

**CDDRL**

**WORKING PAPERS**

Number 003

June 2012

PROGRAM ON HUMAN RIGHTS

***International Cooperation and  
Coordination: The European  
Challenge to Combating and  
Preventing Human Trafficking***

Helga Konrad and Nadejda Marques

Program on Human Rights, Center on Democracy, Development, and the Rule of Law  
Freeman Spogli Institute for International Studies



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## Working Paper of the Program on Human Rights

Center on Democracy, Development,  
and The Rule of Law Freeman Spogli Institute for International Studies  
Stanford University  
Encina Hall  
Stanford, CA 94305  
Phone: 650-724-7197  
Fax: 650-724-2996  
<http://cddrl.stanford.edu/>

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The **Program on Human Rights** seeks to understand how human rights can best be deployed to advance social justice, freedom, equality, development and the rule of law. Founded in 2009, the Program on Human Rights (PHR) is a unique intersection of the social sciences and public-policy formation and implementation. The Program on Human Rights is housed at Stanford's Center for Democracy, Development, and the Rule of Law (CDDRL), and is the focus of human rights research and related activities at Stanford providing a forum for the dozens of Stanford faculty who work in disciplines that engage or border on human rights (including law, philosophy, political science, education, human biology, public health, history and religious studies) and more than 30 student-initiated human rights groups on campus.

## ABOUT THE AUTHORS

**Helga Konrad**, Executive Director Anti-Trafficking of the Austrian Institute for International Affairs (oiip); Head of the 'Regional Implementation Initiative: Austria and the neighboring countries'; International Consultant; Special Representative on Combating Trafficking in Human Beings of the OSCE - Organization for Security and Cooperation in Europe (2004-2006); Chair of the EU Stability Pact Task Force on Human Trafficking for South Eastern Europe (2000-2004). In her capacity as Austrian Federal Government Minister for Women she hosted the 1<sup>st</sup> EU Conference on Trafficking in Women for Sexual Exploitation in Vienna, 1995. She was Head of the Austrian government delegations to the 4th UN World Conference on Women in Beijing/China and the 1<sup>st</sup> World Congress on Combating Commercial Sexual Exploitation of Children in Stockholm/Sweden, 1996.

**Nadejda Marques** is Manager, Program on Human Rights at the Center on Democracy, Development and The Rule of Law. She was the research coordinator for the Cost of Inaction Project at the François-Bagnoud Xavier Center for Health and Human Rights based in the Harvard School of Public Health (2009-2011). For the past decade, Marques has worked in the field of human rights with Human Rights Watch in Brazil and Angola and serves as a consultant and member of the board for leading human rights NGOs in those two countries.

## ACKNOWLEDGEMENTS

It was a great pleasure and great honor for me to have been invited to speak about human trafficking at the opening of the winter quarter Sanela Diana Jenkins International Human Rights Speaker Series at Stanford University's Program on Human Rights (PHR) and to have been able to provide insight and inspiration for Stanford students and faculty engaged in human trafficking research, teaching and service. I am very grateful for this unique opportunity to influence the next generation of human rights lawyers, policy makers, and activists. I wish to express my gratitude to Helen Stacy, Director of the Stanford Program on Human Rights and Richard H. Steinberg, Director of the Sanela Diana Jenkins Human Rights Law Project. I would like to thank Professor Kathleen Jolluck of the East European Women and War in the Twentieth Century for moderating the conversational format of the opening event at the Bechtel Conference Center at Encina and encouraging lively discussions. My warmest thanks go to Nadejda Marques, Manager of the Stanford Program on Human Rights, Center on Democracy, co-author of our paper 'International Cooperation and Coordination: The European Challenge to Combating and Preventing Human Trafficking' for her highly appreciated invaluable input, support and guidance.

Helga Konrad

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Some twelve years after the unveiling of the UN Anti-Trafficking Protocol in 2000, most European countries have sound anti-trafficking legislation. Worldwide, while many countries amend their legislation and policies, they follow practice developed, applied and tested in Western Europe. Some of these practices consider national and international coordination and cooperation for an effective anti-trafficking policy. However, notwithstanding the progress European countries have made, within Europe, governments have not been able to coordinate and develop a comprehensive and multi-pronged approach to render criminal networks of human trafficking inoperative. Why? The authors suggest that different definitions of human trafficking and variations in criminal law, the existing national security and state sovereignty framework, as well as lack of training and proactive investigation combine to facilitate corruption and limit successful prosecutions, convictions and international cooperation.

