (Sep 2012).

<sup>85</sup> Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 202; see also, UN.GIFT, *Human Trafficking and Business*, UN.GIFT, 2010, 12.

<sup>86</sup> Opened for signature 15 Dec 2000, 2241 UNTS 507 (entered into force 28 Jan 2004), art 11(3), (4).

<sup>87</sup> Todres J., The Private Sector's Pivotal Role in Combating Human Trafficking, *California Law Review Circuit*, 3 (2012) 190, 201.



nature of the crime and its consequences.<sup>88</sup> To this end, it is important that awareness campaigns are supported by solid research and by verifiable sources. To prevent persons from falling prey to traffickers the *Toolkit* contends that campaigns «should provide potential victims of trafficking with sufficient information about the risks of human trafficking, the possibilities for migrating legally in order to work and earning possibilities to enable them to make informed decisions about migration, to evaluate whether job offers are realistic and to seek help in the case of trafficking. Awareness-raising campaigns should also address the health risks, such as unwanted pregnancies and sexually transmitted diseases, including HIV/AIDS, associated with sexual exploitation.»<sup>89</sup> The *Toolkit* places particular emphasis on creating campaigns that assist victims to identify that they have been victimized, that trafficking is a crime and they can seek protection of the law. It is suggested that campaigns should be «formulated in way that will be understood by victims, using materials in appropriate languages adapted for and relevant to the target audience.»<sup>90</sup>

Some of the other possible messages that an awareness campaign may wish to convey to its target audience «include vigilance and public accountability (taking action when trafficking is detected), information about anti-trafficking programs, highlighting criminal penalties for trafficking, discouraging the demand for exploitation and increasing transparency of enterprises' supply chains.»<sup>91</sup>

Given the range of potential messages, it is important that careful consideration is given to the audience of the awareness campaign and the campaign objectives. While the victim-oriented approach may be potentially effective in

source countries, it is arguable whether such campaigns are equally as effective in destination countries. Here, the focus of awareness raising may be better placed on the consumer demand of the issue, as well as on information that allows trafficked persons to identify that they are victims of a crime also play an important role.<sup>92</sup>

## 7. Research

Analytical, critical, and independent research is fundamental to understanding the dynamics, levels, and patterns of trafficking in persons, the operations and motivations of offenders, and the needs and vulnerabilities of victims, so as to identify better ways of countering it. Only with a proper knowledge base can governments be encouraged and held accountable to take evidence-based policy action and develop meaningful legislation that can lead to curtailing trafficking in persons and address its root causes.

### 7.1 Data Collection

Efforts to effectively prevent and suppress trafficking in persons are severely hampered by the lack of comprehensive data collection. In spite of the widespread tendency to attempt to estimate or guess the scale of trafficking in persons and the number of victims of trafficking, there are few reliable statistics.<sup>93</sup> «[C]hanges in the magnitude of trafficking in any part of the world must be documented with the best evidence available; it should not be assumed, as many activists assert, that trafficking is steadily increasing and doing so universally,»<sup>94</sup> notes Weitzer.

The absence of any comprehensive data on the scale and spread of trafficking in persons has a direct impact on the ability of those charged with enforcing relevant laws. If the scale and nature of the problem is not known, it is unlikely that appropriate measures and resources can be allocated to prevent and suppress it. Without accurate information about trafficking in persons, effective prevention strategies cannot be identified, and suppression activities are rendered useless because insufficient information will not lead to effective prosecution of offenders. Data collection about the scale and patterns of trafficking in persons is also important for evaluating the impact and efficiency of policy, legislation, and enforcement programs, and for

88 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 439.

89 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 439.

90 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 437–438.

91 UNODC, *Toolkit to Combat Trafficking in Persons*, United Nations, 2<sup>nd</sup> ed., 2008, 439; UNODC & UN.GIFT, *Model Law against Trafficking in Persons*, United Nations, 2009, 83.

