

# Determinants of Anti-Trafficking Efforts



This working paper is published as part of the 'Determinants of Anti-Trafficking Efforts' Project. The project assesses the links and sequencing of specific factors that have yielded improved political will and capacity in national governments to address trafficking in persons and which have led to sustained and comprehensive anti-trafficking efforts. Through a multi-pronged approach, this project will conduct a review/meta-analysis of the current research and contribute a new data-set through expert interviews, a first of its kind global survey and a series of 14 case studies.

More information including the project outputs are available at:  
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Gift of the United States Government



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## I. Introduction

Over the past decades, combating human trafficking has emerged as a complex and distinct legal and policy objective for many global governance actors, including States, intergovernmental organisations (IGOs), and civil society organisations (CSOs). Research on human trafficking has sought to better understand the phenomenon itself in its myriad of manifestations and the efforts to curtail it. On interrogating the nature of human trafficking, scholars have engaged with questions concerning the causes of trafficking, individual vulnerabilities to trafficking and the experienced realities of trafficked persons. Scholarship on anti-trafficking efforts has further examined the successes and failures of laws, policies and initiatives, seeking to evaluate the efforts to prevent trafficking, prosecute traffickers and protect trafficked persons, as well as to provide recommendations for improvement.

However, **questions integral to understanding the processes and factors which shape anti-trafficking efforts often remain unasked and unanswered**: How does anti-trafficking become a policy issue? What factors cause governments to legislate on it? How does anti-trafficking become a policy priority? What prevents such prioritisation? What factors influence the type of policy approach or the direction of the response? What factors impact the implementation and enforcement of policies and legislation? Which actors have the power to bring about policy change in different contexts? What factors mobilise political will to improve anti-trafficking efforts?

This review examines existing research addressing these questions. Our primary research question is **what factors determine governments' anti-trafficking responses?** This research question is based on the understanding that national anti-trafficking responses *should* reflect international anti-trafficking obligations. This refers to the international prohibition of human trafficking, the criminalisation of trafficking and protection obligations derived from the international and regional legal frameworks.<sup>1</sup> We recognise that there are flaws and limitations in the international framework (highlighted in parts of the literature). This review does not use the Palermo Protocol or any specific instrument, as the benchmark, because much of the literature does not do so. The aim here is to review existing literature in order to identify the key determinants highlighted in that literature. We understand a robust State response to trafficking as involving a harmonised understanding of the phenomenon and of the interventions required to address it; sustained prioritisations in anti-trafficking efforts; commensurate funding and resourcing; and continued monitoring and evaluation work.

This review examines a broad range of factors which determine governments' anti-trafficking responses. These encompass factors which shape governments' anti-trafficking efforts, cause compliance and implementation of international standards, as well as cause governments to improve, hinder, or regress efforts. These factors shaping government responses are referred to as 'determinants'.

Existing scholarship tends to focus on particular case studies. This includes examining the determinants that led to a particular policy change (usually in a single country), the processes that triggered efforts to combat a specific type of trafficking (such as trafficking for labour or sexual

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<sup>1</sup> This includes but is not limited to: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol); the European Union Anti-trafficking Directive; the Council of Europe Convention on Action against Trafficking in Human Beings; and the South Asian Association for Regional Cooperation's (SAARC) Convention on anti-trafficking.

exploitation), or the factors contributing to a particular intervention (such as improved protection, prosecution or prevention policies). The literature tends to focus on the impact of a single or few determinants in a particular country or region,<sup>2</sup> or it retrospectively examines the processes which led to a particular policy outcome.<sup>3</sup> Whilst some cross-country comparisons do exist, they are often limited to analysis of the impact of a single determinant, and/or focus on a particular type of exploitation.<sup>4</sup> The tendency of the existing literature to analyse specific cases, in part, is a reflection of the fact that there is no uniform process to combat human trafficking.

This literature review aims to capture the complexity of the factors shaping such efforts; **they are context-specific, non-linear and multidimensional**. Determinants of anti-trafficking efforts do not work in isolation. Rather, the inextricable links and sequencing of different factors is paramount. On the basis of existing literature, this review examines the impact of different determinants, how they interact, and the links and sequencing patterns of specific determinants. Rather than attempt to present a blueprint of which factors influence and yield the most effective anti-trafficking efforts according to a particular international standard, this review aims to accumulate and examine the research that sheds light on this broad research question. In doing so, we do not seek to challenge or replace our judgment for the authors' assumptions. Thus, the review focuses on literature which presents tangible references to the influence of determinants, rather than analysis of recommendations or factors which may hypothetically result in change.

Accordingly, typologies have been developed to capture the different factors' form and influence. The determinants are categorised as either **internal or external**, and **structural factors or pressure points**. Determinants are categorised as internal or external factors according to whether they exist domestically or externally to the particular State. Examples of internal factors include pressure from local NGOs and political or economic situations, whilst external factors include international law, influence from international monitoring bodies (eg GRETA, US Trafficking in Persons Report etc), and transnational influences (such as migration patterns).

Determinants are also categorised as structural or pressure points according to whether the influence is a result of a structural factor or of active pressure advocating for change. Structural determinants include international law and the domestic political or economic situation. Factors categorised as pressure points include the threat of sanctions, civil society campaigning, and factors such as data and international law which can be used as tools to create pressure. As is clear from this explanation, the same individual factor often fits within multiple typologies. A table delineating

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<sup>2</sup> For example, see Shelby Stephens, 'Show, Don't Tell: How Thailand Can and Must Make Advancements in the Fight Against Human Trafficking in the Thai Fishing Industry' (2017) 31 *Emory International Law Review* 477; Peter Vandergeest, Olivia Tran and Melissa Marschke, 'Modern Day Slavery in Thai Fisheries: Academic Critique, Practical Action' (2017) 49 *Critical Asian Studies* 461; Johanna Schönhöfer, 'Political Determinants of Efforts to Protect Victims of Human Trafficking' (2017) 67 *Crime, Law and Social Change* 153.

<sup>3</sup> For example, see Rose Broad and Nick Turnbull, 'From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK' (2019) 25 *European Journal on Criminal Policy and Research* 119; Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking' (2006) 27 *Michigan Journal of International Law* 437; Theresa Barone, 'The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution' (2003) 17 *Temple International & Comparative Law Journal* 579; Nicole F Bromfield and Moshoula Capous-Desyllas, 'Underlying Motives, Moral Agendas and Unlikely Partnerships: The Formulation of the U.S. Trafficking in Victims Protection Act Through the Data and Voices of Key Policy Players' (2012) 13 *Advances in Social Work* 243.

<sup>4</sup> For example, see Katherine L Morrow, 'Soccer, Sex, and Slavery: Human Trafficking in the World Cup' (2008) 17 *Tulane Journal of International and Comparative Law* 243; Gregg Bucken-Knapp, Johan Karlsson Schaffer and Karin Persson Strömbäck, 'Security, Equality, and the Clash of Ideas: Sweden's Evolving Anti-Trafficking Policy' (2012) 13 *Human Rights Review* 167; Schönhöfer (n 2); FikreJesus Amahazion, 'Global Anti-Sex Trafficking: State Variance in Implementation of Protectionist Policies' (2014) 36 *Human Rights Quarterly* 176.

the different determinants addressed in this literature review and their typology can be found below, under the section titled 'III. Determinants'.

Regarding the nature of influence, factors are found to have a **direct or indirect** impact that **improves, hinders or regresses** anti-trafficking efforts. Direct determinants, such as international monitoring bodies, involve an influence directly related to trafficking; whilst an indirect determinant, such as a State's economic situation, may incidentally influence anti-trafficking efforts.

The overall purpose of this literature review is to scope the existing research that has been done on factors influencing anti-trafficking efforts. This review is one aspect of a multi-pronged research project aimed at understanding determinants of anti-trafficking measures. In synthesising and analysing the existing research, this delineates a research gap in the literature regarding a comprehensive global analysis of factors determining government anti-trafficking efforts and political will to improve such measures. The future outputs of the project will attempt to initiate research and analysis on the factors which shape anti-trafficking efforts. This will include analysis of existing datasets, findings from expert interviews, a global survey and country case studies. Given the lack of publicly available evaluations within anti-trafficking initiatives, this research aims to broaden our understanding of what causes governments to take steps towards combating human trafficking and what hinders such efforts. This research aims to contribute new knowledge to the area in an attempt to better understand what is causing governments to adopt changes and why, what is preventing such change, and why particular policy and legislative responses have dominated.

This research is firstly aimed at academics, researchers and policy-makers to contribute to the knowledge production on determinants of anti-trafficking efforts, and to initiate future research on the questions that this opens up. Beyond this, the project will also contribute to the multi-layered relationship between research and policy by providing policy-makers and campaigners with an evidence base to inform their work.

This report is organised as follows: Part II outlines the methodology adopted to gather and analyse the literature concerning determinants of anti-trafficking efforts. Part III discusses our findings regarding different determinants and how they fit into the typologies. Part IV concludes and brings the discussion back to our theoretical framework and research questions.

## II. Methodology

This literature review aims to understand and synthesise the current research on the factors determining policy processes in the anti-trafficking space. It is concerned with the research question of **what factors determine governments' anti-trafficking efforts?** It systematically analyses the literature to date on factors influencing governments' anti-trafficking efforts through two parallel search methods: **(1) a meta-ethnographic synthesis of published research; and (2) supplementary literature through snowballing and expert recommendations.**<sup>5</sup>

A scoping exercise determined the focus of the research and refined our research question for the purposes of the literature review to: **what factors determine governments' anti-trafficking responses?** In seeking to answer this question, we identified the following constitutive questions:

- a. What factors influence a government to **initiate** anti-trafficking efforts?
- b. What factors influence a State to **improve** its anti-trafficking efforts?
- c. What factors **hinder** a State from improving its anti-trafficking efforts?
- d. What factors influence a State to **not improve** its anti-trafficking efforts?
- e. What factors cause a State's anti-trafficking efforts to **regress**?
- f. How do the factors influencing governments vary according to the victim's **profile**, the type of **exploitation**, and the type of **intervention** (protection, prosecution, prevention and partnership)?

To conduct the meta-ethnographic synthesis, pilot searches were conducted with our preliminary search terms. **The pilot searches revealed that the research conducted on the factors which determine governments' anti-trafficking responses does not correspond to a distinct discipline, a specific key term, or a single body of literature. Rather, the scholarship is disparate and scattered.** Accordingly, the search terms were refined to ensure their relevance. The search terms were also informed by terms found to be frequently used in both academic and grey literature on causes of change in governments' anti-trafficking measures and were further amended through consultation with a librarian.

The search terms were grouped into two search strings [see Appendix 1] and combined using Boolean operators (OR, AND) and truncation commands (use of \*). The searches were initially run through EBSCOhost. The items that appeared in the results from both search strings were considered and classified. The search was subject to the following inclusion and exclusion criteria:

- The study should be directly relevant to our research question on determinants of change.
- The study had to be in English.
- The study had to be a journal article, a book, a book chapter, or a piece of grey literature. Leaflets and multimedia resources, for instance, were not included.
- The study had to be published between 1 January 2000 and 31 January 2020. The start date reflects the adoption of the Palermo Protocol marking a critical date for global agenda-setting in anti-trafficking.