In 1996, The Austrian Federal Government Minister for Women's Affairs hosted the first European Union-Conference on "Trafficking in Women for the Purpose of Sexual Exploitation." At that time, the general information and understanding was that the problem of trafficking resulted from a combination of irregular migration, smuggling of people and trafficking per se.<sup>1</sup> The lack of precision in the understanding of the problem of trafficking was exacerbated by the fact that in most of the European countries there was no specific or clear legislation against human trafficking. Europe had been facing the problem of sexual trafficking for a number of years<sup>2</sup> and with increased flow of people in the region, there was little expectation that it would diminish over time. Despite that perception, the European Union Commission, the executive body of the European Union responsible for proposing legislation for the Union and implementing decisions and treaties was convinced and took important first steps against this severe abuse and violation of human rights.

Following the first conference on trafficking of women for sexual exploitation, governments organized several awareness campaigns often partnering with non-governmental organizations (NGOs) and international organizations (IOs) that took the lead in anti-trafficking actions and the first victim assistance and protection centers opened. At first, there were some loose working and coordination structures at the national and transnational levels that generated discussions and enabled the passage of more appropriate legislation on the issue. Over the next decade, from 1996 to 2006, a number of European countries started to modify their existing laws.<sup>3</sup>

The European Commission tried to help governments understand that no country is immune from human trafficking. As is true today, human trafficking affects not only countries of origin, but also countries of transit or of destination and, very often, all three.<sup>4</sup>

Many of the current debates on burden of proof, and criticism from feminist scholars and activists were also present in the 1990s. For example, as the title of the first conference suggests, the debate in Europe was more centered and limited to the problem of sexual trafficking. It was true at that time, and more generally, that forced labor and human trafficking despite being included in several international treaties, before the UN

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<sup>1</sup>Including the three key elements of trafficking as defined in the UN Palermo Protocols: movement or receipt of people; involving some form of threat, force, coercion or deceit; and the intent or purpose of exploitation.

<sup>2</sup>The problem of human trafficking was first identified in Europe in the seventies. This was when NGOs started to confront governments with the problem and to establish the first victim protection centers – such as the Austrian NGO LEFÖ - (the abbreviation LEFÖ means 'Latin-American Exiled Women in Austria' and reflects one of the regions of origin of victims of trafficking at that time).

<sup>3</sup>Elvira Niesner, Christina Jones-Pauly, *Trafficking in Women in Europe, Prosecution and Victim Protection in a European Context*, Bielefeld, 2001.

<sup>4</sup>Although, countries and regions can function in a combination of origin, transit and destination, according to the UN it is possible to identify some patterns of movement and international sex trafficking. Within Europe, victims often originate in Eastern Europe. Transit countries are also mainly in Eastern Europe and, in descending order, destination countries are Italy, Germany, the Netherlands, and Greece. Monzini, P. *Trafficking in women and girls and the involvement of organized crime in western and central Europe. International Review of Victimology*, 11, 73–88. 2004.

Trafficking Protocol, was not often included in the human rights discourse.<sup>5</sup> The UN Commission on Human Rights was not directly involved in cases of human trafficking. It was only in 2002 that the UN Office of the High Commissioner for Human Rights (UNOHCHR) started the process of developing guidelines for the integration of human rights into anti-trafficking initiatives and, until recently, there was no institutional or international scrutiny about what countries were doing regarding human trafficking.<sup>6</sup> The first treaty on human trafficking, the Council of Europe Convention treaty on human trafficking, was only adopted in 2005 and entered into force in 2008.<sup>7</sup>

At the level of the individual nations in Europe, discourse did not differ significantly.<sup>8</sup> It was only after the unveiling of the Palermo Protocol in 2000, which established a more comprehensive definition of trafficking, that governments around the world undertook to pass comprehensive anti-trafficking legislation and other measures to combat this crime.<sup>9</sup> As a response, European states moved to redefine human trafficking to encompass the elements of movement or receipt of people, threat, force, coercion or deceit and the purpose of exploitation, as established in the Palermo Protocols and adopted by the UN in 2000. The first European Court of Human Rights (ECHR) judgment considering trans-national human trafficking as a violation of Article 4 of the ECHR was the historic case of *Rantsev v. Cyprus and Russia* in 2010.<sup>10</sup>

Today, some twelve years after the unveiling of the UN Anti-Trafficking Protocol, most European countries have sound anti-trafficking legislation. Hundreds of anti-trafficking recommendations have been formulated, checklists and indicators have been crafted for the identification of cases of human trafficking, standards for victim protection<sup>11</sup> have been developed, training material has been produced – almost all relevant international and regional organizations such as UN.GIFT, UNODC, OSCE, IOM, ICMPD, ILO, UNICEF, WHO, ECPAT, INTERPOL, EUROPOL and many NGOs as the service providers for victims of trafficking – have developed manuals, handbooks, training modules for law enforcement, health providers, judges and prosecutors, as well as criminal justice practitioners. The European Union provides funding for the organization of countless conferences, symposia, meetings to discuss anti-trafficking projects and programmes. These funds are available to European governments through a variety of EU/EC budget lines.<sup>12</sup> There is a continuing stream of commentators, researchers and analysts attempting to raise awareness and inform the public and policy makers.

