



EU-ASIA DIALOGUE

*Shaping a Common Future for Europe and Asia –
Sharing Policy Innovation and Best Practices in Addressing Common Challenges*

Trafficking in Human Beings

**Learning from Asian and
European Experiences**



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European Experiences



Konrad
Adenauer
Stiftung

EAI
EAST ASIAN INSTITUTE
NATIONAL UNIVERSITY OF SINGAPORE



Centre in Singapore

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Preface

Trafficking in human beings is a strong violation of basic rights and a severe transnational organized crime. But human trafficking is also a highly profitable business in both Europe and Asia. People can be trafficked for different purposes, including sexual exploitation, labour exploitation, organ smuggling and as brides/grooms. Victims of this crime are highly vulnerable and are often coerced by the traffickers through threats to harm their family members, to abuse them or to sell them. At the same, the victims are granted hardly any rights in the destination countries and cooperation with the police is limited due to fear or the fact that the police might be corrupt and involved in the crime as well.

Conservative estimates by the International Labour Organization (ILO) indicate around 20.9 million persons in situations of forced labour in 2012. This does not include people being trafficked for organ removal, forced marriage or adoption. More than 50 percent of these people originated from countries in the Asia-Pacific region. The actual numbers of identified victims and convicted traffickers is only a very small percentage of this estimate. This highlights the two key challenges in combating human trafficking – victims identification and prosecution of traffickers.

The reasons for this failure are the low law enforcement rates and corruption among enforcement units. In a number of countries, the police and immigration officers benefit financially from the trafficking offences. Another cause for the lack of enforcement is the lack of capacities and capabilities of prosecutors. While prosecutors and police officers are being trained, traffickers often amend their strategies and exploit new grey areas before law amendments are even implemented. Due to this flexibility, the criminals are often one step ahead of the law enforcement units. A second reason for the situation is the lack of victim protection in the source as well as destination countries. Many victims of human trafficking do not receive sufficient protection and are even prosecuted as criminals for acts committed under duress. This undermines their confidence in the police and reduces their willingness to cooperate with prosecutors. As a result many victims fear acts of revenge by the traffickers if they testify against them. Even if they agree to take part in the prosecution process, they face the problem of double victimization as they have to testify once to the police and a second time in the court room. As such, victims are reminded of the violations and have to experience them again and again. Finally, a large number of victims do not report to the police as they do not see themselves as victims. Despite unbearable living conditions, they have the impression that they are better off than their fellow countrymen at home. Thus, successful measures against trafficking need to have a domestic component in the countries of origin. Problems in identification and prosecution, however, also have a cross-border characteristic. While trafficking in human beings is a trans-state crime, cooperation efforts between source,

transit and destination countries are very limited. Often, blame and responsibility is pushed to the other states involved so as to justify non-action. Exchange of information is limited and joint training as well as capacity-building workshops are the exceptions. Closer cooperation would enable better protection of the victims and the prosecution of syndicates operating from abroad.

All these measures only tackle the symptoms of human trafficking. In order to stop the crime, it is essential to address the underlying reasons that make people vulnerable or drive them into the arms of traffickers. Possible reasons include poverty, disadvantages, lack of access to the labour market, debts and over-population. In particular, families from rural areas in less developed countries with many children view the sending abroad of children or relatives as an additional source of income. While it might be a voluntary move at the beginning, a large number of those migrants become victims of human trafficking due to false information provided to them, labour exploitation in the destination country or confiscation of documents. It is also important to note that most of these victims are not from the poorest people in their country as they have to pay high fees to the recruitment agencies and smugglers. Another reason for leaving their country is the circle of debts. These can be debts from domestic investments or previous migration experiences. Despite often traumatic experiences abroad, these people see no other solution to pay their debts than to go abroad again, which thus makes them very vulnerable. People and children who are kidnapped in the first place are, of course, to be distinguished from those migrants who leave voluntarily.

Solutions in fighting trafficking in human beings thus have to take a preventive and even pre-emptive approach that tackles the various stages. Awareness building for the local population is a key factor in preventing people from becoming victims of human trafficking. If people are aware of the procedures and risks, they will be able to identify critical situations. Protection of people in the source countries has to be improved. This includes protection of vulnerable people before they are trafficked, but also protection of returning migrants and victims from becoming victims again. In the identification and prosecution stage, training of law enforcement agencies is critical. Coordination among the various domestic units and cross-border exchange should be enhanced. Measures includes joint workshops, and sharing of open-source and intelligence data. Approaches have to prevent corruption among law enforcement officers and should exempt victims from charges for criminal acts committed under duress. While the differentiation between human trafficking and smuggling of migrants is important, it sometimes hinders actions and is less applicable in reality as it slows down processes. It provides an excuse for states not to act and results in discussions on responsibilities while the crime continues. In order to tackle the different aspects of the crime, comprehensive approaches and policy coherence are essential. As long as laws against organized crime, irregular migration, forced labour, sexual exploitation and organ smuggling are not coordinated, legal grey areas will persist and make prosecution as well as conviction more difficult.

As this book will show, Europe and Asia are closely linked on the issue of human trafficking. A large number of Asian nationals are being trafficked and smuggled to Europe to work in the sex industry, as berry pickers or in labour-intensive industries. In this context,

closer cooperation between Europe and Asia is desirable. Besides the above-mentioned cross-border cooperation efforts, such collaboration should include exchange of experiences and information. Europe can share its policies that target irregular migration and control of external borders. In order to ensure smooth exchange of information, working channels have to be developed. Joint operations and cooperation with representatives from the source countries who can speak the mother tongues of the victims can help to improve the situation. In this regard, joint efforts between state authorities and non-state organizations should complement each other. While enforcement agencies have the power to interfere, NGOs can help to create awareness and gain the victims' confidence as well as trust.

In order to contribute to the understanding of the current developments and initiatives on trafficking in human beings, this publication includes papers with perspectives from Europe and Asia. What are the current trends? What strategies do countries apply? How can they cooperate? These and other questions will be addressed in this publication. It should be noted that the articles in this book do not necessarily reflect the opinions of the editors, but are the sole responsibility of the contributors.

The first paper by **Marina Caparini** provides an introduction to human trafficking as a transnational organized crime. She discusses the linkages and differences between trafficking in human beings, smuggling of migrants and forced labour. The connection between traffickers and other organized crimes is highlighted. Caparini concludes by providing an overview of current policy initiatives as well as remaining challenges.

Leslie Holmes takes an interregional perspective and discusses human trafficking between Asia and Europe. After showing the specific characteristics of human trafficking, the paper explains the reasons for the current existence of the phenomenon. He then analyses the various forms of trafficking in human beings taking place between the two regions and discusses existing cooperation efforts as well as an outlook for future opportunities.

Human trafficking in South Korea is addressed by **Seo-Young Cho**. She discusses trends in the country, which is a destination, transit and source country. In particular, sex and labour exploitation are addressed as the main forms of trafficking in human beings present in South Korea. An analysis of anti-trafficking efforts with a focus on prosecution and protection highlights recent reforms and remaining problems.

Huong Le Thu takes a closer look at human trafficking in Vietnam. She shows how the ongoing transformation in the country results in economic growth but also creates opportunities for exploitation. This leads not only to cross-border trafficking but also forms of internal trafficking between rural and urban areas. Recent legislative reforms and bilateral agreements indicate a certain awareness of the problem. However, victim identification, prosecution of victims and internal coordination among enforcement units remain problematic.

Taiwan is often described as one of the success stories in combating human trafficking after it was put on the Tier 2 Watch List in 2006. **Yingyu Chen** discusses the developments in the country before and after 2006, and identifies the patterns of human trafficking in Taiwan and the effects of the policy reforms.

Paul Buckley looks at cross-border cooperation in the case of Thailand and Myanmar. He describes the situation of migrant workers in Thailand and explains national anti-trafficking

policies in both countries. The paper further analyses regional initiatives as well as bilateral labour and criminal justice responses.

In her contribution, **Sallie Yea** addresses an increasingly widespread phenomenon – human trafficking for exploitation of fishermen in Southeast Asia’s long haul fishing industry. She first explains the recruitment procedures and the transit routes being used before the victims board the boats. Then the act of exploitation at sea is described, followed by an analysis of what needs to be done to improve the situation.

Alistair Cook discusses the connection between cyberspace and human trafficking – another aspect which is of growing concern in Asia. The internet is used to recruit victims and can thus facilitate human trafficking, as shown by examples from Indonesia and China. At the same time, the internet can be used to track down traffickers and prosecute them through online petitions, data mapping and awareness-raising.

The approach of the European Union to combating human trafficking is analyzed by **Joanna Pétin**. She illustrates the development of initiatives and directives addressing the issue, with a focus on the 2011 Directive and its impacts on prosecution, protection, prevention and partnership. She also highlights the problems with the human trafficking and migration approach that are hindering the policy’s stronger success.

Ilaria Boiano discusses the situation of human trafficking in Italy. After explaining the legal framework existing in Italy, she analyses the implementation of these legal measures and the challenges. She concludes her paper with an overview of the international cooperation efforts Italy is involved in.

The final paper by **Zbigniew Lasocik** deals with the situation in Poland. He shows how Poland has developed from a source country into a transit and destination state while Polish victims are still common. Although legal frameworks exist, a long-standing strategy is missing and legal grey areas persist. At the end of his analysis, Lasocik focuses on the role civil society can play in the fight against human trafficking.

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Human Trafficking and Organized Crime

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INTRODUCTION

Human trafficking is an issue that has attracted growing attention internationally. It is commonly linked to organized crime. However understanding this relationship requires a nuanced understanding of both phenomena, each of which is complex and has diverse variations. Moreover, these phenomena are very difficult to research, often involve hidden actors and victims, and are challenging to measure. Despite broad claims by various authorities, statistics on both organized crime and on human trafficking are unreliable.² Consequently, it is very difficult to attain clear empirical evidence of the extent to which trafficking is a manifestation of organized crime.

Human trafficking is also more than just a subject of organized criminal activity. It is an outcome of several interacting global conditions and dynamics, such as high competition for restricted work opportunities for large segments of young and rapidly growing populations in developing countries. There are growing efforts to restrict the international migration of labour, and significant demand or pull factors in destination countries from sectors that rely on cheap, unregulated or under-regulated labour forces and that are prone to exploitation of vulnerable workers. However it is the linking of essentially economically driven “illegal” (irregular) migration with organized crime as part of a continuum of threats to the security of destination countries that has arguably shaped policy discourse for the past two decades and reinforced the view that trafficking is a matter of “organized illegal immigration/organized crime rather than a human rights abuse.”³ This has led to the critique among some scholars and advocates who study or work to counter trafficking, that the unquestioned linking of

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² On weakness of data on human trafficking, see U.S. Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, GAO-06-825, July 2006.

³ Jo Goodey, “Human trafficking: Sketchy data and policy responses”, *Criminology and Criminal Justice*, Vol. 8, No. 4 (2008), 424.

organized crime with human trafficking has resulted in the predominant focus on prosecutions (strengthening law enforcement capacities and development of law enforcement and judicial cooperation across borders, for example) and the relative neglect of victim protection and prevention. A critical examination of the links between transnational organized crime and human trafficking thus becomes all the more important.

This paper will examine the relationship between organized crime and human trafficking based on what is already known from existing research. It will begin by setting out the definition of human trafficking, and how it is similar to, and differs from, related but distinct phenomena such as smuggling of migrants and forced labour. It will then examine the scope of activities that constitute human trafficking, and will discuss what is known about the involvement of organized criminal groups in human trafficking, and what is yet unknown. This is done with particular reference to human trafficking within and between Europe and Asia. It will then consider current issues and recent policy initiatives, and will conclude with recommendations for future research and practice.

WHAT IS HUMAN TRAFFICKING? DEFINITIONS, DISTINCTIONS, SCOPE

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the “Trafficking Protocol” or “Palermo Protocol”), attached to the UN Convention Against Transnational Organized Crime, was the first globally binding instrument setting out an agreed definition on trafficking in persons. The protocol sets out that:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴

Three elements are important for understanding the definition of human trafficking: the act itself, its means and its purposes. Unfortunately the word “trafficking” can be misleading to the extent that it tends to imply and focus attention mainly on the aspect of movement or transportation. The definition above makes it clear that the act of “trafficking” may involve a variety of specific actions. The definition is helpful in understanding that trafficking is

⁴ United Nations. (2000). *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. General Assembly Resolution 25, Annex II, U.N. GAOR, 55th Sess, Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001). Entered into force 25 December 2003.

fundamentally about enforced servitude. Victims may be recruited, transported or harboured in exploitative conditions through force, coercion, intimidation, or fraud. And the purpose of trafficking is the exploitation of the person concerned, which may involve sexual exploitation, forced labour, begging, criminal activities, or organ removal.

There is also an important distinction between the related concepts of human trafficking and migrant smuggling. In contrast to human trafficking as defined above, the smuggling of migrants is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”⁵ Thus, to further delineate the related phenomena and concepts, while smuggling occurs with the consent of the individual and involves the crossing of an international border, trafficking need not occur transnationally but must necessarily involve the element of coercion or deception and exploitation. Smuggling may end up as trafficking; a person may voluntarily pay to be smuggled across a border in order to work illegally, but the person could become a victim of trafficking if some element of deception or coercion were used, leading to his or her exploitation. If a smuggled person incurs a debt for being smuggled, and is then subjected to exploitation through employment to repay that debt, the smuggled person would become a victim of trafficking. Nevertheless, identifying the point at which smuggling becomes trafficking, or when consensual participation becomes that based on coercion or deception, is difficult because of the multiple stages involved in trafficking (recruitment, transportation, harbouring, and employment) and the various actors who may be involved in the process at different stages.

It is also useful to delineate human trafficking from forced labour. Forced or compulsory labour has been defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁶ While trafficked individuals are often exploited through forced labour as the means by which traffickers make profits on their activities, not all forced labour has been trafficked.

Numerous criminal activities and functional roles are involved in the various phases of human trafficking. These criminal activities may be perpetrated against the *State*, as when passports or identity documents are forged, traffickers engage in corruption of government officials, and illegal proceeds are laundered and taxes evaded. Criminal activities are also perpetrated against the *individual* victim, as when fraudulent information or promises are used to recruit victims, victims are assaulted during transport, or when they are forced through coercion or threat to engage in activities.

Human trafficking also has a pronounced gender dimension: women are most often victims of trafficking for sexual exploitation or domestic labour, whereas men tend to be trafficked for forced labour in the construction, fishing, forestry, mining or agricultural

⁵ United Nations. *United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*. (2000). Adopted 15 November 2000, General Assembly Res. 55/25, Annex III, U.N. GAOR, 55th Sess, Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001). Entered into force 28 January 2004. Annex III.

⁶ International Labour Organization, *Forced Labour Convention* of 1930 (No. 29), Article 2 (1).

industries. Children are trafficked for both sexual exploitation and child labour. Based on data from 29,000 reported trafficking victims from 2007-2010, adult women constitute about 60% of reported trafficking victims worldwide; if girls are included, females represent about 75% of all victims globally.⁷ Children represent 27% of global victims, while men comprise 15% of detected victims.⁸ Within the EU, recent statistics for the years 2008-2010 establish that 68% of trafficking victims are women, 12% girls, amounting to 80% female reported victims. There is a lower incidence of reported child victims in the EU member states than globally, at 15% over the three years.⁹ Another gender dimension in human trafficking is that, while men represent the great majority of offenders in trafficking, women also tend to play a “prominent role” as perpetrators in trafficking. In Europe, women account for a larger share of perpetrators of trafficking than for most other types of crimes.¹⁰

Attention in policy and academic research has in the past focused largely on sex trafficking, and only recently have there been concentrated efforts to determine the prevalence of trafficking for labour exploitation. The 2009 Global Trafficking in Persons Report identified that 79% of reported cases of human trafficking were for sexual exploitation, and only 18% for forced labour.¹¹ However even at that time it was acknowledged that those observations were likely informed by statistical bias – sexual exploitation of women tends to be more visible than other forms of exploitation and was more widely reported. Three years later, the 2012 Global Trafficking in Persons Report established that trafficking for the purpose of sexual exploitation accounted for 58% of all global trafficking cases, whereas trafficking for forced labour accounted for 36% of cases, doubling over four years.¹²

International attention on forced labour has increased significantly in recent years. An ILO study published in 2012, estimated about 20.9 million forced labourers in the world at any given time over the period 2002-2011. Of these, 9.1 million moved internally or internationally, while 11.8 million were victims of forced labour in their place of origin or residence. 18.7 million (90%) of the total victims were exploited by individual employers or private enterprises. Of these, an estimated 4.5 million (22%) were victims of forced sexual exploitation, and 14.2 million (68%) were victims of forced labour in areas such as agriculture, construction and domestic labour.¹³ While these figures throw light on the widespread occurrence of forced labour, they did not contain an estimate of the number of victims of forced labour who had been trafficked.

⁷ UNODC, *Global Report on Trafficking in Persons* (2012), 25-26.

⁸ UNODC, *Global Report on Trafficking in Persons* (2012), 26-27.

⁹ Eurostat, “Trafficking in human beings”, 2013, 10.

¹⁰ UNODC, *Global Report on Trafficking in Persons* (February 2009), 10, 45-47.

¹¹ UNODC, *Global Report on Trafficking in Persons* (February 2009), 6.

¹² UNODC, *Global Report on Trafficking in Persons* (2012), 7.

¹³ International Labor Organization, *ILO Global Estimate of Forced Labor 2012: Results and Methodology* (Geneva: Special Action Program to Combat Forced Labor, 2012).

HOW IS HUMAN TRAFFICKING LINKED TO ORGANIZED CRIME?

Human trafficking has been conceptualized and legally framed as an activity largely driven by organized crime groups. The UN protocols on trafficking and on smuggling discussed above were specifically agreed to within the framework of the United Nations Convention against Transnational Organized Crime (UNTOC). UNTOC defines an “organized criminal group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”¹⁴ Further, an organized criminal group is involved in transnational activities when the crime is committed in more than one country; a substantial part of the crime’s preparation, planning, direction or control takes place in a country different from that where it occurs; the crime is committed in one country but is perpetrated by an organized criminal group involved in criminal activities in more than one country; or is committed in one country but has substantial effects in another country.¹⁵

The Palermo protocol is accordingly framed primarily as a law enforcement instrument to prevent, suppress and punish trafficking in persons. The protocol’s emphasis on enforcement is indicated by the criminal justice provisions within it specifying that the adoption of laws criminalizing trafficking are obligatory for states ratifying the protocol, whereas provisions regarding rights and needs of trafficking victims are weakly articulated and optional for ratifying states.¹⁶

Within the European Union, human trafficking has also been linked closely to organized crime and to irregular migration. Organized crime is identified as one of the major challenges for EU internal security, and human trafficking is presented as one form of organized crime.¹⁷ The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, expanding the 2011 EU directive on combating trafficking, concentrates on increasing prosecution of traffickers, but also assisting and protecting victims of trafficking, and prevention. The Operational Action Plan on Trafficking of Human Beings is one of eight priority areas in the EU Policy Cycle on serious and organised crime.¹⁸

Article 34.2 of UNTOC notes, however, that trafficking and the other offences that are covered in the Convention may not necessarily involve a transnational element or an organised criminal group; in other words recruiting and exploiting victims may occur wholly domestically within the borders of a country. It also means that trafficking may be perpetrated

¹⁴ United Nations. (2000). *Convention Against Transnational Organized Crime*. General Assembly res. 55/25, Annex I, 55 U.N. GAOR Supp. (No. 49) at 44, U.N. Doc. A/45/49 (Vol. I).

¹⁵ UN, *Convention Against Transnational Organized Crime*.

¹⁶ Maggy Lee, “Trafficking and Transnational Organised Crime”, in *Trafficking and Global Crime Control* (London: Sage, 2011), 83.

¹⁷ European Commission, “The EU Internal Security Strategy in Action: Five steps towards a more secure Europe”, COM 2010 (673) Final, 22 November 2010, 4.

¹⁸ European Commission, “Second Report on the implementation of the EU Internal Security Strategy”, COM (2013) 179 final, Brussels, 10 April 2013.

by individuals, even family members, who do not act in an organized fashion. This apparent footnote to the location of human trafficking within a framework of organized crime belies the critique by some scholars that the “transnational organised crime framework has prevailed despite a lack of clear evidence of its applicability to the trafficking context or systematic analysis of criminal justice data on the profile of trafficking offenders.”¹⁹ Moreover, critics maintain that the “trafficking-as-organised crime” framework largely ignores the social complexity of trafficking, with its layers of actors and ranges of culpability. The organized crime framework of trafficking has further led to a “normalisation of enforcement-led interventions and strengthened the powers of the state apparatus even though these interventions have had a very limited effect on the punishment of traffickers.”²⁰

Legislative and policy framing of the link between organized criminal groups and trafficking may have contributed to the skewing of attention towards some types of exploitation and away from others. For example, whereas trafficking for sexual exploitation is often linked to strip clubs and similar establishments that are connected to organized criminal groups, trafficking for labour exploitation may involve business owners in the construction, forestry or mining industries, farm- and factory-owners, and even homeowners – individuals who may systematically violate labour laws and subject vulnerable workers to grossly unfair work conditions or employment conditions, but whose “otherwise ordinary presence in the community makes it difficult to provoke moral outrage.”²¹

These criticisms have been supported in a comprehensive literature review conducted for UNODC in 2010, which found that there is still little reliable knowledge about trafficking, smuggling and organised crime, and that there is generally insufficient supporting empirical evidence for claims that organized crime is involved in human trafficking and smuggling of migrants, noting agreement among experts that unorganized crime is also involved in human trafficking and migrant smuggling.²² The lack of reliable empirical evidence fails to accurately capture the scope of the phenomenon and makes it difficult to devise effective countermeasures. It also may result in a policy discourse that tends to focus on, and is driven by, extreme manifestations. Friesendorf maintains that accounts of human trafficking that focus on its extreme manifestations involving “torture, rape, drugging and murder”, frame it as a product of organized crime. This focus draws attention away from the socio-economic drivers of migration. In the same way, trafficking of women for sexual exploitation has tended to attract the most attention, and to that extent has deflected attention from other forms of human trafficking that result in exploitation of labour and organ removal.²³

¹⁹ Lee, 84.

²⁰ Lee, 84.

²¹ Sheldon Zhang, *Trafficking of Migrant Laborers in San Diego County: Looking for a Hidden Population* (San Diego, CA: San Diego State University, 2012), 89.

²² UNODC, “Organized crime involvement in trafficking in persons and smuggling of migrants”, Issue Paper, 2010, 29.

²³ Friesendorf (2007), 380-381.

WHAT DO WE KNOW ABOUT THE INVOLVEMENT OF ORGANIZED CRIME IN HUMAN TRAFFICKING?

Our understanding of organized crime has evolved. According to the traditional paradigm, organized criminal groups were thought to constitute ethnic- or kin-based, hierarchical, tightly structured “mafia” organizations such as the Italian Cosa Nostra or Japanese Yakuza. Today, in addition to traditional structures, we find that human trafficking often appears to involve loose shifting networks. Organized criminal groups are often composed of dispersed, loosely connected and fluid “network” structures involving nodes and individual criminal entrepreneurs or free-lancers who are not part of the group. Moreover, organized criminal involvement in trafficking may vary from small groups that operate domestically or in only one element of the multi-component trafficking process, to large, well-organized groups that traffic a large volume of victims across borders and are involved in every aspect of the process.²⁴

Numerous typologies or analytical models have been advanced to describe organized criminal groups involved in trafficking. Picarelli proposes a typology of three: small trafficking groups consisting of a few entrepreneurial individuals; cooperatives consisting of individuals, small groups, and components of larger criminal organisations with specialised skills relevant to trafficking; and the single large criminal organisation that controls all aspects of the trafficking process.²⁵ Based on an empirical study of trafficking organizations in various countries, UNODC identified five different types of groups, including: the “standard hierarchy”, composed of a single hierarchically structured group with strong internal discipline; the “regional hierarchy”, which consist of hierarchically structured groups, but with relatively autonomous regional components; the “clustered hierarchy” in which a set of criminal groups are coordinated or controlled in their activities; the “core group” consisting of a cohesive but unstructured group, sometimes embedded in a network of other actors; and the “criminal network”, in which a loose and fluid network of individuals are aligned in criminal projects.²⁶

In contrast, Shelley has developed a regional-specific typology of trafficking organisations, on the grounds that understanding how these profit-oriented actors function in terms of their business models is necessary in order to find ways to effectively disrupt and dismantle them. These models include the Chinese “trade and development” model in which all stages are controlled, with less abuse and investment to maximize profit over the long-term; the post-Soviet “natural resource model” which employs high violence and abuses against victims to gain maximum short-term profit; the “violent entrepreneur” model of the Balkans where

²⁴ Alexis A. Aronowitz, “The human trafficking—organized crime nexus” in Felia Allum and Stan Gilmour, eds., *Routledge Handbook of Transnational Organized Crime* (London and New York: Routledge, 2012), 222.

²⁵ John Picarelli, “Human Trafficking & Organised Crime in the US & Western Europe” in Cornelius Friesendorf, ed., *Strategies Against Human Trafficking: The Role of the Security Sector* (Vienna and Geneva: National Defence Academy and Austrian Ministry of Defence and Sports in cooperation with the Geneva Centre for the Democratic Control of Armed Forces, 2009), 116.

²⁶ UNODC, *Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries* (Vienna: UNODC, 2002).

traffickers function as middlemen for Russian organized crime and where top-level law enforcement officials are also implicated; the American “pimp model”; and the “supermarket” model seen in human smuggling between Mexico and the US, operating on low-cost, high-volume basis of trafficking large numbers for small fees; and finally the “traditional slavery” model seen in the trading of women and girls for prostitution in Nigeria and West Africa.²⁷

What becomes clear from these various typologies is the considerable diversity that exists among actors involved in trafficking, from individual criminals to small groups to large criminal organizations and network structures, and the concomitant variation in terms of characteristics and capacities, levels of sophistication, methods used and scope of activities, from small-scale, one-off entrepreneurial activities to large criminal syndicate-run transnational operations. Human trafficking involves both licit and illicit actors, and trafficking can occur both domestically and across borders. And organized crime is one actor, likely often a major one, within this fluid and diverse landscape of markets for enforced servitude.

Diversity is also seen across and within different regions, and from the little empirical data and research on regional trafficking operations, we are deriving much-needed granularity to our understanding of the nature of organized criminal groups and human trafficking in different locales. For example, smuggling or trafficking of Asians into Europe is an element that strongly suggests the involvement of organized criminal groups, particularly when they enter Europe via Africa, due to the capital investment and logistical and organisational requirements of operations that traffic significant numbers over long distances.²⁸ Fluid organized criminal networks operate out of East Asia, where individuals not involved in triad-like structures have been found to be involved in transnational criminal activities. Zhang and Chin found that these network-organized criminal groups lack a triad structure because of the “structural deficiency” relating to strong local sub-cultures; while triad societies are effective at enforcing local control in neighbourhoods because of their structures, they are not as well suited to dynamic phenomena such as human trafficking.²⁹ These network-organized criminal groups pose significant challenges for law enforcement because of their flexibility and ability to adapt quickly to changes in the market, as well as changes in the law and law enforcement activities.³⁰

CURRENT APPROACHES TO COUNTERING ORGANIZED CRIME-FACILITATED HUMAN TRAFFICKING

While the EU has included protection and prevention elements as priorities in its most recently articulated anti-trafficking approach,³¹ enforcement has been by far the most strongly

²⁷ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge: Cambridge University Press, 2010).

²⁸ UNODC, “The role of organized crime in the smuggling of migrants from West Africa to the European Union”, 37.

²⁹ Sheldon Zhang and Ko-Lin Chin, “The Declining Significance of Triad Societies in Transnational Illegal Activities: A Structural Deficiency Perspective”, *British Journal of Criminology*, Vol. 43, No. 3 (2003): 469-488.

³⁰ Aronowitz, 222.

³¹ See *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*.

emphasized element. For example, the EU identified targeting of organized crime groups involved in human trafficking and human smuggling as one of eight priority areas in its fight against serious and organized crime between 2011 and 2013.³² Framing it within its multi-annual policy cycle to address serious and organised crime from 2013 to 2017, and set out in the EU Strategy towards the Eradication of Trafficking in Human Beings, the EU seeks as its overarching goal to increase prosecutions for human trafficking, and sets out a four-pronged operational approach to enhance efforts in law enforcement, financial investigation, cross-border police and judicial cooperation, and regional cooperation on this issue. In law enforcement, it advocates the creation of proactive national multidisciplinary law enforcement units to investigate and prosecute human trafficking. These units would serve as national contact points for EU agencies such as Europol. The EU Strategy also urges that its member states develop procedures for exchange of information between local, regional, and national law enforcement units.³³ The EU, secondly, is encouraging member states to undertake financial investigations of trafficking cases as a means to provide information about money trails in trafficking, particularly in high-risk industries such as agriculture, construction, textiles, healthcare, domestic service, and the sex industry.³⁴ The EU is thirdly proposing that member states and EU agencies increase judicial cooperation, and to that end create joint investigation teams of law enforcement and judicial personnel where deemed relevant. And fourth, the EU seeks enhanced regional cooperation along trafficking routes from East to West. This measure is framed within the EU's Instrument for Stability, which ostensibly seeks to bridge the security and development agendas in the EU policy sphere, but does so by building capacity to counter destabilizing trans-regional threats posed by organized crime, including human trafficking.³⁵ The measures identified as promoting regional cooperation lie primarily in data collection, analysis and exchange, and improving law enforcement coordination.

In its external relations, migration issues have similarly been approached with a focus on organized crime and emphasis on enforcement. For example, the “Budapest Process” is a “consultative forum of more than 50 governments and 10 international organisations exchanging information and best practices on a wide range of migration issues.”³⁶ The Process was established in 1993, to facilitate dialogue about “combating illegal migration and smuggling of migrants” between Eastern and Western Europe. As described in a history of the Process, “International organised crime increasingly got involved in facilitating illegal migra-

³² Council of the European Union, “Council conclusions on setting the EU’s priorities for the fight against organized crime between 2011 and 2013”, 3096th Justice and Home Affairs Council Meeting, 9-10 June 2011, Luxembourg, 3.

³³ European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, 9.

³⁴ European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, 9.

³⁵ European Commission, “Commission Implementing Decision of 19.03.2012 adopting the Thematic Strategy Paper 2012-2013 for assistance in the context of stable conditions for cooperation under the Instrument for Stability”, Brussels, 19.03.2012, C (2012) 1649 final.

³⁶ “About the Budapest Process”, <http://www.budapestprocess.org/>.

tion, exemplified by the growth of smuggling and trafficking activities in border regions.”³⁷ The Process quickly became an instrument for approximating migration and justice and home affairs approaches of aspiring Central and East European states to those of member states of the EU.³⁸ After the accession of the CEE countries to the EU, the success of the Budapest Process in facilitating legal harmonisation was considered to justify preserving it, with a focus from 2003-2009 on South-eastern Europe and expanded to include countries further east in the Caucasus, and the former Soviet countries of the New Independent States and Central Asia. The Budapest Process was further expanded in 2010, to include the countries along the historic “Silk Route”, including Afghanistan, Bangladesh, China, Iran, Iraq and Pakistan, with the possibility of other Asian countries being invited to participate.³⁹ Recognizing the “severe risks posed by organised criminal networks involved in irregular migration to internal security and the security of citizens and migrants alike”, the Budapest Process has identified trafficking in persons as one of six priority areas.⁴⁰

Thus the EU approach to counter trafficking has concentrated on capacity-building, developing partnerships among various agencies, and cross-border cooperation in law enforcement both among member states and in external relations. The linking of human trafficking with organized crime has been the dominant frame in which this development of a more networked enforcement capacity has occurred. And yet, despite these efforts, there continue to be very low rates of prosecution in regard to human trafficking. Moreover, in some regions convictions have actually decreased despite the heightened policy attention and effort directed towards this issue especially over the past decade. Within the EU, for example, where trafficking in humans is believed to be on the rise, convictions for trafficking in human beings have decreased 13%, from 1534 in 2008 to 1339 in 2010.⁴¹

Another question that arises is whether states are prosecuting trafficking effectively, and whether they are focusing on who the real criminals are. Advocates maintain that prosecutions tend to involve mostly low-level criminals and victims. They argue that a clear victim focus is needed while prosecutorial efforts shift towards the real perpetrators of trafficking. While there has been progress internationally in criminalizing trafficking, many jurisdictions however still do not have adequate tools in place to combat human trafficking. One example is the still relatively common practice in various states of the U.S. of prosecuting minors for prostitution.

In order to better combat human trafficking, observers suggest that, as trafficking is a complex, multi-faceted, decentralized and dispersed networked activity, countering it

³⁷ ICMPD, “20+ Years of the Budapest Process: An Analysis of Over Two Decades of Migration Dialogue”, 5th Ministerial Conference of the Budapest Process (October 2013), 5. Available at: http://www.budapestprocess.org/images/documents/20_Years_Budapest_Process_Report.pdf.

³⁸ ICMPD, “20+ Years”, 6-7.

³⁹ ICMPD, “20+ Years”, 9.

⁴⁰ Budapest process, “Istanbul Ministerial Declaration on A Silk Routes Partnership for Migration”, 19 April 2013, 1, 5.

⁴¹ Eurostat, “Trafficking in human beings”, 2013 edition, Methodologies and Working Papers Collection, (Luxembourg: European Union 2013), 10-11.

effectively will require developing a more networked approach that links up different and diverse actors involved in anti-trafficking efforts.⁴² This is particularly visible among the specialized state agencies focused on prosecution of trafficking offences – actors and agencies are involved in law enforcement. Police and judicial information-sharing, cooperation and coordination are emphasised both within state jurisdictions at different levels and across agencies, as well as with counterparts in other countries. However a truly networked approach would involve actors involved in protection and prevention as well as in prosecution.

Further development of networked approaches is more slowly appearing through the involvement of non-governmental actors such as victim protection-focused NGOs in cooperative approaches with state and intergovernmental actors focused on enforcement, and the growing focus on sensitizing, training and cooperating with state regulatory and administrative actors (labour inspectors, health inspectors and fire inspectors, business licensing offices, tax and immigration authorities, municipal authorities), as well as with industries and private companies operating in high-risk markets. There is more to be done here in creating a more effective response to the complex, multi-faceted phenomenon of human trafficking.

CONCLUSION AND RECOMMENDATIONS

Organized criminal groups are important actors in human trafficking. However, organized criminal groups are now understood to be far more diverse and organized crime much more complex than previously believed. Documenting the involvement of organized criminal groups in trafficking is challenging, and researchers still have far to go in deepening our understanding of the nature of organized criminal networks, including in the area of human trafficking. Organized crime has constituted the dominant framework for legislation and policy initiatives on combating human trafficking, resulting in a strong emphasis on law enforcement measures. Yet, despite the growing efforts over the past decade to address this problem, prosecutions of traffickers remain low, further suggesting that a predominantly one-dimensional approach to counter trafficking is inadequate. The framing of human trafficking primarily as a problem of organized crime has also been the subject of serious critique from within the anti-trafficking community as presenting an overly simplistic picture of the actors and dynamics involved and contributing to the securitization of discourse and inadequate protection and prevention measures.

Moreover, enhanced enforcement in some dimensions, such as tightened and more rigorous migration controls to prevent migrant smuggling and human trafficking, may inadvertently increase incentives for the involvement of organized criminal groups, networks and criminal entrepreneurs: “The great paradox of enhanced migration controls is that they increase the need for irregular migrants to have recourse to professional smugglers and criminals. As with any illicit market, the more rigorous the official controls, the greater the profit

⁴² Cornelius Friesendorf, “Pathologies of Security Governance: Efforts Against Human Trafficking in Europe”, *Security Dialogue*, Vol. 38, No. 3 (2007): 385-386.

to be made by those who are prepared to take the risks necessary to evade the controls.⁴³ Further, enhanced enforcement that ends up convicting mainly the victims of trafficking and small-time criminals further punishes the victims while leaving big fish, where they exist, untouched.

Some recommendations that follow from this analysis to better address the problem of human trafficking, particularly in terms of the involvement of organised criminal groups:

- In order to better address the problem of human trafficking, one of the key measures that should be implemented widely is that of holding accountable the end users of labour or services provided by victims of trafficking. This could be done through the criminalization of such use while either knowing or disregarding that the provider is a victim of trafficking.
- There is very little empirical research and reliable data on trafficking and the involvement of organized criminal groups in trafficking. As both involve hidden populations, gathering reliable data is extremely challenging. But without that empirical data, meaningful and effective anti-trafficking measures are unlikely. Researchers should address the very large gap in knowledge about traffickers, by collecting more information about traffickers, including offender interviews in their research approaches, and seeking more information on the organization of trafficking activities.
- Governments should seek closer cooperation with high-risk industries on the issue of human trafficking and on hiring responsibly. The risk of bad publicity when a specific company is revealed to be using exploited labour could be an incentive for companies in high-risk industries to become more proactive.
- Public information campaigns should warn employers of the severe consequences of using trafficked labour should they become the subject of law enforcement investigation. And to be credible, there needs to be more prosecutions of businesses that are not doing enough to prevent the use of trafficked labour and of clients of exploited service providers.
- Civil society too has a role in demanding accountability from producers, consumers, and government. Focusing on the “demand” side can also include public awareness campaigns about the services or products produced by exploited men, women and children.
- Advertising campaigns aimed at raising awareness of potential victims of trafficking should not give the impression that it is only men who are involved in trafficking, but that women or couples may also be involved.
- The continuing low rate of prosecutions suggests research is also needed on the efficacy of anti-trafficking training for police and justice personnel, and evaluation of the effectiveness of existing investigative techniques.