The type of study was not a point of inclusion or exclusion; studies could be desk-based or empirical, use primary or secondary data and be from any discipline.

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<sup>5</sup> Recommendations were sought from members of the project's Expert Panel and from participants in expert interviews.

Having gathered the literature, the relevant studies were distilled by reading titles and abstracts, according to their relevance to the research question. The literature was then categorised broadly as: relevant; potentially relevant; or, not relevant. The sources categorised as relevant were read in detail to discern how they contributed to our research question. Where pertinent to the research question, notes were made of the factors which were found to have an impact on governments' anti-trafficking measures. A list of determinants was developed, acknowledging the context and links to other factors mentioned in the research. The relevant sources were also uploaded to NVIVO, where the word frequency function was used to further guide the analysis. As part of the analysis, particular attention was paid to the research methods employed (broadly, quantitative or qualitative), the type of evidence used (empirical versus desk-based), and the type of source (broadly, academic source versus grey literature).

Parallel to this search, the results were supplemented with snowballing literature through references, recommendations from the project's expert panel and expert interviews, accessing grey literature that was not covered by the databases, and through running specific searches on identified determinants. This supplementary literature was necessary given that the current research which looks at determinants does not respond to a specific framework or question and is rather disparate.

The total number of sources reviewed from across the different searches outlined above, was **415**. Of these, there were a total of: **252** academic sources (including journal articles, book chapters, and PhD theses), **163** grey literature sources (including reports from inter-governmental organisations, NGOs and monitoring bodies, as well as some websites and news articles). The determinants were collated and examined inductively through reading each source.

The initial meta-ethnographic synthesis is robust and reduces bias through conducting structured searches based on piloted search terms. It gives access to an understudied research question and draws disparate research together. However, given that the research question does not respond to a fully formed concept, there were difficulties in obtaining accurate search terms to ensure that the relevant literature was identified. It is therefore difficult to know how many studies have been missed because they were not adequately captured through our search terms and subsequent snowballing. Moreover, understanding the determinants of a particular anti-trafficking effort is not a straight-forward task, especially given the challenging nature of evaluating such efforts. How the impact and influence of specific determinants is understood varies across the literature, and each source reviewed may not be solely concerned with understanding determinants, which leaves us to extrapolate. However, this review intends to draw together the various approaches and creates a starting point for further research to build on.

The research has three further limitations, namely linguistic (focusing on English language publications), a regional bias and risks from assessing relevance through reading abstracts and executive summaries. The regional focus, whether this is a result of our searches or because of the state of the literature, is biased towards the global north. The regional bias requires attention and further research and is a gap that we hope to start addressing through this project's future outputs.



### III. Determinants

The literature identifies a plethora of factors and processes which trigger, influence, and hinder national anti-trafficking efforts. There is no single framework or sequencing that exists; rather, the processes through which anti-trafficking policies and laws emerge are particular, varied and, crucially, context-dependent. The key factors and themes that emerge are discussed in this section, taking each factor in turn. This is not to imply that any single factor can be isolated with regards to its impact. Rather, each section explores how the determinant in question interacts with and is shaped by concurrent factors.

Starting with **political will**, this often-elusive concept is explored with regards to the form it may take, and what other determinants mobilise such will. This is followed by a discussion of the influence of **international standards and mechanisms**. This includes an exploration of the role of international law, case law, external monitoring (international and regional monitoring bodies and the US State Department TIP Report), and the imposition and threat of international sanctions. These external factors interact with the domestic **structural conditions**, including governance and the political situation and the economic conditions. The review then moves to examine the role of **civil society organisations and funding and resource allocation**, before examining how governments' **understanding and perceptions of trafficking** itself (through data, research and the media), influence their agenda-setting processes. The final determinant addressed, namely **single or isolated events**, is discussed as a factor which may trigger immediate responses, but also create opportunities for individuals to pressure for change. A table detailing each determinant, with a description, can be found in the Appendix (Table 2).

As delineated above, these factors fall into the typologies of internal and external, structure and pressure. This table visually presents how each determinant is categorised:

	Internal	External	Structure	Pressure
Political Will	x			x
International Law		x	x	x
Case Law	x	x	x	x
External Monitoring		x		x
International Sanctions and Threat of Sanctions		x		x
Governance and Politics	x		x	
Economic Conditions	x		x	
Civil Society Organisations	x	x		x
Funding and Resources	x	x	x	

<b>Data and Research</b>	x		x	x
<b>Media Framing</b>	x	x		x
<b>Media Exposure</b>	x	x		x
<b>Events and Crises</b>	x	x		x

## Political Will

In assessing the question of what determines and influences governments' anti-trafficking efforts, **political will is alluded to as being integral and the lack thereof as being an impediment.** Political will is a determinant of anti-trafficking efforts as it is integral to every stage of the policy- and legislative-formation processes, from initial recognition and prioritisation of the problem, to implementation, resourcing, monitoring and evaluation. However, political will is also a sum outcome of the determinants addressed in the rest of the review. Therefore, as a determinant, political will is necessary to directly trigger change, but it cannot be divorced from the wider determinants through which it is shaped and mobilised. This section will focus on the anti-trafficking literature which mentions or alludes to political will as a determinant of efforts to combat human trafficking.

As a determinant of anti-trafficking efforts, whilst it is deemed a necessity, political will remains an elusive concept to define. Political will is the subject of theoretical analysis, debating the concept's definition, composite elements and measurement frameworks.<sup>6</sup> In the anti-trafficking literature, where 'political will' is explicitly mentioned, the literature reviewed tends to assume a common understanding, without providing a definition. An in-depth discussion of the theoretical debates in relation to anti-trafficking can be found **[reference other output]**, where we deconstruct the concept and suggest a definition of political will in relation to anti-trafficking efforts.

The literature on human trafficking often references the notion of political will as a collective concept on the inter-governmental level, for example, in relation to the adoption of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol). As explored in the following section, the Palermo Protocol was designed to both demonstrate and reflect the political will of the international community, and has been praised as such.<sup>7</sup> However, whilst collective political will was integral to the adoption of the Palermo Protocol, the collective nature is conditional on States' interests and priorities.

At the national level, a lack of political will is identified as an impediment to anti-trafficking efforts. Yet, as above, what political will might entail is not defined. For example, Dean suggests that the lack of political will hampered Russian anti-trafficking efforts in the post-Soviet era.<sup>8</sup> This is reflected in the analysis of specific interventions. The lack of top-down political will to prosecute cases other than child sex trafficking cases impedes law enforcement bodies from investigating new areas of trafficking and from intuitively building on their own findings.<sup>9</sup> The lack of political will is found to be an obstacle to change, yet there is a limitation within the literature when it comes to specifically defining the concept or outlining its constitutive elements. This is further explored in **[reference other output]**.

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<sup>6</sup> For example, see Phuong N Pham, Niamh Gibbons and Patrick Vinck, 'A Framework for Assessing Political Will in Transitional Justice Contexts' (2019) 23 *The International Journal of Human Rights* 993; Lori Ann Post, Amber NW Raile and Eric D Raile, 'Defining Political Will' (2010) 38 *Politics & Policy* 653.

<sup>7</sup> Laura L Shoaps, 'Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act' (2013) 17 *Lewis & Clark Law Review* 931.

<sup>8</sup> Laura A Dean, 'The Diffusion of Human Trafficking Policies in the Post-Soviet Region: A Comparative Analysis of Policy Adoption in Ukraine, Latvia, and Russia' (2017) 19 *Journal of Comparative Policy Analysis: Research and Practice* 403.

<sup>9</sup> Amy Farrell, Rebecca Pfeffer and Katherine Bright, 'Police Perceptions of Human Trafficking' (2015) 38 *Journal of Crime and Justice* 315, 317-8.

The literature further alludes to the influence of political will at the governmental level; yet, political will is not depicted as triggering a straight-forward cause and effect relationship whereby its very existence ensures that change will follow. Rather, **political will must be sustained from prioritising anti-trafficking efforts and adopting legislation, through to enforcing and implementing change.** In reference to the US's passing of the Fight Online Sex Trafficking Act (FOSTA) legislation, Born's analysis alludes to a will that merely demonstrates action but lacks a genuine effort to make structural change and enforce legislation.<sup>10</sup> Observations in reports from the Group of Experts on Action against Trafficking in Human Beings (GRETA), further corroborate this; political will is influential in recognising and prioritising anti-trafficking aims, but for change to occur, such political will must extend to implementation. In its 2018 report, GRETA emphasised that combating human trafficking 'require[s] persistency and commitment to full implementation of States' human rights obligations'.<sup>11</sup> Moreover, the lack of political will to implement the Protocol domestically has also been criticised, suggesting that will, whether collective or individual, must be sustained to be effective.<sup>12</sup>

Political will is inextricably interlinked with **resourcing and capacity.** The literature identifies a disconnect between the two concepts; a lack of political will can prevent the allocation of commensurate capacity.<sup>13</sup> Focusing on the US, Farrell, Pfeffer and Bright suggest that a lack of political will to prosecute trafficking crimes other than cases concerning the sexual exploitation of children, results in a lack of dedicated resources, staffing and time.<sup>14</sup> This points to the fact that resourcing is itself a political and policy decision. In the context of prosecution policies, the UNODC Global Report on Trafficking in Persons indicates 'that it takes time and dedicated resources for a national criminal justice system to acquire sufficient expertise to detect, investigate and successfully prosecute' and such allocation of resources requires political backing.<sup>15</sup> Political will is both necessary for, and reflected through, resourcing. Moreover, the 2019 TIP report suggests that the initial adoption of the Palermo Protocol must be followed through with 'dedication, focus, and resources'.<sup>16</sup>

However, the relationship between will and capacity is nuanced; political will cannot necessarily overcome a lack of capacity and resourcing. Analysing anti-trafficking efforts in the Economic Community of West African States (ECOWAS) and in Thailand respectively, Jaye and Stephens suggest that despite what they consider to be sufficient political will, the capacity to implement such changes is lacking.<sup>17</sup> This is further corroborated by the reports of the Special Rapporteur on Trafficking in Persons who found, in 2014, that the gap between States' international legal obligations and the lack of implementation in practice is 'not always the result of a lack of political will', but is often due to the complex nature of trafficking in persons, lack of clear avenues for

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<sup>10</sup> Emily J Born, 'Too Far and Not Far Enough: Understanding the Impact of FOSTA' (2019) 94 *New York University Law Review* 1623.

<sup>11</sup> Group of Experts on Action against Trafficking in Human Beings, '8th General Report on GRETA's Activities' (Council of Europe 2019) 72 <<https://rm.coe.int/8th-/168094b073>> accessed 8 April 2020.

<sup>12</sup> Shoaps (n 7).

<sup>13</sup> Farrell, Pfeffer and Bright (n 9) 318; Thomas Jaye, 'The Security Culture of the ECOWAS: Origins, Development and the Challenge of Child Trafficking' (2008) 26 *Journal of Contemporary African Studies* 151.

<sup>14</sup> Farrell, Pfeffer and Bright (n 9).

<sup>15</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016* (United Nations 2016) 12.