Outside Europe, many countries have either adopted new anti-trafficking laws or amended their Criminal Codes to provide for the specific crime of human trafficking and to take account of the different dimensions of human trafficking. These measures, in part, follow practice developed, applied and tested in Southeastern Europe in the late 1990s and early 2000 and initiated by the EU Stability Pact Task Force with national anti-

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<sup>5</sup>Other relevant treaties that include forced labor and human trafficking are: the UN Slavery Convention (1926); Convention for the Protection of Human Rights and Fundamental Freedoms (1950); UN Supplementary Convention on Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) and several ILO Conventions.

<sup>6</sup>Trafficking in Human Beings in Southeastern Europe, UNICEF/UNOHCHR/OSCE-ODIHR, 2002.

<sup>7</sup>Council of Europe - CETS No. 197 – Convention on Action against Trafficking in Human Beings, 16.V.2005, available at: [http://www.coe.int/T/E/human\\_rights/trafficking/PDF\\_conv\\_197\\_trafficking\\_e.pdf](http://www.coe.int/T/E/human_rights/trafficking/PDF_conv_197_trafficking_e.pdf). As of March 2012, 43 states have signed and 35 have ratified the Council of Europe Convention on Action against Trafficking in Human Beings.

<sup>8</sup>In countries with different types of police (e.g., the security police, the foreign nationals polices and the district police) specific conflicts of interests between them often led to the fact that a person's chance of being recognized as a victim of trafficking was smaller when he or she was apprehended by the foreign nationals police because of their particularly keen interest in deporting people on the grounds of illegal residence. Another frequent problem in many countries was that not officially recognized, but potential victims of trafficking were sent to deportation prisons or centers (instead to victim protection services) despite the fact that the security police continued to investigate the trafficking case.

<sup>9</sup>The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, attached to the Convention against Transnational Organised Crime (UN TOCC), was opened for signature in December 2000 in Palermo, Italy.

<sup>10</sup>See *Rantsev*, App. No. 25965/04, Holding, paragraph 8, 11.

<sup>11</sup>See for example, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary. UN Human Rights Office of the High Commissioner, New York and Geneva, 2010.

<sup>12</sup>See, European Commission Fight against Trafficking in Human Beings, EU Projects available at: <http://ec.europa.eu/anti-trafficking/index.action?breadCrumbReset=true>

trafficking coordinators working with multidisciplinary working groups/teams/committees.<sup>13</sup> It was the EU Stability Pact Task Force (SPTF) that brought together for the first time government officials, international organisations, law enforcement agencies and relevant NGOs in the 'SPTF Coordination Team'. These initial attempts allowed the implementation of the first 'Alliance against Trafficking in Persons,' under the aegis of Organization for Security and Co-operation in Europe (OSCE) Special Representative. Because of its access to a wider range of mutual information and also because it engaged jointly in decisions taken by individual governments, agencies and institutions, such as the European Commission and others, the Alliance was able to secure some significant advances. For instance, one of the mechanisms implemented worldwide after the European experience has been the National Referral Mechanisms (NRM). Instead of offering isolated solutions, interactive structures such as NRMs offer a sequence of practice-oriented actions and measures. These NRMs are triggered at the moment of identification of the victim(s) or the trafficking situation. By means of coordinated involvement of all relevant stakeholders, NRMs seek to respond in an integrated and strategic manner to protect victims' human rights throughout the entire process.<sup>14</sup>

Notwithstanding the progress European countries have made, within Europe, governments have not been able to coordinate and develop a comprehensive and multi-pronged approach to render criminal networks of human trafficking inoperative.<sup>15</sup> Why has international coordination and co-operation within Europe and with countries of origin been so difficult? Understanding this challenge is key to enable anti-trafficking policy to be effective in Europe and worldwide. Below, we offer a few points for reflection.