⁴³ UNODC, *The role of organized crime in the smuggling of migrants from West Africa to the European Union* (Vienna: UNODC, January 2011), 36.

- Finally, the consistently low numbers of convicted traffickers raises questions about whether anti-trafficking efforts have looked closely enough at corruption within destination countries, i.e., within the state's police, border officials, criminal justice system, and administrative and regulatory sectors, as well as where markets for illicit services and goods exist within important sectors of the legitimate economy, such as transportation and banking.

Human Trafficking: Asia and Europe

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According to various agencies and specialists, trafficking in human beings (hereafter either THB or human trafficking, used interchangeably) and cybercrime have been the fastest growing types of organised crime activity since the 1990s. This article focuses on human trafficking, although it involves brief consideration of cybercrime too.

But before analysing this topic in the Asian and European contexts, it is important to define human trafficking – in particular, how it differs from people smuggling. The most widely cited definition of THB is that contained in the UN's so-called Palermo Protocol of December 2000.² But this definition is complex, and, for the purposes of the present exercise, it is preferable to highlight seven key features that distinguish the two phenomena:

- Trafficking is not *necessarily* transnational, smuggling is;
- Smuggling is invariably illegal – trafficking is sometimes not;
- Trafficking invariably involves coercion and usually deception of victims, whereas smuggling does not;
- Trafficking necessarily involves a highly unequal relationship;
- Trafficking involves an ongoing or a new relationship once the destination is reached, smuggling does not;
- Trafficking often involves the buying and selling of people, smuggling does not;

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² There are in fact three Palermo Protocols – one on THB, one on people smuggling, and a later one on arms trafficking. Here, “the” Palermo protocol refers only to the one on THB, which defines human trafficking thus – “(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs . . . (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article” (UNODC 2004: 42-3). For the genesis of the protocol and a detailed analysis see Gallagher 2001.

- Members of the public, especially in source countries, often have markedly different attitudes towards people smugglers and human traffickers, seeing the former in positive terms as potential liberators and the latter as exploitative and often violent criminals.

Unfortunately, while the two phenomena are conceptually distinct, empirical research reveals that nowadays people smuggling often mutates into human trafficking. A common scenario is where people pay “smugglers” to transport them illegally to a more stable and affluent country, but upon arrival are informed that the price has increased; since the smuggled people do not have funds to cover the additional costs, and since their illegal status means they are unlikely to turn to local law enforcement agencies, they come under the control of the “smugglers” – actually traffickers – to pay off their additional debt.

According to Interpol, there are three types of human trafficking – of women and children for sexual exploitation, for forced labour, and of human organs.³ This is not a fully comprehensive list, however. For instance, males are sometimes trafficked for sexual exploitation. Many trafficked children are forced by their traffickers to beg. And one of the most appalling forms of human trafficking, of children as soldiers, is not explicitly identified in the Interpol approach; while this form is not common in Asia or Europe, there was some evidence of it during the Yugoslav wars of the 1990s.

Human trafficking is now widely recognised as a modern form of slavery. It is a serious problem, for numerous reasons. Socially, it increases health risks (e.g., by spreading sexually transmitted diseases); leads to higher unemployment rates among local citizens by undermining pay rates; and increases racism as local populations blame transnationally trafficked persons for increasing crime and unemployment rates. Economically, it can reduce tax revenue to states (traffickers do not typically declare their incomes to the authorities), and have a negative effect on investment as illicitly acquired funds are laundered overseas. Politically, it can undermine the rule of law, which is a key feature of a well-functioning system, and increase corruption, which weakens legitimacy and has security implications. And THB fundamentally undermines human rights (see Holmes 2010).

While slavery has existed for millennia, THB has become a far more salient issue since the 1990s, to which the timing of the UN Protocol cited above and the USA’s TVPA (Trafficking Victims Protection Act, also 2000) testify.⁴ There are several reasons for this recent focus. One was the collapse of most Communist systems – all of those in Europe and the USSR, and some in Asia (Afghanistan, Cambodia, Mongolia) – at the end of the 1980s and into the 1990s. Suddenly, citizens who had essentially no freedom to travel discovered they were now in principle able to explore the world. Unfortunately, this point applied to criminals as much as to ordinary citizens. But this freedom was granted at the same time as all post-communist states experienced severe economic and related social problems. Stagflation was rife. The

³ <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>, accessed 06-01-2014.

⁴ Technically, the 2000 US legislation was the “Victims of Trafficking and Violence Protection Act”; but this is usually referred to nowadays as the TVPA, including by the US Department of State itself.

problem was exacerbated by the fact that state-run welfare systems in most post-communist states were almost non-existent; during the Communist era, welfare had generally been administered by workplaces, and the confusion of early post-communism meant this system largely collapsed or was severely underfunded. The gendered nature of the unemployment profile in several states, whereby women often fared even worse than men, rendered higher numbers of women susceptible to deception – with promises of legal, secure and acceptable employment in more affluent states – than would be the case in less problematic contexts.

At the same time, as economic and social problems dramatically increased in the new post-communist states, Western Europe was sending out mixed messages. On the one hand, all West European states welcomed the collapse of Communism to their east, and initially appeared willing to assist these countries. In many ways, the West did help, for instance in establishing the European Bank for Reconstruction and Development targeted specifically at post-communist states. At the same time, an idea first publicly mooted in 1985 – the creation of a passport-free zone in Europe – became a reality in 1995 with the establishment of the Schengen Zone. But freer travel was not for all, and many affluent West European states became increasingly apprehensive throughout the 1990s about admitting too many new residents from the East, so that commentators began referring to a new Fortress Europe.⁵ In these circumstances, desperate Easterners became easy prey for both smugglers and traffickers.⁶

The spread of neo-liberalism in recent decades, with its emphasis on deregulation and reducing the role of the state, has been conducive to organised crime and hence THB. The on-going economic crisis that emerged in 2008 further exacerbated the situation. According to Europol (2013: 24), the crisis increased THB, as economic problems encouraged many employers to seek the cheapest sources of labour they could without asking too many questions.

There are many other reasons why THB has become so attractive to criminal gangs. One is its significant advantages over both drug and weapons trafficking. For instance, with the US and other states destroying coca crops in various Latin American countries in recent years, the production and hence supply of some illicit drugs has become more problematic and expensive for gangs. Unlike the situation with drugs and weapons, there is an almost endless and cheap supply of humans. Moreover, once drugs and weapons have been sold, they no longer generate income, whereas trafficked persons can continue to do so for many years; and once a trafficked person has passed his or her “use by” date, replacement is easy. The dramatic rise in cyber technology has also played into the hands of traffickers, who can now more easily advertise illicit goods and services, as well as circulate misleading advertisements about job opportunities. Finally, the penalties for those convicted of THB are in most cases far less severe than for those convicted of trafficking drugs and arms. While China occasionally executes human traffickers (Foster 2009; *VOA News* 2013), many Asian states allow for the death penalty for serious drug trafficking, but only relatively short prison sentences for

⁵ While this term applies less nowadays to the problems facing Asians and those from post-communist states than it did in the 1990s, it appears to be gaining greater currency again in recent years – see Spiegel Online Staff 2013.

⁶ One specific change that led to an increase in a particular form of THB – of babies for adoption – is China’s so-called one-child policy, introduced in 1979.

serious cases of human trafficking. Although the differences between sentencing for drug and human trafficking offences in Europe are in general less stark than those in Asia, punishments for the latter still tend to be lenient relative to the nature of the crime. In short, a simple cost-benefit analysis by amoral criminals will often steer them towards THB.

TRENDS

It is beyond the scope of a paper of this scale to provide a meaningful overview of the trends throughout the whole of Asia and Europe. In order to limit the analysis, the focus here is on “just” the 28 member states of the EU, the 14 states of ASEAN+4 (the 10 ASEAN member states plus China, Japan, India and S. Korea);⁷ and what is sometimes called Eurasia, meaning here the 12 successor states to the USSR excluding the Baltic States (which are included under the EU). While it is often inappropriate to talk about “Europe” or “Asia” – the situations in Singapore and Cambodia being very different, as are the situations in Sweden and Bulgaria – generalisations are necessary in a short comparative piece on a broad topic.

With this important caveat in mind, what overall picture can be drawn? Given its clandestine nature, it is not possible to provide accurate figures on the scale of THB. Most analysts and agencies accept the figures produced in 2012 by the ILO as the most accurate currently available on forced labour. According to this source, at a “conservative” estimate, and excluding trafficking relating to either human organs or forced marriages, almost 21 million people were engaged in forced labour at any one time between 2002 and 2011 (ILO 2012: 13). But many of these are quasi-voluntarily indentured people – the vast majority being in India – while others (c. 10%) are forced to work by states rather than crime gangs, and include certain types of prisoners. Deducting these two groups from the total produces a much lower figure. However, the latest ILO figures explicitly do not disaggregate the total to the number of trafficked persons (ILO 2012: 26), and there are unfortunately no reliable statistics on this at the global level (Wylie and McRedmond 2010: 6). The same is true of the EU. Thus, the EU’s principal law enforcement agency states in a 2011 report, “The scale and nature of THB in the EU is not easy to define because of very fundamental reasons” (Europol 2011), and therefore provides no figures.

But *some* data on the EU are available. One recent source on the number of trafficked persons there is the 2012 Eurostat report; although first published in 2012 (with a marginally modified version published in 2013), the data contained in it are based on surveys conducted between 2008 and 2010. The Eurostat report reveals a substantial rise of 18% in the number of people identified as or presumed to be trafficking victims in that brief three-year period. But in terms of trafficking between Asia and Europe, the report makes it clear that the vast majority of identified and presumed victims within Europe were Europeans, primarily citizens of Romania and Bulgaria (Bogers et al., 2013: 10, 13; see too Bundeskriminalamt 2012: 6-7). Although most trafficking victims in the EU were Europeans, the report reveals that

⁷ The more usual grouping is of the ASEAN States Plus Three; but given its sheer size and significance, India has been added to the list here.

the two principal non-EU countries of origin of identified victims were Nigeria and China (Bogers et al. 2013: 10).

A similar picture is painted by the UNODC's *Global Report on Trafficking in Persons 2012*. Yet, while this endorses the notion that most trafficking within Europe is of Europeans, almost one third of detected victims in Western and Central Europe in the period 2007-2010 were from outside the region. This was the second highest proportion globally (after North Africa and the Middle East), and is in sharp contrast to the situation in Eastern Europe, Central, South and East Asia, where more than 99% of detected victims were from within the region. Some 13% of all detected victims in Western and Central Europe were from Eastern Europe, Central, South and East Asia, with the East Asians constituting the largest group. Finally, the report indicated that East Asian victims are those most likely to be trafficked long-distance, across and between continents (all from Chawla 2012: 41-2, 48-9).

In terms of the prosecution and conviction of traffickers, Europe fares well in comparison with the rest of the world, including Asia, in the sense that the numbers relative to the total population are higher; this is evident from Tables 1 and 2.

Table 1: Trafficking in Europe - Legal Statistics for the Decade 2003-2012

| Year | Prosecutions | Convictions | Victims Identified |
|------|--------------|-------------|--------------------|
| 2003 | 2231 | 1469 | |
| 2004 | 3270 | 993 | |
| 2005 | 2521 | 1792 | |
| 2006 | 2950 | 1821 | |
| 2007 | 2820 (111) | 1941 (80) | |
| 2008 | 2808 (83) | 1721 (16) | 8981 |
| 2009 | 2208 (160) | 1733 (149) | 14650 |
| 2010 | 2803 (47) | 1850 (38) | 8548 |
| 2011 | 3162 (271) | 1601 (81) | 10185 |
| 2012 | 3161 (361) | 1818 (112) | 11905 |

Notes:

- The above statistics are estimates only, given the lack of uniformity in national reporting structures.
- The numbers in parentheses refer to labour trafficking prosecutions and convictions, and have only been provided since 2007.
- The number of victims identified has only been published since 2008.

Sources: US Department of State 2007: 45; US Department of State 2013: 59.

Table 2: Trafficking in Asia - Legal Statistics for the Decade 2003-2012

| Year | Prosecutions | Convictions | Victims Identified |
|------|--------------|-------------|--------------------|
| 2003 | 4532 | 1030 | |
| 2004 | 3202 | 1889 | |
| 2005 | 3621 | 2753 | |
| 2006 | 1950 | 1038 | |
| 2007 | 1871 (169) | 949 (40) | |
| 2008 | 1727 (113) | 985 (42) | 6884 |
| 2009 | 2346 (169) | 1706 (82) | 13563 |
| 2010 | 1887 (249) | 1245 (20) | 6954 |
| 2011 | 2555 (79) | 2042 (66) | 9264 |
| 2012 | 2725 (121) | 2125 (107) | 12936 |

Notes:

a. The figures cited are those for South, Central and East Asia; they do not include figures on the Middle East (which the State Department calls the Near East). The *Trafficking in Persons Reports* group Australia and New Zealand with Asia in aggregate tables (as "East Asia and Pacific"). Unfortunately, the report does not permit the isolation of the Australian and New Zealand figures from the Asian figures. However, since trafficking is not perceived to be a large-scale problem in either Australia or New Zealand – there were only 13 convictions for human trafficking in Australia between January 2004 and June 2011 (Joudo Larsen and Renshaw 2012: 2) – their inclusion is unlikely to have affected the totals in Table 2 to any significant extent.

b. The above statistics are estimates only, given the lack of uniformity in national reporting structures.

c. The numbers in parentheses are those of labour trafficking prosecutions and convictions, and have only been provided since 2007.

Sources: Calculated by the author on the basis of US Department of State 2007: 44 and 47; US Department of State 2013: 58 and 61.

Table 1 reveals that while the number of prosecutions in Europe has been steadily increasing, the marked trend in Europe in the early 2000s towards higher conviction rates (cf. 2004 and 2007) has tapered off in recent years (cf. 2007 and 2012). On the other hand, Table 2 reveals that while the number of prosecutions in 2003 was much higher than in 2007 or 2012, the conviction rate in Asia has risen in the second decade of this century – though it is still much lower than the European conviction rate on a population basis.

The picture painted so far could convey the impression that trafficking between Asia and Europe is relatively insignificant. But such a conclusion would be erroneous, and further evidence needs to be considered; while much of this does not have numbers attached, the perceptions of law enforcement agencies and patchy evidence from NGOs and other sources give cause for reconsidering the comprehensiveness of the official law-based statistics.

In its 2011 report on THB, Europol made it clear that it considered Chinese criminal organisations to be major players in human trafficking into Europe. Their role is not only in providing trafficked people, but also in producing counterfeit documents for them (Europol 2011: 10). So serious does Europol consider the Chinese problem that it singles them out – along with Bulgarian, Romanian and Nigerian organised crime gangs – as “probably the

most threatening to society as a whole” (Europol 2011: 11). Moreover, the Chinese gangs operate less conspicuously than many other groups, and have more fluid structures, rendering it particularly difficult to track them. Whereas such groups tended in the past to focus on trafficking labour for work in restaurants, markets, etc., they have in recent years become more involved in trafficking for the purposes of prostitution. Moreover, while the number of traffickers and victims from Eurasia has been declining, the number from China and other Asian countries (Philippines, Thailand and Vietnam) has been increasing, with the rise of the Chinese especially marked in countries such as the Netherlands (Sarrica 2009: 10-14, 18, 22).

Most analyses of THB between Europe and Asia understandably focus on the movement of the trafficked persons. But the ramifications of human trafficking are not unidirectional from Asia into Europe. While trafficking from Europe to Asia for labour purposes does not appear to be a large-scale problem, the demand by many Asian males for sex with blonde, Western-looking women has led to a marked increase in the number of women trafficked into China, Korea, Japan, Thailand and other Asian states from Russia, the Baltic States and elsewhere in Central and Eastern Europe for the purposes of prostitution (Hughes 2002: 29 and 47-9; Deighan 2010: 89; Shelley 2010: 163). Moreover, Europeans are feeding the trafficking situation in Asia, particularly that relating to prostitution. The best known form of this is sex tourism, and here the movement is mostly from Europe to Asia. For instance, Thailand allegedly has the highest rate of child prostitution in the world, and it is primarily white males – with an increasing proportion originating from Eastern Europe – that are the principal customers, though there are also many Asian paedophiles (on measures adopted by several Asian states up to 2006 to counter child trafficking, see Coomaraswamy and Satkunathan 2006).

Regarding the trends in legislative and other counter-trafficking measures, the EU is now taking human trafficking seriously. But this is a recent development: although its interest in THB has been traced back to 1989 (Wiley and McRedmond 2010b: 3), the EU’s first Anti-trafficking Strategy was adopted only in June 2012, following a call for one in the December 2009 Stockholm Programme, while the first EU Anti-Trafficking Coordinator – Ms. Myria Vassiliadou – assumed office in March 2011. There is as yet no functional regional equivalent in Eurasia or Asia.⁸

Another trend in Europe not currently being repeated in most of Asia is to place greater emphasis than previously on labour trafficking. For many years, both individual countries such as Sweden and international organisations (IOs) such as the Council of Europe focused heavily on THB for the purposes of sexual exploitation; this has been changing since the early 2000s. But labour trafficking is not yet recognised as a serious issue in most ASEAN+4 states, where labour rights generally are not seen as a high priority, and child labour is much more acceptable than in Europe.

⁸ While there is no Eurasian counterpart to the Coordinator’s role, the CIS (Commonwealth of Independent States – now comprising nine of the 12 Eurasian states) co-organised a Round Table on THB with the Council of Europe and the OSCE in April 2012 and had a “Programme of Co-operation to Combat Trafficking in Human Beings for 2010-2012”.

The Palermo Protocol became effective December 2003, and required signatories to focus on 3Ps (Prosecution, Prevention, Protection) and Cooperation; some analysts have renamed the last of these “Partnership”, producing a 4Ps approach. Comparing our three zones as of January 2014 reveals an interesting picture. Thus far, 25 of the 28 EU states have signed and ratified the protocol; Finland and the Netherlands have both signed and accepted it, while only Czechia has signed but neither ratified nor accepted it. In the case of the Eurasian states, nine of the 12 have signed and ratified; the other three (Kazakhstan, Tajikistan and Turkmenistan) have not signed, but have acceded to the Protocol. Of our three groups, the least willing to sign up to the Palermo anti-trafficking protocol has been ASEAN+4; while five states (Cambodia, India, Indonesia, the Philippines, and in 2013 also Thailand) have signed and ratified the protocol, two have signed but essentially taken no further action (Japan, S. Korea), five have not signed but have acceded to it (China, Laos, Malaysia, Myanmar and Vietnam) – while Brunei and Singapore have neither signed nor acceded to the Protocol.⁹

Under the Palermo Protocol, signatories that did not yet have dedicated anti-trafficking laws (which were the vast majority at the beginning of the 2000s) were to introduce them. In 2000, only 8 European states had dedicated anti-trafficking legislation; by 2008, this had soared to 37 (Sarrica 2009: 5); Estonia was one of the few European countries that still had no such law by then, but introduced one in March 2012. Many Asian states (e.g., Philippines 2003; Brunei 2004; Indonesia 2007; India 2013) have also introduced specific anti-THB laws in recent years. However, according to the UNODC, of 162 states analysed in August 2012, 28 still had no or only partial anti-trafficking legislation; none of these was in Europe or Eurasia, while five were in “East and South Asia” (Chawla 2012: 82-4).

Perhaps the most common method nowadays for assessing how well states are performing in terms of addressing the issue of THB is to use the US Department of State’s *Trafficking in Persons’ Report (TiP Report)*, which has been published annually since 2001. This ranks countries according to how well they comply with international anti-trafficking standards; the lower the tier number, the better they are performing. The following are the assessments of the countries considered in this chapter in the 2013 *TiP Report* (US Department of State 2013: 56).¹⁰

Tier One [N = 19]: 17 EU states, 1 ASEAN+4 state (S. Korea) and 1 Eurasian state (Armenia)

Tier Two [N = 25]: 11 EU states, 8 ASEAN+4 states and 6 Eurasian states.

Tier Two Watch List [N = 7]: No EU states, 4 ASEAN+4 states and 3 Eurasian states

⁹ Note, however, that when Singapore introduced a National Plan of Action on Trafficking in March 2012, it was announced that one objective of this is to study the feasibility of accession to the Palermo Protocol. On the first decade of the Palermo Protocol as it relates to child trafficking, see Brusca 2011.

¹⁰ For details of how the tier assessments are made and what they mean, see US Department of State 2013: 42-7 and 55.

Tier Three [N = 3]: No EU states, 1 ASEAN+4 state (China) and 2 Eurasian states (Russia, Uzbekistan).¹¹

It is clear from the above that most EU states (17 out of 28) are meeting what the US Department of State has determined as constituting the minimum compliance standards, and none is classified worse than Tier Two. Conversely, only one ASEAN+4 country is in Tier One, eight are in Tier Two, four are in Tier Two Watch List, and one is in Tier Three. Eurasian states also fare poorly in the *TiP* list – with only one in Tier One, six in Tier Two, three in Tier Two Watch List, and two in Tier Three.

CONTEMPORARY FORMS OF COOPERATION

At present, there are various forms of anti-THB cooperation in Europe as a region, such as the Council of Europe Convention on Action against Trafficking in Human Beings that was opened for accession in 2005 and entered into force in February 2008; this has been signed and ratified by most EU states, with Czechia being a notable exception in not even having signed (in Eurasia, Russia also has not signed). However, some signatories have not yet ratified the Convention, including Germany, Finland and Hungary. The fact that the 2012 EU Strategy mentioned above is based on five key priorities that essentially duplicate those in the 2000 Palermo Protocol indicates that there is still a long way to go in terms of implementing the latter in Europe.¹² Furthermore, it was reported in 2013 that only 6 out of (the then) 27 member states of the EU had met the April 2013 deadline for transposing the 2011 EU anti-trafficking directive into national legislation (European Commission 2013).

Although the situation *within* Europe is gradually improving, practical inter-regional cooperation – as distinct from statements of intent – remains at a very early stage, despite the fact that such collaboration is desperately needed. While the Silk Road from Asia and Eurasia into Europe is still known more for drug trafficking than for THB, the scale of the latter along this route is increasing. Yet the level of cooperation between the three regions in countering this is very limited. One area that looks promising, however, is cooperation against trafficking involving cybercrime. A recent new meaning of “Silk Road” is to refer to the online black market, including of pornography relating to trafficked children subject to sexual abuse; much of this emanates from Asia and Eurasia but is purchased by Europeans, and Europol is making efforts to improve its cooperation with police forces to the east in its endeavours to clamp down on this (for the approach of the new [2013] Europol Cybercrime

¹¹ All three were automatically downgraded in 2013 because they had been on the Tier Two Watch List for two consecutive years prior to 2013 and had made insufficient improvements to move up to Tier Two in 2013; for Chinese and Russian protests about their ranking, see BBC 2013.

¹² The five priorities are: identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increased prosecution of traffickers; enhanced coordination and cooperation among key actors and policy coherence; and increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

Centre – EC3 – for combating online child pornography, see European Cybercrime Centre 2013).

But progress towards deeper and more integrated law enforcement cooperation on a regional basis is hindered by the relative weakness of Aseanapol. Superficially, this looks like an Asian equivalent of Europol. In fact, even though Aseanapol is much older than Europol – having been established in 1981, compared with Europol’s formal start of operations in 1999 – it has been much less active. For almost three decades, it was little more than an annual forum for the region’s police chiefs; not until 2010 did it even have a permanent headquarters (it is now in Kuala Lumpur), and to this day it operates primarily as a coordinating organisation rather than one that pursues its own self-initiated objectives. Europol has been slow to develop too; not only did it commence work only at the very end of the 1990s, but it has also only been funded by the EU (as distinct from individual Member States) since 2010. However, Europol is now far more active as a law enforcement agency than is its putative Asian equivalent.

THE FUTURE

There is clearly considerable scope for further anti-THB measures to be taken by both individual states and regional groupings – as well as for much greater cooperation between regions. Unfortunately, human trafficking does not currently appear to be a major concern of the EU in its relations with the Asian state considered the most significant on this issue, China. There is only one fleeting reference to THB (p. 4) in the 16-page November 2013 *EU-China 2020 Strategic Agenda for Cooperation*; nor was there much in the 2003 EU-China Comprehensive Strategic Partnership. And the EU-China Dialogue on Human Rights, which has taken place more or less twice per annum since 1995, does not concern itself in any significant way with human trafficking.

Although states and IOs have a key role to play, in principle, civil society should also be an important actor. Unfortunately, civil society plays a much less significant role in most Asian and Eurasian states than in most European ones, with the mass media being less of a critical watchdog than should be the case.¹³ Thus the focus at this point must still be on states and IOs. How can and should these improve their operations? At least seven types of measure can be identified:

¹³ Measuring the role of civil society comparatively is highly problematic. However, a proxy measure is to compare democracy levels using an index that includes consideration of civil society. The most useful is the Economist Intelligence Unit’s annual *Democracy Index*. This classifies countries as Full Democracies, Flawed Democracies, Hybrid or Authoritarian regimes. In the edition covering 2012 (EIU 2013: 28), the Index explicitly states that civil society is weak in hybrid regimes; logically, it would be even weaker in authoritarian ones. It is thus interesting to note that in the 2012 Index, 13 of the 15 full democracies among the countries covered in this analysis are EU states, with two being ASEAN+4 ones (Japan; S. Korea); 16 of the 22 flawed democracies are EU states, with five being ASEAN+4 and just one (Moldova) being a Eurasian state. There are no EU states among the hybrids, but two ASEAN+4 states and four Eurasian ones; of the eleven states classified as authoritarian, four are ASEAN+4, while seven are Eurasian.

1. **Legislative.** All states should have dedicated anti-THB laws, and these should recognise that there is a wide variety of types of trafficking. As noted, even progressive states (e.g., Sweden) and IOs (e.g., the Council of Europe) for a long time recognised only THB that related to sexual exploitation. More countries need to change their laws regarding sex tourism, so that nationals of any state who pay for sex in other states with underage prostitutes will be subject to the laws of their own country as well as local laws. The immunity of various kinds of officials (e.g., parliamentarians, peacekeepers, police officers) should be lifted if individual officers are suspected of being involved in any way with THB.
2. **Administrative.** Claims of THB should be investigated and processed more quickly and efficiently than they often are.
3. **Punitive.** Judicial systems must ensure that traffickers are treated more harshly; there is a real problem in some countries, where local traffickers are often treated better than foreign trafficked persons. There should also be more naming and shaming of companies that implicitly or explicitly support forced and child labour. And punishment of corrupt officials involved in THB needs to be severe.
4. **Institutional.** In addition to upgrading the role of Aseanapol, it would be desirable to establish approximate equivalents of the Council of Europe in both Eurasia and ASEAN+4, since this body concerns itself *inter alia* with the rights of trafficking victims.¹⁴
5. **Educative.** There should be better education of officials, including immigration staff in visa offices, to raise their awareness of the signs of possible THB activities and what measures should be taken to address suspicions. Another group of officials who would benefit from educational seminars is the police. Many officers treat trafficked people with disrespect, and are unaware of the horrors most have endured; evidence from countries such as Poland reveal that well-run seminars, perhaps with video presentations and/or personal appearances by trafficked people who tell their stories, can at least modify such negative attitudes.
6. **Attitudinal.** In this increasingly globalised world, and as organised crime becomes more transnational, notions of the sanctity of state sovereignty need to be revised; while this point generally applies more to Asian and Eurasian states than to European states, there is still room for improvement in some of the latter. In particular, most states in all three regions need to place the rights, security and well-being of trafficked persons at least on a par with notions of state sovereignty; improving security includes minimising the likelihood of reprisals against victims by traffickers.

¹⁴ Although ASEAN has its Inter-governmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), these are much less active and influential than the Council of Europe in addressing THB.

7. **Cooperative and coordinating.** All states should sign up to and ratify the Palermo Protocol, and then adhere to their commitments. There should be more concerted efforts at standardising (harmonising) definitions and measurement techniques relating to THB. Given that so much THB is transnational, states should be more willing than most have been hitherto to cooperate with other states in investigating and prosecuting alleged THB cases. For instance, Russia's constitutional ban on extraditing Russian citizens to other states is unhelpful in a globalised era; other countries, such as China, allow extradition to some countries but not others. Such policies play into the hands of traffickers. But it should not be assumed that it is only Eurasian or ASEAN+4 states that are less cooperative than they could be. Thus, according to Europol's 2013 Serious and Organised Crime Assessment (SOCTA – see Europol 2013: 24), even within the EU, let alone between EU member states and Asian or Eurasian countries, “[t]he number of cross-border investigations against OCGs [organised crime gangs – LTH] involved in THB . . . remains low”.

At the start of this analysis, brief reference was made to cybercrime. Fortunately, there is now growing awareness of the close connections between this and THB. Thus, to mark the 7th EU Anti-Trafficking Day, a conference was organised in Vilnius in October 2013 by the Lithuanian EU presidency and the European Commission on the use of the internet for combating human trafficking. The sub-title of the conference – “Cyberspace for Prevention, not Recruitment” – captured succinctly what needs to be done. All too often, criminal organisations are at least one step ahead of law enforcement agencies, so that it is encouraging to see that official awareness of this issue is growing. This is one area in which international cooperation is likely to expand in the near future. In addition to the new EC3 within Europe, Interpol will open a centre – the Interpol Global Complex for Innovation (IGCI) – in Singapore in 2014 that will focus on cybercrime; this should have the capacity to counter the growing technological sophistication of transnational organised crime.

Ultimately, since the underlying causes of THB – such as gross economic inequalities between and within countries, civil war, poverty, despair, demand for cheap and often illicit goods and services, patriarchal cultures, etc. – cannot readily be remedied, reducing the scale of the problem will only happen through the seven methods outlined above. But none of these will be very effective unless there is the *political will and capacity* to make them so. The will must exist not only among senior politicians, but also officers of the state and the general public.

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Human Trafficking in South Korea— Experience, Challenges, and Policy

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1. INTRODUCTION

Human trafficking is a serious transnational crime in South Korea, and the country is not only a destination place for victims of human trafficking, but also functions as a source and transit country (United States Department of State 2013). The patterns of human trafficking in South Korea show regional features which pull victims of human trafficking from Southeast and Central Asian countries into Korea and push its own vulnerable population into other developed countries in the Asia Pacific. Among them, sex trafficking is the most common form, exploiting female migrants and indebted local women in prostitution. Also, sex trafficking happens along with the exploitation of so-called “mail-ordered brides” and female refugees from North Korea. On the other hand, labour trafficking has recently received greater attention because of the exploitation of foreign crew members in South Korean-flagged fishing vessels in Oceania waters.

In response to human trafficking, South Korea has demonstrated a high level of policy efforts to prosecute perpetrators of human trafficking and provide assistance for victims. Both the 3P Anti-trafficking Policy Index (Cho et al. 2014) and the Tier-ranking evaluating anti-trafficking policy worldwide rank South Korea as one of the leading countries in anti-trafficking performance (see Appendix A). Moreover, South Korea recently reformed its anti-trafficking legislation (amendment in 2013). Under the new law, not only sex trafficking, but also labour trafficking can be punished with a sufficiently high level of punishment (up to 15 years in prison), meeting the international standards imposed by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000). This reform can provide a positive example of anti-trafficking policy

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for neighbouring countries in the region. However, South Korea still confronts problems and challenges in properly recognizing and identifying victims, convicting traffickers, and providing victims with long-term prospects for rehabilitation and reintegration because of the narrow application of anti-trafficking legislation in practice and a policy focus on the repatriation of victims.

In this paper, I will provide an overview of the current trends and patterns of human trafficking in South Korea, and assess its anti-trafficking efforts with a focus on the prosecution and protection policy. By doing so, I will provide policy recommendations for South Korea to improve law enforcement and victim protection as a conclusion of the paper.

2. CURRENT TRENDS IN HUMAN TRAFFICKING IN SOUTH KOREA

1) Sexual Exploitation

The most serious form of human trafficking in South Korea is sexual exploitation, with women and girls forming the majority of victims of this type of exploitation. Every year, the South Korean government identifies a few hundred victims of sex trafficking (see Table 1); however, the reported number likely reflects only a tiny portion of the true magnitude. The government of South Korea enacted and implemented the Special Law on Sex Trade (2004), actively prohibiting prostitution; however, demand for prostitution still exists to a large extent and is fulfilled by various channels of commercial sex, including forced prostitution. There are several sub-categories that can group different types of human trafficking for the purpose of sexual exploitation in South Korea.

The first type is the forced prostitution of foreign female migrants. An unknown number of foreign women are trafficked into forced prostitution in South Korea every year, and most victims of forced prostitution come from the former Soviet countries, the Philippines and several other Asian countries (United States Department of State 2013, see Table 2). Among them, many are entertainment visa (E-6) holders who were initially recruited in their home countries for employment in the entertainment and performance business, but end up in forced prostitution in the destination country (Yeom 2010). Also, foreign female low-skilled workers are another target group and, according to a recent study, about 10% of foreign female migrants in low-skilled industries were prompted to go into prostitution (Han 2010). Indeed, in South Korea, the composition of prostitutes has recently become more foreigner-dominant and, for instance, 90% of prostitutes working around the American military bases in Korea are non-Koreans – the majority of them come from the former Soviet countries (Han 2010). This trend of foreignization suggests that demand for commercial sex is now met by the supply of foreign prostitutes – some of them are victims of human trafficking, for instance, forced into prostitution via the E-6 system.

Second, there are two further groups of people vulnerable to sex trafficking: foreign wives who are married to Korean men through international marriage brokers, and indebted women. Sex trafficking via international marriage is most frequently observed among Vietnamese women (Yeom 2010). They are married to South Korean men whom they met through short

meetings arranged by international marriage brokers, and come to South Korea with marriage visas. Such arrangements of international marriages may lead to abusive relationships between the married couples. For instance, it is often the case that the husband is much older than the wife, and they are confronted with communication problems caused by language and other cultural barriers. They also seldom know each other, given that they are married through a short arranged meeting. Abuse cases include marriage for the purpose of family care for old, ailing parents of the husband and child bearing, and for forcing foreign wives into prostitution for monetary gains (Kim and Choi 2012).

On the other hand, there are also Korean women forced into prostitution, mainly because of debts. They have often experienced socioeconomic hardships and borrow money from private lenders who charge an extremely high interest rate (e.g., 1,000% annual interest). Thus, these women tend to accumulate debts, and are forced into bondage-prostitution (Kim and Choi 2012). Some of the Korean victims of forced prostitution are also runaway teenagers, trying to escape family problems and trapped into bondage-prostitution (United States Department of State 2012). While some of them are exploited in prostitution inside Korea, others are sold abroad – the main destination countries for trafficked Korean women are the United States, Australia, Canada, and Japan (see Table 2).

Additionally, there is a Korea-specific phenomenon in sex trafficking. North Korean women who flee from their home country to China and Southeast Asian countries for economic and/or political reasons are also at risk of being trafficked, for instance, being sold in Chinese brothels, and sometimes re-trafficked into South Korea through a transit via China (United States Department of State 2013).

On the other hand, sex tourism is another form of human trafficking in which Korean (male) tourists are involved in Southeast and Central Asia (the Philippines, Thailand, Indonesia, Cambodia, Vietnam, China, Russia, Kazakhstan, etc.). According to the United States Department of State (2012), South Korea is one of the major origin countries of sex tourists. Tourists/business men from South Korea purchase commercial sex in these countries and the prostitutes are often under-aged girls who become prostitutes presumably against their will. Brothels serving Korean clients are often owned by Koreans and offer commercial sexual services as part of tour packages operated through travel agencies. Thus, it is difficult for the local government to intervene. Furthermore, because of the corruption of local governments, and the business relationship with South Korea as an important trading/foreign investment partner, the prosecution of Korean tourists who buy the sexual services of forced prostitutes and child prostitutes is very difficult in practice (Kim and Choi 2012). Also, in South Korea, the punishment for purchasing the services of a child prostitute is too lenient and, to date, there has been no prosecution of such a case. Also, the general public awareness of child sex-tourism abroad is low (Park 2013).

Table 1: Reported Number of Victims of Sex Trafficking in South Korea

| Year | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| No. | 278 | 364 | 172 | 551 | 273 | 81 | 61 | 71 | 87 | 168 | 156 | 144 | 131 |

Note: The numbers for 2000-2009 were collected by the Budget Office, National Assembly of the Republic of Korea, and, for 2010-2012, estimated (see You 2010).

Table 2: List of Origin and Destination Countries for South Korea

| | Countries |
|-------------|---|
| Origin | Russia, Pakistan, Kyrgyzstan, Uzbekistan, Kazakhstan, Morocco, Colombia, Mongolia, China, the Philippines, Thailand, Cambodia, North Korea, Vietnam, Japan, and other Southeast Asian countries |
| Destination | United States, Canada, Japan and Australia |

Source: United States Department of State (2012 and 2013)

2) Labour Exploitation

An estimated 500,000 low-skilled migrant workers currently work in South Korea under the Employment Permit System (EPS) (United States Department of State 2013). Low-skilled migrants typically hold E-9 (employment in fishery industries) or E-10 (non-professional employment category) visas. Despite the fact that the EPS is considered a positive international cooperation between South Korea and neighbouring developing countries, there are some migrant workers – either under the EPS or non-EPS – suffering under poor labour conditions of forced labour (United States Department of State 2013).