<sup>16</sup> United States Department of State, '2019 Trafficking in Persons Report' (2019) <<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>> accessed 8 April 2020.

<sup>17</sup> Jaye (n 13); Stephens (n 2).

solutions and the fact that the perpetrators are rarely States themselves or entities which States can control.<sup>18</sup> The regional variation raises the question of whether the lack of resourcing as a secondary impediment is a feature of countries with particular economic conditions. There is a dearth of literature examining these questions (and we return to those considerations below in the Funding and Resources section).

**The emphasis on the need for sustained political will, and the interaction between will and capacity highlights that whilst political will is a necessity, political will does not emerge in a vacuum.**<sup>19</sup> Rather, it interacts and is interlinked with other factors, which shape and influence political will. For example, the framing of trafficking seems to guide the mobilisation of political will. The US State Department's TIP reports have highlighted States' tendencies to frame trafficking as a foreign issue, and thus fail to admit and recognise the existence of internal trafficking.<sup>20</sup> Crucially, this framing prevents sufficient 'resolution and political will ... to look inward and stop traffickers, including their own citizens, from exploiting victims who have not crossed an international border'.<sup>21</sup> Similarly, in examining the ECOWAS's response to child trafficking, Jaye suggests that ECOWAS's different threat perceptions and priorities shape their collective action.<sup>22</sup> Moreover, corruption may limit the impact of political will. A Joint Submission to the Universal Periodic Review's Third Cycle National Report on the Philippines, suggests that 'there remained a lack of political will to fully implement the Anti-Trafficking in Persons Act', and that such lack of will had been made worse by the level of corruption (the hindrance from corruption levels itself is further explored below).<sup>23</sup>

Beyond collective will, individual intent can also have significant influence over the government's anti-trafficking efforts. As the Commonwealth Parliamentary Association's guidance for parliamentarians outlines, individual parliamentarians have a responsibility to scrutinise legislation and policy, as well as raise awareness of human trafficking.<sup>24</sup> A central example of the individual's role and potential influence on a State's efforts and policy discourse has been that of Theresa May in the UK.<sup>25</sup> However, the individual influence only goes so far, and whilst a collective political will may not be necessary, a degree of cooperation and collaborative working with stakeholders is integral.<sup>26</sup>

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<sup>18</sup> UNGA, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children' (6 August 2014) UN Doc A/69/269, para 51 <<https://undocs.org/A/69/269>> accessed 8 April 2020; See also Philippa Webb and Rosana Garcíandia, 'State Responsibility for Modern Slavery: Uncovering and Bridging the Gap' (2019) 68 *International and Comparative Law Quarterly* 539.

<sup>19</sup> For theoretical discussion, see Pham, Gibbons and Vinck (n 6); Post, Raile and Raile (n 6); Derick W Brinkerhoff, 'Unpacking the Concept of Political Will to Confront Corruption' (Chr Michelsen Institute 2010) 1; Michael Anderson et al, 'Measuring Capacity and Willingness for Poverty Reduction in Fragile States' (2005) Department for International Development PRDE Working Paper 6.

<sup>20</sup> United States Department of State, '2019 Trafficking in Persons Report' (n 16) 13.

<sup>21</sup> United States Department of State, '2019 Trafficking in Persons Report' (n 16) 4.

<sup>22</sup> Jaye (n 13) 152.

<sup>23</sup> United Nations Human Rights Council, 'Summary of Stakeholders' Submissions on the Philippines' (27 February 2017) UN Doc A/HRC/WG.6/27/PHL/3, para 71 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/69/PDF/G1704669.pdf?OpenElement>> accessed 14 April 2020.

<sup>24</sup> Commonwealth Parliamentary Association UK, 'Legislating against Modern Slavery, Human Trafficking and Forced Labour: The Role of Parliament to Scrutinise & Raise Awareness' (2020) <<http://www.uk-cpa.org/media/3495/ehandbook-legislating-against-modern-slavery-human-trafficking-forced-labour-the-role-of-parliament-to-scrutinise-raise-awareness.pdf>> accessed 1 April 2020.

<sup>25</sup> Broad and Turnbull (n 3).

<sup>26</sup> Commonwealth Parliamentary Association UK (n 24).

The references and allusions to political will in the literature, although lacking in thorough conceptualisation, demonstrate its dynamism and interaction with other processes in creating pressure to change anti-trafficking efforts.<sup>27</sup>

## International Standards and Mechanisms

### International Law

International and regional legal frameworks are critically important in shaping anti-trafficking efforts. International law sets particular standards which States Parties are obligated to translate into their domestic legislation and enforce internally. The literature highlights the influence of the Palermo Protocol and of regional and sub-regional frameworks (including the European Union Anti-trafficking Directive, the Council of Europe Convention on Action against Trafficking in Human Beings, and the South Asian Association for Regional Cooperation's (SAARC) Convention on anti-trafficking).

This section will firstly address the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol).<sup>28</sup> It will consider the negotiations in the lead up to the Palermo Protocol and the subsequent influence these debates have had in shaping national anti-trafficking efforts through standard-setting and framing the phenomenon. Secondly, this section will acknowledge that the ratification of international instruments and the adoption of soft law standards is often insufficient to ensure enforcement of such obligations and to address the question of compliance beyond ratification. Lastly, it will come to the literature concerning the influence of soft law instruments.

### The Palermo Protocol

Following the discussion above on political will, the Palermo Protocol is often 'understood as evidence of a global commitment to an uncompromising battle against human trafficking and the protection of its survivors', as it provides the first international legal framework and definition of trafficking.<sup>29</sup> Indeed, the Polish delegate to the United Nations applauded the adoption of the Protocol as 'a significant achievement ... [which] reflects the political will of the international community to combat the increased threat posed by organized crime'.<sup>30</sup> This demonstrates the importance of collective agreement and intent, in progressing anti-trafficking work at the inter-governmental level. Indeed, it triggered the widespread adoption of the international norms in regional and domestic regimes. The significant support of the Protocol, reflected by the 178 States Parties, can be considered a reflection of political will to address trafficking.

However, the collective will of the international community was not unanimous, uncontentious or a linear process. It must be contextualised within the upsurge of unregulated migration in the 1990s and States' concerns over national security and global organised crime. Against this backdrop,

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<sup>27</sup> Post, Raile and Raile (n 6) 657.

<sup>28</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

<sup>29</sup> Daphna Hacker, 'Strategic Compliance in the Shadow of Transnational Anti-Trafficking Law' (2015) 28 Harvard Human Rights Journal 11, 13.

<sup>30</sup> UNGA, 'Statement of Mr Rydzkowski' (15 November 2000) UNGAOR 55th Session, 62nd plenary meeting UN Doc A/55/PV.62, 9 (cited in Shoaps (n 7) 932).

there was a marked shift in the 1990s to frame trafficking as an issue of transnational organised crime as it became associated with other global crimes.<sup>31</sup> The process of negotiating the United Nations Convention against Transnational Organized Crime (UNTOC), was the 'first serious attempt by the international community to invoke international law as a weapon against transnational organized crime', which notably included the two additional Protocols on human trafficking and smuggling.<sup>32</sup> As Gallagher suggests, at the time of drafting, trafficking and smuggling were important issues on the international political agenda. Although 'human rights concerns may have provided some impetus (or cover) for collective action, it was clearly the sovereignty/security issues surrounding trafficking and migrant smuggling, as well as the perceived link with organized criminal groups operating across national borders, that provided the true driving force behind such efforts'.<sup>33</sup> The widespread adoption of the Protocol perhaps would not have occurred had it been framed in any other way.

**It is within this context that the influence of the Palermo Protocol is highlighted; namely its role in shaping States' understanding of trafficking and providing the international standard for anti-trafficking legislation.**<sup>34</sup> Indeed, the influence of the Protocol cannot be divorced from the factors that influenced its own formulation and adoption. These factors include the history of the preceding legal instruments, the evolution of how trafficking was framed, and the contentious debates in the negotiations, all of which served to shape the Protocol itself, and in turn influence national anti-trafficking efforts. The Protocol and its definition of trafficking 'did not emerge in a vacuum'.<sup>35</sup> Rather, the Protocol was preceded by a number of international legal instruments that addressed trafficking, in the context of the prohibition on slavery, prostitution, gender-based violence and discrimination against women, and the rights of the child.<sup>36</sup> Scarpa suggests that the Protocol is 'the final step of the process of approachment among ... two branches of international law', namely international law dealing with slavery and the traffic in persons.<sup>37</sup> Alongside the historical trajectory, the Protocol was also influenced by the debates that occurred during the negotiations and drafting process. These contentions are indicative of the various discourses and framings of trafficking. Whilst an in-depth discussion of these debates is beyond the scope of this paper,<sup>38</sup> the contentions shaped the negotiations and compromises taken in developing the framing and definition adopted in the Protocol.

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<sup>31</sup> Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 16–17; 68.

<sup>32</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 70.

<sup>33</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 71.

<sup>34</sup> Shoaps (n 7).

<sup>35</sup> Silvia Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (2013) 1 *Groningen Journal of International Law* 152, 154.

<sup>36</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 54–68.

<sup>37</sup> Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (n 35) 154.

<sup>38</sup> For discussion of the debates, see Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (n 35); Anne T Gallagher and Marika McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (United Nations Office on Drugs and Crime 2014) <[https://www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)> accessed 6 October 2020; Vanessa E Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (2005) 14 *Social & Legal Studies* 91, 99; Anne T Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly* 975.

Sitting under the aegis of the UNTOC, the Protocol frames trafficking as a **transnational organised crime, which plays an influential role**.<sup>39</sup> Although the international community has been criticised as being selectively focused on the aim to 'combat organised crime, rather than to combat human rights violations inherent within slavery', such focus, with the comparatively limited attention to victim protection, is both a product and reflective of international political interests.<sup>40</sup> This framing is reflective of the States' priorities and understanding of trafficking, and it was this framing that facilitated the collective agreement amongst the represented States at the negotiations. Gallagher elucidates the influence and challenge of political will at the international level, suggesting that in 'a consent-based vision of international law [you] cannot ignore the overriding challenge of political will. States are unwilling to commit themselves to the level of change required to fundamentally alter the trafficking dynamic because they do not perceive such changes to be in their interest'.<sup>41</sup> Therefore, changes and improvements to the international legal framework will be 'slow and incremental',<sup>42</sup> and despite the legal developments that the Protocol stimulated, the 'framework remains fragile and incomplete'.<sup>43</sup>

Based on the Protocol's approach, the framing of trafficking as a transnational and organised crime has justified national responses that focus on prosecution. Mandel and Sharapov find that the focus on criminal justice garners support more easily as people tend to view crimes as non-negotiable, and harsher measures are more likely to be implemented without the scrutiny that would be applied if framed otherwise.<sup>44</sup> Moreover, basing their framing of trafficking on the Palermo Protocol, States have further been found to influence each other in diffusing criminal justice responses to trafficking.<sup>45</sup> Scholars argue that due to both an increase in concerns over border control and a purported increase in transnational crime, the criminal justice frame is able to amass 'more endorsers, more diverse supporters, and stronger language' than the competing human rights frame.<sup>46</sup> Although the human rights frame does enjoy substantial influence in international discourse, Charnysh, Lloyd and Simmons argue that its influence is due to the human rights camp prioritising action on the issue, and compromising on the dominant crime frame so as to form a consensus.<sup>47</sup> Acting in concert to 'broaden the coalition' against trafficking, the concerns of the human rights frame were accommodated within the crime frame which prioritises prosecution, but also embraces protection and prevention.<sup>48</sup>

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<sup>39</sup> Paulette Lloyd, 'Framing and Transnational Legal Organization: The Case of Human Trafficking' (2016) 110 *Proceedings of the ASIL Annual Meeting* 68; Beth A Simmons, Paulette Lloyd and Brandon M Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (2018) 72 *International Organization* 249.