#### Many definitions of human trafficking

European governments have been unable or unwilling to accept a uniform definition of human trafficking (the UN definition). This is a core challenge for a coordinated effort to curb human trafficking. Within Europe, for some, the UN definition was too broad,<sup>16</sup> for others, it was narrow and left out important considerations that would enable addressing some of the most important root causes of the problem, such as poverty, unemployment, discrimination and social acceptance.<sup>17</sup> The UN definition resolves the dispute at the international level but in practice, there are still disputes about the definition and interpretation of the UN definition present in Europe. This dispute disfavours the advancement of anti-trafficking measures because it results in a multitude of definitions creating a general confusion about the issue. It undermines prosecutions and sentencing in human trafficking cases and restricts international cooperation.

Despite the UN definition, human trafficking is re-defined in different ways, in different countries, in various laws, using different benchmarks and indicators. For example, with regard to trafficking for labor exploitation, some countries place their emphasis on overt or, at least, subtle forms of coercion, while others emphasize the intent to exploit. Still others focus on objective criteria of unacceptable living and working conditions (excessively long hours, little if any pay or late payment of wages). The German definition focuses on excess disparity between the wages paid to foreign migrant workers and to German nationals. The Belgian and French definitions center on conditions incompatible with human dignity.<sup>18</sup>

<sup>13</sup>See, Stability Pact for South Eastern Europe, Anti-Trafficking: the task force on trafficking in human beings. Available at: <http://www.stabilitypact.org/trafficking/info.asp>

<sup>14</sup>OSCE/ODIHR, Handbook on National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, Warsaw 2004.

<sup>15</sup>UNODC, Global Report on Trafficking in Persons, 2009 which states: "Overall, the number of prosecutions and convictions recorded in a large part of the world was very limited. This is likely due to the absence of legislation or the fairly recent status of most of the legislation addressing trafficking in persons in many countries. A large number of the countries covered by this report did not record even a single conviction under the specific offence of trafficking in persons." see [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf)

<sup>16</sup>Richard Danziger, Jonathan Martens, Mariela Guajardo, Human Trafficking and Migration Management, Strategies Against Human Trafficking: The Role of the Security Sector, Cornelius Friesendorf (Ed.), DCAF, Vienna and Geneva 2009.

<sup>17</sup>Trafficking in Human Beings in Southeastern Europe, UNICEF/UNOHCHR/OSCE-ODIHR, 2002 and 2005.

<sup>18</sup>Roger Plant, former Head of the ILO's Special Action Program to Combat Forced Labour and Trafficking at the Round Table on THB for labor exploitation and domestic servitude of the 'Regional Implementation Initiative', Vienna 26/27 September 2011, in cooperation with renowned experts.

However, in Europe, the disputes and reluctance in fully adopting the UN definition of human trafficking and variations in criminal law produce a gulf between the intensity of public outcry against human trafficking, on the one hand, and the infrequent prosecutions and convictions, on the other.<sup>19</sup>

#### Variations on criminal law and criminalization of victims

State policies that primarily focus on measures of control and (so-called) self-protection in practice, very often, have led to the criminalization of trafficked persons, who are punished for being undocumented, who are frequently detained and often forcefully deported, and have no access to the assistance and protection measures to which they are entitled under international law.

Most people who fall victim to human trafficking in Europe are still widely regarded as criminals, entitled to little sympathy and support. Trafficking victims often feel that authorities turn a blind eye to the abuses they have suffered at the hands of their traffickers. Among EU member states, only Italy offers (under Article 18 of the National Law on Migration) an alternative for victims of trafficking to the usual law enforcement approach.<sup>20</sup> The Italian program, also known as the social path, provides for unconditional assistance where victims are put in a safe place for a reflection period, temporary and eventually even for permanent residence. The victim will be interviewed by social workers or law enforcement officers, but there is no determination on filing a complaint against the traffickers or on terms of the period in which the victim has to make a statement of formal complaint or give information in order to access a protection program.<sup>21</sup>

Experience shows that offering an extended stay in the country to trafficked people (without forcing or instrumentalizing them for prosecution) is not only consistent with human-rights, but contributes to national security, since trafficked people with legal status are more inclined to support the prosecution of the traffickers and help disrupt their criminal networks by cooperating with the authorities and testifying in court. In Italy, during the 12 years of application of Art. 18, more than 18,000 victims of trafficking, (of these, 994 were minors) have participated in the social protection projects and received assistance and support.<sup>22</sup>