In particular, recent cases of exploitation against Indonesian and other Southeast Asian crew members in South Korean-flagged fishing vessels in Oceania waters increased concerns regarding the labour conditions for foreign crew members in the fishing industries. Among the labour exploitation incidences against crew members, the alleged case of the *Oyang 75* fishing vessel that happened in 2011 provides a typical example of labour exploitation. The Indonesian crew of *Oyang 75*, which operated in New Zealand waters, suffered regular physical and verbal assaults, sexual harassments, poor payment, and confinement. They were not allowed to leave the working place because of delayed payment of debts due to high placement fees, passport confiscation, and fines. Moreover, there were a further 12 South Korean-flagged fishing vessels investigated for labour exploitation in 2013 (United States Department of State 2013). A structural problem enabling such exploitation is that foreign crews are not protected by the Labor Standard Law/Crew Law of South Korea. Their working conditions are regulated through industrial agreements between vessel owners and trade unions (Kim and Choi 2012, 29).

Furthermore, unskilled migrant workers are also at risk of forced labour, particularly in small-scale manufacturing, farming, and fishery industries. While some of the victims of labour trafficking are undocumented migrants, others hold an E-9 visa under the EPS which grants work permits to unskilled/low-skilled foreign workers in South Korea. Under the EPS, foreign workers are strictly limited in changing their employers – a maximum of three times over three years including relocation caused by exploitation and delayed payment (Kim and Choi 2012, 30-31). Therefore, employers have excessive power over the foreign migrant workers, limiting workers' mobility and making them vulnerable to labour exploitation.

On the other hand, there are also reported cases of labour trafficking of South Korean nationals – particularly, the mentally and physically disabled, and the homeless who are abused for unpaid domestic work and begging (Yeom 2010).

3. EXPERIENCE AND CHALLENGES IN ANTI-TRAFFICKING POLICY IN SOUTH KOREA

As discussed earlier, the anti-trafficking efforts the government of South Korea has been undertaking are highly evaluated by different policy evaluation measurements (see Appendix A). In particular, there is a recent development in the anti-trafficking legislative framework. In early 2013, the South Korea's National Assembly passed the legislation of chapter 31 of the criminal code on seizing, luring, and trafficking of humans, prohibiting all forms of human trafficking including both sex and labour trafficking. Prior to the new legislation, human trafficking was punished under the 2004 Act on the Punishment of Acts of Arranging Sexual Traffic and its Labor Standards, and only sex trafficking was prohibited under this law (labour trafficking was not addressed in the 2004 Act, but was theoretically punishable under other labour laws prohibiting forced labour). The new legislation also introduces universal approaches in anti-trafficking policy that specify that crimes of human trafficking committed by non-Korean nationals abroad can be also punished under the South Korean law (APIL 2013). Furthermore, the new law demands more stringent punishment of convicted traffickers, with a maximum sentence of 15 years in prison (previously, 5-10 years). This level of punishment is sufficiently high, compared to that of other countries (for instance, it is 8-20 years in prison in Italy, and 6 months to 10 years in Germany. See United States Department of State 2013).

This legislative reform is one of the preparatory works the South Korean government conducted in order to ratify the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* that South Korea signed in 2000 (see Appendix B for the ratification status of South Korea on international agreements dealing with human trafficking). In principle, this reform is considered a positive advancement, fulfilling the international standards prescribed by the UN Protocol. In fact, the legislative adoption changes not only the legal and institutional framework, but also affects law enforcement. Already in 2012, when the new law was underway, 19 traffickers were convicted for labour trafficking – the first reported case of conviction of labour trafficking in South Korea. Additionally, 30 people were convicted for sex trafficking, increasing the number from 11 in the previous year (see Table 3).

Despite the progress, the anti-trafficking policies of South Korea still demonstrate several problems. In particular, the range of acts and circumstances of human trafficking that can be punished by law are quite limited. Furthermore, the victim protection policy focuses on repatriation rather than ensuring basic rights and the livelihood of victims. In the following sections, I will discuss the problems and challenges of the current anti-trafficking policy in South Korea in more detail.

1) Prosecution

One of the challenges in prosecuting perpetrators of human trafficking in South Korea is the narrow definition of human trafficking applied. According to the UN Protocol, human trafficking is defined as: “*the recruitment, transportation, transfer, harbouring or receipt of persons*

(act), 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 (means), for the purpose of exploitation (purposes) (article 3-a)."

Among the three pillars of human trafficking (act, means, and purposes), the means of human trafficking recognized in South Korea are limited to physical means. Other means – such as threatening family members, bondage labour due to debt, abusing victims' vulnerable situations, deception, etc. – are mostly not considered as evidence of human trafficking, despite the definition of the UN Protocol (Kim and Choi 2012). Furthermore, if a victim consents to exploitative labour conditions and relations, the exploitation is normally not prosecuted as human trafficking, contrary to the UN standards by which human trafficking is defined, independent from the victims' consensus. The consensus-based prosecution is particularly problematic when under-aged or disabled victims are involved, as traffickers can more easily manipulate their consensus (Kim and Choi 2012).

Such a narrow application of human trafficking laws often results in acquitting perpetrators based on the purported consensus of victims, and makes it difficult to convict traffickers. (The annual number of convictions on average is 26 only for the last eight years, despite several hundred investigations every year. See Table 3.) Furthermore, the new legislation introduced in 2013 does not extend the means of committing human trafficking according to the UN Protocol (APIL 2013), maintaining the current challenges of anti-trafficking law enforcement. Upon the adoption of the new legislation, South Korea came to prohibit all forms of human trafficking, providing the legal foundation for better prosecution. The upcoming challenge is how to translate the legality "in book" into stronger prosecution and conviction "in practice" by applying the law in accordance with the international standards.

On the other hand, South Korea does not provide comprehensive statistics on human trafficking, although data collection has recently been improving (United States Department of State 2011). This is partly due to the lack of a comprehensive anti-trafficking law, resulting in perpetrators of human trafficking being prosecuted under different criminal codes – particularly labour exploitation. The lack of quality crime statistics hampers policy efforts to enhance law enforcement, as evidence-based policy making is difficult. In this regard, the introduction of the more comprehensive anti-trafficking law can provide opportunities to collect better statistics on the criminal justice of human trafficking in the future.

There are several further challenges in pursuing the prosecution of human traffickers in South Korea. Corruption among government officials who handle human trafficking is generally not high, but there are several recently reported cases of police officers accepting bribes from brothel owners (brothel operation is illegal in South Korea) which may undermine anti-trafficking enforcement efforts (United States Department of State 2011). In addition, under the current legislation, perpetrators of child sex tourism are not sufficiently punished other than taking "John School" courses, mainly because of the lack of criminal codes specifically addressing this problem and also because of difficulties in evidence collection from abroad. As child prostitution is a particularly severe form of human trafficking, and child sex tourism

by South Korean men is frequently reported, it is necessary for South Korea to take stricter measures to combat the problem.

Tables 3: Number of Convictions of Human Traffickers in South Korea

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012* |
|--------|------|------|------|------|------|------|------|----------------------|
| Number | 26 | 25 | 52 | 31 | 17 | 6 | 11 | 30 (SE) + 11 (LE) |

Note: The numbers reflect convictions under the 2004 Act on the Punishment of Acts of Arranging Sexual Traffic and its Labor Standards, and do not include convictions on human trafficking-related cases for which other criminal statutes were applied (Source: United States Department of State 2006-2013).

* SE: human trafficking for sexual exploitation; LE: human trafficking for labour exploitation.

2) Victim Protection

Protecting victims of human trafficking has two goals: human rights protection and witness protection. While the former stands for ensuring the universal basic rights of those who are victimized by crime, the latter aims at strengthening prosecution by cooperating with victims who are also witnesses of crimes committed. In this regard, South Korea fulfils the basic requirements for providing necessary assistance to victims of human trafficking, such as legal consultation, medical care, repatriation assistance, vocational training and (temporary) residency. Such assistance is also available to foreign nationals and victims of human trafficking who are, in principle, not punished for the acts committed as a result of their situations being trafficking (United States Department of State 2013). However, granting amnesty for victims is difficult in practice because of challenges in victim identification. Furthermore, victim protection efforts focus on repatriation rather than reintegration and rehabilitation (Lee 2010).

First, one of the main challenges in victim protection is victim identification. In South Korea, potential victims of human trafficking are still reluctant to contact the police to report their experience of exploitation, despite the fact that victims can receive support and assistance. The main problem here is that the narrow definition and application of human trafficking – discussed in section 3-1 – makes the victim identification processes very tough and many potential victims may not be granted victim status. For instance, passport confiscation by an employer – one of the indicators of human trafficking suggested by the IOM (2009) – may not be used as evidence of human trafficking, unless there is a clear indication that physical threats were exercised at the same time (So 2010). As long as a victim has given her consensus towards the situation, she is likely not to be identified as a victim of human trafficking, and therefore, upon reporting her case of exploitation to the police, she may fall into risk of being punished and/or deported as an illegal migrant.

Consequently, such negligence in victim identification results in not only the violation of the human rights of victims, but also the unsuccessful prosecution of perpetrators of human trafficking, as victims are likely to be unwilling to testify in court under the circumstances that may make their status more vulnerable.

Second, the main purpose of victim protection in South Korea is repatriation back to their home country, but the protection policy does not prioritize reintegrating victims into normal society and helping them recover from the experience of exploitation. According to the United States Department of State (2013), there are three types of countries providing permanent or temporary residency for victims of human trafficking. The first type is permanent residency for victims – such as the T-visa in the United States, which is meant to provide long-term prospects for reintegration in the new country. The second group of countries offers temporary residency regardless of whether the victim collaborates with investigators. The unconditional temporary residency is important because it gives victims time to recover from their exploitation and gain trust with the government authorities that they typically distrust in the beginning, and with which they are thus reluctant to cooperate. However, South Korea belongs to the third group that provides temporary residency during the legal proceedings only if a victim cooperates with police.

In South Korea, victims are eligible for the G-1 visa that can be given to foreign workers who pursue legal actions against their employers. However, the G-1 visa is valid for one year only and does not provide a work permit during their stay. Therefore, victims are likely to suffer financial hardship during the legal proceedings and cannot have a long-term plan for rehabilitation, discouraging them from taking a legal step against traffickers. Furthermore, returning to the home country may not always be the best solution because victims will be exposed to threats from traffickers at home, and risks of being re-trafficked because their impoverished situations will not have altered (Han 2010). The new anti-trafficking legislation amended in 2013 does not include granting a stable legal status and financial and vocational assistance to victims (APIL 2013). To ensure the reintegration and rehabilitation of victims into normal life, it is necessary to provide opportunities for them to stay in the destination country and support themselves financially, when returning home is not a desirable option.

4. CONCLUSION AND RECOMMENDATIONS

As discussed above, South Korea fulfils the prime policy requirements in punishing perpetrators of human trafficking and protecting victims, and has recently made progress by improving the anti-trafficking legislation. Now, the country prohibits all forms of human trafficking and the new legislation has resulted in punishing not only sex traffickers, but also labour traffickers. Also, victims of human trafficking receive basic assistance from the government and/or publicly-funded NGOs, regardless of their nationality. However, there are still a number of issues to be addressed in order to improve criminal justice and the human rights of victims. Based on the assessments in section 2 and 3, I would like to make the following recommendations for a better anti-trafficking policy for South Korea.

Prosecution

- The definition of human trafficking needs to be enlarged in accordance with the UN Protocol by including various means of human trafficking beyond physical threats – e.g., the abuse of victims in vulnerable situations, threatening family, deception, etc.

- In particular, victims’ consensus with traffickers that was created due to their vulnerable situations must not be a factor in determining whether the person is trafficked.
- Special consideration needs to be given when victims are children (under age 18) or the disabled, because of their particularly vulnerable status.
- Close cooperation with aid organizations is needed in investigating victims, given the distrust and fear that victims often have toward government authorities.
- The collection of comprehensive crime statistics – including data on all forms of human trafficking – is necessary for evidence-based policy making.

Victim Protection

- Victim identification needs to be improved by taking into account various indicators of human trafficking beyond physical threats and violation, as stated above. The “no punishment principle” for victims can be ensured if victims are not properly identified.
- The current temporal residence permit conditional on victims’ cooperation for investigation needs to be reformed. A possible model is to grant unconditional temporal residency to secure time for recovery and trust-building. Also, depending on the specific situations in their home countries, permanent residency can be granted to ensure the reintegration of victims into normality.
- Financial support and employment opportunities need to be provided to victims during their stay to secure basic necessities.
- North Korean victims of sex trafficking need to be addressed with special consideration in the human rights framework.

International Cooperation

- Human trafficking is an international problem in South Korea because other countries in the region are involved in it. Therefore, close cooperation with neighbouring countries is necessary not only for the investigation of human trafficking cases, but also for the repatriation and rehabilitation of victims
- In particular, the following partnerships are important: cooperation with Southeast and Central Asia for sex trafficking; Vietnam and other Southeast Asian countries for international marriages (so-called “mail-ordered brides”); Southeast Asia for child sex tourism; and New Zealand and Indonesia for the labour exploitation of crews.

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Appendix A

Evaluation of Anti-Trafficking Efforts of South Korea (3P Index and Tier ranking)

| Year | 3P Index | | | Tier-ranking |
|------|-------------|------------|------------|--------------|
| | prosecution | protection | prevention | |
| 2000 | 3 | 1 | N.A. | 3 |
| 2001 | 3 | 3 | 4 | 1 |
| 2002 | 3 | 4 | 4 | 1 |
| 2003 | 3 | 5 | 4 | 1 |
| 2004 | 5 | 5 | 4 | 1 |
| 2005 | 5 | 5 | 4 | 1 |
| 2006 | 5 | 5 | 5 | 1 |
| 2007 | 5 | 5 | 5 | 1 |
| 2008 | 5 | 5 | 5 | 1 |
| 2009 | 5 | 4 | 5 | 1 |
| 2010 | 5 | 3 | 5 | 1 |
| 2011 | 5 | 4 | 5 | 1 |
| 2012 | 5 | 5 | 5 | 1 |

Source: Cho et al. (2014) and United States Department of State (2001-2013).

Note: 3P Index (prosecution, protection and prevention) – score 1 (worst) to 5 (best).
Tier-ranking – tier 1 (best) to 3 (worst).

Appendix B

Ratification Status of International Agreements related to Human Trafficking, South Korea

| International Agreement | Ratification Status |
|---|--|
| UN Convention on the Elimination of All Forms of Discrimination against Women (article 6) | Ratified (1984) |
| UN Convention against Transnational Organised Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children | Signed (2000) and not ratified |
| UN Convention on the Rights of the Child (article 35), and its Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (article 3) | Convention: Ratified (1991) Protocol: Ratified (2002) |
| ILO Convention concerning Forced or Compulsory Labour (Forced Labor Convention C29) | Not ratified |
| ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention, c182) | Ratified (2001) |

Source: International Labour Organization and United Nations Treaty Collection.

Human Trafficking in Vietnam: Indicators of Progress and Continuous Challenges

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I. INTRODUCTION

Vietnam is undergoing rapid transformations. In many cases, these transformations bring positive developments, including economic growth, improvement of public health, substantial achievements in poverty alleviation as well as internationalization. Vietnam's achievements include overcoming poverty; from being one of the poorest countries in the world in the 1980s, the Vietnamese economy has managed to sustain national annual economic growth of 5-7% for the last decade. It managed to reduce poverty from 70 percent in the mid-1980s to 58 percent in 1993, and down to 14.2 percent in 2010.² All these internationally acclaimed accomplishments are attributed to the Doi Moi [Renovation] reforms introduced in 1986 that enabled economic and social empowerment, participation in economic activities, political life, mobility, internationalization and accessing international conventions.

However, recent developments also bring along a number of factors which has contributed to the growing number of cases of trafficking in persons. The aim of this report is to outline the trends in trafficking in Vietnam, identify areas of progress, explain the challenges ahead for policies addressing trafficking and offer some recommendations.

Vietnam has been continuously listed as a Tier 2 country according to the U.S. State Department's annual TIP reports.³ It is also characterized primarily as a source country, and

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² 14.2% is according to the national statistics provided by the Ministry of Labour, War Invalids and Social Affairs (MOLISA). The World Bank Report indicated that in 2010, it was 20.7%: World Bank, "2012 Vietnam poverty assessment: Well begun, not yet done – Vietnam's remarkable progress on poverty reduction and the emerging challenges," in *Poverty Assessment* (Hanoi: World Bank, 2012).

³ U.S. Department of State, "Trafficking in Persons Annual Report 2010," (2010); U.S. Department of State, "Trafficking in Persons Annual Report 2011," (2011). U.S. Department of State, "Trafficking in Persons Annual Report 2012," (U.S. State Department, 2012); U.S. Department of State, "Trafficking in Persons Annual Report 2013."

to some extent in recent years, also as a receiving country. Vietnam is facing the tendency of a growing number of trafficked persons, both cross-borders as well as internally.

II. CURRENT CONDITIONS AND TRENDS

There are a number of factors having an impact on the situation of trafficking in Vietnam. This report suggests the following categorization of them: (1) geography; (2) demography; (3) rapid urbanization and industrialization of the country; (4) growing internationalization, (5) social changes contributing to the growing demand; and (6) deepening socio-economic gaps and relative poverty.

The geographic conditions of Vietnam contribute to the increase in numbers of trafficked persons. There is a clear trend of people from northern Vietnam being trafficked to China and from central or south Vietnam to Cambodia, Thailand, Laos and further.

Situated next to China, Vietnam has become largely a “supply” country for the growing demand of women in its northern neighbour, who suffers from a serious gender imbalance as a repercussion of the one-child policy. Vietnamese women are trafficked to China mainly for the purposes of forced marriages, commercial sexual exploitation, and also as surrogate mothers. According to data provided by the Vietnam Ministry of Public Security, Department of Crime Prevention in 2011, between 60-70% of all trafficked people from Vietnam are directed to China. There are also growing numbers of Vietnamese children trafficked to China for the purpose of forced adoption. Men are reported to have been trafficked to China for the purpose of labour exploitation in factories. Trafficking records also reported a growing number of cases where children from Vietnam are abducted, kidnapped and sold to China.⁴ The Post-Yokohama Report estimated that there were 60 kidnapped children from 14 provinces, of which 29 were under 16 years of age. 26 of them were sold for sexual exploitation.⁵

The porous border between Vietnam and China, 1,463km long, creates opportunities for frequent movements. Many Vietnamese and Chinese cross the border at different points on a daily basis, some of the trips illegal or semi-illegal, for the purposes of petit trade and other economic activities. Such illegal movements are also often used for smuggling goods and avoiding import/export taxes. However, many of the women who are involved in such cross-border movements are exposed to trafficking.

In the south, Vietnam’s neighbour Cambodia also faces a great challenge in the increased phenomena of trafficking, smuggling and commercial sexual industry. The “boom” of commercial sex and sex tourism in Cambodia, and also in Thailand, has had a negative impact on Vietnam, particularly since its opening in 1990s. With closer ties and intensified mobility, and also because of ASEAN membership, Vietnam has integrated with the region. This brings many incentives but also creates more opportunities for transnational crime networks, including the ones dealing with human trafficking. Opening up the tourism industry

⁴ UNIAP, “Human Trafficking Sentinel Surveillance,” (2010).

⁵ “Post-Yokohama Mid-Term Review of the East Asia and the Pacific Regional Commitment and Action Plan Against Commercial Sexual Exploitation of Children (CSEC). Vietnam Country Progress Report,” (Bangkok 2004).

has also created an increase in people's mobility, often used for illegal workforce flows. In particular, southern Vietnam has become prone to the inflow of sex tourists as well as an increasing number of people trafficked to the commercial sex industry in Cambodia and Thailand. Victims from Vietnam trafficked southwards are mainly sold for sexual exploitation. The United Nations Inter-agency Project on Human Trafficking (UNIAP) estimates that between 15% and 32% of sex workers in Cambodia are Vietnamese, and around 50% of identified victims come from An Giang province in neighbouring Cambodia.

Further destinations include Europe, particularly the United Kingdom, central Europe (mainly the Czech Republic) and Cyprus. Vietnamese victims were reported to be trafficked for the purpose of commercial sexual exploitation, but also for labour exploitation, including marihuana farms in England.

In terms of demography, Vietnam is outstandingly young. Over 70% of the population are under the working age (16-64), and over 1.8 million people enter the labour market every year. The demand for employment is higher than the state can supply. The government encourages labour migration to address that employment demand. In fact, it has declared that overseas labour migration is a component of the national development strategy, and has established a goal of sending 85,000-100,000 workers overseas between 2010 and 2015.⁶ Statistics say that there are about 170 agencies sending abroad 80,000 Vietnamese labours every year.⁷ According to 2010 statistics, as many as 500,000 Vietnamese labours are working in more than 40 foreign countries and territories.⁸ Given the significant amount of remittances sent back to Vietnam by the migrant workers, around USD8 billion in 2010 (which is up to 11% of the national GDP⁹), the government is keen to continue such a strategy.

The demographic conditions of Vietnam, the significant job demand and the national policy regarding sending labour force abroad, create a growing demand that traffickers use as their opportunity. One of the most common means used by traffickers is using fake job advertisements and promises to lure, most of the time, uninformed job seekers. Often, they are people with lower education, fewer opportunities, or/and in disadvantaged positions, including women and ethnic minorities.

Vietnamese migrant workers are extremely vulnerable to human trafficking because of a number of social and cultural behaviours. Whether it is international or rural-to-urban migration, often the offer comes through the institution of referral by a relative, friend or a fellow villager. In particular, this is common in the situation of rural-to-urban migration, where no employment agencies need to be involved. There have been cases reported of a

⁶ Manolo I. Abella and Geoffrey M. Ducanes, "The Economic Prospects of Viet Nam and what it means for Migration Policy," (Hanoi: Ministry of Labour, Invalids and Social Affairs, International Labour Organization, 2011). p. 38.

⁷ Mekong Migration Network MMN: <http://www.mekongmigration.org/?cat=22> [Last accessed February 27, 2014].

⁸ Official website assisting migrants launched by the Vietnamese Ministry of Foreign Affairs, International Organization for Migration and the European Union: <http://dicu.gov.vn/> [Last accessed on February 26 2014].

⁹ IFAD UN International Fund for Agricultural Development, "Sending Money Home: Worldwide Remittance Flows to Developing and Transition Countries," (2007).

number of employment broker agencies that do not possess licences. Many migrant workers using such agencies to find jobs abroad often find themselves indebted when they reach the destination and are obliged to work under exploitive conditions, or be partially deprived of their freedom. Reports have shown that many agencies do not provide assistance to the migrants after they are sent to the foreign country. With no legal support, little knowledge of the new environment and often no or very limited language skills, the migrants are extremely prone to exploitation.¹⁰

Urbanization in Vietnam is happening rapidly due to unequal growth and industrialization, and distribution of wealth and investment. Urban centres feature a concentration of the majority of jobs and opportunities, whereas the rural areas' economy is still based on agriculture. The seasonal character of agriculture, in addition to severe natural conditions (e.g., frequent floods and draught, etc.), contributes to the seasonal movement of people from the rural areas to the urban areas in the search for additional income sources. It is projected that by 2020, 45% of the Vietnamese population will be living in the cities.¹¹ Moreover, the rural-to-urban movement is dominated by young people (10-24 years old). The tendency of seasonal and irregular migration creates a phenomenon of "floating population" that remains unrecorded. It is estimated that 12-16 million people are potentially missing from national records as unrecorded migrants. However, due to the spontaneous nature of such movements, often when migrants embark without any formal employment, but by following a recommendation from a friend, it is very difficult to track the exact number of moving population.

Internal trafficking is a fast-growing problem and unlike cross-border trafficking, it is even more difficult to identify and address. There is a growing number of sex workers in the country, including children. In Vietnam, there is a significant number of children of special circumstances, including street children. In 2010, according to the Ministry of Labour, War Invalids and Social Affairs (MOLISA), there were 23-26,000 children living in the streets of big cities. These children have minimal protection, often are not registered in any households, have no permanent accommodation, and in many cases are in conflict with the law for petty offences like pick-pocketing. Such conditions make them extremely prone to falling prey to traffickers. In recent years, the police have noted a growing number of children involved in the commercial sex industry, begging and forced labour. The Vietnamese newspaper *Thanh Nien* stated that between 2000 and 2006, the number of children involved in the commer-

¹⁰ Nguyen Anh Dang, "Labour Migration from Vietnam: Issues of policies and practices," in *ILO Asian Regional Programme on Labour Migration Working Paper* (Thailand: ILO, EU, 2008); Danile Belanger; Le Bach Duong; Tran Giang Linh; Khuat Thu Hong; Nguyen Thi Van Anh; Belinda Hammoud, "International Labour Migration from Vietnam to Asian Countries: Process, Experiences and Impact," (Hanoi: International Development Research Center Canada (IDRC); The University of Western Ontario; Institute for Social Development Studies Vietnam, 2010); Huong Le Thu, "Violence, Exploitation and Abuse and Discrimination Affecting Women and Children: Vietnam Country Report," in *Violence, Exploitation and Migration affecting Women and Children in ASEAN: A Baseline Study*, ed. ASEAN Human Rights Resource Center (Jakarta: ASEAN Human Rights Resource Center, 2013).

¹¹ UNIAP, "SIREN Human Trafficking Datasheet: Vietnam," (2008).

cial sex industry grew 5 times.¹² Child pornography, along with child prostitution and child sex-tourism, has appeared in recent years, and is another negative repercussion of the border opening. This tendency is more apparent in the southern provinces than in the northern provinces of Vietnam.

The young demography of Vietnam and mobility of work force also poses challenges to social relations. Although there is a growing number of women migrating from Vietnam, men still outnumber women in terms of migration. Vietnamese young women, often from rural areas (where male peers have migrated to other cities in the country or abroad), are often lured the option of marriage migration, particularly to Northeast Asian countries, like Taiwan, South Korea and Japan. According to the Vietnamese statistics, during the period of 2005-2010, there were 133,000 marriage migrations to Taiwan, South Korea, and Japan.¹³

Many reports and newspaper articles have exposed the scenario where young women were promised marriage with certain grooms, but found themselves sold to brothels or were trapped in other sexual exploitation conditions. It was not until the 2000s, that TV and newspaper commercials advertised in Taiwan about Vietnamese brides who could be “purchased” for competitive prices and were guaranteed virgins, with a guarantee of “another one if that one escapes”. Matchmaker agencies were not under strict control; in fact, many were not even licensed. Marriages which turned out to be slavery, forced surrogacy or servitude, sexual exploitation or even murder for the purpose of insurance compensation were reported in Taiwan, China and South Korea.¹⁴ Women, often from rural and remote areas, are attracted to the possibility of “life change” by marrying a relatively wealthier man from a Northeast Asian country. Studies have found that the main motivation of those women who embark on such marriage migration is not only poverty and willingness to help their families, but even more so due to the craving for better opportunities.¹⁵

Poverty is often listed among the main push factors that contribute to the growing numbers of trafficking. Extreme poverty, indebtedness, lack of resources, prospects, awareness of dangers and safety nets, limited chances for education, shattered or dysfunctional families, the lure of better life in big cities or relatively wealthier countries, make many people seek income sources elsewhere or voluntarily enter arranged marriages or travel to cities or other countries.

¹² All the statistics regarding trafficking are believed to be underreported and uncertain. This indicator was quoted by “Sale of Children, Child Prostitution & Child Pornography – A complementary report from NGOs in Viet Nam to the Vietnamese government’s report on OPSC,” (Hanoi: Save the Children Sweden in Viet Nam, 2006).

¹³ “Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài [General Report of Activities of Vietnamese citizens migrating abroad]”, (paper presented at The First Conference on International Migration, Hanoi June 1-2, 2011). p. 4.

¹⁴ I-Chun Kung, “The Politics of International Marriages: Vietnamese Brides in Taiwan,” in *Cross-Border Marriages with Asian Characteristics*, ed. Hong-Zen Wang and Hsin-Huang Micheal Hsiao (Taipei, Taiwan: Center for Asia-Pacific Studies, RCHSS, Academia Sinica, 2009).

¹⁵ Hong-Zen Wang and Shu-Ming Chang, “The Commodification of International Marriages: Cross-Border Marriage Business in Taiwan and Viet Nam,” in *Cross-Border Marriages with Asian Characteristics* ed. Hong-Zen Wang and Hsin-Huang Micheal Hsiao (Taipei, Taiwan: Center for Asia-Pacific Studies, RCHSS, Academia Sinica, 2009).

Poverty remains the main factor for migration and the main risk for trafficking, particularly in regard to vulnerable groups, including women, children and ethnic minorities. For example, women and girls in the Mekong Delta Region have difficulty in accessing loans and microfinance assistance from the Social Policy Banks due to certain regulations and registration issues. That prevents a number of women from approaching financial institutions for help, which creates a circle of events raising the risk of trafficking. In many cases, poverty-stricken families seek external funding assistance, including indebtedness. Cases have been reported which demonstrate that such conditions contribute to the decisions of these families to drop their children, especially girls, from schools. To seek jobs, girls and women, who often have little legal awareness, decide to migrate to a city, seeking employment, or even marriage, and are often lured or deceived into the sex trade.¹⁶

Poverty itself might not explain the reason for the growing tendency of trafficking but, paired with the increasing economic disparity within the country and unequal distribution of wealth, adds to people's economic instability and vulnerability. With the urbanization tendency, rural-to-urban movement for employment purposes is becoming customary. The increased number of migration is not equivalent to the number of safe migration through official channels and continues to pose threats of trafficking both domestically as well as cross-borders.¹⁷

III. NATIONAL RESPONSES

Vietnam has a strong legal basis for protection and prohibition of any forms of enslavement, abuse and discrimination, which thus assures the equality and well-being of its people. These include: Constitution (1992, 2001, 2013), Civil Law (1995), Penal Law (1999, 2009), Labour Law (2002), Law on Marriage and Family (2000), Law on Child Protection, Care and Education (2003), Law on Protection, Care and Education of Children (2005), Law on Gender Equality (2006); Law on Vietnamese Guest Workers (2006); and Law on Donation and Transplantation of Human Tissues, and Organs, Donation of Corpse/Body (2006).

Article 19 and article 20 of the Penal Law of the Socialist Republic of Vietnam punish activities related to trading in women and children for commercial purposes by imprisonment between 5 to 20 years, or in the case of trafficking of children, the maximum sentence is lifetime imprisonment. In 2009, the definition was changed from "trafficking in women" to "trafficking in humans".

In 2011, the new Law on Prevention, Suppression against Human Trafficking was adopted. This is an important indicator of progress and shows that the issue has reached a level of concern that deserves its own legislation. By defining the crime as "trafficking in

¹⁶ "The Trafficking of Women and children from Vietnam," (Hanoi: Child Exploitation and Online Protection Centre in association with the British Embassy, 2011).

¹⁷ Huong Le Thu, "Violence, Exploitation and Abuse and Discrimination in Migration Affecting Women and Children in Vietnam: A Baseline Study," in *Violence, Exploitation and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN Countries: A Baseline Study* (Jakarta: AHRRC, 2013).

persons”, it includes provisions for victims who are men and boys between 16 and 18 years old. Additionally, it also included definitions of sexual exploitation, sexual slavery and force labour, not addressed before.¹⁸

Vietnam has a number of bilateral agreements with Thailand, China, Cambodia and Lao PDR, to cooperate on counter-trafficking measures. It has also signed a number of Mutual Legal Assistance Treaty (MLAT) with China, Lao PDR, Mongolia, Republic of Korea, and United Kingdom. Vietnam participates in bi-lateral agreements with all parties of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), with the exception of Myanmar. These agreements include the Agreement with Lao PDR on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010); Agreement with Cambodia on Cooperation to Combat Trafficking in Women and Children (2005); Agreement with Thailand on Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (2008); Agreement with China on Strengthening Cooperation on Preventing and Combating Human Trafficking (2010); and a cooperation agreement with Cambodia on standard operating procedures on identification and repatriation of trafficked victims (2009).¹⁹

In terms of international multilateral arrangements, Vietnam is a signatory to:

- International Covenant on Civil and Political Rights (ICCPR) (1976)
- Protocol to the Convention against transnational organized crimes on human trafficking (2000)
- ASEAN Declaration on Transnational Crime (1997)
- ASEAN Hanoi Plan of Action to Combat Transnational Crime (1998)
- ILO’s Convention No. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2000)
- Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Child Prostitution and Child Pornography (2001)
- ASEAN Declaration against Trafficking in Persons Particularly Women and Children (2004)
- Treaty on Mutual Legal Assistance on Criminal Matters (2004)
- Convention Against Transnational Organized Crime (2004)
- Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), Memorandum of Understanding on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region (GMS) (2004)

¹⁸ According to Vietnamese law, a person is a “child” until 16 years old, but is an “adult with legal consent” from 18 years old onwards, leaving a gap for the group of population between 16 and 18 years old.

¹⁹ UNODC, “Needs Assessment for Establishing a National Referral Mechanism in Vietnam,” (UNODC Regional Center for East Asia and the Pacific, 2012).

- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)

The Vietnamese government actively pursues internationalisation and regionalisation. Among these processes are continued efforts to combat and mitigate human and transnational security threats, including trafficking and smuggling in people. Vietnam has taken part in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) since 2004.

IV. PROGRESS INDICATORS

The problem of trafficking in persons has emerged on the radar of the Vietnamese government. The new *Law on Prevention, Suppression Against Human Trafficking in Vietnam* in 2011, and amendment to the Penal Code, rephrasing “trafficking in women and children” to “trafficking in persons”, showed not only a recognition that men can also be victims of trafficking, but also a certain adjustment to the international legal definitions.

The internationalization and globalization that the Vietnamese government has put intensified efforts to engage in have brought a two-fold impact. On the one hand, enhanced technology, connectivity and globalization in general have contributed to more convenient transnational activities and transportation. These serve as a convenience for organized transnational crime gangs, including traffickers. Improved communication and connectivity with the world has also encouraged people to travel more and made the decision to pursue employment abroad less of a problem. Such a perception can turn out to be dangerous for those who lack proper preparation prior to migration and do not have an understanding of their rights.

On the other hand, because of intensified participation in multilateral arrangements and international organizations, room for criticism and assessment from outside has been made. As an “*active and responsible member of international society*”²⁰, Vietnam is expected to adjust to international norms and standards. Being a part of regional and international institutions, Vietnam has become party to a number of conventions, declarations and regional processes, including those addressing trafficking and transnational crimes.

According to the United Nations Inter-agency Project on Human Trafficking that facilitates the COMMIT work: “*Vietnamese government has been one of the most active and showing political will to address the growing problem of human trafficking in the Greater Mekong Sub-region.*”²¹

The government of the Socialist Republic of Vietnam has launched a programme called “130” for its USD130 million budget to fight human trafficking. The 130 Program endeavours to implement the responsibilities set forth by the *Law on Prevention, Suppression against Human Trafficking in Vietnam* and to enhance inter-ministerial collaboration to combat

²⁰ Target for Vietnamese foreign policy: Binh Minh Pham, “Thoughts on shaping new foreign policy [Một số suy nghĩ về định hình chính sách đối ngoại mới],” in *Setting direction for strategic diplomacy of Vietnam toward 2020 [Định Hướng Chiến Lược Đối Ngoại Việt Nam đến 2020]*, ed. Binh Minh Pham (Hanoi: National Political Publisher Nhà Xuất Bản Quốc Gia, 2010).

²¹ UNIAP officer, interview February 21, 2014, Bangkok.

human trafficking and provide assistance to victims. The 130 Program's overall objective is divided into five goals:

1. Increase the awareness of human trafficking,
2. Increase the effectiveness of investigation and prosecution of human trafficking cases,
3. Increase the ability to identify victims and provide protection and assistance,
4. Strengthen legislation to properly address human trafficking, and
5. Increase the effectiveness of international cooperation to prevent human trafficking.

Previously, the government launched a National Plan of Action (NPA) 2004-2007 to deal with Criminal Trafficking in Women and Children. It addressed four main components: (1) Communicating with and educating communities on trafficking; (2) Combating trafficking in children and women; (3) Receiving and supporting women and children victims returning from abroad; (4) Developing and strengthening a legal framework in relation to preventing and combating criminal trafficking in women and children. However, this NPA and a number of other initiatives had limited budget and more initial character.

Vietnam has been active in participating in regional mechanisms to combat trafficking. It is a signatory to most existing regional multilateral cooperation arrangements. Bilateral agreements play a significant role. Since 2001, Vietnam and China have launched a number of cooperation programmes at various levels based on informal agreements and annual joint action plans. It has been a strong partnership and it has served as a role model and basis for the China-Myanmar Anti-Trafficking Cooperation Framework 2007-2010.