92 See further Schloenhardt A. et al, Be Careful What You Pay For: Awareness Raising on Trafficking in Persons, *Washington University Global Studies Law Review*, 11(2) (2012) 415–435.

93 Bassiouni M. C. et al, Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21<sup>st</sup> Century, *International Review of Penal Law*, 81 (2010) 417, 433.

94 Weitzer R., Sex Trafficking and the Sex Industry, *Journal of Criminal Law & Criminology*, 101 (2012) 1337, 1355.



providing feedback to policy makers and legislators. Without defensible and realistic baseline data, claims concerning the operation and impact of anti-trafficking strategies cannot be verified, and thus the credibility and commitment of government programs are left subject to question.<sup>95</sup>

If, on the other hand, relevant data is collected and reported consistently, it becomes possible to review investigation and prosecution processes and identify potential weaknesses in the criminal justice system that cause cases to collapse, as has frequently been the case. The collection of data should also be followed by data analysis in order to identify and understand trends and patterns of trafficking in persons.

### 7.2 Research & Analysis

Independent, scholarly research is a crucial step in understanding trafficking in persons. It can also assist in assessing existing and proposed government policies, legislation, administrative and enforcement measures, and in developing recommendations for law reform and policy change. Such research can also give greater legitimacy to relevant government initiatives. Research is also important in contributing to prevention measures such as information programs to increase public awareness about trafficking in persons, efforts to prevent persons from falling victim to traffickers, and promoting or developing programs to combat the root-causes of trafficking.<sup>96</sup>

## 8. Conclusions

This article has shown that prevention is an essential part of any strategy to combat trafficking in persons. Regrettably, too few concrete and sustainable initiatives have been designed and implemented at international and domestic levels that provide meaningful steps to stop would-be offenders from engaging in this crime and that prevent others from falling victim to them. The response to trafficking in persons remains preoccupied with trying to fight this phenomenon after people have been exploited and after harm has been done.

This article also demonstrates that there is a wealth of ideas and opportunities to prevent trafficking in persons. Working with the communities and individuals most at risk, raising awareness and educating the public about the

true causes and consequences of trafficking in persons, cooperating with the private sector to identify and stop trafficking, and creating a better knowledge-base to understand the levels, trends, and characteristics of trafficking are important steps to protect victims and stop traffickers long before crimes have been committed.

This article has shown that very many aspects of trafficking, the demand for cheap labour, the exploitation of vulnerabilities, the status of women and children, poverty and socio-economic developments, et cetera touch on many very diverse aspects of society and that a great range of persons, in their official or private capacities, may encounter situations of trafficking or come into contact with possible victims. Seen this way, trafficking is not a hidden crime but one that sits at the centre of society and which concerns the everyday life of many people.

To prevent and combat trafficking in persons more effectively it is also necessary for this phenomenon to be elevated to a concern of all of society, not one that just some academic experts, NGOs, and pockets of government talk about. If there is a solution to trafficking it is one that has to come from and be shared by everybody. Efforts that exclusively focus on the traffickers and the trafficked, in sending and destination countries, fail to acknowledge the wider implications of trafficking in persons and the vulnerabilities of potential and would-be victims.<sup>97</sup> One of the most immediate responses to trafficking should be a recognition that vulnerabilities exist and that exploitation does occur in every country of the world. Society as a whole has to work together to ensure that vulnerabilities are addressed and that exploitation – of which trafficking is merely one form – is prevented and, where appropriate, punished.

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<sup>95</sup> See further, Wise M., Schloenhardt A., Counting Shadows: Measuring Trafficking in Persons in Australia, *International Journal of Criminology & Sociology*, 3 (2014) [forthcoming].

<sup>96</sup> See further, UNODC, *Global Report on Trafficking in Persons* (United Nations, 2012) 89–90.

<sup>97</sup> Danailova-Trainor G., Laczko F., Trafficking in Persons and Development, *International Migration*, 48(4) (2010) 38, 68.