In 2006, Italy prosecuted 214 cases of trafficking for the purpose of sexual exploitation,<sup>23</sup> more than the total number of cases investigated in the entire European Union in 2001. In 2003, the number of EU investigations rose to 453. By 2005, it increased to 1,060 and 1,569 in 2006. Despite the upward trend, the number of criminal proceedings in the European Union still does not reflect the presumed scale of the crime. According to estimates of the International Organization for Migration (IMO) about 500,000 people are trafficked to Europe every year.<sup>24</sup>

Since 1999, Sweden has developed an alternative legislation that views prostitution as a form of sexual violence against women and therefore criminalizes those that purchase sexual services but not the sale. Since its

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<sup>19</sup>There are few prosecutions and convictions for human trafficking in general but even fewer convictions of human trafficking for labor exploitation in Europe. See, Statistics for Europe from the US TIP Report 2010: 47 prosecutions and 38 convictions for trafficking for labor exploitation as opposed to some 2,000 to 3,000 of prosecutions and convictions for all forms of THB. Ruth Rosenberg, "Trafficking of Adult Men in the Europe and Eurasia Region", USAID, September 2010 by Creative Associates International Inc. and the Aguirre Division of JBS International Inc. Ie.

<sup>20</sup>Article 18 of the Italian National Law on Migration (Legislative Decree n° 286 of 1998), providing for long term protection programs for trafficked persons (Assistance, recovery, residential facilities, trainings, job placement, residence permit, social inclusion). Although all the European States provide for short term assistance and protection of victims and prosecution of traffickers, long term unconditional assistance and protection has been proven to be more effective – for the victims and the prosecution.

<sup>21</sup>See also, UNHCR. Refworld, Trafficking in Persons Report 2009 – Italy. June 16, 2009. Available at: <http://www.unhcr.org/refworld/country,,USDOS,,ITA,,4a4214b1c,0.html>

<sup>22</sup>Department for Equal Opportunity, Italy, Meeting of the Informal Network of EU National Rapporteur, Brussels July 2011.

<sup>23</sup>See, European Commission Fight against Trafficking in Human Beings; Italy. Available at: <http://ec.europa.eu/anti-trafficking/showNIPsection.action;jsessionid=2z1KPIFG8gJLTvHYG66lJ3nXh5T7w8TjmQDpPCSCn9hLLprgYVJ1!511069867?sectionId=6888c58a-3517-49fd-903c-c18984028f48>

<sup>24</sup>Commission Working Document Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, COM(2008) 657 final, Brussels.

implementation, the Swedish government claims that human trafficking has stabilized or declined, but this without sound evidence of this claim.<sup>25</sup> In contrast, renowned experts and independent researchers call the Swedish approach a failed experiment.<sup>26</sup>

#### Notions of national security and sovereignty

The European security and sovereignty framework undermines effective international cooperation because it does not present clear mechanisms that allow mutual legal assistance, cross-border investigation and extradition of and respect for victims of human trafficking human rights.<sup>27</sup> Rarely do one State's actions result in admissible evidence in courts of a different State with different legal, political and cultural traditions. In part this is because there is a generalized lack of political will to put theory into practice. This lack of political will often translates into a lack of political leadership to properly implement relevant laws and commitments that may challenge the sovereignty and territorial integrity of States.

Often, anti-trafficking discourse does not correspond to governmental commitment. Repeatedly, government officials in Europe have proclaimed that human trafficking is a gross violation of human rights, yet most countries organize their response to trafficking in persons narrowly, based almost exclusively on prevailing notions of national security and national sovereignty. At the same time, governments continue to regard trafficking as a function of illegal immigration. Thus, the protection of the fundamental rights of the victims of trafficking takes second place to the promotion of the state's interest in restricting immigration flows and to its exercise of sovereign rights.

In contrast to the free movement of goods and capital, free movement of people has remained a sensitive political and social issue in Europe. Even though many European countries recognize the need for foreign labour if they wish to maintain their current growth rates, many countries act to restrict immigration to the absolute minimum.<sup>28</sup> Facing also a trend for more restrictive asylum regulations, the alternative left to the majority of migrants is irregular migration.<sup>29</sup> Regrettably, intergovernmental cooperation in the field of anti-trafficking management has focused primarily on stepping up border controls with a view to preventing irregular migration and illegal immigration instead of strengthening mechanisms to expedite authorization for extraterritorial action and extradition in cases of human trafficking. As a result, potential victims of trafficking run the risk of being treated as illegal immigrants and immediately deported to their countries of origin, before and without proper investigation of the circumstances. These practices serve to enhance further the vulnerability of all migrants and other potential victims. Traffickers have ruthlessly exploited vulnerable migrants, capitalizing on the lack of protection offered by states and their focus on enforcement of immigration law.