<sup>40</sup> Elżbieta M Goździak and Kathleen M Vogel, 'Palermo at 20: A Retrospective and Prospective' (2020) 6 *Journal of Human Trafficking* 109, 111; Kristina Touzenis, *Trafficking in Human Beings: Human Rights and Trans-National Criminal Law, Developments in Law and Practices* (UNESCO 2010) <<https://unesdoc.unesco.org/ark:/48223/pf0000188397>> accessed 14 April 2020; Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling' (n 38); James Hathaway, 'The Human Rights Quagmire of Human Trafficking' (2008) 49 *Virginia Journal of International Law* 1.

<sup>41</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 503.

<sup>42</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 503.

<sup>43</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 503.

<sup>44</sup> Jonathan Mendel and Kiril Sharapov, 'Human Trafficking and Online Networks: Policy, Analysis, and Ignorance' (2016) 48 *Antipode* 665.

<sup>45</sup> Simmons, Lloyd and Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (n 39).

<sup>46</sup> Volha Charnysh, Paulette Lloyd and Beth A Simmons, 'Frames and Consensus Formation in International Relations: The Case of Trafficking in Persons' (2015) 21 *European Journal of International Relations* 323, 345; Chuang (n 3).

<sup>47</sup> Charnysh, Lloyd and Simmons (n 46) 323.

<sup>48</sup> Charnysh, Lloyd and Simmons (n 46) 345.



The influence of the criminal framing of the Palermo Protocol of course **depends on national interpretation and application, particularly articulated by judges and courts**; the influence of the Protocol interacts with other determinants. Esser and Dettmeijer-Vermeulen find that whilst 'national courts are bound to render judgment within the boundaries of the international parameters ... the use of open norms in that definition invariably requires domestic courts to engage in interpretation'.<sup>49</sup> Examining the Netherlands, they highlight that 'abuse of a position of vulnerability', for example, has had a broad interpretation, and 'purpose of exploitation' is not differentiated according to different forms of exploitation.<sup>50</sup>

Such influence of the criminal justice framing is accompanied by the comparatively 'ungenerous and equivocal provisions' to protect and support trafficked persons.<sup>51</sup> However, whilst the lack of specific protection obligations and the mixture of discretionary and mandatory protection provisions are a product of the negotiations, this has had a varied influence on national anti-trafficking efforts. Gallagher notes that since the adoption of the Protocol, the European Trafficking Convention has set 'much higher and more specific standards', which is also reflected in the regional anti-trafficking instruments and policies. She therefore suggests that States seem to be moving 'toward agreement that they are obliged, as a matter of international law, to accurately and quickly identify victims of trafficking; to avoid criminalizing victims for status offenses; to refrain from detaining victims; to provide at least immediate protection and support to victims that is not conditional on cooperation with criminal justice agencies; to provide additional protection and support to victim-witnesses; and to make special provision for child victims'.<sup>52</sup>

However, **there are criticisms that the discretionary aspects of victim protection within the Palermo Protocol have allowed States to prioritise prosecution above other issues, to the detriment, its critics argue, of victim protection<sup>53</sup> and addressing wider structural causes of trafficking.** For example, in the US, victims are offered a temporary 4-year working visa on the condition that, 'they have assisted criminal justice in an investigation or prosecution'.<sup>54</sup> The former cap of 5,000 T-Visas per year is also testament to that prioritisation on 'crimmigration',<sup>55</sup> as concern was raised that to increase the number would be akin to encouraging illegal immigration and trafficking.<sup>56</sup> This is reflected in how the EU's provision of protection is conditional on the trafficked person's cooperation with authorities. Moreover, Brunovskis and Skilbrei point to the detrimental impacts of

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<sup>49</sup> Luuk B Esser and Corinne E Dettmeijer-Vermeulen, 'The Prominent Role of National Judges in Interpreting the International Definition of Human Trafficking' [2016] (6) *Anti-Trafficking Review* 91  
<<http://www.anti-traffickingreview.org/index.php/atrjournal/article/view/171/174>> accessed 7 October 2020.

<sup>50</sup> Esser and Dettmeijer-Vermeulen (n 49).

<sup>51</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 336.

<sup>52</sup> Gallagher, *The International Law of Human Trafficking* (n 31) 366.

<sup>53</sup> Jo Goodey, 'Promoting "Good Practice" in Sex Trafficking Cases' (2004) 11 *International Review of Victimology* 89; Nicholas Fyfe, *Protecting Intimidated Witnesses* (Ashgate 2001); Jo-Anne Wemmers, *Victims in the Criminal Justice System: A Study into the Treatment of Victims and Its Effects in Their Attitudes and Behaviour* (Kugler 1996).

<sup>54</sup> US Citizenship and Immigration Services, 'Victims of Human Trafficking: T Nonimmigrant Status' (USCIS, 10 May 2018)  
<<https://www.uscis.gov/humanitarian/victims-human-trafficking-and-other-crimes/victims-human-trafficking-t-nonimmigrant-status>>  
accessed 24 April 2020.

<sup>55</sup> Edith Kinney, 'Victims, Villains, and Valiant Rescuers: Unpacking Sociolegal Constructions of Human Trafficking and Crimmigration in Popular Culture' in Maria João Guia (ed), *Illegal Business of Human Trafficking* (Springer 2015).

<sup>56</sup> Anthony M DeStefano, *The War on Human Trafficking: U.S. Policy Assessed* (Rutgers University Press 2007).

prioritising prosecution, particularly when protection is conditional on cooperation with the authorities in the prosecution process.<sup>57</sup>

The way in which the negotiations shaped the Palermo Protocol, and in turn national anti-trafficking efforts can further be seen in **the debates concerning the gendered framing of human trafficking and the distinction between free and forced sex work**. During the drafting process, the discussions focused on the issue of consent, specifically in the context of exploitation of the prostitution of others and other forms of sexual exploitation, whilst other forms of exploitation were not discussed at length.<sup>58</sup> McSherry and Kneebone trace the evolution of the preceding international instruments to contextualise the debates in the Palermo Protocol.<sup>59</sup> Having been primarily framed as an issue of exploited women and children for prostitution throughout the twentieth century, debates arose in the 1990s between 'radical feminism' and the 'sex work feminist perspective'.<sup>60</sup> Whilst the former argued that 'no distinction can be drawn between free and forced prostitution', the latter highlighted individual agency to distinguish between free and forced sex work.<sup>61</sup> As Gallagher suggests, given these debates, lack of an agreed definition and historic link between trafficking and prostitution, 'it is not surprising that discussions around the definition to be included in the protocol proved to be the most controversial aspect of the negotiation'.<sup>62</sup>

The **definition of trafficking** in the Palermo Protocol, as outlined in Article 3(a) and (c) has since been adopted by regional instruments and national legislation.<sup>63</sup> The influence of the Palermo Protocol and its definition of trafficking is tangibly seen in the number of regional instruments that have adopted this definition and understanding of consent, and in the fact that most jurisdictions replicate the Palermo Protocol's definition in domestic legislation.<sup>64</sup>

However, although it is the first internationally agreed definition of trafficking, the Palermo Protocol's definition represents a compromise across the participant States of the negotiation process.<sup>65</sup> Although there is room for the improper means to obtain consent to be applied to the various forms of exploitation, 'a rigid interpretation of such framework does not support such aims and instead risks undermining it'.<sup>66</sup> Indeed, as Gallagher and McAdam point to, the practical and interpretative confusion shapes the influence that the Protocol may have on national anti-trafficking efforts. Their study suggests that whilst there is widespread agreement on the irrelevance of consent in principle, there are varied approaches in practice which are 'informed by different priorities and

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<sup>57</sup> Anette Brunovskis and May-Len Skilbrei, 'Two Birds with One Stone? Implications of Conditional Assistance in Victim Protection and Prosecution of Traffickers' [2016] (6) *Anti-Trafficking Review* 13  
<<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/167/170>> accessed 7 October 2020.

<sup>58</sup> Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (n 35) 155.

<sup>59</sup> Bernadette McSherry and Susan Kneebone, 'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights' (2008) 12 *The International Journal of Human Rights* 67.

<sup>60</sup> McSherry and Kneebone (n 59) 70.

<sup>61</sup> McSherry and Kneebone (n 59) 70.

<sup>62</sup> Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (n 38) 984.

<sup>63</sup> Gallagher and McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (n 38).

<sup>64</sup> Gallagher and McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (n 38).

<sup>65</sup> Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (n 35) 161.

<sup>66</sup> Scarpa, 'The Definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach That Respects Peculiarities' (n 35) 161.

practical realities'.<sup>67</sup> The interpretation of the international definition is furthered by individual States, whose interpretations vary widely.<sup>68</sup>

Examining policies responding to the cross-border trafficking of women for the purposes of sexual exploitation, Munro highlights that in practice, domestic policies diverge rather than reflect a universal definition.<sup>69</sup> Interestingly, however, despite diverging framings of trafficking, Munro (focusing on UK and Australian variances) and Segrave (comparing Australian and Thai legislative differences) both find that the diverging policy frameworks are not as different when implemented in practice.<sup>70</sup> Munro's research indicates that the processes of implementation face similar inadequacies, thus questioning the importance of the definitional debates amongst policy-makers and service providers.<sup>71</sup> Munro and Segrave both find that the law enforcement framing, which prioritises prosecution and repatriation over protection is a more influential frame than the definitional differences.<sup>72</sup>

More broadly, the gendered framing in which the definitional debates concerning consent are bound, has since influenced State anti-trafficking measures. Indeed, the Protocol's very title includes 'especially Women and Children'. As explored below, this shapes how trafficking is perceived as an issue that affects and concerns women. Some have argued that the homogenised framing of both groups not only suggests that they are particularly at risk, but also infantilises women.<sup>73</sup> Requiring the same special attention as children, women are seen as lacking agency and in need of greater protection.<sup>74</sup> Furthermore, this framing risks overlooking men's vulnerabilities.<sup>75</sup> This not only creates stigma and may prevent identification of men who have been trafficked, but it can also lead to deficient State response with regard to protecting male victims, particularly in the context of sexual exploitation. Institutional barriers to increased protection of male victims are highlighted as resulting from limited identification of male victims due to the (investigative) focus on female

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<sup>67</sup> Gallagher and McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (n 38) 74.

<sup>68</sup> Anne T Gallagher and Marika McAdam, 'Abuse of a Position of Vulnerability and Other "Means" within the Definition of Trafficking in Persons' (United Nations Office on Drugs and Crime 2013); Gallagher and McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (n 38).