V. REMAINING CHALLENGES

There is still room for improvement for the Vietnamese legal system in addressing trafficking. For example, the Vietnamese versions of the Penal Code and *Law on Prevention, Suppression Against Human Trafficking in Vietnam* use the term "buying and selling" rather than "human trafficking"; this fails to acknowledge the three elements that collectively define human trafficking in the Palermo Protocol, which are the means, the purpose and the act.²²

Moreover, the referral mechanism of victim identification requires further efforts. Victim identification still has a reactive nature in Vietnam, as self-identification remains the major source. There have been cases reported that under the referral agreements victims are returned to Vietnam but receive no assistance at the border and hence are exposed to threats of re-trafficking. The UNICEF report stated: "*In China officials continue to return trafficking victims to Viet Nam as a part of general deportations, with no clear distinctions between victims of*

²² UNODC, "Needs Assessment for Establishing a National Referral Mechanism in Vietnam."

*trafficking, other irregular migrants, and even traffickers.*²³ Stronger assistance for repatriation and return needs to be introduced.

Often, victims of trafficking are coerced into illegal activities, e.g., commercial sex services, other forms of crime like drugs distribution and stealing, etc. There must be improvement in assuring victims of trafficking that they will not be prosecuted for the acts committed as a result of being trafficked. Moreover, many survivors of trafficking are not willing to report to the police and pursue the legal process for fear of retaliation. Hence, many trafficking cases remain unreported. Furthermore, victims' sharing of their experiences is important for improvement of prevention and protection mechanisms. For these reasons, stronger victim protection mechanisms are required.

Particularly in the cases of identification of children, the mechanisms and investigations need to ensure a child-friendly environment with strong support in terms of counselling, a safe environment and victim protection. Many cases have found that victims were kept in the same interrogating space at police stations with suspect traffickers while waiting for their cases to be resolved.²⁴

In terms of rehabilitation, there are 9 shelters (5 long-term and 4 short-term) run by the government, and a number run by international agencies. In shelters, survivors of trafficking receive healthcare, psychological counselling, vocational training, jobs and legal assistance. However, the rehabilitation beyond shelters (to which not all survivors get, particularly those self-identified ones) remains challenging.

In the awareness campaigns run by the Department of Social Evils, trafficking is portrayed as one of the "social evils", which is understood as deviation from legal, social, and ethical standards, and a negative repercussion of modernization. Among other "social evils" defined by the state are drug abuse, prostitution, pornography, gambling, and corruption. Campaigns address trafficking in connection with drug abuse, HIV, prostitution, and criminality. There is a need to separate such issues from each other and not put trafficking victims in "one basket" with the others. Moreover, it leads to a perception that stigmatizes trafficking survivors as "participants" in those social evils.²⁵ Therefore, survivors often face difficulties in reintegration with the society. Stigmatization of trafficked people prevents them from successfully engaging in the original community. In extreme cases, many survivors search again for opportunities for migration and some of them have fallen prey to re-trafficking.

Related to trafficking is the commercial sex industry. Although it is a lucrative industry, it remains officially illegal. There are no registered brothels; hence, there are no precise statistics on women working in prostitution. They have no social or health protection, which leads to other public health and social problems, including sexually transmitted diseases, unwanted pregnancies as well as abandoned children, etc. Moreover, because there is no official registry,

²³ UNICEF, "Reversing the Trend: Child Trafficking in East and Southeast Asia," (Bangkok: UNICEF East Asia and Pacific Regional Office, 2009).

²⁴ UNODC, "Needs Assessment for Establishing a National Referral Mechanism in Vietnam."

²⁵ Le Thu, "Violence, Exploitation and Abuse and Discrimination in Migration Affecting Women and Children in Vietnam: A Baseline Study."

there is no control over potential under-aged girls engaging in the industry. Non-existent formal registration, statistics and control creates a grey space for trafficking for sexual exploitation purposes.

At the root, discriminating conditions for certain groups, including those affecting women's and ethnic minorities' economic independence, such as limited accessibility to microfinance loans, preferential educations for boys and migration policies, make women more vulnerable to exploitations. Exploitations include trafficking. Comparably, lower education makes them more likely to seek informal means of migration (e.g., through a friend's referral), and they are more likely to agree to less favourable working conditions. Marriage migration is another option that becomes available to women.

Geographical disparity also prevents equal distribution of not only wealth and opportunities, but also awareness and information campaigns. Hence, ethnic minorities and communities in remote areas have limited channels to access safe migration programmes or financial assistance and microfinance credits programmes. Hence, they are more prone to the trafficking threat while searching for economic migration.

Effective response is limited by the weak coordination among internal governmental agencies. Unclear division and accountability between MOLISA, Border Policy Force, Regular Police Force, local governments and other agencies have a negative impact on the effectiveness of response mechanisms. Insufficient information sharing also limits accurate understanding of the matter, including aggregated statistics. Corruption on many levels hampers not only response to, but also prevention and protection of the problem.

VI. RECOMMENDATIONS

Vietnam has showed its political will to address the growing issue of trafficking in persons. The introduction of the new Anti-Trafficking Law, implementation of the National 130 Program and active participation in international initiatives are examples. Along with good practices, including involvement of non-state actors in the process and increased cooperation with international agencies, there are a number of limitations to be addressed.

The following are some recommendations with a view to enhancing the response to trafficking in Vietnam:

- Harmonize the Penal Code with the Law on Prevention, Suppression Against Human Trafficking;
- Include provisions in the Law to protect victims from prosecution;
- Change the definition of a minor to less than 18 years of age to adhere to international standards;
- Strengthen the current referral mechanism;
- Improve information sharing and coordinated division of tasks among responsible agencies;
- Create an aggregated single database;

- Increase technology capabilities for relevant actors;
- Trafficking survivors should disseminate their experiences that need to be included in the prevention strategy;
- State policies should focus more on ensuring safe repatriation, assisting survivors in coming back to the community, and rehabilitation centres;
- Awareness campaigns should engage local communities so as to develop networks against trafficking and should be addressed to men and women;
- Education about trafficking should be separated from other “social evils” to adequately address the issue and prevent stigmatization;
- More efforts and resources should be allocated to reach remote communities and ethnic minorities;
- Open shelters should not only be for females and children, but for males as well;
- Stronger efforts should be put into public legal awareness raising;
- Safe migration information and education programmes should be more accessible and widespread;
- More funding should be invested to research the issue.

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Human Trafficking in Taiwan

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INTRODUCTION

Globalization in the late 19th and early 20th century enhanced the connectedness of economies and cultures between countries, increasing the flows of goods as well as people. The economic growth of East Asia in the 1980s also created a demand for cheap labourers from Southeast Asia, especially in the areas of manufacturing and construction work (Skolnik and Boontinand, 1999). In the 20th century, labour migration is growing in Southeast Asia, as workers from poorer countries seek difficult but low-paid jobs in neighbouring countries, and the remittances the migrant workers send home have often helped economic growth in their home countries (*The Economist*, 2007). Against this backdrop, a growing number of migrant workers from Southeast Asian countries go after employment opportunities in wealthier countries.

Taiwan is located off the southeast coast of China and north of the Philippine island of Luzon. Its unique geographical location creates a main international transport hub for business and leisure. Taiwan was affected by globalization, and started to import migrant workers from 1989, to alleviate the problem of labour shortage for the manufacturing industries. The number of migrant workers has continued to increase since 1989, and other sectors in addition to the manufacturing industry were also in need of migrant workers. Migrant workers are mainly divided into two categories: production and service workers (*Migration News*, 2007). Taiwan's government even decided in 2012, to loosen the limit on the proportion of migrant workers a firm could hire from 35% to 40% (Sui, 2012). While the number of migrant workers has been on the rise, the procedures for recruiting migrant workers have been flawed. The majority of migrant workers came to Taiwan via private employment agencies or brokers, which often asked migrants to pay large sums of money before coming to Taiwan (*Migration News*, 2007). Traffickers usually take advantage of these flawed procedures and migrant workers' desperation to seek better lives, abusing and exploiting them without being detected by criminal justice agencies (Fuchs, 2011).

The Trafficking in Persons Report (TIP) in 2013 reported that Taiwan is a destination country for victims of sex trafficking and forced labour, and that victims are mostly migrant

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workers from Vietnam, Thailand, Indonesia, China, Cambodia, the Philippines, Bangladesh, and India. The migrant workers were recruited by the employment agencies or brokers to perform low-skilled and difficult jobs in the production sector (i.e., manufacturing, construction, and fishing industries) as well as the domestic sector (i.e., home caregivers and domestic workers). However, they were charged large sums of recruitment fees in their home countries, and so they were heavily indebted and might afterwards be coerced or threatened by brokers or employers in Taiwan to repay their debts (TIP Report, 2013). In addition to forced labour, some women and girls from China or Southeast Asian countries were deceived into coming to Taiwan for the purpose of sexual exploitation (TIP Report, 2013). Although Taiwan is primarily a destination country for human trafficking, some Taiwanese women were recruited through advertisements for jobs in Japan, Australia, the United Kingdom, and the United States, but ended up being forced into prostitution (TIP Report, 2013).

CURRENT TREND IN HUMAN TRAFFICKING

The patterns of human trafficking have not changed much since Huang (2007) conducted a study in 2006. He found that victims were trafficked to Taiwan through legal work permits, marriages, fraudulent marriages, illegal immigration, or tourist visas, and that their legal documents were confiscated after entering Taiwan (Huang, 2007). In order to further explore the means and types of exploitation traffickers used, two studies were later conducted. Chen (2009) interviewed 81 female victims of human trafficking in Taiwan between November 2007 and June 2008, while Fuchs (2011) collected data on 74 suspected trafficking victims between December 2009 and February 2010. The two studies reported similar findings concerning the patterns of human trafficking. While Chen (2009) found more patterns of human trafficking in Taiwan, the most commonly used methods by traffickers reported by the two studies were alike. These commonly used methods are as follows:

1. **Fraudulent marriages.** Migrant workers were recruited by employment agencies, brokers, or matchmakers in their home countries and came to Taiwan through fraudulent marriages. After arriving in Taiwan, brokers or employers forced workers to perform work outside the scope of their contracts. Brokers or employers might also use verbal threats, physical or sexual violence, confinement, and/or the confiscation of travel documents to control workers. They were subjected to forced labour or sexual exploitation.
2. **Legal work permits.** Migrant workers were recruited by employment agencies or brokers in their home countries and came to Taiwan through legal work permits. The agencies or brokers charged workers huge sums of recruitment fees, so they were deep in debt. Workers were forced to work over 10 hours every day to repay the debts, and might meanwhile be subjected to verbal threats, physical violence, confinement, and/or the confiscation of travel documents. They were subjected to forced labour or sexual exploitation.

3. **Undocumented workers.** Migrant workers came to Taiwan through legal work permits. However, they decided to run away from their legal employers because they could not tolerate the unfriendly working conditions, such as working overtime, low wages, and/or bad employers. They lost their legal status, becoming undocumented workers. They were subsequently recruited by friends or others, and were subjected to forced labour or sexual exploitation.
4. **Tourist or student visas.** This method was used primarily to recruit women or girls for the purpose of sex trafficking. Women and girls were recruited by friends or through advertisements in the newspapers and came to Taiwan through tourist or student visas. After they arrived in Taiwan, traffickers used verbal threats, physical violence, confinement, and confiscated their travel documents to force them into prostitution.

There were two lesser-used methods by traffickers: real marriages but then forced into prostitution, and smuggling (Chen, 2009). No matter how migrant workers were trafficked to Taiwan, they all faced at least one of the following conditions: verbal threats, physical abuse or violence, sexual assault, confinement, and confiscation of travel documents.

In addition to malicious employment agencies or brokers, legal employers can also become traffickers. If the employers ask migrant workers to perform work that is not within the scope of their contracts and/or subject them to poor working conditions, their acts constitute trafficking in persons. Migrant workers can work in Taiwan for up to nine years, but they have to leave Taiwan and then come back for every three-year term. Taiwan's Foreign Labour Policy states that issuance of a migrant worker's work permit is contingent upon the employer and a change of employer or work is only possible under certain circumstances (Fuchs, 2011). Sometimes brokers in Taiwan helped employers deport migrant workers who did not live up to their expectations, thus allowing the brokers to recruit more new migrant workers to fill the empty quota (TIP Report, 2013). These bad practices have left migrant workers trapped in an abusive working environment.

TAIWAN'S TIER RANKINGS

The U.S. Congress passed the Trafficking Victims Protection Act (TVPA) in October 2000 to declare that trafficking in persons is a serious violation of human rights, severely punish the traffickers, protect the victims, and prevent future offences. According to Section 110 of the TVPA (2000), the U.S. Department of State needs to send a TIP Report to the U.S. Congress annually, describing foreign governments' efforts to eliminate severe forms of trafficking in persons. The U.S. Department of State evaluates whether a country fully complies

with the TVPA's minimum standards for the elimination of trafficking, and places it into one of four ranks: Tier 1, Tier 2, Tier 2 Watch List, and Tier 3.²

Countries that fully comply with the minimum standards are ranked as Tier 1, while countries that do not fully comply with the minimum standards but are making significant efforts to do so are ranked Tier 2 (TIP Report, 2013). A Tier 2 Watch List was added to the tier rankings in the Trafficking Victims Protection Reauthorization Act of 2003. Countries are ranked as Tier 2 Watch List when their government do not fully comply with the minimum standards, but are making significant efforts to do so, and one of the 3 criteria exists: "(a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or (c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year" (TIP Report, 2013, p. 47). Lastly, countries are ranked at Tier 3 when they do not comply with the minimum standards and are not making significant efforts to do so (TIP Report, 2013).

Taiwan was a Tier 1 country from 2001 to 2004 (Trafficking in Persons Report, 2001; 2003; 2004). However, Taiwan became a Tier 2 country in 2005 because Taiwan did not properly identify victims of trafficking and placed some victims in detention centres (TIP Report, 2005). The TIP Report (2005) also indicated that Taiwan did not provide legal alternatives other than repatriation, and lacked a comprehensive anti-trafficking law to protect and assist victims (TIP Report, 2005).

Taiwan fell to Tier 2 Watch List in 2006, mainly because the government had not yet drafted a comprehensive anti-trafficking law to prosecute all forms of human trafficking, particularly forced labour, and to protect trafficking victims (TIP Report, 2006). Taiwan's brokers and/or employers used workers' large amount of recruitment fees as a tool to coerce them into forced labour, and if the brokers and/or employers were later found guilty of exploiting migrant workers, they received only administrative fines (TIP Report, 2006). Moreover, over half of the migrant workers in Taiwan were caregivers and domestic helpers, but they were not protected by the Labor Standards Law (TIP Report, 2006). Lastly, victims of trafficking were not properly identified, were even punished for their criminal acts which were direct results of being trafficked, and there were no shelters specifically designed for them (TIP Report, 2006).

² Section 108(a) of the TVPA states the minimum standards as follows: (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking; (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaning consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

Taiwan returned to Tier 2 in 2007, and remained so until 2009. Although Taiwan passed the National Action Plan to show its determination to combat human trafficking, the 2007 TIP Report criticized Taiwan for being in need of a comprehensive anti-trafficking law to criminalize all forms of trafficking and its related acts. The TIP Report (2007; 2008; 2009) indicated that Taiwan did not properly identify victims, not only categorizing them as illegal immigrants or workers but also placing them in over-crowded detention facilities in which very limited services were provided. “Runaways” (i.e., migrant workers who decided to escape from their legal employers) were treated as criminals and subjected to punishment and deportation without being considered victims of trafficking (TIP Report, 2007; 2008; 2009). The Council of Labor Affairs (CLA) often viewed exploitative work situations as labour disputes rather than trafficking, without referring the incidents to law enforcement agencies for further criminal investigation (TIP Report, 2007). Despite the fact that Taiwan had passed an anti-trafficking law in 2009, and built shelters to better assist victims, the law had not been fully implemented to prosecute traffickers and to protect victims (TIP Report, 2009).

Taiwan was ranked Tier 1 in 2010, and this has remained unchanged since then. TIP Report (2010; 2011; 2012; 2013) consistently stated that Taiwan has implemented the anti-trafficking law, stringently prosecuting and punishing traffickers, improved victim protection, and continued to train law enforcement personnel, officials in the CLA, and labour inspectors on victim identification and the anti-trafficking law. Taiwan has also been encouraged to improve efforts to more effectively use the anti-trafficking law to investigate, prosecute, and convict trafficking incidents (TIP Report, 2010; 2011; 2013; 2013). In addition, the U.S. Department of State suggests that Taiwan continues to train personnel who may come into contact with victims, raise awareness among victims to ensure that they know what their options are, and increase public awareness of all types of trafficking (TIP Report, 2010; 2011; 2013; 2013).

ANTI-TRAFFICKING POLICIES AND EFFECTS

There were no specific policies on combating trafficking in persons when Taiwan was ranked Tier 1 between 2001 and 2004. When Taiwan fell to Tier 2 in 2005, the amendments to the Immigration Law, focusing on prevention and protection of victims of trafficking, were sent to the Legislative Yuan for review for the first time in August 2005 (The Ministry of the Interior, 2007). However, Taiwan had not taken major steps to fight trafficking in persons until 2006, when Taiwan was listed on Tier 2 Watch List in the TIP Report. The 2006 TIP Report indicated that Taiwan failed to “address the serious level of forced labour and sexual servitude among legally migrating Southeast Asian contract workers and brides,” because Taiwan lacked a comprehensive anti-trafficking law and provided inadequate protection for victims of trafficking (TIP Report, 2006, p. 238). As a result, Taiwan started to make great efforts to prevent human trafficking.

Taiwan’s Executive Yuan convened eight inter-agency meetings and consulted with experts and scholars to produce a national action plan (NAP) in November 2006 to show its determination to combat trafficking in persons (The Executive Yuan, 2007). To be

consistent with the United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* in 2000, the NAP correspondingly stresses three anti-trafficking elements: prosecution, protection, and prevention (The Executive Yuan, 2006). The NPA aims to reach the goals of protection of human rights, adequate criminal investigation and prosecution, awareness-raising campaigns, and international collaboration for the purpose of establishing a comprehensive anti-trafficking approach (The Executive Yuan, 2006). After the promulgation of the NAP, law enforcement personnel and other professionals who were likely to come into contact with victims of trafficking started to take the matter more seriously. However, the NAP was merely an executive order, which did not have legal consequences if it was not abided by. Taiwan still faced the same difficulties, including inability to prosecute all forms of trafficking, particularly labour exploitation or debt bondage, as well as insufficient protection for victims.

In addition to the NAP, Taiwan's government had enacted several anti-trafficking policies in 2006 and 2007. The Ministry of Justice produced an Executive Plan for Prevention of Human Trafficking Offenses on December 12, 2006, mandating every district court to appoint prosecutors to investigate and prosecute trafficking offences, appellate courts to form a specialized supervision unit, and the Office of the Prosecutor for the appellate courts to organize all human trafficking cases (The Executive Yuan, 2007). The Executive Yuan also established the Administrative Council Meeting on Prevention of Human Trafficking, which has been convened once every two months since March 7, 2007, building a communication platform between the government agencies and non-governmental organizations (NGOs) to discuss issues related to human trafficking (The Executive Yuan, 2007). These efforts made by the Ministry of Justice and the Executive Yuan increased coordination and cooperation between governmental and non-governmental organizations. Taiwan's government also started several awareness-raising campaigns targeting foreign spouses, migrant workers, and the public, regarding forms of trafficking and help resources.

Despite the efforts Taiwan made in 2006 and 2007, the U.S. Department of State reported that punishment for traffickers was too lenient and protection for victims was still insufficient (TIP Report, 2007). In contrast to the policies enacted in 2007, Taiwan focused more on prosecution of traffickers and assistance for victims in 2008. The Ministry of Justice had formal victim identification procedures, so more victims could be identified without being treated as illegal immigrants or undocumented foreign workers (The Executive Yuan, 2008). As a result, more victims were identified by law enforcement personnel and received services such as psychological and legal counselling, and financial aid (TIP Report, 2008). However, law enforcement personnel also indicated that, due to the language barrier, some victims were not identified, arrested, and detained for unlawful acts committed as a direct result of their being trafficked (TIP Report, 2008). Thus, the Ministry of Interior collaborated with the Council of Labor Affairs (CLA) to compile a centralized interpreter database accessible by law enforcement officials (TIP Report, 2009).

The Ministry of Justice also collaborated with the Association for Protection of Victims of Criminal Acts (APVCA) to provide services for victims and to inform their families in

their home countries and embassies in Taipei of their physical safety, in the hope that victims and their families could be fully informed of their current situations and options (The Executive Yuan, 2008). Other policies on victim assistance and protection included victim accompaniment services and physical safety plan when testifying in court (The Executive Yuan, 2008). Taiwan's government also relaxed the foreign labour policies in an attempt to reduce illegal migrant workers, including establishing the Direct Employment Center on December 2007, to make the direct hiring process more efficient, lower restrictions on change of employers, and improve the respect of human rights of migrant workers (The Executive Yuan, 2008). While the identified victims might have benefited from these protection measures, the problem that a large number of victims were not identified and even treated as criminals remained (TIP Report, 2008).

The U.S. Department of State consistently reported that Taiwan did not prosecute all forms of trafficking, especially forced labour and involuntary servitude, and did not provide adequate protection for victims because Taiwan did not have a comprehensive anti-trafficking legislation (TIP Report 2005; 2006; 2007; 2008). Thus, Taiwan made great efforts to draft laws in order to better prosecute, protect, and prevent trafficking. Amendments to Taiwan's Immigration Act were enacted in August 2008, to improve protection for victims and witnesses, including six-month temporary residency and work permits (The Executive Yuan, 2008). Shortly after Amendments to Taiwan's Immigration Act went into effect, a comprehensive anti-trafficking law, the Human Trafficking Prevention and Control Act (HTPCA), was passed by the Legislative Yuan in January 2009, to combat trafficking in persons and to protect victims' rights. Because the HTPCA covers both victim protection and criminal prosecution, law enforcement officials usually use the HTPCA rather than the Amendments to the Immigration Act.

The HTPCA has been implemented since 2009, but its effect is rarely evaluated. Wang, Wang, Huang, and Su (2012) conducted seven focus groups with the police, prosecutors, labour agency personnel, social workers, and lawyers to examine the difficulties and challenges they had faced since the implementation of HTPCA in 2009. They also interviewed 30 victims of trafficking (24 victims of forced labour, 6 victims of sexual exploitation) to more fully grasp the ordeals that victims had gone through. Wang et al. (2012) found that (1) it was difficult for law enforcement officials to collect information and evidence on trafficking offences because of its clandestine nature; (2) the law requires that the victim is "in a state of vulnerability that results in his or her inability to seek help from others," but the prosecutors indicated that since most victims could go out, communicate in Chinese, have friends, and have come to Taiwan a few times, it is difficult to prove that they were unable to seek help; (3) the law states that "trafficking is for the purpose of profit making," but most of the migrant workers in Taiwan were forced to perform work outside the scope of their contracts, which is not entirely for "profit making;" (4) victims and their families were compensated for their physical and psychological injuries, but they were most in need of lost-wages compensation, which was not mandated by law; (5) the law states that "the victim has the opportunity to express his or her opinions on the matter in court," but in most cases, the judge handed down the decision without listening to what the victim had to say; and (6) victims might have been

issued six-month work permits, but could not find jobs because of the remote location and the curfew imposed by the shelters.

Although Taiwan's legal authorities have used the HTPCA to convict traffickers (e.g., 65 people for forced labour and 186 people for sexual exploitation in 2012; 51 for forced labour and 113 for sexual exploitation in 2011), Wang et al.'s (2012) research findings showed that criminal justice personnel and social workers have encountered difficulties when using the anti-trafficking law. Since there has been only one study evaluating the effect of the anti-trafficking law, more research is needed to examine its effect. If future studies have similar findings, amendments to the HTPCA would be warranted.

Other than anti-trafficking law enforcement measures, Taiwan has regularly provided professional training for law enforcement personnel, officials in the Council of Labor Affairs, labour inspectors, prosecutors, and judges on victim identification processes and the anti-trafficking law (TIP Report, 2011; 2012; 2013). Those who may come into contact with victims of trafficking are better equipped to identify victims because of recurrent training. Furthermore, Taiwan continually undertakes awareness-raising campaigns targeting potential victims through TV, radio, and newspaper advertisements, so that they know of help resources and legal remedies. The CLA operates foreign-worker service stations around Taiwan and service counters inside the international airports, so that migrant workers can be informed of their rights and the hotline number. The campaigns also target the public, raising awareness of how trafficking takes place, the perils of trafficking, and how to prevent it. However, the effects of these prevention measures have yet to be determined.

CONCLUSION

Taiwan has been mainly a destination country for people who are forced into labour or sexual exploitation, and started to develop policies on anti-trafficking in 2006, when trafficking became a much more serious problem. Taiwan promulgated the national action plan in November 2006, encouraged coordination and cooperation between governmental and non-governmental organizations, formed a specialized supervision unit in the Prosecutors Office for appellate court, developed measures to identify victims, built shelters for victims, provided compensation for victims and their families, re-examined the labour immigration policy, and enacted a comprehensive anti-trafficking law in order to more fully prosecute, protect, and prevent trafficking in persons. The U.S. Department of State has ranked Taiwan a Tier 1 country since 2010, because of Taiwan's great efforts to combat trafficking. However, more research is needed to evaluate the effects of these policies. Meanwhile, it is important to form international alliances, especially with source countries. However, the controversial political status of Taiwan has made it difficult to establish diplomatic relations with other countries. While the NGOs in Taiwan have collaborated with NGOs in source countries, this collaboration has to advance into the governmental level, so that Taiwan's government can make more progress in combating trafficking in persons.

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Myanmar-Thailand Bilateral Cooperation to Combat Trafficking in Persons

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HUMAN TRAFFICKING BETWEEN MYANMAR AND THAILAND

In recent years, Myanmar has been recognized as “the epicenter of human trafficking and exploitive/unsafe migration in mainland Southeast Asia”². Thailand is the key destination for labour migration and trafficking from Myanmar, and extensive research in four key industries in 2006 found that “Thailand has emerged as the number-one destination in the cross-border trafficking of children and women” in the Greater Mekong Sub-region (GMS) more broadly³. It has since emerged that men are also clearly vulnerable and the UN Special Rapporteur on Human Trafficking reported after a visit to Thailand in 2011:

The trafficking of men, women and children for labour exploitation is growing in scale in various sectors, including agricultural, construction, fishing, seafood processing, manufacturing and textile industries. In particular, the trafficking of migrant men and boys for labour exploitation on fishing boats is notoriously widespread⁴.

As elsewhere the statistics on human trafficking prevalence are limited; however, research in 2008 estimated that approximately a third of Burmese migrants in Samut Sakhon province in

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² Feingold, D. A. (2012) “The Burmese traffic-jam explored: Changing dynamics and ambiguous reforms”, *Cultural Dynamics*, p. 211.

³ Pearson, E. (2006) “Underpaid, Overworked and Overlooked”, ILO, p. xvii. This extensive research was conducted under the Trafficking in Children and Women project and resulted in substantial findings on exploitation and forced labour of migrants in four key industries: agriculture, manufacturing, fishing and fisheries, and domestic work.

⁴ Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (2012) “Mission to Thailand”, United Nations General Assembly, Human Rights Council, 20th Session, p. 4.

Thailand had at some point been trafficked⁵. Recent research indicates there are 2.3 million Myanmar migrants in Thailand meeting the demand for labour in low-skilled sectors⁶. It is well recognized that the vast majority of trafficked persons are not identified as such, and that there are multiple barriers to formal identification of victims⁷. From official statistics that are available, over the period from 2001 to February 2011, “Thailand provided shelter for 4,863 non-national victims of human trafficking [including] 1,576 from Myanmar”⁸. In 2012, of 594 persons identified as victims of trafficking in Thailand, 145 were from Myanmar, trafficked for a range of purposes, with sexual exploitation as the most prevalent across all nationalities⁹. Taking into account estimates of forced labour globally, it is clear that there are significant challenges in identifying those trafficked for labour exploitation.

Prominent cases of trafficking for forced labour in recent years have come to light through the cooperation of civil society (to whom cases are often first reported) together with government authorities. These demonstrate patterns of trafficking in Myanmar from their communities, from border areas en route, and while in destination communities in Thailand, sometimes after having already been working in other trafficked or non-trafficked environments. The causes of these patterns are multiple and are rooted initially in the social, economic, and political situation in Myanmar and the corresponding pull factors on the Thai side of the border, being the socio-economic development in Thailand and the profile of industries that benefit from a supply of low-skilled migrant labour. At 2,400km, the Myanmar-Thai border is very difficult to regulate, providing opportunities for brokers facilitating the movement. While there are only four main border crossing points, there are many areas to cross in close proximity to these, and brokers can bring migrants by foot through the mountain and forested areas.

⁵ Labour Rights Promotion Network (LPN) and Johns Hopkins Bloomberg School of Public Health (2011) “Estimating Labor Trafficking: A Study of Burmese Migrant Workers in Samut Sakhon, Thailand”, UNIAP. As a hub of the seafood processing industry in Thailand, Samut Sakhon is estimated to have some 200-300,000 Burmese migrants in such industries, and the study found that 33.6% of respondents had been trafficked at some stage into forced labour.

⁶ International Organisation for Migration, Country Mission for Thailand, and Asian Research Center for Migration, Chulalongkorn University (2013) “Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand”, IOM Thailand, p. vii.

⁷ See ILO (2012) “ILO Global Estimate of Forced Labour: Results and Methodology”, International Labour Office/Special Action Project on Forced Labour (SAP-FL) for global estimates of forced labour at 20.9 million persons, and also regional estimates. For an analysis of why many victims of trafficking are not identified in the Greater Mekong Sub-region, refer to Surtees, R. (2013) “After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked Persons in the Greater Mekong Sub-region”, UNIAP/NEXUS Institute.

⁸ Yamada, M. (2012) “Comparative Analysis of Bilateral Memoranda on Anti-human Trafficking Cooperation between Thailand and Three Neighboring Countries: What Do the Origin and the Destination States Agree Upon?”, Institute of Developing Economies, Discussion Paper No. 349, p. 3.

⁹ Royal Thai Government (2013) “Thailand’s Annual Report on Efforts and Progress on the Implementation of Anti-Human Trafficking Action Plan in 2012 for the U.S. Department of State’s preparation of Trafficking in Persons Report of 2013”.

SITUATION OF MIGRANT WORKERS

Thailand's economic development, progressing from a lower middle-income to an upper middle-income country in recent years, according to the World Bank, puts it in stark contrast with those neighbours with which it shares long borders¹⁰. With its export-oriented development and low unemployment, demand for migrant workers to meet labour demand in low-skilled (3D) industries has outpaced domestic supply. There is an understandable desire to see this labour migration occur orderly through formal channels, yet progress towards a broader migrant labour management strategy to meet demand and also afford sufficient monitoring and protection of labour rights has been lacking. Manifesting the contention in the economic and labour demand with the internal security in the country, the National Security Council has sought to address the issue of irregular migrants in the country through a draft Comprehensive Strategy on Irregular Migration¹¹. Yet research indicates that there is limited evidence supporting claims that migrants pose a threat to national security, and a greater evidence base on the negative impact of national security policies on migrant communities in the form of exploitation¹².

The extortion of migrants and their vulnerability to corrupt practices has been highlighted with investigative reports from journalists and research conducted by international organisations¹³. The UN Special Rapporteur on Human Trafficking noted that “corruption, coupled with the infamous brokerage system, has diluted the efficacy of Government policies and programmes to combat human trafficking” in Thailand¹⁴. In a study on compliance with anti-trafficking policies over 2000-2010 for 180 countries, it was found that “compliance with (overall) anti-trafficking policies significantly decreases with corruption”¹⁵. Transparency International's Corruption Perception Index has seen Thailand's ranking fall from 59 of 159 countries in 2005 to 102 of 177 countries in 2013¹⁶. Therefore, despite strong rhetoric from the government regarding the need to combat corruption, the situation is worsening according to available metrics, and this may also reflect the situation of human trafficking in the country.

An understanding of the vulnerability of Myanmar migrant workers in Thailand is not complete without considering the environment from which they migrate. Myanmar has been undergoing a massive transformation in recent years, yet the impact of decades of military rule, economic mismanagement, human rights abuses and repression, marked Myanmar's

¹⁰ <http://www.worldbank.org/en/country/thailand/overview>.

¹¹ Office of the National Security Council (NSC), Thailand, presentation on “Current Migration Challenges in Thailand, Bangkok”, 13 June 2012

¹² Huguet, J. and Chamratrithong, A. eds. (2011) “Thailand Migration Report 2011”, IOM, p. 31.

¹³ See for example: Human Rights Watch (2010) “From the Tiger to the Crocodile: Abuse of migrant workers in Thailand”.

¹⁴ Ibid. UN Special Rapporteur on Trafficking in Persons (2012) p. 17,

¹⁵ Cho, S.Y., Dreher, A. and Neumayer, E. (2012) “The Determinants of Anti-trafficking Policies - Evidence from a New Index”. Economics of Security Working Paper 72, Berlin: Economics of Security, p. 4.

¹⁶ http://www.icgg.org/corruption.cpi_2005_data.html and <http://www.transparency.org/country#THA>.

socio-economic regression in the region¹⁷. Official policy for many years prohibited international migration; however, this has since changed to a more positive approach to supporting migrant workers. Many Myanmar migrants in difficult and exploitative labour conditions in Thailand still find that this offers a better chance for the future than returning to Myanmar.

NATIONAL ANTI-TRAFFICKING POLICIES

Myanmar's counter-trafficking efforts and infrastructure, particularly with regard to the law enforcement approach, have outpaced the country's broader development and Myanmar signed the UN Human Trafficking Protocol (or Palermo Protocol)¹⁸ in 2004. The national Anti-Trafficking in Persons Law passed in 2005 was the first in the Greater Mekong Sub-region to correspond to the definition in the Palermo Protocol. The Central Body for the Suppression of Trafficking in Persons (CBTIP) was established in 2005, along with the establishment of similar bodies at more local administrative levels. Myanmar's Anti-Trafficking Unit was created in 2004 under the Ministry of Home Affairs, and a network of 26 Anti-Trafficking Task Forces (ATTFs) has been built up across the country. The Anti-Trafficking in Persons Division (ATIPD) was established in 2013 to succeed the ATU and with a broader mandate for policy and coordination.

Myanmar's current five-year Plan of Action (2012-2016) under the auspices of the CBTIP succeeds the first five-year plan (2007-2011). Analysis from implementation under the 2007-11 plan saw 777 cases uncovered, with 2,164 perpetrators involved and 1,717 victims rescued¹⁹. This is broken down into seven trafficking patterns, being: 69.7% forced marriages; 13.6% prostitution; 10% labour exploitation; 4.8% child trafficking; 1.4% forced begging; and 0.5% sexual exploitation. Interestingly, despite the scale of migration and trafficking flows noted to Thailand, analysis of these cases also indicates that only 10% is accounted through flows to Thailand, while 80% is to China, the latter of which largely being young women and girls sold into forced marriage. The majority among the victims in Thailand were originally migrants without documents who had come to work and subsequently became trafficked. This distinction is a factor in the different number of identified victims out of the populations trafficked to Thailand and China.

Thailand first introduced legislation against human trafficking in 1997, although limited in definition to the trafficking of women and children, under the "Measures for Prevention and Suppression of Trafficking in Women and Children Act". In 2003, a national plan and policy was announced to run through until 2010 and the suppression of Trafficking in Persons was placed on the national agenda as a priority issue in 2004. The Anti-Trafficking in Persons Act (2008) brought the Thai legal definition of human trafficking into compliance

¹⁷ Ibid. Feingold (2013).

¹⁸ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 2000.

¹⁹ Myanmar Second Five-Year Plan of Action to Combat Human Trafficking (2012-2016), Central Body for the Suppression of Trafficking in Persons, Ministry of Home Affairs.

with the Palermo Protocol and two committees were established for implementation of the law. The Anti-Trafficking in Persons Committee (ATP Committee) was established with the Prime Minister as President to oversee the policy implementation of the government's anti-trafficking efforts. The Coordinating and Monitoring of the Anti-Trafficking in Persons Performance Committee, presided over by a Deputy Prime Minister, oversees the operational implementation. Three sub-committees were established under the ATP Committee, being: the Subcommittee on Human Trafficking Data Collection and Classification; the Subcommittee on the Assistance Program for Workers in the Fisheries Industry; and, the Subcommittee on Monitoring the National Anti-Trafficking Action Plan. The Committees and Subcommittees are all inter-ministerial and inter-departmental, with the subcommittees chaired by different agencies (the Royal Thai Police, Immigration, and MSDHS respectively). The current National Plan of Action (2011-16) stipulates a range of interventions, including specific actions to address labour conditions and trafficking in the fisheries industry. The government also ratified the Palermo Protocol in 2013.

The Ministry of Social Development and Human Security (MSDHS) is the focal ministry for anti-human trafficking and coordination of anti-trafficking efforts in Thailand, reflecting a victim-focused approach. Multidisciplinary teams have been established in all provinces, consisting of both relevant government agencies and key civil society organisations in those areas. There is a network of shelters across the country, both temporary and longer-term, with larger shelters for victims of trafficking in Bangkok. The National Operations Center on Prevention and Suppression of Human Trafficking (NOCHT) is the primary coordinating body under MSDHS and there are centres at the provincial level countrywide. There are MoUs between agencies at a sub-national level between provinces in the different regions, laying out guidelines, roles and responsibilities of the different agencies involved in the different stages of addressing trafficking cases. While inter-ministerial cooperation is important in anti-trafficking efforts, implementation is often complicated by protocols and power relationships between different agencies, as well as individual leadership²⁰.