Political will is also represented by financial and budgetary commitments. In times of economic crisis, priorities and funding are redirected and some human trafficking units and task forces have been shut down or had their operations limited due to budget cuts.<sup>30</sup> Limited resources may also undermine the quality and outcomes of special units' investigations by reducing the units' capacity and morale.

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<sup>25</sup> Ann Jordan, *The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering*, posted on April 2012 at Rights Work.

<sup>26</sup> Ann Jordan, *The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering*, posted on April 2012 at Rights Work.

<sup>27</sup> Barbara Limanowska, Helga Konrad, *Problems of Anti-Trafficking Cooperation*, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, DCAF, Vienna and Geneva 2009.

<sup>28</sup> Richard Danziger, Jonathan Martens, Mariela Guajardo, *Human Trafficking and Migration Management, Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf (Ed.), DCAF, Vienna and Geneva 2009; *Trafficking in Human Beings in Southeastern Europe*, UNICEF/UNOHCHR/OSCE-ODIHR, 2002 and 2005.

<sup>29</sup> Richard Danziger, Jonathan Martens, Mariela Guajardo, *Human Trafficking and Migration Management, Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf (Ed.), DCAF, Vienna and Geneva 2009; *Trafficking in Human Beings in Southeastern Europe*, UNICEF/UNOHCHR/OSCE-ODIHR, 2002 and 2005.

<sup>30</sup> See, Emily Dugan, *Police Team that Investigated Tide of Human Trafficking is Closed*, *The Independent (UK)*, Nov. 10, 2008.

## Lack of training and proactive transnational investigation

When looking into the practice of countries dealing with human trafficking in Europe, a few shortcomings are apparent. To be sure, law enforcement authorities in many countries have improved their methods of investigating trafficking cases by employing proactive and intelligence-led methods and by setting up national and transnational joint investigation teams (proactive investigation is the tool with which to initiate identification of trafficking victims, with a view to rescuing them, rather than waiting for them to appear on the doorstep of authorities. Hence, proactive investigation is a critical factor of success). In the UK proactive law enforcement investigation during 2006 and 2007 under the “Operation Parameter 1” and “Operation Parameter 2” increased the number of cases being prosecuted for human trafficking significantly.<sup>31</sup> That recognized, what happens before and after investigation proper gives cause for concern.

There is a generalized lack of specific training for law enforcement, judicial authorities and service providers on how to identify, interact and work with victims of human trafficking. Many law enforcement officials are at best trained to identify victims of sex trafficking, but frequently have no idea how to identify victims of trafficking for labor exploitation or other forms of human trafficking. There is a need for training—not mere awareness rising—curricular development and teaching new skill-sets based on a victim-centered approach. Team teaching by law enforcement officers and NGO-representatives, by adding a new dimension to education and training, has proved highly effective.<sup>32</sup>

However, in most European countries, there is the continuing practice among police (and the judiciary) in a number to use an interrogation strategy that tries to take the person interrogated by surprise—often at the crime scene or shortly after a raid. It is argued that a statement given immediately after taking an individual into custody (or arrest) is more likely to be true and unfalsified, because the people concerned are not given the chance to think over their statement or to monitor their behavior.

Studies that looked at the levels of depression and anxiety of victims of trafficking over three time periods (when victims first entered assistance and support services, two to six weeks later, and three months after) highlight the striking reduction in their trauma as a result of the post-trafficking assistance and long-term protection provided by NGOs. They also point out that there are no quick fixes, and that long-term psychological support is needed to enable victims of trafficking to regain their lives and their relationships.<sup>33</sup>

Another example of the lack of adequate training is the poor response to cases of child trafficking. The crime of child trafficking requires specialized responses. In Europe, countries have yet to develop comprehensive national plans of action against child trafficking and to implement them as effectively and rapidly as possible. These programs should include effective procedures for the rapid identification and referral of child trafficking victims with a view to establishing a durable solution including appropriate accommodation, health care, education, residence permit and the provision of a guardian. When taking decisions on the fate of trafficked children, their long-term best interests and welfare must be taken into consideration. This includes the obligation to carry out a security and risk assessment before returning a child to his or her country of origin.<sup>34</sup>

There are hardly any investigations of human trafficking that systematically link the criminal activity in the countries of origin with the criminals in the countries of destination.<sup>35</sup> There is no systematic method for following up on the fates of repatriated victims. Once a trafficked person is repatriated, there is no coordination between the governments to ensure that those responsible for the trafficking in the countries of origin are brought to justice or to ensure the protection of the victims. There is almost no evidence that governments in

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<sup>31</sup>Home Office, United Kingdom, UK Action Plan on Tackling Human Trafficking, 14 (2007).