<sup>69</sup> Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (n 38); Vanessa E Munro, 'Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution' (2006) 46 *The British Journal of Criminology* 318.

<sup>70</sup> Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (n 38); Marie Segrave, 'Order at the Border: The Repatriation of Victims of Trafficking' (2009) 32 *Women's Studies International Forum* 251.

<sup>71</sup> Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (n 38).

<sup>72</sup> Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (n 38); Segrave (n 70); See also Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2013) Chapter 4.

<sup>73</sup> Neil Howard and Mumtaz Lalani, 'Editorial Introduction: The Politics of Human Trafficking' (2008) 4 *St Antony's International Review* 5; Annie George, U Vindhya and Sawmya Ray, 'Sex Trafficking and Sex Work: Definitions, Debates and Dynamics – A Review of Literature' (2010) 45(17) *Economic and Political Weekly* 64; Elizabeth A Faulkner, 'The Victim, the Villain and the Rescuer: The Trafficking of Women and Contemporary Abolition' [2018] (21) *Journal of Law, Social Justice and Global Development* 1.

<sup>74</sup> George, Vindhya and Ray (n 73); Howard and Lalani (n 73).

<sup>75</sup> Connie de la Vega and Conchita Lozano-Batista, 'Advocates Should Use Applicable International Standards to Address Violations of Undocumented Migrant Workers' Rights in the United States' (2005) 3 *Hastings Race and Poverty Law Journal* 35; Kelsey McGregor Perry and Lindsay McEwing, 'How Do Social Determinants Affect Human Trafficking in Southeast Asia, and What Can We Do about It? A Systematic Review' (2013) 15(2) *Health and Human Rights Journal* 23.

victims,<sup>76</sup> the need to involve new actors (such as trade unions) and adopt new strategies (including examining the production chain that facilitates trafficking),<sup>77</sup> and disproportionately low funding for organisations working to protect male victims.<sup>78</sup>

## Compliance with International Instruments

The Protocol has had a 'very strong' impact in shaping national legislation.<sup>79</sup> As the UNODC highlights, '[f]ew international legal instruments have been as rapidly and globally endorsed as the UN Trafficking in Persons Protocol'.<sup>80</sup> As mentioned above, at the time of writing, there are 178 States Parties to the Protocol.<sup>81</sup>

**However, beyond initial ratification and national adoption, the literature questions the extent to which international law is a factor which influences and determines governments' anti-trafficking efforts.**<sup>82</sup> Scholars argue that ratification of international laws is insufficient to ensure adherence to and enforcement of relevant standards in national laws. This underscores the persistent gap between States' international obligations and their enforcement domestically. Thus, a lens through which our research question has been addressed is that of *compliance* with anti-trafficking legal frameworks. In exploring what influences compliance, **the literature underscores the complexity and dynamism of compliance as a concept, and examines an array of factors which not only cause and impede States' efforts to adopt international obligations within their national policies and legislation, but also to apply them in practice.**<sup>83</sup>

The attention to the gap between obligation and implementation draws on the expansive theorisations of why States comply with international law. Kneebone and Debeljak outline insights using the different theories of realism, liberalism and constructivism, as to why States comply with the Palermo Protocol and indeed cooperate in its implementation.<sup>84</sup> Whilst assessing the evolution of such theories is beyond the scope of this review,<sup>85</sup> some are particularly pertinent to this analysis.

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<sup>76</sup> Heath Clawson, Mary Layne and Kevonne Small, 'Estimating Human Trafficking into the United States: Development of a Methodology' (ICF International Company 2006); Jennifer Chacon, 'Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking' (2006) 27 *Immigration and Nationality Law Review* 331.

<sup>77</sup> Silvia Scarpa, 'The Implementation of the OSCE Commitments on Trafficking in Human Beings by Italian Authorities' in Andrea de Guttry (ed), 'Implementation of Selected OSCE Commitments on Human Rights and Democracy in Italy: Independent Evaluation Report on the Occasion of the Italian OSCE Chairmanship 2018' (Sant'Anna School of Advanced Studies 2018) 85.

<sup>78</sup> Samuel Vincent Jones, 'The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking' [2010] *Utah Law Review* 1143.

<sup>79</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2014* (United Nations 2014) 51–52.

<sup>80</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016* (n 15) 48.

<sup>81</sup> United Nations Treaty Collection, 'Chapter XVIII Penal Matters 12. a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime' (UNTS) <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en)> accessed 6 April 2020.

<sup>82</sup> Maren Reynolds Perkins, 'Why Do States Comply with Anti-Trafficking Norms? A Study in Eastern Europe' (2010) 27 *Journal of Political and International Studies* 84.

<sup>83</sup> Perkins (n 82); Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-Trafficking Protocol' (2012) 28 *European Journal of Political Economy* 249; Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance for Big Brothers: An Empirical Analysis on the Impact of the Anti-Trafficking Protocol' (2012) 28 *European Journal of Political Economy* 1; Seo-Young Cho, Axel Dreher and Eric Neumayer, 'The Spread of Anti-Trafficking Policies: Evidence from a New Index' (2011) Center for Economic Studies Working Paper 3376 <<https://ssrn.com/abstract=1788809>> accessed 2 March 2020.

<sup>84</sup> Kneebone and Debeljak (n 72) 182–188.

<sup>85</sup> Barbara Delcourt, 'Theory of Compliance', *Max Planck Encyclopedias of International Law* (2013) <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1043#>> accessed 19 March 2021.

As Schönhöfer outlines, analysis of ratification and implementation of the Protocol has 'predominantly drawn on theories of international relations: states are conceptualised as unitary, coherent and rational actors whose decisions depend on the structure of the international system, irrespective of their internal, political composition'.<sup>86</sup> In this vein, scholars examine the role of international pressure, relations with adjacent States, sanctions and the threat thereof, loans, international reputation, influence from regional organisations, and obligations under regional treaties.<sup>87</sup> However, external influences alone are insufficient to explain compliance and implementation of international law. With reference to the Palermo Protocol, research has considered the influence of domestic conditions, such as the type of regime, freedom of the press, political representation (in particular with reference to gender), and advocacy.<sup>88</sup> These individual determinants are further explored within the context of influencing anti-trafficking efforts in the subsequent sections.

The theoretical discussions of what triggers States to fully comply with, rather than just commit to, international obligations, is also useful.<sup>89</sup> Using the Spiral Model, which explains how international norms are internalised and implemented domestically,<sup>90</sup> Hacker demonstrates that there can be a commitment to norms which can be simultaneously violated, and that compliance is a series of choices 'determined in light of internal and external forces'.<sup>91</sup> This reflects the typologies of internal versus external determinants.

Cho, Dreher and Neumayer<sup>92</sup> aim to formulate an index to empirically estimate 180 countries' levels of compliance with the Palermo Protocol, disaggregating the extent of compliance with the Palermo Protocol Articles concerning prosecution, protection and prevention obligations.<sup>93</sup> The resulting index, which they name the '3P index', and the accompanying dataset have been used to interrogate the determinants of compliance with international anti-trafficking law. Cho and Vadlamanti conduct quantitative analysis to test the hypothesis that the most significant impact of

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<sup>86</sup> Schönhöfer (n 2) 155.

<sup>87</sup> For example, see Cho and Vadlamanti, 'Compliance with the Anti-Trafficking Protocol' (n 83); Olga A Avdeyeva, 'Does Reputation Matter for States' Compliance with International Treaties? States Enforcement of Anti-Trafficking Norms' (2012) 16 *The International Journal of Human Rights* 298; Beth A Simmons and Paulette Lloyd, 'Subjective Frames and Rational Choice: Transnational Crime and the Case of Human Trafficking' (17 July 2010) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1653473](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1653473)> accessed 19 March 2021; Maureen Stobb and Charlotte McDonald, 'The Conditioning Effect of EU Membership Status: Understanding Compliance with Legislative Initiatives to Protect Trafficking Victims' (2019) 17 *Comparative European Politics* 813; Perkins (n 82).

<sup>88</sup> For example, see Horace A Bartilow, 'Gender Representation and the Sex Trade: Domestic Sources of International Compliance against Human Trafficking' (Paper prepared for the 104th Annual meeting of the American Political Science Association, Boston, August 2008); Schönhöfer (n 2); Ales Wooditch, 'Human Trafficking Law and Social Structures' (2012) 56 *International Journal of Offender Therapy and Comparative Criminology* 673; Dana E Wittmer and Vanessa Bouché, 'The Limits of Gendered Leadership: Policy Implications of Female Leadership on "Women's Issues"' (2013) 9 *Politics & Gender* 245; Jayoti Das et al, 'Anti-Human Trafficking Policies And Freedom Of The Press: A Cross-Country Study' (2013) 6(2) *International Journal of Management and Marketing Research* 1.

<sup>89</sup> Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).

<sup>90</sup> Thomas Risse and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction' in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (1999).

<sup>91</sup> Hacker (n 29) 22.

<sup>92</sup> Cho, Dreher and Neumayer, 'The Spread of Anti-Trafficking Policies: Evidence from a New Index' (n 83); Cho and Vadlamanti, 'Compliance with the Anti-Trafficking Protocol' (n 83); Seo-Young Cho, Axel Dreher and Eric Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (2014) 116 *The Scandinavian Journal of Economics* 429.

<sup>93</sup> Cho, Dreher and Neumayer, 'The Spread of Anti-Trafficking Policies: Evidence from a New Index' (n 83); Cho, Dreher and Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (n 92).

ratification of the Palermo Protocol is that States Parties tend to comply with the prevention obligations, over the prosecution and protection requirements.<sup>94</sup> They suggest that compliance is costly, it is not always a high priority for sending countries, and the domestic conditions may help or hinder compliance. They therefore hypothesise that States comply strategically 'with obligations that ensure the highest appreciation from the major countries at the lowest possible cost'.<sup>95</sup> This is termed 'efficient compliance'. Their empirical evidence supports the hypothesis and indicates that prevention policies seem to be the first choice and most efficient means of compliance. Whilst other scholars have corroborated that cost and reputation play a role in influencing compliance,<sup>96</sup> the further analyses based solely on the 3P index are limited by methodological questions, and the way in which the quantification produces generalised, rather than contextualised, conclusions.<sup>97</sup>

The growing body of qualitative research allows for a more nuanced and contextualised consideration of determinants of compliance. Indeed, the notion of successful compliance has competing definitions.<sup>98</sup> In reference to Israel's strategies of compliance in response to US pressure, Hacker highlights that the US, Israel and trafficked persons have different understandings of what constitutes successful compliance. Whilst the US notion of success denotes compliance with the standards set out in the Victims of Trafficking and Violence Protection Act (TVPA), Israel's view of success involves protecting its sovereignty whilst fulfilling US demands.<sup>99</sup> In contrast, for trafficked persons, 'success may supersede "compliance" and rather focus on recovery and reintegration'.<sup>100</sup> Compliance is a dynamic process which involves multiple priorities and determinants.