REGIONAL AND BILATERAL COOPERATION

Cooperation to combat human trafficking in the Greater Mekong Sub-region began in the early 2000s, recognising that a regional approach was required, and led to the signing of the COMMIT Memorandum of Understanding (the Coordinated Mekong Ministerial Initiative Against Trafficking in Persons) between the six GMS governments in 2004. The UN Inter-Agency Project on Human Trafficking (UNIAP) has acted as Secretariat to the COMMIT Process and supported implementation of interventions across a range of anti-trafficking efforts together with a number of international agencies and projects including: IOM, ILO, UNICEF, ARTIP, Save the Children, and World Vision. Interventions include a range of

²⁰ As Yamada notes, while a multi-disciplinary approach is important for anti-trafficking work, “in reality, a ministry is in charge of matters prescribed by its legal base and ministries exist within their power politics”. Yamada, M. (2012) p. 14.

support to criminal justice responses, victim protection, prevention and policy development. The partner agencies and civil society also undertake a range of anti-trafficking efforts outside of the COMMIT Process, together with the governments.

The Association of Southeast Asian Nation (ASEAN) seeks to build cooperation against human trafficking and adopted the “ASEAN Declaration Against Trafficking in Persons Particularly Women and Children” in 2004. With the blueprint of the ASEAN Community outlined under the ASEAN Charter, trafficking is addressed to differing degrees under different bodies within ASEAN, including: the Senior Officials Meeting on Transnational Organised Crime (SOM-TC); the ASEAN Intergovernmental Commission on Human Rights (AICHR); the ASEAN Commission on Women and Children (ACWC); and, possibly the ASEAN Committee on the Protection and Promotion of the Rights of Migrant Workers. The issue is most directly addressed under the SOM-TC, incorporating the Heads of Specialist Units (HSU) process and the Working Group on Trafficking in Persons, under which there have been discussions towards an ASEAN Convention on Trafficking in Persons (ACTIP) and Regional Plan of Action²¹.

At a bilateral level, Myanmar and Thailand signed a “Memorandum of Understanding on Cooperation to Combat Trafficking in Persons, Especially Women and Children” in 2009, and a subsequent Plan of Action was agreed to support its implementation. A second phase of the Plan of Action is in implementation over 2012-14, including activities to improve victim protection, return and reintegration, criminal justice responses, and data collection on the situation. Bilateral cooperation in the return and reintegration of trafficked persons started in 2003; however, this was conducted in an ad hoc fashion until a systematic process was introduced in 2008, due to the high number of victims staying in the Thai government shelters. Bi-annual Case Management Meetings are held between the Department of Social Welfare (DSW), Myanmar, and the Bureau of Anti-Trafficking in Women in Children (BATWC), Thailand, to improve the operational level of return and reintegration. Case conference meetings are held to coordinate on specific cases and include coordination of family tracing and assessments to ensure the safety of returnees. Myanmar government officials have also conducted ad hoc visits to trafficked persons resident at Thai government shelters in order to understand and address their needs.

BILATERAL CRIMINAL JUSTICE RESPONSES

Cooperation has developed between the Anti-Human Trafficking Center in Thailand’s Department of Special Investigations (DSI) and the Anti-Trafficking in Persons Division in Myanmar Police Force (MPF) as a result of working on specific cases since 2009. This has been one of the more successful areas of bilateral cooperation in anti-trafficking in the GMS, in which channels of communication have been developed along with collaboration in investigating and pursuing cases. Quarterly meetings are held, supporting trust-building and information exchange. In 2013, this led to a broader engagement of law enforcement

²¹ Ibid. ARTIP (2011) p. 135.

and criminal justice practitioners from both sides, meeting in Yangon to determine how to improve cooperation in anti-trafficking more effectively. The Myanmar Police Force has tried to engage with the Anti-Human Trafficking Division (AHTD) under the Royal Thai Police (RTP) in Thailand, as the AHTD has the mandate for broader trafficking cases, while DSI has traditionally been mandated to focus on complex cases²². An MoU has been agreed between AHTD and DSI on cooperation in anti-trafficking efforts, yet the collaboration between MPF and DSI has continued to be the most proactive.

Despite the bilateral law enforcement collaboration that has developed in recent years, the relationship may at best be considered nascent in its ability to successfully result in criminal justice. Since 2006, cases of trafficking for labour exploitation into the seafood processing and fisheries industries became prominent when severe cases came to light involving Myanmar migrants²³. The subsequent response to such cases has seen some positive steps in specific cases, such as the taking of pre-trial depositions so that trafficked persons do not have to remain in shelters through the course of trials²⁴. In broad terms, these have been of mixed success and a systematic approach to the pursuit of justice and support to victims has been lacking due to a range of factors. For example, in cases of trafficked persons escaping forced labour on fishing boats, identifying the perpetrators is often difficult as the victims rarely know the names or other key identifying characteristics of the boats. The language barrier, the fear of repercussions, and the need to find a livelihood to send remittances home, also deter them from staying in shelters to pursue justice in cases that have limited chances of success. Where investigations are sufficient for a police report to be submitted to the Office of the Attorney General (OAG), the criminal justice process is lengthy and often relies on the victim's testimony (as is the case more generally), thus seeing further attrition in the number of cases reaching prosecution.

In 2012, a total of 305 trafficking cases were investigated by law enforcement in Thailand and ultimately 27 were pursued for prosecution²⁵. Data from previous years indicates that further attrition is likely and even those that see sentencing of perpetrators in the Court of First Instance will likely be drawn out to the Appeals Court and potentially the Supreme Court. Against the backdrop of the number of victims identified and estimates of the prevalence of forced labour as earlier outlined, the number of prosecutions for trafficking in persons reflects a minimal deterrent to traffickers. As the UN Special Rapporteur on

²² Royal Thai Government (2013) p. 15.

²³ Cases of note have been raised in the U.S. State Department's annual "Trafficking in Persons Report", Al Jazeera (2008) <http://www.aljazeera.com/programmes/general/2008/08/200882917912777575.html>; Environmental Justice Foundation (2013) "Sold to the Sea"; BBC (2014) "Forced to Fish on Thai Fishing Trawlers", <http://www.bbc.co.uk/news/magazine-25814718>, <http://www.bbc.co.uk/news/world-asia-pacific-12881982>; ILO (2013) "Caught at Sea".

²⁴ ARTIP (2011) "Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region", ASEAN Secretariat.

²⁵ Ibid. Royal Thai Government (2013) p. 18.

Human Trafficking notes, this “contributes to impunity of traffickers engaging in illicit and clandestine operations”²⁶.

BILATERAL LABOUR RESPONSES

In 2003, Myanmar and Thailand signed an MoU on the recruitment of migrant workers; however, this remained ineffective for years after as subsequent procedures were not agreed upon and implemented. A policy for registering migrant workers in Thailand was implemented in a limited way until 2004, when a broader amnesty for migrant registration was opened to all undocumented migrants from neighbouring countries in Thailand. A charge of 3,800 baht included registration, health check-up and insurance, and the registration process was opened again in subsequent years. A policy for nationality verification of migrant workers and issuance of temporary passports, as earlier expected under the MoU, only gained momentum with the constitution and government changes in Myanmar. As of July 2013, a total of 778,258 Myanmar migrants have completed nationality verification and have work permits, with a further 462,162 in the regularization process in Thailand, after their employers submitted their requests for employment²⁷.

While a positive development, there remains a range of limitations to the protections offered by the registration process, for example, the requirements that employers are responsible for registering workers, and workers are therefore tied to those employers. In comparison, 36,650 Myanmar citizens had migrated for work in Thailand through the formal MoU channel, representing a fraction of the broader flow of migrant workers. Research has also indicated that those going through such channels are also subject to potential exploitation, and therefore formal channels still face challenges in providing adequate protection²⁸.

In February 2013, a bilateral meeting between officials from the two countries’ Ministries of Labour agreed that Myanmar officials would be deployed at 11 One-Stop Service Centers for migrant workers in Thailand. Developments in other areas continue to be discussed at such meetings, including reduction in fees and extensions of deadlines to facilitate ease of migrants entering the formal system. The deadline for those undergoing nationality verification has now been extended for a year to allow for all those registered to go through the process, yet there is still no broader migrant labour management strategy in place to determine the fates of the million or more estimated undocumented Myanmar migrant workers currently in the country.

²⁶ Ibid. UN Special Rapporteur on Trafficking in Persons (2012) p. 17.

²⁷ Migrant Information Note, IOM, September 2013. The International Organisation for Migration (IOM) publishes Migrant Information Notes in Thailand on an approximately quarterly basis, tracking the migrant-related policy in Thailand and the numbers of those in different stages of the regularization process. <http://th.iom.int/index.php/component/remository/facilitating-migration/migration-information-notes/>.

²⁸ Mahidol Migration Center (2012) “Experiences of Myanmar Migrant Workers in Thailand with the MoU Import Process”, Institute for Population and Social Research, Mahidol University.

With the increased concern over trafficking onto fishing boats and the difficulties in enforcing a criminal justice response, a range of actions have been proposed by the government and industry to provide greater oversight and monitoring of recruitment of migrant labour. In October 2012, the Cabinet approved the establishment of seven Labour Coordination Centers as proposed by MSDHS and subsequently the Department of Employment issued a directive to outline the roles and responsibilities of the different agencies involved, which includes the Department of Labour Protection and Welfare, the Immigration Bureau and the National Fisheries Association of Thailand. The ILO has been supporting consultations towards the development of the centers and it is hoped that the supply of workers through these centers will be an incentive for fisheries operators to use this formal channel as opposed to the informal brokers they have relied on to date. An initiative between the Thai Government and the ILO entitled “Good Labour Practices” also seeks to normalize working conditions in the seafood processing and fisheries industry²⁹.

A key issue in work on fishing boats is the limitations of protection of labour rights; for example, the labour law does not apply to boats that are out of Thai waters for more than one year. As many boats are at sea for more than a year, to date there has been no risk of prosecution for forced labour on such boats. A ministerial regulation addressing this issue is currently under review and with support from the ILO is expected to be revised in 2014. Challenges to these positive efforts, however, will be in the implementation, with such initiatives as the Labour Coordination Centers and Good Labour Practices not being compulsory or enforceable. Further measures to address both the need for workers in the sector and their protection include a specific round of registration of migrants for work on fishing boats in March 2014, open for 22 coastal provinces; however, accessibility to registration for those on long-haul boats will remain an issue³⁰.

CHALLENGES AND FUTURE OUTLOOK

The challenges in the patterns and cases detailed above were summarised in the concerns expressed by the Special Rapporteur on Human Trafficking:

the lack of capacity and willingness of law enforcement authorities to properly identify trafficked persons, the arrest, detention and summary deportation of trafficked persons, the lack of adequate support for the recovery of trafficked persons in shelters, the low rate of prosecution and delays in prosecuting trafficking cases, as well as the insufficient efforts made to tackle the root causes, such as restrictive immigration policies and the abuse of the human rights of migrants. (OHCHR 2012: 1)

Compounding the criminal nature of human trafficking, weaknesses in the rule of law and corruption, there are a range of other dynamics and systems that affect patterns. Taking the trafficking into the fisheries industry as an example, the patterns have been influenced by:

²⁹ Ibid. Royal Thai Government (2013) p. 34.

³⁰ Migrant Information Note 22 (2014) IOM.

the decline in the Thai workforce on fishing boats, the depletion of local fish stocks increasing the length of time boats have to stay at sea, and the ability to conduct unregulated (or IUU) fishing. Within the shrimp industry, the long coastal area of Thailand with mangroves that support shrimp-farming, the infrastructure that has developed and the supply of migrant workers have been facilitating factors. More recent developments in the industry, such as the EMS disease in shrimp, has reduced the supply for processing and therefore affected the workforce required to process the reduced stock of shrimp³¹. It may be that this reduces the number of workers in exploitative conditions in the sector, or it may be that this encourages the use of brokers as intermediaries to workers instead of employers taking responsibility to manage the varying supply and demand.

A recent forecast indicates the demand for migrant labour in Thailand may increase to as much as 5.36 million workers by 2025, which will require a longer-term strategy for migrant labour management in order to meet it³². If the needs increase without such an approach, the tension between labour demand and national security, as well as the vulnerability of migrant workers, is likely to increase. Conversely, the political changes in Myanmar have seen projections of an increase in opportunities for Myanmar workers at home, with up to 10 million new non-agricultural jobs created by 2030³³.

RECOMMENDATIONS

Significant efforts are needed at the policy and implementation levels to improve both the criminal justice and labour responses to human trafficking. Progress in both of these areas should be informed by improved data collection systems and analysis on the related trends, to provide a deeper understanding of the causes and identify weaknesses in anti-trafficking responses. Increasing information exchanges between the relevant Myanmar and Thai authorities will be important in comprehensively understanding the dynamics in cases and addressing this significant bilateral trend.

Proactive efforts should be made in identifying trafficked persons in vulnerable industries with cooperation between criminal justice and victim service agencies to ensure optimal support to those identified. Where trafficked persons are identified in production or services that affect broader industries, establishment of monitoring mechanisms will be important to meet international standards, which companies will be held to.

More broadly, improvements are required in the recruitment and management of migrant workers nationally and bilaterally, and protection of migrant workers in Thailand. Improved governance and anti-corruption initiatives, particularly related to the most vulnerable and disenfranchised populations, should be adopted at all levels. Ultimately, a greater focus on sustainable economic developments and livelihoods in Myanmar may reduce the population vulnerable as migrant workers.

³¹ http://www.thai-frozen.or.th/thailand_seafood_02_en.phps.

³² Ibid. IOM (2013) p. vii.

³³ Ibid. IOM (2013) p. vii.

Trafficking on the High Seas: The Exploitation of Migrant Fishermen in Southeast Asia's Long Haul Fishing Industry

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INTRODUCTION

Asia's long haul (offshore) fishing industry has received considerable scrutiny recently for human rights and labour abuses of crew, including where these practices constitute labour trafficking. This attention is in line with growing international recognition that men and boys comprise a significant proportion of trafficked persons, and that in some sectors where labour trafficking is a significant problem – such as the construction industry and long haul fishing industry – their presence far outweighs that of women and girls (Surtees 2008). To date, discussions of human trafficking within the long haul fishing industry in Asia have focused primarily on the fishing vessels that operates out of Southern Thailand (UNIAP 2007 & 2009, IOM 2010, Nonnenmacher 2013, Derks 2010), while studies documenting this trafficking problem in other regions of the world focus primarily on Eastern Europe, especially Russia's long haul fishing industry (Surtees 2013).

Long haul fishing industries globally have undergone significant structural changes in the last decade, all of which have contributed to the heightened vulnerability of fishermen. The industry faces environmental challenges as overfishing results in declining fish stocks, leaving vessels no option but to extend the range of their fishing to deep waters internationally. Simultaneously, countries are heightening the protection of their own fish stocks through the establishment of exclusive economic zones where boats bearing the flags of other countries face restrictions in fishing. These circumstances have compromised the profitability of fishing fleets so leading them to explore avenues by which they can maintain profitable operations. As IOM's Sophie Nonnenmacher writes, "Due to poor working conditions, low salary levels, and the dangers of being at sea, it has become increasingly difficult for fisheries

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to find labour. This has given rise to a large scale business of trafficking in persons for employment on fishing boats” (2013: 3).

In this paper, I draw on the case of the little-researched Taiwanese component of this industry in Asia, since as suggested above, there has only been fleeting attention paid to Taiwan’s fishing industry in the context of labour trafficking and other exploitative practices, with most studies focusing on Thailand. I draw specifically on data collected to-date in an ongoing qualitative study of the trafficking of fishermen on Taiwanese-owned fishing vessels. The source countries from which fishermen are recruited for these vessels include the Philippines, Indonesia, Cambodia, Vietnam and the People’s Republic of China (PRC). My study involves men from the first three of these countries as participants and to-date twenty-one Filipino men, three Cambodian men and one Indonesian man have been interviewed. The study also draws on sixty-three case files of trafficked fishermen kept by the Philippines Embassy in Singapore for the period April 2010 – April 2011, which includes affidavits for some men; case information from some cases handled by the Singaporean NGO Transient Workers Count Too (TWC2); and key informant interviews with NGOs and government authorities in the Philippines, Cambodia and Singapore. No primary data collection has yet been carried out in Taiwan. Singapore is significant in this study because many men recruited to work on Taiwanese vessels transit through Singapore, where manning agencies managing their contracts and deployment are located.

This paper begins with a brief examination of the recruitment and deployment of fishermen. After this, I examine the situations of men on the boats and outline the dimensions of exploitation. In the concluding part of the paper, I put forward some recommendations that could improve the situations of fishermen in Asia. Pseudonyms are used when referring to fishermen participants, but all other organisations and individuals named in the paper are real.

THE RECRUITMENT PROCESS AND MODUS OPERANDI OF TRAFFICKING

In this part of the paper, I discuss the recruitment process and deployment of fishermen. Specifically, I examine the individuals and organisations involved in the recruitment – both in source countries and in Singapore, which may be considered a transit country. Men deployed on Taiwanese vessels leave their jobs primarily because of a mismatch between the work they believe they will be performing, including the conditions attached to that work, and the actual work they perform and remuneration for that work. In terms of internationally accepted definitions of human trafficking, such as that laid out in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), deceptive recruitment with the intention to exploit the labour of the fishermen at the destination (on the boats) are the key characteristics that define them as victims of trafficking. These concerns were evident for all the men who participated in this study.

Men’s recruitment in source countries fell into three main groups. These are: those recruited through a newspaper advertisement (and presented at the “agency” featured in the

advertisement); those recruited through the advice and contacts of friends or compatriots (who referred recruits either to an “agency” or recruiter in the capital city of the source country); and those recruited directly by a recruiter or scout (and were either referred to an agency in the source country or directly to a manning agency in Singapore). The most common scenario for Filipino and Indonesian men recruited through Singapore was the involvement of a foreign domestic worker (FDW) working on commission for one of the Singaporean-based manning agencies. For example as one Filipino participant, Jeffrey, recalled,

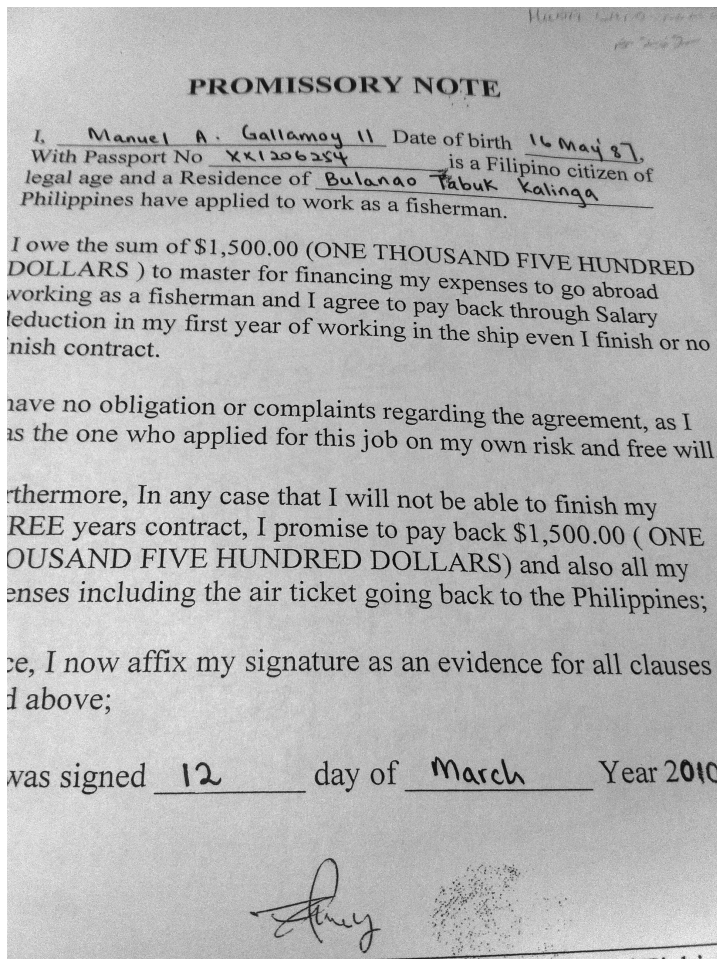
When we [three men together] were all in the Philippines last February 19 2010 resting, this woman [name omitted] kept bugging us and calling us. She was a domestic helper in Singapore and she was also acting as an agent for Step-Up Marine Agency in Singapore. We finally agreed to come to Singapore because we were sweet talked into it. She promised us over the phone our salary is USD420 per month. She told us Step-Up wanted us to report in Manila and give our passports to [name omitted, recruiter’s friend]. She asked us each to bring PHP5000 to pay our booking as seamen, but actually we found out later that we are not booked as seamen, but as fishermen.

Whilst Cambodian participants did not pay any fees upfront (with costs of facilitating their migration being deducted from future earnings), Filipino participants had to pay substantial sums upfront. One of the most significant concerns for these men was the debts they incurred to finance their migration. Most common amongst the Filipino participants was the pawning (lit. *pasangla* in Tagalog) of family assets, including farmland use for subsistence and to provide an income for men’s families. As Gary related, “I had to pay PHP25,000 all in all; nothing to pay after that. PHP12,500 was for the fee and the other PHP12,500 was for my costs and airfare. I know I can pay this back through my salary when I’m on the boat, but I didn’t know I would receive a salary deduction from the Singapore agency as well, which was for another four months. This was going to make it difficult to repay my costs, let alone make any money from the work. My grandparents pawned their property so I could cover my fee and costs”.

Gary’s statement exemplifies the dilemma men face when they reach Singapore and are presented with different financial scenarios to what they had agreed in the Philippines, which make debt repayment obligations to recover financial assets difficult to meet. Many participants lamented that they were left with little choice but to accept the new arrangements because they had already outlaid considerable sums of money for their deployment and needed to at least recoup these costs through working on the boats. But what should also be emphasized here is the longer term impact that pawning assets has on the livelihoods of families back in the Philippines, who lose productive assets or money. Fishermen’s failed migration, in this sense, further impoverishes families, rather than act to improve their economic situation.

According to the findings of my study, the manning agencies in Singapore play a key role in the trafficking of fishermen. Although undoubtedly the exploitation of the men’s labour takes place at sea, financial exploitation, non-payment of salary, deductions, penalties, removal of the men’s documents and debt bondage occurs at the hands of these agencies.

The Singaporean manning agencies ask recruited fishermen to sign a new contract and other documents, such as promissory notes, once in Singapore. The new contracts are weighted against the interests of the men, asking them to agree to unreasonable working conditions. In addition, the promissory notes stipulate that the men will not receive any salary if they break their contracts, which are normally two or three years in duration. The provision in this note is enforced through the non-payment of any salary (apart from the first month) to fishermen until the completion of their contracts. Fishermen must endure extremely exploitative work arrangements on the boats with the knowledge that if they attempt to leave their employment they will not be able to recover any salary for work already performed. Figure 1, below, is a copy of a typical promissory note the men are asked to sign. It is to a consideration of the conditions on the boats, from which the men are not easily able to extricate themselves, that we now turn.



EXPLOITATION AT SEA

The men's exploitation fell into four broad categories: financial exploitation (discussed above), labour exploitation, physical abuse and psychological manipulation. It is argued in this paper that financial exploitation occurs principally in relation to contract arrangements with Singapore-based agencies, whilst the other three elements of exploitation occur primarily at sea (although, as suggested above, some coercion and abuse were documented during the men's sojourns at the agencies in Singapore as well). In addition, in extreme instances, there were cases of men who died at sea due to health concerns induced by the conditions of their work. An overview of these circumstances is given below (for a more detailed discussion, including the narratives of fishermen themselves, see Yea 2013). As well as these conditions, another major concern surfaced through the research: namely the flight of men to third countries and their subsequent "disappearance". Discussion of this concern is beyond the scope of this paper. However it is noted here that for men who fall into this category, exit from the fishing vessel presents new vulnerabilities in countries where they jump ship and they may be unable to avail themselves of legal or social protections.

Principally, migrant fishermen are exploited for their labour. Common concerns that were recounted to myself, TWC2 and the Philippines Embassy in Singapore included: excessive working hours, concomitant fatigue leading, for some, to complete mental and physical exhaustion, lack of protective gear and the resulting high frequency of preventable "accidents", lack of adequate medical treatment for accidents and sickness, work in extreme environmental conditions (especially frigid temperatures in polar regions), and food and water rations that are inadequate for basic sustenance. According to information provided by TWC2, as a result of their own documentation of men's work on the boats, the following additional problems were identified: "The men store fish in the cold 'hole'. The men work in cold rooms with no cold weather gear in -80 degree temperatures. They have life buoys but these are locked up in a room. They don't wear life jackets. Nobody does because most vessels do not have life jackets. In rough seas many men have been thrown overboard, bitten by sharks...they lose a limb and they have to wait for the vessel to berth (which could be many months) before they get medical attention for their lost limbs. There is no protective gear. If there are life jackets, they are in a room and are torn. There have been stories of Indonesian fishermen throwing themselves overboard". Joey and Victor presented themselves together at the Philippines Embassy in April 2011, after deserting their vessel when it docked in Singapore. They summarized to me the main elements of their labour exploitation at sea, which were typical of the men in this study, as including:

- Working 18-22 hours a day, seven days a week
- No day off and no overtime for hours worked beyond those agreed to (8-9 hours per day)
- Forced to work during storms and with no protective gear
- Forced to pull the heavy fish up manually from the ocean
- Food that was rotten or expired and water rations that were inadequate

Extreme fatigue coupled with a lack of adequate sustenance, as well as difficult working conditions, lead many men to become depressed whilst onboard the fishing vessels. Jason related the very common problem of seasickness: “After big waves struck the boat my nausea grew and I wasn’t able to eat. They still forced us to work even with the seasickness. That’s why I decided I wanted to go home”. Forcing men to work when they were sick or injured was the norm on the vessels, including working excessive hours, as other participants related: “They would give us expired and rotten food, cans of drink and medicine. A compatriot died because of that; when he got injured on the boat they gave him medicine – an injection - that was more than 5 years out of date. I believe this is maltreatment and I can’t take it anymore.”

A particularly prevalent injury from working on the vessels involves fishing hooks. Each fishing line is about 14 kilometres in length and each line holds around 4000 hooks. When the lines are reeled into the boat the men must dodge them in order to avoid being stuck. Men who are not experienced at the work or who are not quick enough to move risk injuries, most commonly to the face, neck and arms. Wounds are normally sewn up with a needle and thread, with no antiseptic or pain relievers administered. Men with more serious injuries – either from fishing hooks or commonly from shark bites – must wait until their vessels berth before being treated by a doctor. There have been cases of deaths of men who have been unable to endure the wait or who have died from other illnesses induced by the working conditions they must endure. The men are also subjected to verbal and physical abuse whilst on the boats, usually from the Taiwanese captain and sometimes the Taiwanese officers. These senior personnel on the boats often beat the men on the face and body and verbally abuse them, usually for poor working performance or for making a complaint.

CONCLUSIONS AND RECOMMENDATIONS

As the information provided in this brief paper indicates, men suffer a range of abuses in the recruitment and deployment process (in the source countries and Singapore), at sea (in international and territorial waters), and after exiting their situations of exploitation, including in Singapore and upon the return home to the Philippines. Many of their experiences provide parallels with the exploitation of migrant men (primarily from Cambodia and Burma) in Thailand’s long haul fishing sector. This includes: lack of adequate remuneration for work performed, debt bondage, physical and psychological abuse, significant harm resulting from working in unsafe conditions (including serious injury and on occasion, death), and lack of care for workers’ health (resulting variously in physical exhaustion and dramatic weight loss, amongst other effects). Men were unable to easily leave these situations whilst on the boats (because of the infrequency of port calls), and even once they had “jumped ship” (because of debt bondage arrangements).

Despite these similarities the main factor differentiating the Thai case from that of Singapore concerns the legal/extra-territorial geographies of trafficking and jurisdictional problems that define exploitation in the two fishing industries. In particular, for men deployed on boats through Singapore, Singapore is not just a transit point in the traditional sense of the usage of the word in anti-trafficking, since the men sign contracts with, receive

(supposedly) salary from, and are beholden to their Singaporean agency if they break contract. This is different from migrant and refugee men on Thailand-based boats. This complication in terms of understanding the meaning of “transit country” for men trafficked onto fishing boats through Singapore is not presently well understood but requires much greater consideration. In other words, although the Singapore government has taken commendable positive steps towards supporting exploited fishermen who are deployed through Singapore and whose vessels berth in Singaporean docks, these supports do not extend to a recognition that these men are a trafficking concern for Singapore.

In some cases, pursued legally in the Philippines and Cambodia respectively, and involving the Singaporean manning agencies that deployed the men on the fishing vessels, the relationship and collusion between these various actors is paramount to efforts to prosecute those involved in the trafficking of the men. Specifically, if it can be established that a Philippines or Cambodia-based recruiter/scout and/or an agency was acting on behalf of, and in the interest of a Singapore-based manning agency, then Singaporean actors may be legally implicated in the deceptive and illegal recruitment and deployment of men into trafficking situations. Although some men suggested that this was the case, a thorough police investigation would be required to establish this. Further research with Taiwanese government representatives would be needed to ascertain their views about their government’s responsibility concerning this problem.

The remainder of this paper provides some further reflections on the experiences and meaning of trafficking in this context and sector. To provide more detailed recommendations for appropriate actions to protect trafficked and exploited migrant fishermen who pass through Singapore further, more in-depth, research involving documentation of multiple nationalities deployed in this sector would need to be undertaken.

Men as Victims of Human Trafficking?

Following the development of the UN Trafficking Protocol (2000) the presumption that women and children constitute the largest proportion of trafficking victims globally, and that the majority of human trafficking activities take place in the sex industry, became well entrenched. Efforts at protection of victims and prevention of trafficking, as well as investigations of trafficking activities and legal proceedings, have consequently centred on women and girls in the sex industry. Belatedly, both in Southeast Asia and Europe, it has been recognized that men and boys also constitute a significant component of the population of trafficked persons, and that trafficking for forced and exploitative labour in a range of sectors (such as the construction sector and fishing industry) may be far more widespread than previously thought. Yet, because this recognition has emerged belatedly, an anti-trafficking infrastructure based on the three Ps (Prevention, Protection and Prosecution) that centres on woman and girls (in the sex industry) as victims has already become well-established.

Incipient research on trafficking of men in Europe suggests that the types of supports and needs of male victims of trafficking may differ significantly from those of women (Surtees 2008). As Surtees suggests, the concept of victimhood may sit awkwardly with men (as well

as many women) because it can imply powerlessness and lack of control and agency. These concerns often intersect with traditional concepts of masculinity in many societies:

While there are many variations on the concept of masculinity within and between cultures, it is nonetheless possible to generalize male behavioural norms within a given society, commonly known as “hegemonic masculinity”. Hegemonic masculinity in many social and cultural environments requires men to be strong, stoic and self-sufficient. Men are commonly viewed as the breadwinner and/or the household head; the family protector; and the person most able to care not only for themselves but also for their families.

This understanding of masculinity has implications on the appropriate ways of interacting with and supporting men who have been trafficked that are applicable both to the men in this study and more widely. These need far more in-depth exploration than they are currently accorded. One of the main insights from the men in this study concerned their deliberate and sometimes excessive efforts to conceal and downplay negative work experiences abroad. These strategies can reduce the success of efforts to circulate the dangers of unsafe migration to Singapore or directly to Taiwan, as men are reluctant to recount their experiences to others in the source communities. Concealing experiences makes it difficult to initiate proceedings to bring traffickers to justice, even where there may be legal recourse to do so, as men do not wish for their experiences to be disclosed and known to their families and community. This discourse of shame has gained further salience in an era of development in the Philippines, Indonesia and more recently Cambodia, in which migrant workers are popularly characterized as “modern day heroes” (see Rodriquez 2010 on this in the Philippines case).

From Crime Issue to Development Issue

In its response to evidence of human trafficking in Singapore, the Singapore government has embraced globally prevailing discourses of anti-trafficking put forward by the United Nations (2000) in which human trafficking is principally understood as a transnational crime issue. This understanding structures responses to the problem of trafficking based on states developing anti-trafficking measures according to the “three Ps” (prosecution, protection and prevention). What is notable about this framework is the general absence of interventions aimed at poverty alleviation and sustainable livelihoods in framing responses. The men in this study were primarily motivated to go to abroad and work because of their marginal economic situations, to which they returned after exiting their situations on the boats. Moreover, trafficked fishermen were often saddled with additional financial burdens accrued through debts incurred to finance their migration.

It therefore seems that more focused attention to development aid in trafficking destination states such as Taiwan and Singapore would significantly enhance efforts aimed at prevention of trafficking. The Cambodian fishermen trafficked on Taiwanese fishing vessels appeared to have far greater access to NGO support upon their repatriation than either Filipino or Indonesian men. As one NGO representative in Manila lamented, “We are actually an NGO set up to support women and children trafficked for commercial sexual purposes. We only became involved in the fishermen’s problems because we work on trafficking and no

other NGO wanted to handle the cases” (personal communication, representative AsiaACTS, June 2013). If formally assisted by an NGO, these fishermen may be able to obtain vocational training to start a business, legal assistance if they wish to pursue a legal claim, and psycho-social support.

Other Supports for Fishermen in the Destination Country

Christian missions oriented specifically to the welfare of seafarers and fishermen currently provide the greatest level of support to trafficked fishermen who are deployed abroad, including in Singapore and Taiwan. Missionaries provide information at the ports, including helpline numbers, and in some contexts (including Singapore) can board vessels for inspections and provision of information to seafarers and fishermen. They also provide transit accommodation to men who “jump ship”, and drop-in centres where men can go and seek advice. Where embassies or other intervening parties are unable to assist in the safe repatriation of a fisherman, missionaries often make such arrangements including, at least in Singapore, paying for a man’s air ticket. Yet missionaries are often reluctant to share information or take on an advocacy role for fear of losing their access to port areas. They perform an essential function in assisting men and should perhaps be encouraged to develop more systematic bilateral connections with NGO actors in trafficking source countries to expedite their support for distressed fishermen.

The Role of Taiwanese Supply Chains

There is great interest at present in trafficking destination countries in developing transparency amongst the business community in scrutinizing and, where necessary, “cleaning up” their supply chains. Markets for Taiwanese imports of tuna, shrimp and salmon, amongst other fish, could place “fair trade” standards on fish imports as a deterrent to exploitative practices in the industry. Further research on markets and supply chains would be helpful in understanding the focus and possible effects of implementing such standards. The one factor mitigating against the effectiveness of such an approach in Asia’s long haul fishing industry is that, unlike many other industries where trafficking is prevalent, the sector is dominated by small business operations and small vessels. These businesses are less likely than large transnational corporations to be responsive to public pressure and are not beholden to shareholders’ dictates.

Extraterritoriality and the New Zealand Solution

One of the major hurdles to ensuring that states commit to addressing this form of trafficking stems from two jurisdictional problems. The first is the fact that exploitation takes place primarily (though not exclusively) in international waters where it is unclear whose jurisdictional responsibility it is to protect trafficked fishermen (see Nonnenmacher 2013). The Singapore government has used this argument to deflect responsibility for addressing trafficking of fishermen, even where the fishermen transit through Singapore, are deployed by Singapore-registered manning agencies, and board fishing vessels (or jump ship from fishing vessels) berthed at one of Singapore’s ports – as Singapore’s Ministry of Manpower claimed

in response to suggestions that these Singaporean agencies were a key link in the trafficking chain for men deployed on Taiwanese vessels, “Actual recruitment of the seamen is carried out by Beverly Agency’s business partners overseas...The seamen in question are deployed to work for employers not based in Singapore and on international waters” (MOM 2012). In the face of the exploitation of these sorts of jurisdictional grey zones by states such as Singapore, Sophie Nonnenmacher (2013) suggests that it is necessary to critically scrutinize the applicability of various international instruments to punish the crime of trafficking in the offshore fishing industry. She concludes that the Slavery Convention may be the most applicable since it specifically covers the movement and exploitation of persons on the high seas. To make full use of this Convention, she argues that it would first need to be established that the fishermen can be defined as slaves, which is a challenging task in itself.

The second problem of extraterritoriality relates to the ways vessels use flags of convenience to deliberately evade labour regulations that may compromise their operations. Drawing on the work of Anna Tsing (2009), Amanda Wise (2013) argues that “[C]onditions of abuse and virtual enslavement...are able to occur through the complex, and quite deliberate exploitation of ‘greyness’ operating transnationally between zones of regulation...commercial fishing trawlers are registered under ‘Flags of Convenience’ states which have lax or no labour regulations”. The New Zealand government recently enacted legislative revisions to increase the protections it can offer to foreign fishermen who are found in exploitative situations in New Zealand waters. Because the fishermen are not New Zealanders and the fishing vessels are foreign-flagged, the New Zealand government grappled with how best to address labour trafficking on fishing vessels for fishermen who entered New Zealand waters and/or ports in foreign-flagged vessels. The solution adopted was to have vessels re-flag with a New Zealand flag when entering New Zealand territorial waters. Foreign-flagged boats, under the new legislative amendments, would not be granted permission to dock in New Zealand ports unless they carried the New Zealand flag. This solution would enable all fishing boats to be subject to New Zealand labour laws and provisions relating to working and other conditions, such as safety. Consequently this would provide New Zealand maritime authorities, the coast-guard and other bodies license to board vessels specifically with the intent of determining compliance to New Zealand labour standards. Countries, such as Singapore, which receive foreign-flagged vessels should evaluate the feasibility of adopting similar measures to curb the exploitation of foreign fishermen.