<sup>32</sup>Practical experience tested and implemented in a number of European and Southeastern European countries, provided e.g., by the Austrian NGO LEFÖ or the Belgium NGO PAYOKE (official victim protection and assistance centers) in cooperation with police or law enforcement.

<sup>33</sup>Heike Gerhardt, General Psychiatrist, OSCE Conference, 17 March 2006; and *Stolen Smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe*, The London School of Hygiene & Tropical Medicine, 2006.

<sup>34</sup>See also, Ann Jordan. Where is the Village to Raise these Children? Rights Work Initiative, November 30, 2011.

<sup>35</sup>OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent The Crime*. See <http://www.osce.org/cthb/69028?download=true>

the source countries take responsibility for the protection of their nationals upon their return home. On the contrary: there are countries where women are arrested upon repatriation or branded as deviants or criminals. At a minimum, these actions undermine the successful reintegration of trafficked persons into their communities. Given the scope of the trafficking problem and limited resources to address re-integration, most victims of trafficking receive little or no assistance.

### Corruption

Human trafficking injects significant resources into the informal market and underground economy.<sup>36</sup> Corruption can hamper the work of individuals, recruitment agencies or even businesses to find loopholes in the law, operate between the legitimate and the underground economy as agents of human trafficking.<sup>37</sup> In Europe there are very few financial investigations as a consistent law enforcement strategy of anti-trafficking.<sup>38</sup> One might expect that financial records of organized human trafficking enterprises and the locations where they are kept would be subject of thorough investigations. Yet, financial information often falls under bank secrecy legislation. As a result, overall the risk of being prosecuted is not high enough to alter traffickers' sense of profits and impunity.

Deterrence effects will only be achieved when there are more sustained proactive investigations that lead directly to the prosecution and conviction of many more traffickers and to the disabling of networks through forfeiture of criminal assets. In addition, there are inefficiencies on the penalty aspect of criminal law against human trafficking. Retributive aspects of penalizing the crime of human trafficking are still rare. These combined factors allow for the business of human trafficking to produce high profits at very low risk due to low economic penalties in the law.<sup>39</sup>

### Difficulty assessing success

Considerable difficulties in assessing and defining the criteria of success combating human trafficking undermine the efforts of anti-trafficking groups and international cooperation. The criteria of success in combating human trafficking have traditionally been based on one single field of action rather than all the elements required for an appropriate response to trafficking situations. These elements cannot be measured in minimum standards, and are contingent on more than a checklist approach. For example, most of the time, authorities fail to identify victims of trafficking and trafficking situations properly, and approaches such as 'the fewer victims the better' or 'no data, no problem' are counterproductive.<sup>40</sup>

Research and studies that evaluate the impact of anti-trafficking measures are still limited or insufficient. To a large extent, anti-trafficking efforts operate without sufficient empirical data. It has been established that one of the weakest points in developing coordinated approaches to human trafficking is the lack of sound information and data on the scope and nature of human trafficking in given countries and regions. Data collection, in general has been poor or inadequate. Despite various attempts and some improvements in recent years at data collection at national and regional levels, data have not been made comparable across states. This shortcoming calls for a determined effort to harmonize methodologies and to coordinate approaches. In addition, there is a growing need for improved analysis of what the data mean as well as more robust efforts to link findings to policies and operations to make them more effective.

The Regional Implementation Initiative,<sup>41</sup> which encompasses some 15 European and third countries, encourages the establishment of a regional researchers network on human trafficking both within and outside

<sup>36</sup>Leslie Holmes, Human Trafficking and Corruption: Triple Victimisation? in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, DCAF, Vienna and Geneva 2009.

<sup>37</sup>Leslie Holmes, Human Trafficking and Corruption: Triple Victimisation? in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, DCAF, Vienna and Geneva 2009.

<sup>38</sup>OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent The Crime*  
<http://www.osce.org/cthb/69028?download=true>

<sup>39</sup>See, Siddharth Kara, *Designing More Effective Laws Against Human Trafficking*. *Northwestern Journal of International Human Rights*, Volume 9, Number 2 (Spring 2011).

<sup>40</sup>TIP Reports 2001 and following.