This nuance is further reflected in Renshaw's analysis of compliance in Southeast Asia. Her analysis suggests that the formulation of international legal frameworks may prevent effective compliance. She argues that what matters in compliance is whether the international legal framework reflects the domestic 'social reality with which it is supposed to deal', and how this law is formulated and enforced.<sup>101</sup> Both aspects rely on the question of the legitimacy of legal frameworks. Comparing the international and foreign instruments (Protocol and TVPA) to ASEAN's regional instruments,<sup>102</sup> Renshaw argues that the former lack legitimacy due to their inadequate reflection of the realities of human trafficking in the region. This is particularly demonstrated by the Protocol's and TVPA's assumptions that, Renshaw suggests, 'do not match the particularities of the practice in the region'. For example, she suggests that the element of coercion in the trafficking definition is complicated in the Southeast Asian context by issues of 'poverty and economic deprivation'.<sup>103</sup> This lack of legitimacy hinders compliance and enforcement. **The mere ratification of international law does not necessarily determine national anti-trafficking policies, and rather interacts with the context.**

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<sup>94</sup> Cho and Vadlamannati, 'Compliance with the Anti-Trafficking Protocol' (n 83).

<sup>95</sup> Cho and Vadlamannati, 'Compliance with the Anti-Trafficking Protocol' (n 83) 252.

<sup>96</sup> For example, see Stobb and McDonald (n 87); Hacker (n 29).

<sup>97</sup> We acknowledge that the methodology used for the 3P Index has some limitations due to its sources (TIP Report) and the focus on whether government policies fulfil the Palermo Protocol's requirements, rather than exploring the complexities of implementation or the contextual nuances of compliance.

<sup>98</sup> Hacker (n 29) 56.

<sup>99</sup> Hacker (n 29) 56.

<sup>100</sup> Hacker (n 29) 56.

<sup>101</sup> Catherine Renshaw, 'Human Trafficking in Southeast Asia: Uncovering the Dynamics of State Commitment and Compliance' (2016) 37 *Michigan Journal of International Law* 611, 657.

<sup>102</sup> ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (adopted 29 November 2004); ASEAN Convention Against Trafficking in Persons, Especially Women and Children (adopted 21 November 2015, entered into force 8 March 2017).

<sup>103</sup> Renshaw (n 101) 657.

What's more, beyond ratification, the literature highlights a series of internal & external impediments to compliance, including cost of compliance,<sup>104</sup> capacity to comply<sup>105</sup> and corruption.<sup>106</sup> It also identified incentives including candidacy for EU membership or length of membership status,<sup>107</sup> international reputation,<sup>108</sup> pressure from external bodies,<sup>109</sup> ranking in the US State Department's Trafficking in Persons Report,<sup>110</sup> and threat of sanctions and State ability to afford sanctions.<sup>111</sup> In an effort to shift the lens from external to internal components, the literature also discusses whether the gender composition of governments<sup>112</sup> and the extent to which the State has a free press<sup>113</sup> influence compliance with international obligations. The use of international law as a leverage tool adopted by NGOs and trafficked persons to hold governments to account and pressure compliance is also explored.<sup>114</sup> **This highlights the complexity of compliance and that the factors at play are context-specific. The impact of each individual determinant on compliance with international obligations, and in influencing anti-trafficking efforts, is explored further below.**

## Soft Law

The question of international law also relates to how soft law instruments, such as the Sustainable Development Goals (SDGs) Agenda and the Global Compact on Migration, have shaped national anti-trafficking efforts. The SDGs, namely Goals 5.2, 8.7 and 16.2, outline a commitment to abolish slavery by 2030 and thus play a role in strengthening governments' international obligations to anti-trafficking. The SDGs are part of a web of international instruments which set an international standard and shape national legislation. For example, commitment to the SDGs has been part of the process of the strengthening of the national anti-slavery legislation in Mauritania.<sup>115</sup> However, as with international law more broadly, there is a limit to its ability to influence the enforcement of such legislation.

The SDGs have had a broader impact with the creation of Alliance 8.7, a global partnership to achieve SDG Target 8.7, aiming to work towards the eradication of forced labour, modern slavery and human trafficking. This Alliance facilitates workshops and provides assistance to 'Pathfinder

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<sup>104</sup> Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-Trafficking Protocol' (n 83); Stobb and McDonald (n 87); Schönhöfer (n 2).

<sup>105</sup> Stobb and McDonald (n 87).

<sup>106</sup> Cassandra DiRienzo, 'Compliance with Anti-Human Trafficking Policies: The Mediating Effect of Corruption' (2018) 70 *Crime, Law and Social Change* 525.

<sup>107</sup> Stobb and McDonald (n 87); Perkins (n 82).

<sup>108</sup> Avdeyeva (n 87).

<sup>109</sup> Stobb and McDonald (n 87).

<sup>110</sup> Frances Bernat and Tatyana Zhilina, 'Trafficking in Humans: The TIP Report' (2011) 5 *Sociology Compass* 452; Susan Tiefenbrun, 'Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad' (2005) 11 *William & Mary Journal of Race, Gender, and Social Justice* 317.

<sup>111</sup> Stobb and McDonald (n 87).

<sup>112</sup> DiRienzo (n 106); Cho, Dreher and Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (n 92); Bartilow (n 88); Schönhöfer (n 2).

<sup>113</sup> Das et al (n 88).

<sup>114</sup> Hacker (n 29).

<sup>115</sup> Rosana Garcíandia, Maeve Ryan and Philippa Webb, "'I Demand Justice. I Hold Them All Responsible': Advancing the Enforcement of Anti-Slavery Legislation in Mauritania' (2020) 5(1) *Journal of Modern Slavery* <[https://slavefreetoday.org/wp-content/uploads/2020/11/Advancing\\_the\\_Enforcement\\_of\\_Antislavery\\_Legislation\\_in\\_Mauritania.pdf](https://slavefreetoday.org/wp-content/uploads/2020/11/Advancing_the_Enforcement_of_Antislavery_Legislation_in_Mauritania.pdf)> accessed 18 December 2020.

countries' to create workplans that set out 'priorities, key actions, responsibilities, timelines and budgets' to help that country meet Target 8.7.<sup>116</sup> However, with reference to Mauritania, Garciandia, Ryan and Webb's research highlights certain nuances with respect to the impact of Pathfinder countries. They argue that '[d]espite Mauritania's visible role as a Pathfinder state and a vocal proponent of its "success" in removing the last vestiges of slavery from its society, there are indications of challenges in enforcing its anti-slavery legislation'.<sup>117</sup> These challenges are rooted in systemic patterns and biases in law enforcement, such as 'race and gender discrimination and the instrumentalization of sharia law and of the legal system to maintain the privileges of certain elites'.<sup>118</sup> Therefore, although the SDGs and accompanying initiatives have strengthened the international standard and accompanying commitments, they are insufficient in overcoming barriers to enforcement of such commitments.

The potential influence of the Global Compact on Migration, specifically Objective 10 which aims to prevent, combat and eradicate trafficking in persons in the context of international migration, is important in the way it strengthens existing binding anti-trafficking obligations.<sup>119</sup> The International Organization for Migration has recently held its first regional review of the State implementation of the Global Compact on Migration, focusing on Europe and North America.<sup>120</sup> However, there has been little research or analysis on the impact that the Compact itself has had on States' anti-trafficking practices.

There is scope for further research into the impact of soft law that will build on the existing literature, and for analysis of how soft law has triggered inter-governmental and national anti-trafficking efforts.<sup>121</sup> Future outputs from Alliance 8.7 and their knowledge platform, Delta 8.7, hope to shed further light on the influence of soft law instruments and associated bodies.

## Case Law

The implementation of and compliance with international and regional anti-trafficking frameworks, raises the question of what role litigation and case law (domestic and international) plays in facilitating the implementation of international standards, and in influencing national responses. Case law from domestic and regional courts can be a decisive factor in influencing national anti-trafficking (legislative) responses. Documenting the key trafficking cases and outlining their impact

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<sup>116</sup> 'What is a Pathfinder Country?' (*Alliance 8.7*) <<https://www.alliance87.org/pathfinder-countries/>> accessed 20 October 2020.

<sup>117</sup> Garciandia, Ryan and Webb (n 115) 21.

<sup>118</sup> Garciandia, Ryan and Webb (n 115) 21.

<sup>119</sup> Jean-Pierre Gauci and Francesca Romana Partipilo, 'GCM Indicators: Objective 10: Prevent, Combat and Eradicate Trafficking in Persons in the Context of International Migration' (*RLI Blog on Refugee Law and Forced Migration*, 21 August 2019) <<https://rli.blogs.sas.ac.uk/2019/08/21/gcm-indicators-objective-10-prevent-combat-and-eradicate-trafficking-in-persons-in-the-context-of-international-migration/>> accessed 18 December 2020.

<sup>120</sup> 'First Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE Region' (*United Nations Network on Migration*) <<https://migrationnetwork.un.org/country-regional-network/europe-north-america>> accessed 18 December 2020.

<sup>121</sup> Katharine Bryant and Todd Landman, 'Combating Human Trafficking since Palermo: What Do We Know about What Works?' (2020) 6 *Journal of Human Trafficking* 119; The Inter-Agency Coordination Group against Trafficking in Persons, 'The Role of the Sustainable Development Goals (SDGs) in Combating Trafficking in Persons' (2018); United Nations Economic and Social Council, 'Special Edition Progress towards the Sustainable Development Goals: Report of the Secretary-General' (8 May 2019) UN Doc E/2019/68 <<https://undocs.org/E/2019/68>> accessed 6 July 2020.



on national legislation is beyond the scope of this paper;<sup>122</sup> rather, this section will focus on the influence that case law can have on anti-trafficking efforts.

The analysis conducted by domestic courts, especially by the Supreme or highest level Cassation and other Courts, is important 'to ensure consistency of judicial practice and correct understanding and interpretation of anti-trafficking legislation'.<sup>123</sup> Official clarifications by higher courts play an important role, especially when binding on lower courts, for example when clarifications are 'issued as a resolution by the plenum of a Supreme Court'.<sup>124</sup> These clarifications also reinforce international legal obligations and encourage harmonisation and cooperation across different judicial interpretations.

Crucially, domestic case law can trigger legislative change and can oblige legislative compliance with international obligations. For example, GRETA's General Reports identify specific jurisprudence which has triggered legislative change and pushed governments to adopt the advised change, such as *Hussein v The Labour Court & Anor* that caused legislative changes in Ireland through the enactment of the Employment Permits (Amendment) Act on 27 July 2014. Similarly, at the domestic level, the case of *NN and LP v SSHD* found the UK Home Office's policy to be unlawful and incompatible with the European Convention.<sup>125</sup> This case triggered a change in policy and obliged support to be provided to trafficked persons according to individual needs rather than on the basis of a narrow test. Crucially, it found the previous policy to be incompatible with the European Trafficking Convention, and thus obliged UK policy to comply with their international obligations.