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A Non-Traditional Security Threat in Asia: Cyberspace and Human Trafficking?

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In Asia, and particularly in Southeast and East Asia, the population is rising and as a region it is becoming more technologically advanced. The Southeast Asian regional grouping, the Association of South East Asian Nations, has a total population of slightly over 600 million people, and most of its member states have a higher population growth rate than the Asian average for 2010-2015, raising the number of potential internet users. Regional targets for ASEAN are set for exceptional growth in ICT adoption, investment in infrastructure, and human capital as illustrated by the doubling of internet users from 2008 until 2011.² Alongside these advancements, the reality is that while the internet has brought many opportunities to facilitate communication between friends, relatives, businesses, and social groups, it has also brought attendant challenges in the form of facilitating global transnational crime. Through the use of online social media, human traffickers are able to supplement their real-time recruitment on the streets and other public places. The social media platforms you use almost every day also allow for new ways of facilitating human trafficking from the distribution of child abuse material to functioning as a new recruitment tool. However, as technology-facilitated trafficking is more diffuse and adaptive than initially thought it indicates the increasing importance of mobile technology. Mobile phones allow traffickers to change physical location and facilitate real-time communication and coordination, which in turn broadens their horizon and increases their reach.³

In 2010, the fifth Conference of Parties to the United Nations Convention on Transnational Organised Crime identified cybercrime, identity-related crimes, trafficking in

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² Heintz, Caitriona, 2013, "Regional Cyber Security: Moving towards a Resilient ASEAN Cyber Security Regime", RSIS Working Paper No. 263: S. Rajaratnam School of International Studies, Singapore, p. 5.

³ Latonero, Mark, 2012, "The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking", Research Series on Technology and Human Trafficking: University of Southern California. Available: https://technologyandtrafficking.usc.edu/files/2012/11/HumanTrafficking2012_Nov12.pdf.

cultural property, environmental crime, piracy, organ trafficking, and fraudulent medicine as new and emerging crimes of concern.⁴ In both Europe and Asia, to varying degrees computer-related cybercrime acts are expanding to include a broad range of otherwise offline crimes, when committed with the use or help of a computer or mobile device. In the case of Europe, The Council of Europe Cybercrime Convention only covers computer-related forgery and computer-related fraud. In contrast, the Arab League Model Law contains a wide range of criminal provisions including establishing an internet site with the intention of trafficking in human beings.⁵ The Arab League Model Law is currently the only Asian regional exercise that furthers the linkage between cyberspace and human trafficking to a significant extent as it has influenced domestic anti-trafficking legislation across West Asia (Middle East).

Computer-related offences involving illicit trafficking are included in article 16 of the League of Arab States Convention on Combating Information Technology Offences (2010), and the League of Arab States Model Law on Combating Offences related to Information Technology Systems (2004).⁶ In a UNODC study, their research found that respondents identified that the “use of an information technology device for the purposes of trafficking in persons” was covered by cyber-specific legislation – indicating “the centrality of the use of computer systems or data to the act” in the Arab League Model Law.⁷ The common theme here is the move to include crimes facilitated by internet access. However, the particular case of the Arab League Model Law is that it has already been applied to human trafficking. Some jurisdictions interpret existing conventional laws to cover the use of computer systems to facilitate human trafficking, and so there are implications for the wider Asian region on how to respond to human trafficking facilitated by online activity.⁸ However, human trafficking is not a new crime to engage multiple jurisdictions and laws. It starts and ends in different hemispheres, traversing many lands in between. However, as cybercrime happens faster, the act committed in one country, downloaded in another, which may or may not be deemed illegal in either country, increases the importance of cooperation between different jurisdictions.⁹ Indeed, this will become increasingly acute in Southeast and East Asia where population sizes and internet penetration rates are increasing exponentially.

While the essence of human trafficking remains where a perpetrator tricks, coerces, and exploits an individual into working or providing sex, the internet has provided a new avenue through which to facilitate this process which poses a serious threat to Southeast and East Asia, a region committed to tackling the crime and identified as both a source and destination region. The central regional grouping, the Association of Southeast Asian Nations (ASEAN), signed the Declaration Against Trafficking in Persons particularly women and

⁴ UNODC, 2011, “Background note on emerging crimes,” UNODC, October. Available: <http://www.unodc.org/unodc/organized-crime/emerging-crimes.html>.

⁵ UNODC, 2013, *Comprehensive Study on Cybercrime – Draft*, February, p. 18.

⁶ UNODC, 2013, *Comprehensive Study on Cybercrime – Draft*, February, p. 270.

⁷ UNODC, 2013, *Comprehensive Study on Cybercrime – Draft*, February, p. 19.

⁸ UNODC, 2013, *Comprehensive Study on Cybercrime – Draft*, February, p. 20.

⁹ UNODC, 2013, *Comprehensive Study on Cybercrime – Draft*, February, p. 56.

children in Vientiane, Lao People's Democratic Republic in 2004. However, significant progress on implementing the declaration remains wanting. This is particularly the case given that East Asian countries are a major source for long-distance, trans-regional trafficking. The 2009 UNODC Global Report on Trafficking in Persons showed that victims were trafficked for sexual exploitation and forced labour, including domestic servitude and begging. It also pointed to an increase in the number of human trafficking offences in Cambodia, Indonesia, Mongolia, Timor-Leste, Thailand and Vietnam. However, it was noted that the region has relatively recent legislation or modifications of old laws with ten countries in East Asia having introduced responses between 2005 and 2008.¹⁰ In the most recent UNODC Global Report on Trafficking in Persons, East Asia and the Pacific accounted for nearly 40% of worldwide detected child victims. It found that victims from this region are the most geographically dispersed, with trafficking victims being found in more than 60 countries around the world. It also found that countries in Asia generally intercept more forced labour cases than sexual exploitation cases.¹¹

There are examples of the use of social media in Indonesia in 2012 to lure and abduct children. An estimated one quarter of the children reported missing in Indonesia are thought to have met their captors on Facebook.¹² At least 182 children aged from 0 to 12 were reported missing in Indonesia by their parents in 2011, up from 111 in 2010, according to the Indonesian National Commission on Child Protection chairman, Arist Merdeka Sirait. He suspected that a human trafficking network could be seeking to use the children for illegal adoption, commercial sexual abuse, drug trafficking and domestic and international child labour. A 2012 report by the Indonesian National Task Force Against Human Trafficking argued that members of trafficking rings use the internet to lure their victims to big cities such as Jakarta.¹³ Children under the age of 18 who utilise social media platforms such as Facebook have fallen victim to recruitment from traffickers. In the first instance a young person receives a friend notification from someone they do not know but accept it all the same. Through interacting with the new friend, they increase their exchanges and agree to meet. After an initial meeting and continued social media interaction they can agree to meet again. This is how the story began for a 14 year-old Indonesian girl, who was "quickly smitten" by the new friend's online flattery as reported in the *USA Today* newspaper. On the second meeting, she climbed into the man's minivan near her home and was driven to Bogor, West Java, where she was locked in a room with at least five other girls aged 14 to 17, where she was drugged and raped repeatedly. After one week, her captor planned to ship her to the

¹⁰ UNODC, 2009, Global Report on Trafficking in Persons, UNODC: Vienna, February. Available: http://www.unodc.org/documents/southeastasiaandpacific//2009/02/ht-report/UNGift_Report_on_TIP.pdf.

¹¹ UNODC, 2012, Global Report on Trafficking in Persons, UNODC: Vienna. Available: http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf.

¹² Stone, Karyn, "The New Cyber Trend in Human Trafficking: How to Stay Safe Online," MTV EXIT. Available: <http://mtvexit.org/blog/human-trafficking-goes-cyber-stay-online/>.

¹³ IRIN, 2012, "Indonesia: Missing children raise trafficking concerns", 9 April. Available: <http://www.irinnews.org/report/95250/indonesia-missing-children-raise-trafficking-concerns>.

island of Batam, a destination known for brothels and child sex tourism. However, as the man did not have the money and others were looking for her, he decided to dump her at a bus station, where she was found.¹⁴ Many users of social media platforms place detailed personal information online such as their home address, telephone number, email address as well as detailed photographic histories, blog posts and status updates, which, left unprotected, allow for online trolls to collect this information and use in profiling the user to identify potential targets.

Another case of the use of cyberspace for human trafficking is illegal adoption. In February 2014, Chinese police authorities in 27 provinces rescued 382 babies and arrested 1,094 people suspected of buying and selling young children online, China's Ministry of Public Security said in a statement. The arrests came after a six-month operation in which authorities were made aware of a website promoting private adoptions. Through the investigation the Chinese police uncovered a virtual black market connecting buyers and sellers involving four websites, online forums and some 30 groups on a popular Chinese messaging platform. It was reported by CCTV that one woman arrested in Leshan, Sichuan admitted to buying two baby girls. Another couple in their 30s admitted they used a Chinese website to buy a baby from Chengdu for 20,000 Yuan (US\$3,250).¹⁵

However the internet is not only used to circumvent the law, enforcement authorities can also use online criminal activity as a way to track down and identify criminals. New methods and techniques such as victim-identification databases, data mining and analytics also improve forensic processes to advance investigations and gain a better understanding of a criminal's digital footprint. However, many recognise that government authorities need to look beyond a single-pronged strategy focused on prosecution to include a more comprehensive "3P" approach that prevents, protects, and prosecutes.¹⁶ In Asia, Singapore has most recently advanced this paradigmatic approach to include partnership as a critical component.¹⁷ This "4P" approach involves the non-government sector, including the private sector, which is also the driver behind technological development.¹⁸

¹⁴ Mason, Margie, 2012, "Facebook used to kidnap, traffic Indonesian girls", 29 October. Available: <http://www.usatoday.com/story/news/world/2012/10/29/facebook-used-to-kidnap-traffic-indonesian-girls/1665321/>.

¹⁵ Cy, Xu, Sophie Brown and Kevin Wang, 2014, "Chinese police save hundreds of babies from online trading racket", CNN, 1 March. Available: <http://edition.cnn.com/2014/02/28/world/asia/china-online-baby-trafficking-crackdown/>.

¹⁶ US State Department, 2010, "The '3P' Paradigm: Prevention, Protection and Prosecution," Washington, D.C, 14 June. Available <http://www.state.gov/j/tip/rls/fs/2010/143248.htm>.

¹⁷ Hangzo, Pau Khan Khup and Alistair D.B. Cook, 2012, "Trafficking in persons: Singapore's evolving responses", NTS Alert, April, Singapore: RSIS Centre for Non-Traditional Security (NTS) Studies for NTS-Asia. Available: <http://www.rsis.edu.sg/nts/html-newsletter/alert/nts-alert-Apr-1201.html>.

¹⁸ UNODC, 2013, UN Crime Body to Combat Online Child Abuse, News Front Page, Vienna, 27 September. Available: <https://www.unodc.org/unodc/en/frontpage/2013/September/un-crime-body-to-combat-online-child-abuse.html?ref=fs1>.

IDENTIFYING KEY ACTORS

In the recent past, there have been several technological innovations in an effort to combat human trafficking, which are of global importance, and in Southeast and East Asia in particular, where the use of technology is widespread. For example, the use of internet and mobile phone technology has provided a medium through which trafficking victims can send alerts or trace payments so that they are less vulnerable to the threat of forced labour. Additionally, social media platforms are used to generate awareness in human trafficking through the creation of groups, information pages and advertisements. Mobile phone technology allows greater connectivity between people, in particular as a medium that victims can use to contact service providers and seek help, as well as a way to raise awareness with the general public to identify vulnerable communities. Indeed, victim identification by law enforcement is made easier through facial-recognition software, particularly for locating the images of exploited minors online – even when digitally altered.¹⁹ The 2012 USC Technology and Trafficking Report indicated that data mining, mapping, computational linguistics, and advanced analytics can be harnessed to develop better strategies against human trafficking by providing law enforcement, academia and the private sector with new tools to do so.²⁰ An example of private sector collaboration is a new Google-funded global data sharing collaboration for anti-trafficking organisations Polaris Project based in the USA, Liberty Asia based in Hong Kong, and La Strada International based in Amsterdam to connect the Global Human Trafficking Hotline Network, and two internet companies, Salesforce and Palantir Technologies, to help identify illicit patterns and provide victims more effective support.²¹ In another, LexisNexis established the Human Trafficking Awareness Index, which tracks and analyses published news articles related to human trafficking, assisting human trafficking research worldwide.

Likewise the non-government sector has actively sought to combat human trafficking. The Qatar Foundation for Combating Human Trafficking (QFCHT) organized a training workshop to support the implementation of the National Action Plan to combat human trafficking adopted for the years 2010-2015. The workshop was held on 22-24 November, 2011 at the Grand Heritage Doha Hotel. On the first day of the workshop, presentations discussed the definition of human trafficking, the link between human trafficking and cybercrime, blocking access to illegal content, identification of the victims targeted in such crimes, the experience of Qatar Centre in information security, and the experience of an NGO, ECPAT, in

¹⁹ US State Department, 2013, *Trafficking in Persons Report*, Washington, D.C. Available: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>.

²⁰ Latonero, Mark, 2012, “The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking”, *Research Series on Technology and Human Trafficking*: University of Southern California. Available: https://technologyandtrafficking.usc.edu/files/2012/11/HumanTrafficking2012_Nov12.pdf.

²¹ Westcott, Lucy, 2013, “Human trafficking investigators play catchup as criminals go hi-tech”, *The Guardian*, 29 July. Available: <http://www.theguardian.com/global-development/2013/jul/29/human-trafficking-law>.

protecting children from exploitation through cybercrime.²² Most recently, on 14 November 2013, the new UNODC Regional Programme for Southeast Asia and the Pacific was launched, which promotes the rule of law and assists Member States to address governance, security and public health challenges in Southeast Asia. The Regional Programme focuses on five key issues: Transnational Organised Crime and Illicit Trafficking; Anti-Corruption; Terrorism Prevention; Criminal Justice; and Drugs, Health and Alternative Development. The Programme will assist states by providing them with capacity-building initiatives and other forms of assistance.²³ While using the internet to facilitate human trafficking is not new, utilising cyberspace effectively to combat human trafficking is relatively recent and is of significance to Southeast and East Asia. The actors involved in responding to the threat of cyber-facilitated human trafficking are from across the broad spectrum of global governance, and cooperation crosses these levels with various organisations, like MTV Exit, regionally based in Bangkok, partnering with governments to address human trafficking in Asia. Through these collaborations there are broad thematic responses to human trafficking; key examples include online petitions, data mapping, virtual communities and awareness-raising activities. In the next section, these collaborations are outlined to provide an overview of the work underway to respond to human trafficking in Asia.

DIGITAL ACTIVISM IN ASIA

In line with the exponential increase in the number of people accessing the internet throughout Asia, we are likely to see a related increase in the development of digital activism. While most innovation continues to emanate predominantly from the USA and Europe, there is growing awareness of adapting these technological advances to the needs of people in Asia. Indeed, with the pro-active American government policy of combating human trafficking, alongside a raft of private sector companies choosing the issue as part of their corporate social responsibility schemes, there have been several advances in response to human trafficking. These technological advances are facilitated by the collaborative efforts of multiple stakeholders both within and outside the Asian region, as illustrated above with the Google-sponsored effort with three partners from Asia, Europe and the USA. In addition, Asian governments also respond to human trafficking to varying degrees, with the Republic of Korea and Taiwan classified as Tier One countries in the 2013 US Trafficking in Persons Report at the top of the anti-trafficking league table.²⁴

²² QFCHT, 2011, "Anti-Human Trafficking Cyber Crime Training Workshop," Press Release, 24 November. Available: http://www.qfcht.org/NewsDetails_en.aspx?newsid=119.

²³ UNODC, 2013, "New UNODC SE Asia regional programme addresses transnational organized crime and downsides of regional integration," Press Release, 12 November. Available: <http://www.unodc.org/unodc/en/frontpage/2013/November/new-unodc-se-asia-regional-programme-addresses-transnational-organized-crime-and-downsides-of-regional-integration.html?ref=fs1>.

²⁴ US State Department, 2013, Trafficking in Persons Report, Washington, D.C. Available: <http://www.state.gov/j/tip/rls/tiprpt/2013/>.

ONLINE PETITIONS

The emergence of online petitions supplements the hard-copy version in Asia at the present time. However, with the increase in internet usage this is likely to change. In 2004, in response to a petition by one million Korean women, the Republic of Korea passed two significant anti-prostitution and anti-trafficking laws the same year, addressing the commercial exploitation of women and girls.²⁵ The ROK Ministry of Gender, Equality and Family is active in developing methods to combat human trafficking. In 2005, the ministry placed advertisements on a tourist website, “Seoul Searching”, warning about human trafficking and listing relevant government service providers.²⁶ Indeed, as part of their 2013 Work Plan, MOGEF examined “ways to enact laws using inductive investigation techniques of the police to crack down on sex trafficking targeting children and teenagers over the internet.”²⁷ It is clear that the ROK government is committed to addressing the human trafficking issue and is actively looking towards cyberspace to achieve this. More recently, the Body Shop’s international “Stop Sex Trafficking of Children and Young People” petition collected over seven million signatures, and was supported by regional partners in Asia and presented to the United Nations Human Rights Council in 2009. In Singapore alone, over 110,000 signatures were collected for the petition.²⁸ It is clear that with the rise in digital activism, online petitions will form a key avenue for collaboration and provide a medium through which people can call on governments to more effectively respond to human trafficking in Asia.

However, it is important to recognise that while governments and private corporations respond to petitions, there can be unintended consequences. For example, in the United States, Craigslist, the online community that facilitates the buying and selling of goods, had an adult section until 2010. The online community lobbied to shut down the “adult section” of the website in order to tackle the buying and selling of sex online through posted advertisements. However, this approach meant that while Craigslist shut the adult section down, the buyers and sellers moved to a non-US based website, Redbook. Previously law enforcement officials served subpoenas to Craigslist, and they were returned with the necessary information as Craigslist is a US-based company. However, the non-US-based Redbook does not respond to subpoenas and as a result makes investigations more difficult for law enforcement

²⁵ US State Department, 2005, *Trafficking in Persons Report*, Washington, D.C. Available: <http://www.state.gov/documents/organization/47255.pdf>.

²⁶ Schuckman, Emily E., 2005, “Antitrafficking Policies in Asia and the Russian Far East: A Comparative Perspective”, *Demokratizatsiya* 14:1, p. 93.

²⁷ MOGEF, 2013, “Reported 2013 Work Plan,” Seoul: Republic of Korea. Available: http://english.mogef.go.kr/sub03/sub03_11.jsp?id=euc0100&menuID=euc0100&mode=view&idx=6914.

²⁸ Hong, Sophie, 2011, “114,886 sign petition to UN against human trafficking”, *My Paper*, 24 August. Available: <http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20110824-295909.html#sthash.M7AhHdFLdpuf>.

agencies.²⁹ It thus illustrates the importance of collaboration in responding to human trafficking and the limits of uncoordinated action. Indeed this is particularly pertinent in Asia where the rule of law varies considerably and cooperation with private companies becomes all the more important in its absence.

DATA MAPPING

The Philippines is now known as a hub for the production of online child exploitation. In January 2014, Jejomar Binay, Vice President of the Inter-Agency Against Trafficking, announced that the agency would attempt to track criminal syndicates that exploit children in the Philippines by tapping the National Telecommunications Commission. He also appealed for information from telecommunications companies to assist in the investigation of those that abuse children. However, one of the more advanced online tools is data mapping which led to the identification of areas in the Philippines where child abuse material was transmitted. The data map produced by the UK NGO, Child Exploitation and Online Protection identified Metro Manila, Angeles City in Pampanga, and Cagayan De Oro, and assisted in Operation Endeavour, which produced 29 international arrests, of which 11 were part of the facilitation group in the Philippines. Some of the facilitators were members of the children's own family.³⁰ This definition falls under the definition of the US Trafficking Victims Protection Act, which forms the basis for the annual Trafficking in Persons report that sex trafficking is "the recruitment, harbouring, transportation, provision or obtaining of a person for the purpose of a commercial sex act."³¹ However, the importance is that while the internet has provided a new avenue for human traffickers, it has also become an avenue through which their digital footprints can be identified, as illustrated by the success of Operation Endeavour.

In recognition of the global dimension that the internet provides to human trafficking, multiple stakeholders need to work together to implement an effective anti-human trafficking strategy. As part of an international cooperation effort, the Virtual Global Taskforce was established over a decade ago in 2003 to bring together law enforcement agencies, non-government organisations and industry partners to protect children from online child abuse. This international collaboration effort identified the Philippines as a source country

²⁹ Latonero, Mark, 2012, "The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking", Research Series on Technology and Human Trafficking: University of Southern California, p.26. Available: https://technologyandtrafficking.usc.edu/files/2012/11/HumanTrafficking2012_Nov12.pdf.

³⁰ Pots de Lyon, 2014, "Anti-trafficking body looks to NTS aid to track down child porn rings", 20 January. Available: <http://www.interaksyon.com/article/79066/anti-trafficking-body-looks-to-ntc-aid-to-track-down-child-porn-rings---binay>.

³¹ Pots de Lyon, 2014, "Anti-trafficking body looks to NTS aid to track down child porn rings", 20 January. Available: <http://www.interaksyon.com/article/79066/anti-trafficking-body-looks-to-ntc-aid-to-track-down-child-porn-rings---binay>.

for the sexual exploitation of minors.³² Through the data mapping exercise noted above and the coordination efforts of Virtual Global Taskforce members, the U.K.'s National Crime Agency (NCA), the Australian Federal Police (AFP) and the U.S. Immigration and Customs Enforcement (ICE) were able to dismantle an organised crime group that coordinated the live streaming of on-demand child sexual abuse in the Philippines.³³

AWARENESS RAISING ACTIVITIES

The most pronounced activity that multiple stakeholders get involved in is awareness raising. Indeed, across Asia, non-governmental organisations have collaborated together and with the private sector to combat human trafficking. The International Centre for Missing & Exploited Children (ICMEC) and PayPal worked together to produce a joint best practices education document titled *Confronting New Challenges in the Fight Against Child Pornography*³⁴, aimed at enabling file hosting and file sharing companies to become aware of and implement effective policies to minimise the use of their technologies as a facilitation and distribution mechanism for the distribution of child sexual abuse images.³⁵ Arenas which facilitate human trafficking are not always immediately apparent, and so the role of non-governmental organisations to identify these arenas and produce actionable policies is all the more important. However, with the development of mobile device applications, stakeholders need not rely solely on convincing firms and governments to take top-down policy measures. With mobile device applications, there are significant ways to empower individuals to contribute individually in responding to human trafficking.

In October 2013, the Taken Campaign launched the first anti-trafficking mobile phone application to mark “Anti-Slavery Day” in London, U.K. The Taken Campaign is a direct result of Hazel Thompson’s over ten-year investigation into Mumbai’s sex trade, one of the largest sex industries in Asia, and the application provides a toolkit for digital activists to take action against trafficking and sex slavery. The application includes video footage of Hazel Thompson’s investigation, a petition to support more legislative changes, integrated social media networks, briefing paper to explain issues, methods to support anti-trafficking

³² Pots de Lyon, 2014, “Anti-trafficking body looks to NTS aid to track down child porn rings”, 20 January. Available: <http://www.interaksyon.com/article/79066/anti-trafficking-body-looks-to-ntc-aid-to-track-down-child-porn-rings---binay>.

³³ Virtual Global Taskforce, 2014, “29 Arrested in International Case Involving Live Online Webcam Child Abuse,” 16 January. Available: <http://www.virtualglobaltaskforce.com/2014/29-arrested-international-case-online-webcam-child-abuse/>.

³⁴ Asia – Pacific Financial Coalition Against Child Pornography, 2013, *Confronting New Challenges in the Fight Against Child Pornography: Best Practices to Help File Hosting and File Sharing Companies Fight the Distribution of Child Sexual Exploitation Content*, September. Available: http://www.icmec.org/en_X1/pdf/BestPracticesforFileHostingandSharingIndustrySeptember2013.pdf.

³⁵ Virtual Global Taskforce, 2014, “Two VGT Partners Fight Dissemination of Child Sexual Exploitation Images Through Targeted Collaboration,” 10 February. Available: <http://www.virtualglobaltaskforce.com/2014/two-vgt-partners-fight-dissemination-of-child-sexual-exploitation-images-through-targeted-collaboration/>.

organisations, and a way to donate to the rescue mission in Mumbai's red light district.³⁶ More recently, an anti-trafficking mobile phone application has been developed by RedLight Traffic in the United States. Along with the Polaris Project, it provides individuals with a list of potential trafficking indicators and red flags to identify victims of human trafficking. In collaboration with the Blue Campaign, a twenty-minute training exercise teaches users how to recognise trafficking as part of the RedLight Traffic application. In addition there is film footage of the commercial sexual exploitation of girls in New York City as they seek to exit the commercial sex industry. Through the mobile phone application, the user is able to recognise human trafficking, and report the case in a discreet, anonymous way. The Redlight Traffic application shares the reports with local authorities enabling a trained first response. In addition, through a sharing tool, users are able to encourage friends to use it and establish a local community network against human trafficking.³⁷

In another example, The World Tourism Organization (UNWTO), UNODC and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) joined forces in March 2014 to promote a global campaign, "Your Actions Count – Be a Responsible Traveller." This campaign seeks to raise human trafficking awareness in travellers, so that they are able to recognise the signs of human trafficking, among other issues, and to take action through responsible consumer choices. The campaign launched with private sector support from Marriott International and Sabre Holdings, who will promote the campaign to their customers. The Anti-Human Trafficking campaign is Sabre Holdings' corporate social responsibility initiative, promoting the campaign through their Travelocity and lastminute.com online booking tools and their TripCase mobile app and GetThere booking tool.³⁸ It is through these multi-stakeholder initiatives that sustainable awareness raising activities are possible in the effort to address human trafficking issues. It is all the more important to do so in Asia, which is of significance as both a source and destination region for trafficked persons.

CONCLUSION

As Asia, and in particular Southeast and East Asia, becomes all the more globally significant both in terms of population size and the number of online users, the attendant challenge of human trafficking requires policy innovation to mirror the technological developments and increased internet reach. This chapter has sought to outline the ways and means that the internet is used by human traffickers to recruit vulnerable people into the sex or forced labour industries to illustrate the current threat posed by cyberspace as an avenue to facilitate human

³⁶ PRWEB UK, 2013, "First Anti-Trafficking App Launched in Parliament to Mark Anti-Slavery Day," Press Release, 23 October. Available: <http://www.prweb.com/releases/2013/10/prweb11250275.htm>.

³⁷ Redlight Traffic, 2013, "New Anti-Trafficking App Catches Attention of Government and Law Enforcement: RedLight Traffic App To Be Unveiled at Special Event on October 18," 16 October. Available: <http://www.redlightraffic.org/Article-DHS-McKenna.html>.

³⁸ UNWTO, 2014, "UNWTO, UNODC and UNESCO launch anti-trafficking campaign," Press Release No.: PR14018, Berlin/Madrid, 5 March. Available: <http://media.unwto.org/press-release/2014-03-05/unwto-unodc-and-unesco-launch-anti-trafficking-campaign>.

trafficking in Asia. However, it goes on to argue that there are several multi-stakeholder approaches being taken in the United States and Europe that turn this threat into an opportunity to leverage against the human traffickers by utilising technology to tackle the issue of human trafficking. It does this through three main areas of policy development, online petitions, data mapping and awareness-raising activities. Through an examination of each of these in turn, the chapter identifies current collaborations in Asia as well as collaborations elsewhere which are easily transferable to Asia to address human trafficking. By identifying these policies, this chapter provides both an overview of the role of cyberspace in human trafficking and how it can also be used to tackle it. From the examples in this chapter, it is clear that it is no longer possible to apportion policy development only to governments, but through a multifocal lens it illustrates that collaboration with a range of stakeholders is important in order to develop sustainable policies to tackle human trafficking in Asia.

The EU Action against Trafficking in Human Beings

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Trafficking in human beings (THB) is a world scourge and can be considered as the slavery of modern times.² It has indeed become “a global problem that challenges the basic values of contemporary democratic society”.³ Regarding the extent of the phenomenon, there is a consensus throughout the world to fight against THB.

The first relevant instrument is the Palermo Protocol adopted in 2000 by the General Assembly of the United Nations⁴. It gave the first common binding definition of THB⁵. In a general way, one can say that “the essence of trafficking in human beings is that the victim is removed from their home environment, under the effective control of another and exploited for the gain of others”.⁶ Crossing of borders is not a required element.⁷ But in most cases, victims of THB are third-country nationals. Thus, “it is much rather a chain...of criminal

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² The EU Strategy towards the eradication of trafficking in human beings 2012-2016, COM(2012)286, 19 June 2012, p. 2.

³ V. Ilareva, “Human Trafficking and Protection for its victims under European Law”, in C. Gortázar, M.-C. Parra, B. Segart, C. Timmerman (eds.), *European Migration and Asylum Policies: Coherence or contradiction? An interdisciplinary evaluation of the EU Programme of Tampere (1999), The Hague (2004) and Stockholm (2009)*, Bruylant, Bruxelles, 2012, p. 193.

⁴ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, 15 December 2000. See also, Council of Europe Convention on Action against Trafficking in Human Beings, signed in Warsaw, 16 May 2005.

⁵ See Article 3 point a) of the Palermo Protocol.

⁶ R. Piotrowicz, “Trafficking of Human Beings and their Human Rights in the migration context”, in R. Cholewinski, R. Perruchoud and E. MacDonald, *International Migration Law – Developing paradigms and key challenges*, T.M.C. Asser Press, The Hague, 2007, p. 276.

⁷ Crossing of borders can lead to confusion between THB and smuggling of migrants. For a clear explanation of the difference between the two, see E. Guild, *Security and Migration in the 21st century*, Polity Press, United Kingdom, 2009, p. 170.

offences and human rights violations, starting in the country of origin and extending over time and across countries of transit into countries of destination”.⁸

The EU takes part in the consensus working to counter THB. As far as other regions are concerned, the European territory is worried about the spreading of trafficking. The EU is indeed a destination region. A statistics report was published by Eurostat in 2013.⁹ It gives an overview of the situation in the EU between 2008 and 2010. The report reveals that the number of identified and presumed victims has increased, that 62% of the victims are trafficked for sexual exploitation and 25% for forced labour, and the major part of victims are female. Most of the trafficked persons are from the EU Member States, and more specifically, from Bulgaria and Romania. Regarding non-EU victims, they originated principally from Nigeria and China.

The EU shall not remain silent while facing such a situation. The fight against THB is a top priority of the EU. Nevertheless, the debate on how to counter THB has torn the EU for more than a decade and is still a current issue. Commissioner Cecilia Malmström underlines that “*Europe has developed ambitious policies and measures to help the victims...and put an end to this hideous crime. Unfortunately we are not there yet*”.¹⁰

At first, the security approach prevailed throughout the criminalisation of THB and the fight against irregular migration.¹¹ Little room was left for protection and prevention. The EU experts group on THB highlighted in 2004 that “up till now, States have concentrated predominantly on measures in the area of crime control and migration policies, rather than on victim assistance and protection”.¹²

In 1997, the EU adopted its first binding text: the Joint-Action concerning action to combat trafficking in human beings and sexual exploitation of children.¹³ The objective of this text was to improve criminal cooperation between Member States, but it established neither a common definition of THB nor common penalties.¹⁴ Subsequently, on 19 July 2002, a Council Framework Decision 2002/629/JHA on combating trafficking in human beings was adopted¹⁵, as the EU “recognized that merely seeking functional cooperation among Member States is not sufficient to deal with trafficking in human beings, as asymmetries in legislative

⁸ H. Konrad, “The fight against trafficking in human beings from the EU perspective”, in S. Cameron and E. Newman, *Trafficking in Humans – Social, Cultural and Political Dimensions*, United Nations University Press, 2008, p. 178.

⁹ Eurostat, *Trafficking in human beings*, 2013 edition.

¹⁰ Statement by Commissioner Malmström on EU Anti-trafficking Day, 17 October 2013, MEMO/13/908.

¹¹ See Conclusions of the European Council in Tampere on 15 and 16 October 1999.

¹² Report of the experts group on trafficking in human beings, 22 December 2004.

¹³ Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, OJ L 63, 4 March 1997, p. 2.

¹⁴ J. Pétin and M. Poelemans, “La réponse de l’Union européenne à la traite des êtres humains”, in B. Lavaud-Legendre (dir.), *Prostitution nigériane – Entre rêves de migration et réalités de la traite*, Karthala, Paris, 2013, p. 127.

¹⁵ OJ L 203, 1 August 2002, p. 1.

frameworks among Member States made it difficult to deal effectively with the act”.¹⁶ The Framework Decision gave, *inter alia*, a common definition of human trafficking in its article 1 and a uniform threshold for minimum penalties in its article 3§2. With this instrument, the EU wanted to fill the gap between Member States and to promote a common approach towards combating THB. The security approach was inherent to this text, as no place was left for support and assistance to victims.

Afterward, the security perspective was confirmed in 2004. The EU enacted the directive 2004/81/EC.¹⁷ This text puts in place a system whereby a victim of THB is granted a temporary residence permit and protection when this victim agrees to cooperate with the prosecuting authorities. Such a scheme linking protection and cooperation highlights the priority of the EU, that is to say, prosecution and law enforcement rather than protection of the human rights of victims.

It quickly became apparent that the security approach was not an optimal solution and the recent report from Eurostat confirms this analysis. Following the recommendations of the 2004 report of the EU experts group underlying that the protection and the human rights of victims should be the cornerstone of EU action against THB, the EU became aware of the necessity to change its approach.¹⁸ Thus, in 2005, the European Commission published a communication in order to adopt an integrated and multidisciplinary approach to the fight against THB.¹⁹ Subsequently, the Stockholm Programme supported this issue and called for “the adoption of a new legislation on combating trafficking and protecting victims”.²⁰

On 5 April 2011, a new directive relating to THB was adopted in order to reach the objective of implementing a comprehensive and integrated approach. Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims tends to promote a human rights-based approach.²¹

As a consequence, nowadays, the European scene of the combat against THB is composed of two main instruments – the 2011 Directive which favours a holistic approach, and

¹⁶ T. Obokata, “EU action against trafficking of human beings – Past, Present and the Future”, in E. Guild and P. Minderhoud (eds.), *Immigration and Criminal Law in the European Union – The legal measures and social consequences of criminal law in Member States on trafficking and smuggling in human beings*, Martinus Nijhoff Publishers, The Netherlands, 2006, p. 390.

¹⁷ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6 August 2004, p. 19.

¹⁸ The European Parliament also called for a holistic approach focused on human rights. See European Parliament resolution of 10 February 2010 on preventing trafficking in human beings, P7_TA(2010)0018.

¹⁹ Fighting trafficking in human beings – an integrated approach and proposals for an action plan, COM(2005)514, 18 October 2005; See EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, OJ C 311, 9 December 2005, p. 1.

²⁰ The Stockholm programme – An open and secure Europe serving and protecting citizens, OJ C 115, 4 May 2010, point 4.4.2.

²¹ OJ L 101, 15 April 2011, p. 1.

the 2004 Directive 2004/81/EC which recalls that the EU action is still permeated with the fight against irregular migration.

In the framework of the EU-Asia Dialogue Project, it is thus interesting to examine the content of this policy, as human trafficking issues are topics of current interests in the dialogue between the EU and Asia, as it is an increasing problem for both parties. Furthermore, such an analysis seems opportune, as recently, the Group of Experts on Action against THB of the Council of Europe (GRETA) urged EU Member States to boost their efforts to avoid Europe becoming or remaining an “El Dorado” for human traffickers.²²

I. THE INTEGRATED AND MULTIDISCIPLINARY APPROACH BASED ON HUMAN RIGHTS

In 2004, the EU Experts Group stated that “given the complexity of the issue and the interconnectedness of the different actors that feed and maintain trafficking in human beings, a holistic, multi-levelled and integrated approach is needed”.²³ The 2011 Directive was enacted in this way. An EU strategy towards the eradication of THB was also elaborated in order to boost the implementation of the new provisions.²⁴

The 2011 Directive “not only focuses on law enforcement but also aims to prevent crime and ensure that victims of trafficking are given an opportunity to recover and to reintegrate into society”.²⁵ Hence, the key elements of the EU action are prosecution, protection and prevention. Another key factor appears in the preamble of the directive. Recital 2 of the preamble highlights indeed the importance of the external dimension of the EU action. Thus, one can conclude that the EU action against human trafficking is based on a “4P Strategy”: prosecution, protection, prevention and partnership.

Prosecution

The 2011 Directive replaces the Framework Decision of 2002. The text of 2002 aimed to define a common approach against THB and to contribute “to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings”.²⁶ In 2011, the EU wants to go further in the way of approximation of national legislations and wishes to harden sanctions and prosecutions.

In order to tackle the recent evolutions of human trafficking, the directive adopts a broader approach in relation to what should be considered as THB. The scope of the incrimination has been extended by including new forms of exploitation, such as begging, exploitation of criminal activities and removal of organs.²⁷ The list of forms of exploitation is

²² GRETA, 3rd General Report on GRETA’s activities, 17 October 2013.