<sup>41</sup>The purpose of this Regional Initiative is to enhance and better coordinate the practical implementation of established (EU and international) norms, instruments and existing good practices within a smaller and thus potentially more manageable and effective group - (thus supporting and complementing the implementation efforts of the larger European

the university framework. The goal is to foster continuous academic discussion and sharing of enhanced knowledge on human trafficking; the pooling of such information, the creation of synergies, and the stimulation of additional joint evidence-based research endeavors. The resulting enhancement of the insight into human trafficking within the region and beyond may provide politicians and experts or practitioners with a sound basis for both policy making in general and for designing targeted and effective anti-trafficking interventions.

#### Infrequent prosecutions and convictions

Poor identification of trafficking situations and victims leads to a weak or no case against the perpetrators. To respond to this clear relation, the new EU Directive urges state authorities to ensure that victims of trafficking are not subject to criminal or administrative liability and sanctions for acts arising from the trafficking situation.<sup>42</sup> They must refrain from immediately expelling or criminalizing (potential) victims of trafficking due to their unlawful entry into the country and to their irregular residence and/or labor status. Victims of trafficking in human beings should be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimization and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This is a particular and problematic issue which arises from the interference between various laws, more specifically between the laws on trafficking in human beings and the legislation on immigration.

Often, cases of human trafficking are dismissed because of lack of evidence (which is based almost exclusively on the testimony of the victims, while hardly any additional evidence is secured); cross-border legal assistance tends to get bogged down in red tape and, with very few exceptions, the sentences handed down fail to reflect the severity of the crime.<sup>43</sup> It has been observed that often the credibility of a victim depends on the prosecutor's and on the judge's insights derived from other sources of information.

#### Conclusion

For the victims, trafficking is about violence, loss of control, pain, fear, and profound distress. It should go without saying that the primary reason why we must object to human trafficking is because of the harm it causes to people. Disputes and debates about the definition of human trafficking have undermined progress and achievements of anti-trafficking legislation and policy while traffickers continue to ruthlessly pursue their criminal trade, very often with impunity.

Trafficking in persons cannot be captured in a single 'snapshot'. It does not happen within a given moment in time nor does it happen in one place. It is not perpetrated only in the country of destination, where the victim or the criminal is discovered. It is much rather a chain or series of criminal offences and of human rights violations, starting in the country of origin and extending over time and across countries of transit into countries of destination. Even internal trafficking extends over a period of time and through various places.

In the past twelve years, since the UN Anti-Trafficking Protocol, most countries in Europe have adopted anti-trafficking legislation and adopted measures to assist and protect victims. Some of these efforts have in-

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anti-trafficking framework established in the Lisbon Treaty, the Stockholm Programme and the Action oriented Paper) and to strengthen networks and develop mutually beneficial partnerships with third countries. The Regional Initiative aims at reinforcing the political commitments and legal obligations of the participating countries both to prevent and combat all forms of trafficking in human beings, including trafficking for labour exploitation and domestic servitude. It will foster cooperation and coordination among all relevant stakeholders – including government authorities, international and non-governmental organizations, taking existing good practices and lessons learned into account. It focuses on a human-rights-based, victim-centered and age-sensitive approach, taking the gender perspective into account.

<sup>42</sup>EU-Directive 2011/36/EU of 5 April 2011 of the European Parliament and the Council on preventing and combating trafficking in human beings (14)\*.

<sup>43</sup>OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent The Crime*. See <http://www.osce.org/cthb/69028?download=true>

spired and motivated countries worldwide but in at least one important aspect the European approach has proven short. Coordination and cooperation are key for an effective anti-trafficking approach. Although, inter-agency cooperation to combat trafficking should operate in most of Europe, coordination gatherings have often served only as a forum for presentations of isolated activities rather than as fora to set new courses or to change approaches. Similarly, coordination at international level has involved discussions without tangible outcome and binding results. Moreover, coordination structures within law enforcement or within NGOs, for example, have for quite a period of time tended to work in closed loops. In other words, they have failed to develop networks and coordination structures that focus on different aspects or perspectives (human rights versus national security) of the fight against human trafficking.

Achievements of anti-trafficking efforts in Europe have inspired and motivated other countries around the world to adopt similar practices. Yet serious flaws remain. Concentration on border controls, deterrence and immediate repatriation of trafficked persons often is the beginning of a vicious circle for victims but disguised as an effective means of self-protection serving the interests of national security.

The governmental institutions related to law enforcement and responsible for coordinating anti-trafficking responses are the ones to establish the rules of cooperation with the non-governmental service providers for victims, which consequently reflect state security concerns and occasionally violate human rights standards. The status and protection of the victims needs to be established, consistent with the status of victims of a serious crime and not with that of criminals.

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