More broadly, Duffy's analysis of the impact of decisions by regional courts finds that 'the power of the cases to date lies in simple exposure'.<sup>126</sup> Her analysis focuses on decisions by the European Court of Human Rights, the African Commission on Human and People's Rights, the ECOWAS Court and the Inter-American Commission and Court of Human Rights. They are able to expose the human stories and experiences to the public as well as shed light on the shortfalls of legal frameworks and State policies. Moreover, she noted that regional courts play a significant role in clarifying and underlining States' positive obligations.<sup>127</sup> Courts reinforce 'duties to prevent, regulate, investigate, cooperate, criminalize and punish'.<sup>128</sup> She also points to the influence that regional courts have on shaping international legal frameworks.<sup>129</sup> Duffy highlights four key examples:

In some cases, such as *CN v. UK* or *Fazenda Brasil Verde*, the litigation has led to legislative changes to enhance criminal law and jurisdiction over these offences. Many other cases,

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<sup>122</sup> United Nations Office on Drugs and Crime, 'Evidential Issues in Trafficking in Persons Cases: Case Digest' (2017) <[https://www.unodc.org/documents/human-trafficking/2017/Case\\_Digest\\_Evidential\\_Issues\\_in\\_Trafficking.pdf](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf)> accessed 30 September 2020.

<sup>123</sup> Organization for Security and Co-operation in Europe, 'Highlights of the International Conference "The Critical Role of the Judiciary in Combating Trafficking in Human Beings"' (2019) 8.

<sup>124</sup> Organization for Security and Co-operation in Europe (n 123) 8.

<sup>125</sup> *NN and LP v SSHD* [2019] EWHC 1003 (Admin).

<sup>126</sup> Helen Duffy, 'Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution' (2016) 14 *Journal of International Criminal Justice* 375, 400.

<sup>127</sup> Duffy (n 126) 402.

<sup>128</sup> Duffy (n 126) 402.

<sup>129</sup> Duffy (n 126) 401.

however, including *Mani*, or *Periera v. Brazil*, reveal something quite different, which is laws that exist on paper but are not understood or given effect in practice, for varying reasons including the lack of capacity and knowledge of prosecutors or judges themselves, the insensitive and ineffective handling of investigations or direct corruption and collusion of state agents.<sup>130</sup>

The sustained impact of litigation is explored by Milano, but this analysis is with specific reference to the European Court of Human Rights. She argues that despite the hallmark case of *Rantsev*, the Court ruling on *L.E. v Greece* failed to meet the expectations set out in *Rantsev* and therefore represents a regression.<sup>131</sup> Specifically, this regression has occurred with regards to prevention of trafficking, and protection of trafficked persons. Whilst the details of such regression are complex, **what is important to note is that case law plays an integral role in interpreting the law, in how States implement the relevant obligations, and thus in pressuring change in State practice. Through a well-argued case, which includes strong evidence from witnesses who may not normally have a platform, the State is exposed to a wider range of evidence.**

Overall, however, the literature may be lacking on the role of case law because of the limited number of cases that have appeared in the regional courts in the past 20 years.

### External Monitoring

Beyond international law and case law, the influence of international standards is also derived from external monitoring processes. External monitoring mechanisms, tasked with monitoring and evaluating State compliance with the relevant international obligations and anti-trafficking efforts more broadly, influence national efforts through exerting pressure. **External monitoring can influence change not only through making recommendations to countries of concern, but also through the implications such assessments have for a State's international reputation.**

There are a range of mechanisms which assess and monitor national anti-trafficking efforts. They operate in different regions, have different scopes and varying mandates. This section will firstly review literature regarding the influence of international monitoring bodies, before turning to the US State Department's Trafficking in Persons (TIP) Report.

### International Monitoring

The literature reviewed refers to a range of monitoring mechanisms. While operating within different mandates reflecting different scope of monitoring, these mechanisms are categorised as external pressure points in influencing domestic policy. This section will firstly address the monitoring of the UNODC, followed by that conducted by the Council of Europe, before addressing the development of the monitoring of the UNTOC and Protocols. There is comparatively more attention on the reporting conducted by the US State Department and its TIP Report, which is addressed in the following section.

### The UNODC

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<sup>130</sup> Duffy (n 126) 401.

<sup>131</sup> Valentina Milano, 'The European Court of Human Rights' Case Law on Human Trafficking in Light of *L.E. v Greece*: A Disturbing Setback?' (2017) 17 Human Rights Law Review 701.

The UNODC started their 'Global Report on Human Trafficking' in 2009, which is global in scope, focuses on collecting data on prosecution, national legislation and enforcement. It collects country-level data from 130 countries. There is a lack of critical analysis of the Global Report or of its impact and influence. This lack of critical engagement was noted by Gallagher in 2011, and the literature is still lacking in such critique, with a few exceptions.<sup>132</sup> The critiques that have been reviewed of the Global Report revolve around its methodology and statistics. Whilst the UNODC's 'data-driven approach' in the Report 'has potential to provide accurate insight into the scope of the human trafficking problem', has revealed some patterns of trafficking and the criminalisation of it, the methodology of data collection is limited.<sup>133</sup> Gallagher notes that the statistics and data reported by the UNODC are presented as 'fact', but are rather reflections of 'self-reported patterns of investigations and prosecutions'.<sup>134</sup> Similarly Bouché and Bailey point to the problems in the data being based solely on detected cases of trafficking, and similarly question the self-reporting bias.<sup>135</sup> The influence of the UNODC Global Reports is therefore bound up with the criticisms explored in the data section.

Beyond the methodological criticisms, there is less analysis on the impact of the reporting in influencing national anti-trafficking measures. Bouché and Bailey suggest that the 'methodological limitations impede it from being as impactful as it could be'.<sup>136</sup> Whilst the Global Report is valuable in analysing State legislation and tracking its compliance with international obligations (in particular, the Palermo Protocol's binding obligation of criminalising trafficking), the impact is further limited by the lack of mechanisms that might 'spur the international community toward internalizing anti human trafficking norms'.<sup>137</sup> Comparing the Global Report to the TIP Report (further explored below), Bouché and Bailey suggest that the Global Report could 'fill a gap in the international compliance regime' for anti-trafficking through a name-and-shame element that may include reputational consequences for non-compliant States. In turn, they suggest, this would strengthen compliance with the Protocol.<sup>138</sup>

## UNTOC and the Review Mechanism

The impact of international monitoring is dependent, in part, on the legitimacy of the review process. This has been highlighted by the process of creating a monitoring mechanism for the UNTOC and Protocols. Rose's review of the discussions and compromises suggests that the influence of the upcoming Review Mechanism may be hampered by the circumscribed participation of civil society and the confidential nature of the review documents.<sup>139</sup> The potential that the Review

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<sup>132</sup> Anne T Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports' (2011) 12 *Human Rights Review* 381, 391; Vanessa Bouché and Madeleine Bailey, 'The UNODC Global Report on Trafficking in Persons: An Aspirational Tool with Great Potential' in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Springer 2020).

<sup>133</sup> Bouché and Bailey (n 132) 164 and 166–169; See also Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking' (n 132) 391.

<sup>134</sup> Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports' (n 132) 391.

<sup>135</sup> Bouché and Bailey (n 132) 166–167.

<sup>136</sup> Bouché and Bailey (n 132) 173.

<sup>137</sup> Bouché and Bailey (n 132) 174.

<sup>138</sup> Bouché and Bailey (n 132) 172.

<sup>139</sup> Cecily Rose, 'The Creation of a Review Mechanism for the UN Convention Against Transnational Organized Crime and Its Protocols' (2020) 114 *The American Journal of International Law* 51.

Mechanism has to influence governments' anti-trafficking measures rests on 'a significant number of states parties opt[ing] to make country reports publicly available' because 'this will create a significant body of data about whether and how states are implementing and potentially also enforcing UNTOC'.<sup>140</sup> This data and research is integral to the functioning of the Review Mechanism, to allow the domestic influence of the treaty to be better understood, and thus for obstacles to compliance to be identified.

## The Council of Europe

The Council of Europe has established a Group of Experts on Action against Trafficking in Human Beings (GRETA) to monitor the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. GRETA conducts country visits and provides reports and recommendations to each country within its mandate. It has been found to be influential through providing 'important opportunities for raising the accountability of parties' in relation to the obligations under the Council of Europe Convention.<sup>141</sup> However, commentators question the extent to which the monitoring process is maximising its potential impact. Planitzer suggests that the questions to Member States may be too general to assess whether a human rights approach has been 'implemented in all spheres of work against trafficking in human beings'.<sup>142</sup> Moreover, in comparing the process to the monitoring of UN human rights treaties, she draws attention to the lack of dialogue between GRETA and the Member States, the lack of shadow reports from civil society, and the lack of an individual complaint procedure. Rather than questioning the impact of GRETA, however, this analysis brings to light potential areas of improvement of the monitoring process itself. Since this analysis was published in 2015, much has been improved in GRETA's procedures. For example, GRETA now publishes the State's response to draft reports, as well as its comments on the final report. Moreover, the dialogue with States has improved and the questions have evolved. This analysis is noted in order to highlight the potential influences and deficiencies in monitoring processes.

**The impact of international monitoring, the reports and recommendations produced, and any mechanisms (such as the threat of sanctions, as explored below), is of course dependent on a State's receptiveness. This, in turn, implicates questions of a State's economic conditions, concern for its international reputation, political influence of what is included in reports, and capacity to implement changes in a sustained fashion.**

## The US State Department's Trafficking in Persons Report

Within the different external monitoring processes, the US State Department's Trafficking in Persons (TIP) Report is a unique report and process. The Report is a requirement of the Victims of Trafficking and Violence Protection Act (TVPA) for the US State Department to assess governmental anti-trafficking efforts annually. The report ranks countries according to their compliance with US standards. Countries ranked at the lowest Tier, Tier 3, are at risk of having economic sanctions imposed.

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<sup>140</sup> Rose (n 139) 67.

<sup>141</sup> Julia Planitzer, 'GRETA's First Years of Work: Review of the Monitoring of Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings' [2012] (1) *Anti-Trafficking Review* 31  
<<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/18>> accessed 24 April 2020.

<sup>142</sup> Planitzer (n 141) 34.

A central contention in the literature is the role of the US State Department's annual TIP.<sup>143</sup> According to its mandate, it has created a mechanism to incentivise and punish (non-)compliance through funding opportunities and threats of economic and foreign assistance sanctions. Critics of the TIP report highlight the politicisation of the report by ranking countries according to an American bias and othering non-Western countries.<sup>144</sup> For example, Foerster notes that Venezuela and Bolivia were placed in Tier 3 only after electoral turbulence deemed to be 'antithetical' to US foreign policy interests of regional stability.<sup>145</sup> Similarly, Malaysia and Cuba are suspected to have improved their Tier rankings in 2015 to foster beneficial trade relations with the US.<sup>146</sup> This contrasts with Thailand and India escaping TVPA sanctions, despite doing relatively little to address prevention as predominantly source countries.<sup>147</sup> Similarly, Gallagher suggests that China and Myanmar escaped being downgraded in the 2015 TIP Report, due to the US priority of avoiding damaging its economic and political relations with the imposition of sanctions.<sup>148</sup> Moreover, Wooditch's 2011 study suggested that the TIP Ranking was not consistently resulting in funding for lower tier countries, which were making clear anti-trafficking efforts.<sup>149</sup>

The TIP Report is further criticised for failing to interrogate the underlying and structural causes of trafficking, thus creating an illusion that the Report is telling the whole definitive story of the exploitation taking place in each country.<sup>150</sup> By failing to delve into the role of exploitation in propping up global wealth and economies, the TIP Report casts a shadow over the structures which facilitate vulnerability to trafficking and rely on trafficking and exploitation. The TIP Report is thus limited in 'not even try[ing] to explain why governments are so willing to pass strong laws and so unwilling to implement them effectively'.<sup>151</sup>

However, despite criticisms of the approach, the effectiveness of the TIP Report in initiating change has also been explored in the literature with its influence described as nuanced and context-specific. In particular, the process of reporting can trigger governments to start and engage in a discourse confronting the problem of human trafficking<sup>152</sup> and the ranking can incentivise improvements as demonstrated by the adoption of anti-trafficking laws and policies.<sup>153</sup> Gallagher notes that the TIP Report can create 'the opportunity to help revise an evidence law; to work on developing interview protocols that protect victims; to encourage fair trials for suspects', which may not have arisen if such countries 'were not conscious of the US looking on and judging their every move'.<sup>154</sup> For example, Nigeria was elevated from Tier 3 in 2004 to Tier 1 in 2009. The TIP Report intuitively 'exercised a strong, if not decisive influence' as Nigeria followed the TIP recommendations and

<sup>143</sup> Victims of Trafficking and Violence Protection Act of 2000, Public Law No 106-386, 114 STAT 1464.