²³ Report of the EU experts group, *op. cit.*, p. 9.

²⁴ COM(2012)286, *op. cit.*

²⁵ *Ibid.*, p. 3.

²⁶ Recital 2 of the Framework Decision 2002/629/JHA, *op. cit.*

²⁷ See Article 2, paragraph 3 and recital 11.

a non-exhaustive one. Such a broad conception is real progress. However, most of the prosecutions in the EU Member States are related to sexual exploitation. Efforts need to be made in order to prosecute forced labour and other forms of exploitation.²⁸

Incitement, aiding, abetting and attempt are also punishable pursuant to Article 3. In addition, liability of legal persons can be involved and specific sanctions are provided.²⁹ Furthermore, Article 8 provides a sort of protection against penalisation of criminal acts committed by victims of THB, since those activities are “a direct consequence of being subjected” to trafficking. Some Member States have already implemented such a protection³⁰, while others are still reluctant.³¹ All EU Member States should transpose this provision into their national legislations in order to recognize the vulnerability of victims of trafficking.

Regarding penalties, one can notice that the threshold of sanctions has been raised in 2011. The offence of THB is punishable by five years of imprisonment, and where there are aggravating circumstances, the sanction is increased to ten years.³² Although these sanctions are deemed to be dissuasive, the real “sinew of war” in the context of trafficking is money. THB is globally worth USD42.5 billion per year.³³ THB “has to be converted from a low risk–high reward enterprise for organised crime into a high risk–low reward one”.³⁴ The 2011 Directive contains a provision relating to the seizure and confiscation of crime assets.³⁵ However, the EU lacks efficient instruments in this field. That is why a proposal for a new directive on the freezing and confiscation of proceeds of crime in the EU was published in 2012³⁶ and the final directive was adopted on 3 April 2014³⁷. Thanks to this new text, the EU hopes that it would be easier to seize the assets of organised crime, as “the main motive for cross-border organised crime is financial gain”.³⁸

Concerning the jurisdiction of EU Member States over the offences of THB, one can regret the lack of a proactive position on the part of the EU. Even if “Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where: (a) the offence is committed in whole or in part within their territory; or (b)

²⁸ For instances, see GRETA’s reports concerning the implementation of the Council of Europe on action against trafficking in human beings by Bulgaria (14 December 2011), France (28 January 2013) and Spain (27 September 2013).

²⁹ Articles 5 and 6.

³⁰ GRETA’s report concerning Romania, 31 May 2012.

³¹ GRETA’s report concerning Bulgaria, *op. cit.*

³² Article 4§1 and §2.

³³ Proposal for a directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union, COM(2012)85, 12 March 2012, p. 2.

³⁴ COM(2015)514, *op. cit.*, p. 4.

³⁵ Article 7.

³⁶ COM(2012)85, *op. cit.*

³⁷ Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime of the European Union, OJ L 127, 29 April 2014, p. 39.

³⁸ Recital 1, COM(2012)85, *op. cit.*

the offender is one of their nationals”³⁹, there is no clear obligation to prosecute offences committed in another EU country when the victim is one of their nationals, or when the offence was committed for the benefit of a legal person established on its territory, or at least, when the trafficker is a habitual resident in its territory.⁴⁰ This position is open to criticism, as the consecration of a universal jurisdiction in this field would be great progress.⁴¹

Although several criticisms can be stressed, the willingness to strengthen the prosecution of traffickers is welcomed. One element that has not been mentioned previously, which indeed permeates the context of law enforcement, is cooperation. Judicial and criminal cooperation at national and European level is of paramount importance.⁴² In order to improve cooperation and coordination, an EU Anti-trafficking Coordinator, Mrs Vassiliadou, was appointed in 2010.

Protection

The second important point and, above all, the new element stressed by the 2011 Directive, is the awareness of the necessity to pay attention to the protection of victims. Assistance and support for identified and potential⁴³ victims are priorities in order to respect the ambition to establish an EU action against THB based on human rights.⁴⁴ Measures of assistance and support shall be provided before, during and after the criminal proceedings in order to enable them to exercise their rights and to participate in the procedures.⁴⁵ Measures shall also be implemented to ensure victims’ subsistence through “the provision of appropriate and safe accommodation and material assistance, as well as [*inter alia*] medical treatment”.⁴⁶ The GRETA noted in its report concerning Bulgaria that States shall ensure that the measures provided for in law are guaranteed in practice, as there is still a gap between law and practice; for instance, there is a lack of shelters in some EU Member States. Finally, even if the 2011 Directive contains a provision relating to the right to compensation, one can notice that its implementation in practice remains problematical. Frequently, victims are not even informed of this opportunity.

³⁹ Article 10§1.

⁴⁰ Article 10§2.

⁴¹ A. Weyembergh, “L’Union européenne et la lutte contre la traite des êtres humains”, *Cahiers de droit européen* 2000, p. 215; For example, see the Belgium case.

⁴² For instance, the GRETA underlines that Spain must strengthen national cooperation. See GRETA’s report about Spain, *op. cit.*

⁴³ Article 11§2.

⁴⁴ The EU published a handbook on the rights of victims in 2013 which is addressed to victims and to practitioners seeking an overview of rights based on EU legislation.

⁴⁵ Article 11§1; see also Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14 November 2012, p. 57; Article 11§5 provides also protection against secondary victimization.

⁴⁶ Article 11§5.

In the field of protection, the special attention due to the specific situation of children is a point particularly well developed in 2011.⁴⁷ Article 13§1 underlines that the best interest of a child is a primary consideration. The objective of assistance and support provided to children is “their physical and psycho-social recovery” in order to find a durable solution.⁴⁸ Specific measures shall thus be implemented, such as the appointment of a guardian or specific techniques of interview. The 2011 Directive also recognizes “the gender specific phenomenon of trafficking”⁴⁹, but unfortunately no concrete provisions are introduced in the text of the directive.

This question of the access to protection puts stress on the problem of detection of victims. Identification of victims is indeed a crucial issue.⁵⁰ Cognizant of that, the EU developed guidelines for the identification of trafficked persons.⁵¹ According to EU statistics published in 2013, police officers remain the predominant protagonists of detection. But some authors stress that “it is a persistent problem that victims of trafficking are tracked down by the police, instead of being able to resort to a network of points of contact and support services without running the risk of being immediately caught in the law and order machinery”.⁵² The role of NGOs is indeed important in the context of identification, as they can be the first point of contact with victims of THB. NGOs and civil society have also an essential role in assisting and supporting victims.⁵³ Most of the protection measures are provided by NGOs and other specialised associations. Thus, close cooperation between States and those organisations is duly recommended⁵⁴ and States should help them through more funding. Strengthening the idea of the essential role of NGOs and civil society, the EU created and launched on 31 May 2013 an EU civil society platform against THB. This platform will be a place for exchanges of experiences and concrete ideas on how best to prevent THB and assist victims. Apart from their protective function, the action of NGOs and civil society is relevant in the context of prevention.

Prevention

The EU experts group in 2004 stressed that “prevention of trafficking is one of the most important lines of action to reduce this crime. Elements are research, awareness-raising, training

⁴⁷ Articles 13 to 16.

⁴⁸ Article 14§1.

⁴⁹ Recital 3.

⁵⁰ J. Pétin, “Les victimes de traite des êtres humains face à la protection internationale”, in M. Richard Gonzalez, I. Riaño Brun and M. Poelemans, *Estudios sobre la lucha contra la trata de seres humanos*, Aranzadi, Cizur Menor, 2013, p. 402.

⁵¹ Guidelines for the identification of victims of trafficking in human beings, especially for consular services and border guards, 2013.

⁵² H. Konrad, *op. cit.*, p. 169.

⁵³ See Council of Europe, *La lutte contre la traite des êtres humains aux fins d’exploitation sexuelle: le rôle des ONG*, Seminar, June 1998.

⁵⁴ Recital 6.

and administrative controls along with addressing the root causes of trafficking and the issue of demand”. Regarding the 2011 Directive, prevention is deemed to be a priority for the EU.⁵⁵ Article 18 relates to the measures of prevention. EU Member States shall implement measures to discourage and reduce the demand.⁵⁶ In this way, one can mention the EU directive on sanctions and measures against employers of illegally staying third-country nationals.⁵⁷ The 2011 Directive also requires putting in place information campaigns in order to raise awareness of THB. Awareness-raising “should be tailor made to the different target group and should include vulnerable groups, professionals, employers, clients and the public at large”.⁵⁸ Research and education programmes are also part of the measures of awareness-raising and prevention. Finally, training of officials is another important part of prevention, as it will provide tools and skills to understand and detect THB.

Partnership

As THB is a worldwide problem, the EU is aware of the importance of its external action. Development of the external dimension on action against human trafficking became a priority in 2005.⁵⁹ The Action-Oriented Paper on strengthening the EU external dimension on action against THB was published in 2009⁶⁰ and the Stockholm programme strengthened this ambition even more. The EU Strategy adopted in 2012 calls for the establishment of a list of priority third-countries and regions for future partnerships. In the second implementation report of the Action-Oriented Paper published on 3 December 2012, some countries and regions of high-priority were enumerated, such as Albania, China, Vietnam or the Silk Route region and Southeast Asian countries.⁶¹

THB is systematically addressed “in relevant EU agreements and strategic partnership with non-EU countries and also in all political dialogues on migration and mobility”.⁶² THB is also part of the European Neighbourhood Policy and is included in discussions about EU accession, particularly with the Balkan countries.⁶³ Within the EU-Africa Partnership, THB is an important priority. In December 2011, a meeting was organised in Johannesburg (South Africa) in order to enhance criminal investigation, prosecution and victim and witness

⁵⁵ Recital 1.

⁵⁶ There is a debate in some EU Member States on the question of penalisation of persons using the services of victims of trafficking, such as the services of victims exploited for sexual exploitation.

⁵⁷ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30 June 2009, p. 24.

⁵⁸ The EU experts group report of 2004, *op. cit.*

⁵⁹ See COM(2005)514, p. 4.

⁶⁰ Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings – Towards global EU action against trafficking in human beings, 2009.

⁶¹ Second implementation report/update of information on Member States’ external action, 3 December 2012.

⁶² The global approach to migration and mobility, COM(2011)743, 18 November 2011, p. 16.

⁶³ See A. Terrenoire, “Les Balkans occidentaux et l’Union européenne”, Study, 2007.

protection.⁶⁴ This event took place in the framework of the African union commission initiative against trafficking campaign, which aims to implement the Ouagadougou Action Plan to combat THB signed in Tripoli in 2006⁶⁵.

Recital 2 of the 2011 Directive stresses that the external action aims at “raising awareness, reducing vulnerability, supporting and assisting victims, fighting root causes of trafficking and supporting...third-countries in developing appropriate anti-trafficking legislation”. To understand the root causes of THB, such as poverty, discrimination, and lack of opportunities, implies, *inter alia*, an active action in the field of EU development policy.

Another relevant element of the external action against THB is the concern for repatriation and reintegration of victims in their home country.⁶⁶ The Action-Oriented Paper of 2009 underlined that “reintegration and return programmes should aim at the empowerment and social inclusion of victims of THB, including the safety and well-being of the victim, opportunities to find viable means of existence, and the prevention of re-victimisation and reduction of the risk of being trafficked again”.⁶⁷ The return process for victims of THB is important, as they are frequently third-country nationals and are not entitled to settle on a long-term basis in EU territory.

In this regard, as neither the Framework Decision of 2002 nor the 2011 Directive deal “with the conditions of residence of the victims of trafficking in human beings in the territory of the Member States”, the EU adopted in 2004 a directive regulating this issue.

II. THE MIGRATORY APPROACH

Due to the fact that most victims are migrants, confusion between the EU’s fight against irregular migration and its action to counter THB is natural. Since the very beginning, the EU deems that its action against human trafficking should go through measures countering irregular migration.⁶⁸ According to the EU, “addressing trafficking in human beings is of key importance and should be a visible dimension of the pillar on irregular migration”.⁶⁹ Efficient migration management appears as a tool to combat THB.⁷⁰ However, the statistics published in 2013, proving that the number of victims of human trafficking is increasing in the EU, has cast doubts on the efficiency of such a policy.

⁶⁴ <http://www.africa-eu-partnership.org/newsroom/all-news/one-step-closer-fight-against-trafficking-persons>.

⁶⁵ Ouagadougou Action Plan to combat trafficking in human beings, especially women and children, 22-23 November 2006.

⁶⁶ The GRETA urged some EU Member States (i.e., Spain and Romania) to intensify their efforts in this field. Concerning the case of victims who are EU citizens, the GRETA is worried about the fact that in Belgium, for instance, those persons cannot benefit in practice from the assisted voluntary return programmes.

⁶⁷ Action-Oriented Paper, *op. cit.*, point 3.5.

⁶⁸ See Conclusions of the European Council of Tampere, point 23; COM(2005)514, p. 6.

⁶⁹ COM(2011)743, p. 6.

⁷⁰ J. Pétin and M. Poelmans, *op. cit.*, p. 134.

The rigidity of EU migration policies can be, indeed, an indirect factor playing a part in the development of THB. The gap between the North and the South, in light of development issues, drives numerous individuals to migrate to wealthy regions. But “legal possibilities for migration from the poorer to more affluent parts of the globalised world are largely nonexistent for unskilled workers”.⁷¹ Thus, “facing restrictive immigration regulation, the choice left to the majority of migrants is illegal immigration”, and “where regular channels are closed, or too difficult to move through, space will be created for abusive practices, including human trafficking”.⁷² The EU’s restrictive measures create a real migration market.⁷³ Yet, the Council of Europe through its Convention⁷⁴ and its jurisprudence⁷⁵ stresses that States shall avoid that their legislations relating to migration encourage, facilitate or tolerate THB.

Restrictive migration rules seem counterproductive. Furthermore, traffickers play with rules, as they are systematically trying to circumvent them. For instance, it is not rare that victims of THB enter into European territory legally, thanks to corrupt officials. In addition, traffickers use asylum procedures in order to “regularise” the administrative situation of their victims. Frequently, victims are indeed obliged to apply for international protection when they arrive in an EU Member State in order to get a temporary residence permit. With this temporary authorisation to stay in the territory, traffickers can exploit the individuals and move them into another EU Member State, as the EU is an area without internal border controls.⁷⁶

As a consequence, one can conclude that restrictive rules are not successful. In 2004, the EU experts group already underlined that “States policies in promoting immigration restriction and reducing opportunities for regular migration have not been effective in preventing” THB.

However, as the first approach of the EU action against THB was a security approach based on prosecution and fight against irregular migration, the EU enacted on 29 April 2004 a directive linking issuance of residence permits with cooperation in the criminal proceedings.⁷⁷ The adoption of this instrument was part of a proposal for a comprehensive plan to combat illegal immigration and THB published in 2002.⁷⁸

Even if some provisions of the 2004 Directive seem to imply that it is a protective text, the reality is very different. The proposal for this directive published in 2002 refuted such an

⁷¹ G. Wylie and P. McRedmond, *op. cit.*

⁷² H. Konrad, *op. cit.*, p. 167.

⁷³ G. Vaz Cabral, *La traite des êtres humains – Réalités de l’esclavage contemporain*, Editions La Découverte, Paris, 2006.

⁷⁴ See Article 5§4 of the Council of Europe Convention on action against THB.

⁷⁵ ECtHR, 7 January 2010, *Rantsev v. Cyprus and Russia*, n°25962/04, §284.

⁷⁶ J. Pétin, *op. cit.*, p. 416.

⁷⁷ Directive 2004/81/EC, *op. cit.*

⁷⁸ OJ C 142, 14 June 2002, p. 23.

idea. It was indeed stated that “the proposed directive introduces a residence permit and is not concerned with protection of either witnesses or victims”⁷⁹.

The 2004 Directive establishes a system whereby victims of THB who cooperate with the authorities in the framework of prosecutions are each granted a residence permit of six months. Thus, regularisation of the administrative situation of a victim whose presence is illegal is closely linked to her willingness to cooperate in the criminal proceedings. If they cooperate, victims are each entitled to a temporary residence permit and specific assistance and support. It is obvious that assistance provided to victims serves the objective of law enforcement and prosecution. Victims are indeed the ones who can supply the most valuable information on THB. So this opportunity to be granted a temporary residence permit is a sort of incentive to cooperate.

Hence, cooperation of victims remains the cornerstone of the system. Such a nexus between cooperation and protection is however deemed to be in breach with a fight against THB focused on human rights. For a short period, there was a trend to question this system. In 2010, the European Parliament called for an “access to...a temporary residence permit, irrespective of their willingness to cooperate in criminal proceedings”.⁸⁰

A provision of the 2011 Directive can also be understood in this way. Article 11§3 notes that Member States “shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial”. At first sight, this new provision is a sign of great progress regarding the protection of victims, but this enthusiasm must be put into perspective. Article 11§3 shall be read in light of recital 18 of the 2011 Directive. Recital 18 underlines indeed that “in cases where the victim does not reside lawfully in the Member States concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit...the Member State concerned is not obliged to continue providing assistance and support to that person”. Thus, there is no fundamental change. Effective protection of victims who are in an irregular administrative situation is still closely linked to their cooperation with the authorities.

In order to reduce criticisms on this nexus between cooperation and the issuance of residence permit and protection, the 2004 Directive specifies that victims are granted a reflection period during which they will choose whether or not they will cooperate. This reflection period protects victims from expulsion and detention⁸¹ and allows them to recover and escape the influence of their traffickers in order to make an informed decision. The establishment of this reflection period must be welcomed as it is in line with a human rights-based approach of THB, but it is regrettable that no precise duration was indicated in 2004.⁸²

⁷⁹ COM(2002)71, 11 February 2002, point 2.3.

⁸⁰ European Parliament resolution of 10 February 2010 on preventing trafficking in human beings, P7_TA(2010)0018, point 15.

⁸¹ Article 6 of the 2004 Directive.

⁸² See the report on the application of Directive 2004/81/EC, COM(2010)493, 15 October 2010.

The 2004 Directive also suffers from criticisms regarding the temporary and precarious nature of the residence permit issued. As its issuance is conditioned by the willingness to cooperate, its renewal is linked, in a way, to the use of the victim in the criminal proceedings.⁸³ This approach is largely open to criticism. While victims can suffer from reprisals due to their cooperation with the authorities, they will face the threat of removal when the proceedings end or when the State concerned judges that it is not opportune to renew the residence permit. The EU experts group in its report of 2004 recommended that “in special circumstances, a long term permit should be granted on humanitarian grounds”. Some authors also suggested creating a specific status.⁸⁴ In any case, when the residence permit is not renewed or is withdrawn and when victims can be subject to expulsion, States shall however respect the principle of non-refoulement, as victims are entitled to such protection.⁸⁵

According to the report on the application of the 2004 Directive, this system is not successful; compared to the number of victims identified each year, the number of residence permit issued is very low.⁸⁶ In addition, it appears that some EU Member States fail to apply this directive correctly. For instance, the GRETA reveals in its report concerning the situation in France that “the 30-day reflection period for THB victims appears to focus on their decision to cooperate with the authorities, without taking into account their need to recover. Moreover, it is insufficiently known by the authorities as well as victims and as a result underused”.⁸⁷

III. CONCLUDING REMARKS

Combating THB remains a sensitive problem, as it encompasses immigration, criminal acts and human rights issues. The EU action in this field confirms such an observation. Directive 2011/36/EU and Directive 2004/81/EC reflect the struggle between security and a human rights-based approach. But “both issues must be tackled together if we wish to be successful in the fight against human trafficking”.⁸⁸

Directive 2011/36/UE aims to put in place an integrated and multidisciplinary approach based on human rights. However, at present, there is not enough experience to judge the efficiency of the new provisions. The only thing that must be noted is that some EU Member States seem reluctant to integrate the new legislation in their national systems. The deadline

⁸³ See Article 8§1 point a) and Article 14 point e).

⁸⁴ M. Ngalikpima (dir.), *L’esclavage sexuel: un défi pour l’Europe*, Les éditions de Paris, Fondation Scelles, Paris, 2005.

⁸⁵ J. Pétin, *op. cit.*, p. 408.

⁸⁶ COM(2010)493, *op. cit.*; See also Odysseus Network, Study, “Conformity checking of the transposition by Member States of 10 EC directives in the sector of asylum and immigration”.

⁸⁷ GRETA’s report concerning the implementation of the Council of Europe Convention on action against trafficking in human beings by France, 28 January 2013.

⁸⁸ H. Konrad, *op. cit.*, p. 163.

for the transposition was 6 April 2013, but at the end of 2013, Cyprus, Spain, Italy and Luxembourg were still in breach of their EU obligations.

In any case, according to statistics published by Eurostat in 2013, it is clear that improvements are duly required. In our view, three points must be strengthened. Although it is a key element, identification of victims remains problematical. Greater efforts are strongly recommended, as detection determines the implementation of the protective measures. Furthermore, concrete measures relating to the seizure of crime assets should be implemented. The financial rewards of THB are indeed significant. Hence, the freezing and confiscation of crime assets are effective tools. States must ensure the transposition and the implementation of the new directive 2014/42/EU⁸⁹, which will be effective in financially weakening crime organisation. Finally, a prevention policy and information on legal migration methods are of paramount importance. In this way, the EU's external action is relevant. The EU Member States should develop and strengthen its partnership with non-EU countries, *inter alia*, with Asia, which is a source, transit and destination region for human trafficking.

⁸⁹ OJ L 127, 29 April 2014, p.39, *op. cit.*

Trafficking in Human Beings in Italy

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GENERAL INTRODUCTION

Trafficking of human beings (THB) consists of the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation².

The exploitation includes sexual exploitation, forced labour or services, begging, criminal activities, or the removal of organs and it is managed by criminal organizations continuously adapting to changing socio-economic circumstances and to legal reforms³.

Within this paper, “sexual exploitation” implies the use of another person in non-consensual sex for profit⁴.

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² EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

³ UNODC, *Global Report on Trafficking in Persons*, 2012, United Nations publication, Sales No.13.IV.1, available online at http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf, last accessed 17th January 2014.

⁴ Definition extracted from EC website on anti-trafficking: <http://ec.europa.eu/anti-trafficking/section.action?sectionPath=Citizens%27+corner%2FGlossary>. See J. Halley, P. Kotiswaran, H. Shamir, C. Thomas, *From the international to the local in feminist legal responses to rape, prostitution/sex work, and sex trafficking: Four studies in contemporary governance feminism*, in *Harvard Journal of Law & Gender*, Vol. 29, p. 336 ff.; C. Pateman, *The Sexual Contract*, 203–04 (1988); C. A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH J. GENDER & L. 13, 22 (1993); N. Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791.

THB differs from human smuggling because it involves the use of force as well as exploitation, and because there is no need for the persons involved to cross a border or be physically transported⁵.

THB is the slavery of our times: victims are recruited among persons who are in particularly vulnerable position due to poor life conditions, gender inequality and widespread violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination⁶.

With regard to the actual trends of the phenomenon, the first report at the EU level on statistics on trafficking in human beings recognised Nigeria and China as the main non-EU countries of origin of identified and presumed victims in the EU and Brazil, Russia and Algeria⁷.

According to the above-mentioned report, the vast majority (80%) of victims are female. While the majority of victims of labour exploitation are male, victims of sexual exploitation are predominantly female (96% in 2010) and their percentage is increasing each year.

The percentage of male EU citizens trafficked within the EU is 74% and the percentage of female EU citizens trafficked in the EU is 66%.

The percentage of identified and presumed victims from non-EU countries is constantly increasing over the period studied, from 12% in 2008 to 37% in 2010 for male victims, and from 18% to 39% for female victims.

The prevalence of female victims impacts the forms of suffered exploitation and, consequently, the prevention and repression strategy should take into account the gender-based aspects of both the phenomenon and the policies. The consolidation of the gender-based perspective within the legislative and policy framework was recently suggested by EU Directive 2011/36/EU⁸.

⁵ EU Strategy towards the eradication of trafficking in human beings 2012-2016, available online at http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf.

⁶ UNODC, *Global Report*, p. 31 ff.

⁷ EUROSTAT, *Trafficking in human beings*, 2013, available online AT http://ec.europa.eu/anti-trafficking/download.action?nodePath=/Publications/Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileName=Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileType=pdf, last accessed on 18th January 2014.

⁸ DIRECTIVE 2011/36/EU of the European parliament and of the council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>, last accessed 18 January 2014. See also H. Askola, *Legal responses to the trafficking in women for sexual exploitation in the EU*, Oxford, 2007; A. Gallagher, *Contemporary forms of female slavery*, in K. D. Askin, D. M. Koenig (a cura di), *Women and International human rights law*, vol. II, New York 2000, 487; Id., *Triply Exploited: Female victims of trafficking networks – strategies for pursuing protection and legal status in countries of destination in Georgetown Immigration Law Journal*, 2004, 99; K. Barry, *Female sexual slavery*, New York 1979.

ITALIAN LEGAL FRAMEWORK

The so-called “new forms of slavery” (human trafficking, slavery and servitude) are punished by articles 600, 601 and 602 of the Italian Penal Code, as they were modified in consistency with the principles contained in the UN Protocol signed in Palermo by Law 228/2003 “Measures against human trafficking” (hereinafter National Law against THB)⁹.

Following a long debate between CSOs and public institutions concerning THB after the implementation of article 18 Legislative Decree No 286 of 1998 (hereinafter National Law on Migration), the notion of slavery resulting from the Geneva Convention of 1926, under which slavery was intended as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”, was clearly distinguished from “reducing to servitude”, thus introducing the possibility to punish the act of maintaining a person in a status of continuous subjection¹⁰. The criminal punishments for those responsible are from 6 to 20 years of imprisonment, with an increase of one third if crimes are committed against a minor of age or are aimed at exploiting prostitution or taking organs¹¹.

The mentioned norms punish also the act of maintaining a person in a status of continuous subjection for sexual exploitation; however the absence of any margin of freedom for the victims needs to be proved: despite a consolidated jurisprudence recognizing that the eventual space of autonomy or episodes of conviviality do not exclude the crime of reduction and maintenance in servitude but are instrumental to the maintenance of such servitude because they frustrate any kind of resistance on the part of the victims¹², the recent orientation of the criminal courts do not consider a condition of deprivation of freedom in the situation where the victims had given an initial consent even if they were minors at the age of recruitment, transportation and exploitation. In these cases the courts generally reappraise the allegations as exploitation of others’ prostitution under article 3 Law No 75 1958, the so-called Merlin Law¹³.

⁹ E. Rosi, *Combattere la tratta degli esseri umani: la nuova legge*, in *Gli stranieri*, 2004, 527; Id., *La moderna schiavitù e la tratta di persone: analisi della riforma*, in *Dir. e giust.*, 2004, n. 3, 52; A. Rossetti, *Riduzione in schiavitù e nuovo art. 600 Cp: riflessioni in tema di selezione delle condotte punibili*, in *Cass. pen.*, 2007, 160.

¹⁰ J. Allain, *R vs Tang: clarifying the definition of “slavery” in International law*, in *Melbourne Journal of International Law*, 2009, 246; Id., *The definition of slavery in international law*, in *Howard Law Journal*, 2009, 239; Id., *The slavery conventions: the travaux préparatoires of the 1926 League of Nations convention and the 1956 United Nations convention*, Leiden 2008. E. Amati, *Sul concetto di “condizione analoga alla schiavitù”*, in *Cass. pen.*, 1998, 36.

¹¹ M. L. Paesano, *Il reato di “riduzione in schiavitù” fra vecchia e nuova disciplina*, in *Cass. pen.*, 2005, 786.

¹² The first Judgment in this sense is Court of Cassation, Criminal Section V, No 13125/2000.

¹³ In Italy, prostitution is still ruled under Law 75 of 1958 “Abolition of the regulation on prostitution and fight against the exploitation of other people’s prostitution”, better known as “Merlin Law” after the name of the socialist member of the Senate who had promoted it. Enacted at the end of a ten-year heated debate, law 75/1958 sets forth the abolition of the regulation on prostitution in Italy (abolitionist hallmark) and, at the same time, kicked off the fight against the exploitation of other people’s prostitution. The approval of this law marked a real turning point in Italian customs and cultural habits of that time.

The trafficking of minors for sexual exploitation purposes may consist of the following offences: prostitution of minors (article 600-bis Italian penal code), pornography of minors (article 600-ter Italian penal code) and detention of pornographic materials (article 600-quarter Italian penal code).

Since the first legislative act about immigration regulation (Legislative Decree No 286 of 1998, hereinafter National Law on Migration), Italy acknowledged that trafficking in human beings is strictly connected with migration flows and that it constitutes a severe violation of the human rights of the victims.

A complex structure, hence, for the provision of assistance to trafficked persons was developed on the basis of a victims' rights-centred approach, rather than subordinating the protection to the victims' cooperation with police or judicial authorities.

The established victims' rights-centred protection system is grounded on the following provisions¹⁴:

- a. Article 18 National Law on Migration, which provides a long-term protection¹⁵: going beyond the connection of social protection of the victims and their collaboration with the Judicial Authority¹⁶, in the case that an illegal immigrant is in a *documented condition of violence or heavy exploitation and there is actual danger for his/her personal safety because s/he has backed out of constraints exerted by an illegal organisation, or owing to declarations made during judicial enquiries*, support shall be provided by giving the victims the possibility to back out of constraints, to obtain the recognition of a residency status and to participate in an assistance and social integration programme. The fields of application of this norm were clarified by the Decree of the President of the Republic No 394/1999, identifying the judicial path and the social path. In the first case, the foreigner can report directly to the police his/her status of constraint or heavy exploitation and the issuing of the residency permit is requested by the Public Prosecutor dealing with the case arising from the complaint of the foreigner. The second path starts under the initiative of a registered association, which submits a request to the Police Central Office, pointing out the presence of the conditions required by the law. The residency permit "for social protection reasons" lasts for six months and can be extended up to one year; it allows working and accessing the training system, and can be transformed into a work or study permit. The suspensions of the programme or

¹⁴ F. Prina, *La tratta di persone in Italia: il sistema degli interventi a favore delle vittime*, Milano, 2007. For data about the number of victims who are recipients of the programmes of protection, see the website of the Department for equal opportunities, <http://www.pariopportunita.gov.it/index.php/component/content/article/70-traffico-di-esseri-umani-2295-contro-la-tratta-di-persone>, last accessed 21 January 2014.

¹⁵ M. Virgilio, *I risultati e i nodi problematici di politica legislativa e criminale*, in *Articolo 18: tutela delle vittime del traffico di esseri umani e lotta alla criminalità*, Martinsicuro, 2002.

¹⁶ For further information cf. M. G. Giammarinaro, *Il permesso di soggiorno per motivi di protezione sociale previsto dall'art. 18 del t.u. sull'immigrazione*, in *Diritto, immigrazione e cittadinanza*, 1999, p. 4; D. Mancini, *Traffico di migranti e tratta di persone, tutela dei diritti umani e azioni di contrasto*, Franco Angeli, Milano, 2008; M.T. Manente, *Assistenza specializzata ed integrata per la vittima di tratta degli esseri umani*, in *Atti incontro di studio del C.S.M sul tema "Sistema penale, flussi migratori e cooperazione internazionale"* 4-6 April 2011.

behaviours that are “conflicting” with the protection purposes determine the revocation of the residency permit.

- b. Article 13 National Law against Trafficking in Human Beings ensures a short-term protection and initial assistance for Italian, European and foreign victims of slavery, servitude and trafficking (crimes included in articles 600 and 601 Italian Penal Code). The assistance shall include, at least, lodging and shelter in facilities whose address is secret and access to first-aid public health services. The programme under article 13 lasts three months and can be extended for another three months and upon completion, victims can seek support through article 18 by adhering to social integration programmes.
- c. Article 22 National Law on Migration as amended by Legislative Decree No. 109/2012 transposing EU directive 2009/52/EU: an irregular third-country national employed in “particular exploitative” conditions under article 603 bis Italian Penal Code, who lodges a complaint against the exploiter and cooperates with the criminal proceeding is entitled to a residency permit for humanitarian reasons for six months.

IMPLEMENTATION OF ANTI-TRAFFICKING POLICY

The coordinating and promoting authority is the Department for Equal Opportunities (DPO), which is currently considered Italy’s Equivalent Mechanism on Trafficking in Human Beings and indicates the current national approach to the issue adopted by the Italian government.

Despite the efforts of CSOs to define an organic and multi-agency national anti-trafficking plan jointly with the DP, the plan has not been adopted. However, on 3 December 2013, the DPO declared the intention to soon adopt a national anti-trafficking plan in view of the implementation of the directive 2011/36/EU¹⁷.

In Italy, for the moment, there is no national rapporteur or an equivalent mechanism, but the appointment of a national rapporteur is among the objectives of the decree transposing the EU Directive 2011/36/EU¹⁸.

The actual implementation of the internal legal framework raises many concerns both in terms of protection of the victims, often exposed to the serious risk of second victimization, and in terms of effective repression of the phenomenon, the lack of which is increasing a general sense of impunity.

¹⁷ DPO, *Press release*, 3 December 2013, available online at <http://www.pariopportunita.gov.it/index.php/primo-piano/2421-lotta-contro-la-tratta-degli-esseri-umani>, last accessed on 18 January 2014.

¹⁸ Legislative Decree 4th March 2014, No. 24 transposing the Eu Directive 2011/36/EU, available online at <http://sito.asgi.it/banca-dati/%E2%80%A2decreto-legislativo-4-marzo-2014-n-24/>, last accessed on 22nd June 2014. For a first comment see ASGI, Osservazioni allo schema di decreto legislativo recante attuazione della Direttiva 2011/36UE del Parlamento europeo e del Consiglio concernente la prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime e che sostituisce la decisione quadro del Consiglio 2002/629/GAI, available online at http://www.asgi.it/public/parser_download/save/1_0013_direttiva.2011.36.ue.pdf, last accessed on 18 January 2014.

Italian authorities, in fact, have progressively reduced their effective commitment in anti-trafficking actions, reducing dedicated human resources and making it uncertain to have funds for programmes of assistance and public calls to have access to them.

Such a trend clearly coincides with the switch of perspective in managing immigration flows: the emerging criminalization of immigration, in fact, has heavily impacted the approach of the operators and authorities involved in all the stages of the anti-trafficking strategy¹⁹.

The phase of identification of victims of THB is the most negatively impacted by the prevalence of the repressive policy on irregular migration: in fact, even very clear indexes of trafficking are often disregarded by public authorities in order to implement the removal procedures.

As an immediate consequence of such a practice, consider the high number of Nigerian women who are recipients of an expulsion order and detained in the administrative detention centres pending repatriation, although it is generally known by public authorities that there is an endemic and high-scale trafficking of Nigerian women for sexual exploitation in Europe and in Italy²⁰. In his last report the National Anti-*Mafia* Prosecutor admitted that there has not been a single case of voluntary prostitution among Nigerian women²¹. Their expulsion and repatriation is quite automatic, ignoring both the National Law against THB and the fact that they should have access to international protection, often denied also by the competent authorities (territorial and national commissions for international protection), who generally exclude THB as a form of persecution or a serious harm.

Despite the fact that victims are usually at risk of re-trafficking, their access to the due protection is subordinated to the possibility of rare and lucky contact with CSOs. The same rationale underlies the practice of public authorities to accord the residency permit under article 18 National Law on Migration only in the presence of effective and useful cooperation with police and judicial authorities, making the social path very residual.

It must be stressed, furthermore, that the prevalence of the judicial path for obtaining the residency permit under article 18 National Law on Migration and the consequent increasing of criminal complaints against traffickers and exploiters does not correspond to an increase of effective prosecution and conviction for THB crimes²².

In general, the competent authorities maintain a large discretion despite the various directives on the interpretation of article 18 National Law on Migration issued by the Minister

¹⁹ On the impact of the criminalization of the immigration, see A. di Martino, F. Biondi, I. Boiano, R. Raffaelli, *The criminalization of irregular immigration: Law and practice in Italy*, Pisa, Pisa University Press, 2013.

²⁰ See the concerns on the issue reported by the “30 years CEDAW Platform”, *Shadow Report*, New York, June 2011, available online at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Lavori_in_Corsa_for_the_session_Italy_CEDAW49.pdf, last accessed on 18 January 2014.

²¹ National Anti mafia Prosecutor, *Relazione annuale 2013*, available at http://www.regione.lazio.it/binary/rl_osservatorio_legalita_sicurezza/tbl_evidenza/Relazione_Annuale_DNA_2013_1_.pdf, last accessed 22nd June 2014.

²² EUROSTAT, *Trafficking in human beings*, 2013, available online at: http://ec.europa.eu/anti-trafficking/download.action?nodePath=/Publications/Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileName=Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileType=pdf, last accessed on 18th January 2014.

of Home Affairs. The possibility of applying Article 18 to cases of severe exploitation in areas other than sexual exploitation has hardly been explored. In recent years, however, the demands for a residence permit in these areas have increased, but the issuance of the permit has been strictly restricted to a complaint of the victim, then through the judicial path.

Many concerns have been reported about the investigation of THB crimes, which is within the area of interest of Anti-*mafia* Directorates (DDA), which deals with all kinds of organized crime, including, hence, THB: in fact, the lack of cooperation and exchange of information between DDA and the ordinary prosecutors' offices dealing with the so-called "spy crimes", (i.e., the exploitation of prostitution, the provision of false identity documents, the irregular renting of apartments or fictitious contract of employment, etc.), decrease the identification both of the victims of THB and of the traffickers and exploiters.

Furthermore, the discriminatory stereotypes which have been conveyed by the criminalization of immigration also impact the fairness of the criminal trials for the victims, who are exposed to second victimization because the proceedings' activities may not only be very intrusive and frustrating but also impacts the appraisal of the elements of the offences. With regard to the latter, the rare convictions for reduction and maintenance in servitude if the victims originally consented to be transferred and to provide work or sexual services is a significant indication of the persistence of moral prejudices and of the lack of awareness about the dynamics of THB.

Finally, it must be stressed that the very small number of compensations given for damages suffered by the victims is also due to the absence of an effective system of compensation, including through the establishment of a dedicated public fund.

Widespread discriminatory stereotypes underlie many ordinances issued by the mayors of Italian cities concerning the more precarious persons involved in begging, window cleaning, and prostitution, and who have been generally identified with irregular immigrants and stigmatized as a threat to public order, public health and public decency, without any consideration of their exposure to exploitation²³.

Such criticisms of the Italian system are common to many EU Member States, as stressed by Special Representative and Coordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, on 25 October 2013: despite the crime of human trafficking having been introduced in the penal codes of most countries in compliance with the United Nations' Palermo Protocol, such laws are rarely applied fully, while indictments are often raised for less serious crimes. She stressed that "too often, trafficking cases are not qualified as such, and therefore criminal networks are not disrupted", and suggested a more proactive strategy by bringing landmark cases to court, promoting innovative jurisprudence interpret-

²³ On the issue, see T. Pitch, *Contro il decoro*, Roma-Bari, Laterza, 2013. Many concerns arose from the ordinance of the mayor of Rome, 16 September 2008, available online at http://www.comune.roma.it/PCR/resources/cms/documents/Ordinanza_antiprostituzione.pdf, last accessed on 18 January 2014.

ing and applying penal laws on trafficking not only when extreme violence has been used but also when victims have been manipulated and compelled to stay in exploitative situations²⁴.

With regard to the scope of the labour exploitation, the new regulations introduced by Legislative Decree No 109/12 (which amended Article 22 National Law on Migration) are very recent and their effectiveness may not have been accurately measured. However, the general structure of the provisions seems not to ensure effective protection and not to encourage their homogenous application: the circumstances entitling special residency permit as provided by the law do not correspond to the reality that exploited workers live in. For instance, the norms require a “particular” labour exploitation, offering however no criterion for determining the “particularity” of exploitation, thus leaving it to the discretion of public authorities. In addition, the new article 22 National Law on Migration does not expressly clarify that the special residency permit will be confirmed at the end of the criminal proceeding against the exploiter; consequently, the uncertainty does not encourage the reporting of the exploitation.

For the implementation of the Italian anti-trafficking policy the CSOs have a key role: registered in a specific category, they provide shelters and assistance to the victims and manage the social programmes provided by law. Many of the CSOs involved in THB prevention and assistance to the victims are part of a national anti-trafficking platform, an informal network which has the aim to coordinate the interventions in favour of THB’s victims’ protection²⁵.

Despite their role as the main providers for the services established by law for victims of THB, CSOs are suffering from the precarious state of funds and the lack of a planned anti-trafficking strategy, and many good practices of identification and protection of victims are at risk due to the lack of adequate financial support.

INTERNATIONAL AND EU COOPERATION

Italy is part of the UN Convention against Transnational Organized Crime and of its Protocols, among which is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted by General Assembly resolution 55/25. Entered into force on 25 December 2003, it is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

Furthermore, Italy is a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings, ratified on 29 November 2010, and was represented in many

²⁴ M. Giammarinaro, *International conference in Lisbon of judges and prosecutors*, Lisbon, 25 October 2013, available online at <http://www.osce.org/cthb/107569>, last accessed 18 January 2013.

²⁵ For further information see the Intents declaration of the platform available online at <http://piattaformaantitratta.blogspot.it/>, last accessed 18 January 2014.

activities organized in the context of the Council of Europe Campaign to combat trafficking in human beings²⁶.

In 2013, Italy was visited by the main monitoring institutions on THB: after the visit of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings, Dr. Mariagrazia Giammarinaro, in June and July 2013, and the visit of United Nations Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ezeilo, an evaluation of the visit to Italy was carried out from 2 to 6 December 2013 by a delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). The visit was organized in the context of the first round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

In the meanwhile, Italy, together with Cyprus, Spain and Luxembourg, has still not notified the Commission of national measures taken to enact EU rules and it was formally requested by the EU Commission to ensure full compliance with their obligations under the EU legislation on human trafficking by transposing Directive 2011/36/EU. It was also noted that if the Member States do not comply with their legal obligation within two months, the Commission may decide to refer them to the Court of Justice. Over the past decade, the European Union has stepped up its efforts to fight human trafficking, strengthening its focus on prevention and protection of victims. The adoption of the 2011 Directive on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision, is the most recent sign of the continued commitment of the European Union in this field. The Directive represents a critical step in addressing human trafficking with a comprehensive approach, acknowledging that trafficking is both a crime and a human rights violation and that the state has primary responsibility to respect, protect and promote the rights of all trafficked persons regardless of their country of origin.

It puts human rights at the centre of all the efforts, including when dealing with criminal matters, dedicating specific provisions to the rights of victims during criminal proceedings and stressing the need for a gender perspective because of the cultural and structural differences between the victimization of men and women.

The Directive 2011/36/EU was transposed with the Legislative Decree No. 24/2014: despite the several proposals of amendments submitted by specialist civil society's organisations and THB experts, the act gives only a partial transposition to the EU directive, particularly in regard to the protection of the more vulnerable victims and to the reparation of damages²⁷.

The EU directive 2009/52/EU providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals was transposed by the Legislative Decree No 109/2012 which modified, as indicated before, articles 22 and 24 National Law on Migration providing a special residency permit for workers in a particular

²⁶ http://www.coe.int/t/dghl/monitoring/trafficking/docs/Profiles/ITALYProfile_en.asp.

²⁷ See F. Niccodemi, *Osservazioni al decreto legislativo 4 marzo 2014 n. 24 di attuazione della direttiva 2011/36UE relativa alla prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime e che sostituisce la decisione quadro del Consiglio 2002/629/GAI*, www.asgi.it, last accessed 22 June 2014.

situation of exploitation and introducing more serious punishment for the employers of irregular third-country nationals, with an increase of the sanction in case of exploitative labour conditions under article 603-bis Italian Penal Code.

The transposition has been widely criticized: among the reported criticisms are: the strict scope of the procedure of regularization, covering only full-time work, the entitlement only of the employers for the lodging of the request of regularization, the limited degree of precision of the conditions entitling the special residency permit under article 22 National Law on Migration and the limited duration of the permit.

For the rights of the victims of THB, it shall be mentioned also the EU directive 2004/80/EC relating to compensation to victims of crime: the damages compensation is very rarely achieved by victims in general, and specifically by THB's victims, because of the many difficulties related to the structure of the criminal organizations, which usually manage to obscure the profit of the exploitation.

In Italy, these obstacles to the full compensation of victims are worsened by the lack of a public-dedicated fund for the victims of crime, established by 2004/20/EC as an obligation that the Italian government has still not fulfilled, despite recent jurisprudence recognizing that victims of crime are entitled to an indemnity for damages due to the non-transposition of the directive²⁸.

²⁸ Court of Turin, judgment No 3145/2010; Court of Rome, Judgment No 20439/2013.

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Current Problems of Human Trafficking in Poland

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To understand the situation of human trafficking in Poland one has to note that it is one of the very few countries in Europe, and possibly in the world, facing all existing dimensions of the phenomenon. Poland is a country of origin, where victims, mostly women (rarely men) are recruited and transferred, mostly to Western European countries. Poland is also a destination country, which means that victims (both women and men) from Eastern European countries and from Asia are coming to Poland and being exploited here. Finally, Poland is also a transit country for victims (mostly women and children) travelling from the East to the West.²

This exceptional situation makes combating human trafficking in Poland a really difficult and demanding task. That might be also one of the reasons why Poland has not enjoyed spectacular achievements in this respect as yet. There are also other reasons for that but I will come back to them later. At this stage it is fair to note that since 2005, Poland has been included in the top category of countries, called Tier 1, in the report on human trafficking prepared by the US State Department³. Even if we take into account the controversies around this report this should be seen as a positive factor rather than a negative one.

For external observers, it is also important to understand that the history of human trafficking coincides with the collapse of the communist system in Poland and in many other countries of the “Eastern Bloc”. Economic changes in this region, such as liberalization of regulations concerning movement of people, the unemployment that emerged after switching to a market economy and growing demand for special and sophisticated services in Western societies, had constituted a very good ground for the sex and porn industry.⁴ That was one of the reasons why for many years there was a strong focus on human trafficking for sexual exploitation of Polish women in Western Europe and women from neighbouring countries in Poland. As a result, between 1995 and 2002, law enforcement agencies completed nearly 260

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² B. Perrin, “Just Passing through? International Obligations and Policies of Transit Countries in Combating Trafficking in Persons”, *European Journal of Criminology* 2010, Vol. 7 N. 1, pp. 11-27.

³ <http://www.state.gov/j/tip/rls/tiprpt/>.

⁴ The important elements of the human trafficking description are the so-called “pull factors”, which generate the market’s response to the existing demand, see K. Bales, *Understanding Global Slavery*, University of California Press, Berkeley, No 2005: 155.

criminal investigations concerning human trafficking (with a total of 1,250 women-victims) but nearly all of them were related to the sex business. As to perpetrators (almost 500), they appeared to be individuals and criminal organizations both from Poland and other countries – mostly countries of origin of the victims. Albanian and Turkish groups were an exception to this pattern. The modus operandi of all crimes was similar: young women were recruited, transported to another country, either voluntarily or by force, enslaved there and forced into prostitution. According to data disclosed by the police, Poland was and still is a country of origin for such countries as Germany, Belgium, Italy, Spain, Sweden or France; it is a country of destination for victims from Ukraine, Bulgaria, Belarus, Latvia, Moldova, Russia, Lithuania and Vietnam; and a transit country for victims from Latvia, Lithuania, Ukraine, Russia, Moldova and Bulgaria.⁵

With time, a new form of sexual services emerged in Poland, among others, the so-called “road prostitution”. This refers to young women, scantily dressed, standing by major roads, mostly in the forests, ready to provide sexual services to drivers passing by. This form of prostitution is controlled by Polish and Bulgarian criminal groups. The police claims that, in fact, there is nothing they can do about it, as there is no evidence that these women break the law, and are merely walking along the road.

At the beginning of the new century it became clear that there is much more than just sexual exploitation in Poland. In 2004, Polish court sentenced two Vietnamese citizens for the sale and exploitation of another man from Vietnam. It was a classical case of forced labour: a person from Vietnam was offered a good job in Poland and was transferred illegally to Poland. While here, he was exploited to pay back the debt and subsequently sold to another Vietnamese. During a routine inspection carried out by Polish Border Guard, he was identified as an illegal immigrant using a fake identity document. In the course of the proceedings, it was discovered that this person was also a victim of trafficking in person and forced labour.

Another event important for the level of awareness of the Poles, including decision makers, was a case codenamed *Terra Promesa*. In the summer of 2006, the Polish press published a series of articles describing the situation of Poles picking fruits and vegetables in Italy.⁶ They had responded to offers of seasonal jobs, went voluntarily there and took legal jobs offered to them by local planters. However, both the working conditions and accommodation were totally unacceptable. The people were supervised both at work and accommodation by special guards, equipped with firearms. The pay they received was much lower than agreed and they were punished for any form of disobedience. Some men were beaten but some women were raped.

Since the local authorities were corrupted, the Italian *Carabinieri* intervened, rescuing hundreds of Poles and other nationals and arresting the perpetrators. Simultaneously, the Polish authorities arrested the Polish citizens that organized this slave labour. Both the Italian

⁵ *Combating Human Trafficking*, PP presentation of the Central Counter Human Trafficking Unit, Counter-Organized Crime Section, Central Bureau of Investigation, Warsaw.

⁶ “Dying for 1 Euro”, M.A., *Rzeczpospolita Daily*, 19 July 2006; “Horror of Poles in Italian Labor Camps”, *Gazeta Krakowska Daily*, 8 October 2006.

and Polish Ministries of Justice took steps to promptly open and finalize their investigations. The proceedings in Italy have been closed some time ago but in Poland it is still in progress. This particular case demonstrated that the victims of enslavement are not only “young naive women” who want to improve their financial situations working abroad but also so-called “ordinary people” searching for well-paid seasonal jobs in another country. It proved also that the list of obligations of the state is a bit longer than we thought before.

An entirely different dimension of forced labour was revealed in the autumn of 2009, when a group of 19 men from Bangladesh arrived in Poland.⁷ The recruitment agent promised them legal jobs at a fish plant in Gdansk (a large city on the Baltic Sea coast) and high pay. That is why they decided to sell all their properties or take out loans from their relatives to cover all related costs. After arrival, they were sent to hard manual work in the shipbuilding industry and hardly received any money. They were told that certain sums were deducted to cover the “costs of the trip”. This particular case showed that Poland has become also a place where migrants could face deceptive recruitment and exploitation.

The process of recruitment in the country of origin, as described above, is rather expensive and the travel arrangements can be problematic. As a result, more and more often, new employees are not recruited on the spot but when they are already in Poland. This process could be directed at those who came to Poland illegally or people whose visas' validity are almost over or those whose other contracts have been terminated. Such people are in trouble and their vulnerability is being utilized by recruiters and traffickers coming up with easy solutions. In some Polish towns there are specific “human fairs” where potential foreign employees meet them as well as potential local employers. Again, there is nothing local authorities can do as some people simply stay on the streets, having all documents in order.

One of the other forms of human trafficking, which has not yet emerged in Poland, is illegal trafficking in human organs and tissues. This means that no single case has occurred so far. According to Polish transplant experts, such cases are unlikely to happen due to restrictive regulations and well-controlled medical practice. Since transplant operations always involve teamwork and require the appropriate conditions, they cannot be carried out outside of the specialized hospitals, which are well-monitored. The rules of such operations are specifically laid down by the Transplantation Act, which imposes special restrictions, on records of live donors or court permission for donation or opinion from the special ethical commission.⁸

Neither Polish law enforcement agencies nor NGOs operating in Poland have recorded any cases of typical child exploitation, e.g., in farming, production or services. However, children begging on the streets can be seen in many Polish cities. There was also a court case in Southern Poland where perpetrators were sentenced for forcing other persons, including

⁷ “Human Trafficker. 19 Bangladeshis Deceived”, D. Po., *Gazeta Tczewska Daily*, 26 January 2010.

⁸ A. Liszewska, “Legal and criminal assessment of organ transplants”, *Law and Medicine* 1999, No 3, pp. 80-89 (the author raises the question of whether it is right that the sale of his or her own organs by the donor is not subject to penal liability).

children, to beg⁹. Sometimes children on the streets are forced to be very active in begging for money, in other cases, their role is reduced to assisting adult beggars. The role of children, especially if they are disabled, is to evoke feelings of compassion in potential donors.

Finally, the issue of illegal commercial adoption should be tackled. According to Polish law (Article 211a of the Polish Penal Code), this is forbidden, no matter whether future parents do it on their own or with the help of an intermediary. The scale of illegal adoption, as measured by official statistics, seems to be very limited – there are several cases a year.

The most recent method of enslavement and exploitation that has emerged in Poland is, in short, called “forced crime”. Most of such incidents have been recorded in Sweden.¹⁰ The scheme is as follows: attractive jobs in Sweden were offered to Poles by members of a criminal group. Men were promised work in the construction sector or in farms, and women were recruited as *au pairs*. To start the new life, the criminals offered “employees” direct loans and assistance in the banks. Those who cannot afford to pay the money back were forced to steal luxury goods from shops.¹¹ Those who refused were threatened and severely beaten.

HUMAN TRAFFICKING

As mentioned, Poland has been facing human trafficking since the mid-1990s. There has been enough time to set up a system to manage all challenges related to this special phenomenon. For the purposes of this report, I define a system as a combination of elements interconnected institutionally and functionally, whose main aim is to provide a holistic response to human trafficking and slavery. First, there is a set of legal regulations, both at international and national level, which determine the key issues, like the definition of human trafficking, rules of penalization of behaviours related to all forms of slavery, the responsibilities of the state, the rights of the victim and mechanisms of prevention. Second, the system includes complex institutions that implement legal provisions related to human trafficking, monitoring the issue and counteracting potential victimization of people. The third element of such a system comprises all measures connected with the effective investigation and conviction of perpetrators of human trafficking and related crimes. Fourth, the system contains a set of legal and organizational solutions leading to the effective care, support and protection of the victims of human trafficking. Fifth, elements of the system includes all initiatives, campaigns and events undertaken by the civil society, namely by non-governmental organizations or other civic and professional groups as well as media, to raise social awareness. Such a system of eliminating human trafficking should be supplemented by analytical and research infrastructure, namely by a network of experts specializing in this problem and research centres studying the subject. This element is still “under construction”.

⁹ “They Kidnapped Children and Forced Mothers into Begging”, *Wprost/Dziennik Gazeta Prawna Newspaper*, November 6, 2007: <http://www.wprost.pl/ar/117137/Porywali-dzieci-i-zmuszali-matki-do-zebrania/>.

¹⁰ <http://www.money.pl/gospodarka/wiadomosci/artykul/polacy;zmuszani;do;kradziezy;w;szwecji,3,0,148227.html>.

¹¹ In June 2012, Polish media reported on the initial phase of the trial of this criminal group, see <http://www.tvn24.pl/wiadomosci-ze-swiata,2/polacy-oskarzeni-o-handel-ludzmi-w-szwecji,201593.html>.

The report is expected to demonstrate, among other things, the national policy towards trafficking in person. Changes in the legislation could serve as a good example of the lack of consistency of Polish authorities in this respect. The said crime had been introduced into legislation in Poland as early as in 1997. New penal code introduced two crimes: human trafficking and commercial illegal adoption (Art. 253 para 1 and 2). Although it should be seen as a very positive step, this regulation lacked the precise, legal definition of human trafficking. This resulted in serious difficulties in effective sentencing of perpetrators.

The lack of a legal definition of human trafficking in Polish criminal law became less painful after the Palermo Protocol¹², supplementing the UN Convention against Transnational Organized Crime of November¹³. Soon after that Polish law gained another definition of human trafficking on 1 May 2004, when Poland acceded to the European Union, which meant that it incorporated the framework decision of 19 July 2002 (2002/629/JHA)¹⁴ on counteracting human trafficking. Another legal definition of human trafficking, formally applicable in Poland, was the definition included in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005¹⁵.

Nevertheless, the legal definition directly placed in the Penal Code was heavily criticized for many years by law enforcement agencies, academics and representatives of non-governmental organizations. For almost a decade such pressure was totally ineffective. It was only in 2010, that the Ministry of Justice prepared amendments to the Penal Code. Pursuant to the new Act enacted on 20 May 2010¹⁶, Polish criminal law gained two definitions, i.e., a definition of human trafficking and a definition of slavery (Article 115, para 22¹⁷ and para 23¹⁸ respectively).

These provisions set up the legal bases for the Polish system to combat trafficking, which had been created for over 15 years. This period of time has been long enough for such a

¹² Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (*Journal of Laws*, 2005, No 18, item 160).

¹³ *Journal of Laws*, 2005, No 18, item 158, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

¹⁴ OJ (Official Journal of the EU), L 203, 1.8.2002, pp. 1–4.

¹⁵ *Journal of Laws*, 2009, No. 20, item 107.

¹⁶ The Act of 20 May 2010 on amendments to the Penal Code, the Police Act, the Act introducing the Penal Code and the Code of Criminal Procedure, which came into force on 8 September 2011 (*Journal of Laws* 2010, No 98, item 626).

¹⁷ In accordance with Article 115 para 22: “Trafficking in persons means the recruitment, transportation, delivery, transfer, harboring or receipt of persons by means of threat or use of force, of abduction, of fraud, of deception, of use of mistake or incapability of actions, by abuse of dependence relation, by use of critical condition or state of helplessness, by granting or accepting material or personal benefits or by promise to another person in supervision over a person, with the purpose of their exploitation, even with their consent, particularly in prostitution, pornography or other forms of sexual exploitation, in forced labor or services, in begging, in slavery or other forms of exploitation degrading human dignity or with the purpose of acquiring cells, tissues or organs in violation of the law”.

¹⁸ According to Article 115 para 23: “Slavery means a state of dependence where a human being is treated as the subject matter of ownership”.

system to be effective. Researches carried out by the Human Trafficking Studies Centre at Warsaw University¹⁹ have revealed that it had some weaknesses. The most important one was its lack of comprehensiveness. Particular elements were created in response to current needs rather than as a result of planned and well-prepared action. Sometimes such moves were lacking in an in-depth reflection on the potential influence of a new element on the whole construction. On the other hand, it can be stated that the system fits into the system of public authorities in Poland, into the Polish model of justice and into the level of welfare services. It requires, however, essential strengthening in its axiology, well-defined strategic goals and clearly defined leadership.

The existing system is based on the assumption that it is the central government who takes responsibilities for activities related to the elimination of trafficking in persons. It defines goals and assigns tasks which have to be implemented by the state executive bodies, supported by self-governments and non-governmental organizations. The government allocates very limited and insufficient funds for fighting human trafficking, which in fact is being used for support of the victims at the national level. In practice, the Ministry of Interior transfers this money to special programmes run by non-governmental organizations. In such situations, it is expected that all other stakeholders, namely local authorities and local organizations involved in fight against this serious crime, would collect the relevant funds themselves.

This rather generalized opinion about the system should be supplemented by the results of an in-depth evaluation, which may demonstrate a more balanced assessment. It is possible, thanks to an analysis of the strong parts of the system, to reveal all its weaknesses that are required to be rectified. From that perspective, the main features of the system should be described as follows:

1. Human trafficking has been noticed by the state authorities some time ago but there is a lack of consistency in this respect. This issue is no longer a priority of the government.
2. There is no long-term strategy of dealing with human trafficking along with related issues, e.g., forced labour. As a result, the system is somehow in a vacuum since no one can determine if any proposed solutions are consistent with such a strategy and if they are in line with the priorities of the state.
3. The legal foundations of the system, although rather good, lack some important elements. First, recently the adopted definition of human trafficking lacks precision, for example, in the regulation of commercial adoption. Second, the legal status of a human trafficking victim is not sufficiently well described. Third, there is no provision criminalizing forced labour as a separate crime. Finally, the most important institutions dealing with the human trafficking problem must act on the basis of the lowest ranked regulations, whereas the highest ranked regulations (e.g., concerning foreigners or welfare) have been amended several times.

¹⁹ *Eliminating human trafficking in Poland - analysis of the system*, Z. Lasocik (ed.), Human Trafficking Studies Centre (HTSC), Warsaw University, Warsaw 2011.

4. State activities had been concentrated on legal regulations, investigation and support for the victims but it has paid much less attention to awareness-building, education and training.
5. As has been mentioned, at the policy level there is no long-term strategy to combat trafficking in persons in Poland. But there are national action plans, which since 2003, are being accepted by the Council of Ministers on two-year terms. In theory, such programmes should clearly define the position of state authorities, precisely allocate tasks to public institutions, provide information on available resources and determine instruments to evaluate the effectiveness of activities. National action plans created in Poland do not meet all such criteria. Moreover, the programmes lack mechanisms to verify tasks and to evaluate achievements.
6. At the institutional level there are three institutions which serve as the pillars of the system. These institutions are: the Inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings, the Working Group created as part of that Committee, and the Human Trafficking Team at the Migration Policy Department of the Ministry of the Interior. In fact none of these institutions is sufficiently effective in fulfilling its tasks. The Interdepartmental Committee is a leading body but can hardly be perceived as the real leader of the whole system. It is a typical bureaucratic entity undertaking actions of only a ritual nature. The Inter-ministerial Committee is operationally served by the Human Trafficking Team at the Migration Policy Department of the Ministry of the Interior. This solution is the least appropriate since it concentrates relatively broad powers within one department, without, however, making it explicitly responsible for preventing and combating human trafficking in Poland.
7. Although many institutions collect information on human trafficking and forced labour there is no coherent united system of data collection. The need for such an important element of the system has been recognised for many years, and was even reflected in the national action plans, but so far such a system does not exist. This shortage of the system was also pointed out by GRETA in its report on Poland.
8. Another weak segment of the system is the functioning of local government institutions, and welfare in particular. In the situation where the funds allocated by the government are insufficient, it is the local government authorities that are responsible for raising money to secure the needs of human trafficking victims. Recent amendments to the welfare law give some hope that soon, better conditions will be created at the local level to work out effective solutions to the problems of victims of human trafficking and forced labour. One of the good signs is the new regulation which imposes crucial obligations to coordinate local activities aimed at creating an effective system of assistance to victims on provincial governors.
9. Somehow, in the heart of each system of this kind, is support for the victims, which in Poland was important from the very beginning thanks to the La Strada Foundation. In general, the subsystem of support for victims is based on the idea of cooperation between state institutions responsible for investigation and civil society, represented in Poland by the La Strada Foundation. At first, financial means for victims were raised by this NGO but since 2009, only the government has foreseen money for this purpose.

10. Finally, the cross-cultural communication issue must be mentioned here as it has somehow been forgotten by Polish authorities for many years. We faced this problem painfully when workers from Bangladesh appeared to be victimized in Poland. The very obvious question which was asked then was: Were public services in Poland well-prepared to understand these people from a different cultural environment and to manage problems they might have? Were they well-prepared to understand the experiences of those people and to meet their needs? The system of combating human trafficking in Poland still needs some time to answer these questions positively.

These are the main elements of the system, which does work relatively well despite its drawbacks. But there are two things which the system requires most urgently. First is a long-term strategy for combating human trafficking and forced labour in Poland, especially taking into account dynamic changes in the nature of these crimes (as described earlier), size of the country and its population (38,000,000 inhabitants), changes in migration processes as well as realistically assessed potential of the state. Second is the need for fundamental reconstruction of the management centre of the system. Such a change could ensure the achievement of three important goals: (1) to improve the analytical capacity of the system (e.g., in the area of collecting data), (2) to introduce the mechanisms of effective coordination of activities of all stakeholders, and (3) to develop reliable instruments of evaluation of the system. According to our research, the first step to achieving all these goals is the *establishment of the national rapporteur on slavery and human trafficking in Poland*. Such a new institution should be institutionally and financially independent, and this must be seen as a precondition for its effectiveness. The experience of some European countries, such as the Netherlands²⁰ or Finland²¹, proves that this is possible.

Although Polish authorities are relatively happy with the way the system is operating, there are several grey zones, which are successfully used by traffickers. I will not deal with such controversial issues as legality of prostitution, criminalization of clients buying sexual services or justified adoption conducted outside of the legal system. Instead, I will try to draw attention to several topics that are considered “borderline” and are the subjects of constant debates in Poland.

One such phenomenon is called “surrogate motherhood”. Similar to illegal adoption, surrogate motherhood is the result of the desperate desire of infertile couples to have a baby. This issue has not been regulated in Poland yet. On the one hand, there is no regulation banning such practices, but on the other, there are no regulations concerning the legal status of all the parties involved in such an unusual transaction (parents, mother, child) either. In fact, each of them requires protection, which the Polish legal system fails to provide at the moment. In this context it has to be emphasized that Poland has not yet ratified the European Bioethics Convention, which has imposed an explicit ban on such practices.

²⁰ For more details on the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, see <http://english.bnrm.nl>.

²¹ For more details on the Finnish National Rapporteur on Trafficking in Human Beings, see www.ofm.fi.

The lack of explicit legal regulations results in occasional cases of surrogate motherhood in Poland. Moreover, infertile couples may find firms and agencies, sometimes operating abroad (for example, in Ukraine), helping to match them with young women who are ready to give birth for money. This kind of activity cannot be considered illegal, although it is not officially declared in the company's statement of business objects.

Another area which should be mentioned here is trafficking in children, which can be declared "abandoned" compared to other aspects of THB. The root cause of this problem in Poland is the fact that many children are transferred through Polish territory from the poorer EU countries and from the former Soviet Union states. Although this has been reported by some international organizations,²² our knowledge of the scale and nature of the problem is still almost zero or, at least, very limited. In fact, there is no estimation of figures concerning unaccompanied children crossing Poland's borders. Similarly, the population of foreign children who stay under the custody of a variety of detention or institutional care centres has never been analyzed in details. Children, especially if they travel in groups or in the company of adults, undergo only random control, if any. This situation provides some space for traffickers, and the Polish Border Guard has reported that there is some intelligence that could suggest the existence of such a problem.

Some important issues are related also to forced labour of migrants but more precisely to the way that the labour market is organized and controlled in Poland. There is a variety of topics in this field but from the point of view of this report, two of them have to be mentioned. First is the functioning of employment agencies taking an active part in the recruitment of migrant workers. On the one hand, their role is growing due to increasing interest in leased workers, but on the other hand, the system of certification and monitoring of such institutions is still very ineffective. It is especially true when Polish agencies cooperate with similar entities in countries of origin or when agencies operating on the spot are recruiting workers for Polish firms. In both situations it is almost impossible to control the process of recruitment and to make sure that potential workers are being provided with high-quality and honest information.

Second, the grey zone area in the labour market is the system of declarations, where the intention to employ in Poland a foreigner from Belarus, Georgia, Moldova, Russia, and Ukraine has to be made. In brief, the system operates as follows: According to Polish law an employer can issue a declaration that she/he intends to employ a particular person for a specific work. Such a statement (document) has to be registered in the District Labour Office and can then be used by the potential migrant worker to obtain a Polish visa. Obviously, the firm issuing such a paper is obliged to employ the foreigner upon her or his arrival to Poland.

At first glance the system looks very good but the problem is that no one controls whether the employers really need workers and what is happening to people coming to Poland. Also, the declarations are issued in Poland for free but in some countries they are the subject of illegal transactions as they almost guarantee obtaining Polish (EU) visas. One of the ways to reduce the grey zone in this field worth considering, would be introduction of a central

²² *Child Trafficking in Europe. A Broad Vision to Put Children First*, UNICEF, Innocenti Research Center, 2008.

register of the declarations. It would be an efficient way of managing the system, mostly by assessment of the real needs of particular employers and verification of how many people appeared both in Poland and in the companies which issued such declarations. Although this might create more bureaucracy, it could help to reduce risks of fake recruitment and exploitation.

CIVIL SOCIETY

As in many other countries, in Poland, all civil society actors and stakeholders, including non-governmental organizations, media and academics, play a significant role in the system of combating trafficking in human beings. All of them are active in several fields, such as support of victims, education, research and awareness-building.

If one would like to make a general assessment of the involvement of civil society in combating human trafficking in Poland, it should be said that this role is rather limited due to its insufficient infrastructure (number of institutions and their potential). On the other hand it must be said that the whole sub-system of support for victims of human trafficking is based on civil society actors, but more precisely on one non-governmental organization – La Strada Foundation – occasionally supported by other NGOs.

In fact, it was La Strada that played a key role in drawing public attention to the issue of human trafficking in Poland in the mid-1990s, and it is very active and effective in this field up to now. But looking at the problem from another perspective, it must be noted that the system of combating THB in Poland became a victim of the success of the La Strada Foundation. Because, in fact, it is the only professional organization offering support for victims of human trafficking in Poland. This is the result of the wrong development policy of both the Foundation and the government. The lack of other NGOs, especially local ones, is especially unfortunate taking into account the size of Poland, its population, the scale of the problem and the scope of needs. Poland, as has been mentioned, is a country of origin, a transit country and a country of destination at the same time, facing all possible problems related to such a difficult situation. One organization, even the best one, is not enough. Instead of encouraging the authorities to develop conditions for the establishment of new regional and specialized organizations, La Strada become a monopolist in the area of offering assistance to victims of all forms of human trafficking and forced labour.

The assistance mentioned above is offered through National Consulting and Intervention Center for Victims of Human Trafficking, which was brought into existence in 2009. This Center is run as an independent body, financed by the government in the form of an annual tender. Not surprisingly the La Strada Foundation was for a few years the only bidder, and obvious winner, of the competition issued every year by the Ministry of Interior to manage the Centre. The situation changed in 2013, when it had to share responsibility with Association PoMOC from Katowice.

In Poland, there are also other organizations that deal with the issues of human trafficking. Some of them are typical intervention and support organizations; some of them are involved in the promotion of specific issues (advocacy) and theoretical analysis. Such a list

include: H. Niec Legal Aid Center in Krakow, PoMOC Mary Immaculate Association in Katowice, Caritas, and several organizations based in Warsaw, such as Nobody's Children Foundation, ITAKA Foundation, Centre for Women's Rights, The Association for Legal Intervention and Helsinki Foundation for Human Rights. In addition, academic legal clinics and Human Trafficking Studies Center of Warsaw University should be mentioned.

Other than support for victims, all these entities, with the leading role of the La Strada Foundation, are involved also in the training of all state and non-state institutions dealing with human trafficking. The training is meant mostly for law enforcement, labour inspectors and social workers. Although the volume of such training is growing there is no sufficient data on the effectiveness of this process. There is no mechanism of evaluation of the training conducted and assessments of its real impact on the performance of the authorities in question.

Effective elimination of trafficking in persons depends strongly on the level of awareness of the society as a whole but especially the potential victims. In many countries this field is successfully occupied by civil society actors but this is not the case in Poland. The role of NGOs in education and social awareness-building is rather limited. There is no good programme of school education concerning enslavement and human trafficking. Also, effective but at the same time interesting information campaigns pointing at the issue are still rare.

When the issue of awareness is discussed one looks also towards the media. After years of stagnation there are some positive changes in this respect in Poland. Recently, all media have devoted increasingly greater attention on the problem than they used to. Although there is still a lot of coverage of criminal cases or the actions of law enforcement agencies, more and more analytical publications are appearing. Some articles can be seen as successful attempts to explain the very complicated nature of modern-day slavery.

Every system for countering human trafficking should also be based on reliable data on this phenomenon. Despite the information which is collected by all the stakeholders there must also be data collected by academia and independent research centres. The role of civil society in this aspect of the problem is also limited for two reasons. First, the Polish government has not set aside any financial means for studying human trafficking. This means that if there is any study on that issue, most probably it is being financed by external sources²³. Second, the institutional infrastructure is still underdeveloped, with one independent academic centre (HTCS) and several NGOs trying to conduct simple research. On the other hand, there is a growing number of master and Ph.D. dissertations on this topic being prepared.

There is also the very difficult issue of protection of migrant workers in the labour market and the need for specialized services for them. The role of NGOs in this field is definitely small; in fact, it is reduced to the activities of a very few organizations.

²³ It even happened that the Polish Ministry of Interior ordered a survey on public awareness of risk in human trafficking, financed by the British Embassy in Poland (see OBOP 2010, K. 019/10).

CONCLUSIONS

1. Poland is a country of origin, a country of destination and a transit country.
2. But Poland has undergone a specific evolution from country of origin to country of destination and transit country (mostly as a result of EU and Schengen membership).
3. Human trafficking in Poland is a dynamic phenomenon with respect to forms of trafficking, methods of enslavement, modus operandi of organized crime groups and victims' profiles.
4. Over the last few decades, the list of human trafficking emanations has substantially expanded, from sexual exploitation to begging and forced crimes.
5. A new issue of forced labour of migrant workers, also from Asia, has emerged.
6. There is a system of combating THB in Poland, with strong legal bases but lacking a long-term strategy and sufficient financial means.
7. The management of the system should be changed as it is ineffective and lacks transparency.
8. There are numerous grey zone areas, such as surrogate motherhood, child trafficking and labour market, which need immediate intervention.
9. The role of civil society in combating human trafficking is still limited due to its insufficient infrastructure.
10. There is a strong need for independent institutions to analyze human trafficking, collect data and assist state institutions (i.e., national rapporteur).



EU-ASIA DIALOGUE

*Shaping a Common Future for Europe and Asia –
Sharing Policy Innovation and Best Practices in Addressing Common Challenges*

The “EU-Asia Dialogue”-project is a joint project by the European Commission and the Konrad-Adenauer-Stiftung of Germany.

It aims to foster exchange and understanding between policy-makers, non-governmental organizations and researchers from Europe and Asia. The stakeholders shall be provided with a platform to discuss regional and cross-regional developments in order to identify both short- and long-term challenges, to prevent their emergence and solve them at an early stage. This informal exchange shall help to enhance bi-regional cooperation across sectors and disciplines.

The project addresses issues from seven different topics:

1. Climate Change Diplomacy
2. Eco-Cities
3. Migration / Integration
4. Social Cohesion
5. Human Trafficking
6. Maritime Piracy and Security
7. Food Security

All activities are implemented by a consortium consisting of the Konrad-Adenauer-Stiftung Singapore, East Asian Institute of the National University of Singapore, European Policy Centre in Brussels and European Union Centre in Singapore.

Besides conferences in Europe and Asia, the project will produce research papers and book publications. These will, together with the conference reports, be made available online.

The contents of this publication is the sole responsibility of the implementing consortium under the lead of Konrad-Adenauer-Stiftung e.V. and can in no way be taken to reflect the views of the European Union.



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