<sup>144</sup> Dina Francesca Haynes, '(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act' (2007) 21 *Georgetown Immigration Law Journal* 337 <<https://ssrn.com/abstract=984927>>.

<sup>145</sup> Amy Foerster, 'Contested Bodies' (2009) 11 *International Feminist Journal of Politics* 151, 161.

<sup>146</sup> Anne T Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (*OpenDemocracy*, 31 July 2015) <<https://www.opendemocracy.net/en/5050/2015-us-trafficking-report-signs-of-decline/>> accessed 18 September 2020.

<sup>147</sup> Foerster (n 145) 161.

<sup>148</sup> Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (n 146).

<sup>149</sup> Alese Wooditch, 'The Efficacy of the Trafficking in Persons Report: A Review of the Evidence' (2011) 22 *Criminal Justice Policy Review* 471, 487-488.

<sup>150</sup> Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (n 146).

<sup>151</sup> Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (n 146).

<sup>152</sup> Bernat and Zhilina (n 110).

<sup>153</sup> Tiefenbrun (n 110).

<sup>154</sup> Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (n 146).

adopted an anti-trafficking law, coordinated a national anti-trafficking response, adapted its criminal justice response, established victim support, and also echoed the US position in emphasising the link between prostitution and trafficking.<sup>155</sup>

Nevertheless, Gallagher suggests that beyond intuition, the impact of the TIP Report is difficult to ascertain.<sup>156</sup> Whilst the impact of the TIP Report on individuals in national governments is 'indisputable', the broader motivations of acting in national interests, considerations of international reputation, sanctions and the perceived legitimacy of the TIP Report, all vary from country to country.<sup>157</sup> Further influential factors that are referred to by Gallagher include pressure from neighbouring countries, provision of bi-lateral aid, NGO advocacy, and media exposure.<sup>158</sup>

The TIP report has specifically been found to influence the diffusion of the criminal justice approach to addressing human trafficking. Despite the criticism of such framing, Simmons, Lloyd and Stewart find that the US State Department plays a role in transnational law enforcement, punishing States for failing to adopt a criminal justice response to trafficking as modelled on the TVPA.<sup>159</sup> Penalties not deemed to be significant enough to dissuade the act of trafficking, for example, are a cause for criticism. The US government is also cited as encouraging neighbouring States to emulate each other's criminal justice law and policy, so that they can act in concert against 'regional effects' of the crime.<sup>160</sup> Intersecting with the influence of framing, the TIP report, the TVPA and its sanctions regime has diffused the crime frame and criminal justice response to human trafficking globally.<sup>161</sup> The impact of sanctions is fully explored in the following section.

### International Sanctions and Threat of Sanctions

A theme that has resonated in the literature on the influence of international law and monitoring, is the question of national compliance and enforcement. This section focuses on the threat and imposition of US Sanctions; there is a lack of research addressing the impact of other forms of sanctions (eg UN Security Council Sanctions<sup>162</sup> and UN Economic Sanctions).

**Within this context, the literature underscores the role of sanctions by other States and the threat thereof, as external points of pressure, which can have direct impact on State anti-trafficking measures. As explored in reference to compliance with international law and the influence of the US TIP report, the threat and imposition of sanctions can influence compliance with international obligations. However, scholars point to international sanctions as a 'controversial and powerful**

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<sup>155</sup> Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking' (n 132) 388.

<sup>156</sup> Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking' (n 132) 389–390.

<sup>157</sup> Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking' (n 132) 389; 389–390.

<sup>158</sup> Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking' (n 132).

<sup>159</sup> Simmons, Lloyd and Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (n 39).

<sup>160</sup> Simmons, Lloyd and Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (n 39) 277.

<sup>161</sup> Chuang (n 3); US Committee on Foreign Relations, Trafficking of Women and Children 2000 [106th Congress].

<sup>162</sup> Mirjam van Reisen, Klara Smits and Morgane Wirtz, 'Lawless Libya: Unprotected Refugees Kept Powerless and Silenced' in Mirjam van Reisen et al (eds), *Mobile Africa: Human Trafficking and the Digital Divide* (Langaa Research & Publishing CIG 2019); Judith Vorrath, 'Organized Crime on the UN Security Council Agenda: Action against Human Trafficking Reveals Opportunities and Challenges' (SWP Comment No 38, October 2018); Kieran Guilbert, 'Landmark U.N. Libya Trafficking Sanctions Need Tough Follow-up: Experts' *Reuters* (8 June 2018) <<https://www.reuters.com/article/us-un-trafficking-libya-idUSKCN1J41LH>> accessed 18 December 2020.

weapon in the arsenal of international tools to combat trafficking',<sup>163</sup> and one that is often insufficient in causing change that is sustained in the long term.

The theme of effectiveness emerges most clearly within analysis of the US TIP report; the threat and imposition of sanctions is a tool of the US TIP report, as above. Although criticism has been levelled against the standards which the TVPA uses to threaten or enforce sanctions, it has also been recognised that they serve as a useful mechanism for holding governments to some external accountability on their anti-trafficking initiatives.<sup>164</sup> Furthermore, conversely, the literature reviewed questions whether monitoring mechanisms, such as the UNODC's Global Report, which lack enforcement powers, such as threatening or imposing sanctions, are limited in their ability to trigger improved anti-trafficking measures.<sup>165</sup>

Israel and Thailand both present a compelling illustration of the effectiveness of the threat of State-targeted sanctions.<sup>166</sup> As one of the greatest beneficiaries of US non-humanitarian foreign aid, the threat of cuts to that aid, accompanied by the pressure created by an Amnesty International report in 2000,<sup>167</sup> propelled the Israeli government to act.<sup>168</sup> A Parliamentary Committee of Inquiry on the Trafficking in Women overhauled the criminal justice system's approach to trafficking: trafficking for the purposes of prostitution was included in Israel's Penal Code,<sup>169</sup> shelters were established, and it was ensured that trafficked persons were not convicted for prostitution and immediately deported.<sup>170</sup> Similarly, having been placed on the Tier 2 Watch List in 2004, and thus facing imminent threat of cuts to US aid, Thailand is reported subsequently to have improved its anti-trafficking measures.<sup>171</sup> Indeed, Thailand introduced a wide array of measures aimed at ensuring both safe repatriation and reintegration of trafficked persons (although how successful these measures are is debated).<sup>172</sup>

However, the impact of the threat of sanctions may be limited to acting as a trigger for superficial change; sanctions are not found to have much long-term influence in causing implementation of changes or shaping systemic change. At best, some authors point to sanctions as inducing mixed

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<sup>163</sup> Chuang (n 3) 493.

<sup>164</sup> Anne T Gallagher and Janie A Chuang, 'The Use of Indicators to Measure Government Responses to Human Trafficking' in Kevin Davis et al (eds), *Governance by Indicators: Global Power Through Quantification and Rankings* (Oxford University Press 2012); Chuang (n 3).

<sup>165</sup> Rose (n 139); Bouché and Bailey (n 132).

<sup>166</sup> Gad J Bensinger, 'Trafficking in Women for Prostitution in Israel: A Follow-up Analysis' (2007) 31 *International Journal of Comparative & Applied Criminal Justice* 281; Ratchada Jayagupta, 'The Thai Government's Repatriation and Reintegration Programmes: Responding to Trafficked Female Commercial Sex Workers from the Greater Mekong Subregion' (2009) 47(2) *International Migration* 227.

<sup>167</sup> Amnesty International, 'Israel: Human Rights Abuses of Women Trafficked from Countries of the Former Soviet Union into Israel's Sex Industry' (2000).

<sup>168</sup> Bensinger (n 166).

<sup>169</sup> Amendment to Penal Code criminalizing the procurement, inducement, and sheltering of prostitution 2000 (Penal Code) 226; Amendment no 56 to Penalty Code stating that an 'offense' for the purposes of the money laundering statute includes prostitution 2000 (Penalty Code) 226.

<sup>170</sup> Hacker (n 29) 27.

<sup>171</sup> Jayagupta (n 166).

<sup>172</sup> Marwaan Macan-Markar, 'Rights-Thailand: Trafficking Victims Finally Given Protection' *Inter Press Service* (Bangkok, 6 August 2004) <<http://www.ipsnews.net/2004/08/rights-thailand-trafficking-victims-finally-given-protection/>> accessed 16 June 2020; Jayagupta (n 166) 242.

results.<sup>173</sup> For instance, Cheng and Momesso note that whilst the threat of US sanctions has forced target States to adopt international norms on trafficking, they question whether those norms have been adopted 'on a global scale'.<sup>174</sup> Whilst it is argued that the TVPA sanctions regime adds weight to the US TIP Report, the impacts of that weight have not been felt universally by all profiles of trafficked persons.<sup>175</sup> The 'gendered' and criminal justice framing of the TVPA is found to work jointly with sanctions to improve efforts focused on women and children victims of sexual exploitation.<sup>176</sup>

Moreover, the threat or imposition of sanctions is found to interact and vary according to the target State's political situation and regime type. Meriläinen and Vos argue that the legitimacy and normative value of international human rights treaties are threatened by the absence of sanctions, indicating that autocratic States may take advantage of this.<sup>177</sup> Without accountability mechanisms supported by sanctions, autocratic States may see ratifying protocols and treaties as a low-cost political tool, while 'human rights violations [...] continue as usual', which further reflects the discussion above on compliance beyond ratification of international instruments.<sup>178</sup> That said, broader literature on the ability of State-targeted economic sanctions to induce compliance with human rights standards has found that they may be more effective when targeted at democratic regimes.<sup>179</sup> Autocratic regimes are deemed more likely to intervene in the economy to 'divert existing wealth and resources made scarce by sanctions towards their supporters', preventing the negative repercussions which may otherwise lead to legislative change.<sup>180</sup>

More broadly, the influence of sanctions depends on the regional characteristics and contexts. Subono and Kosandi point to the ASEAN decision-making process as one with a 'strong tendency toward consensus' which thus 'reduces the importance of punishment and sanction as solution to collective and shared problems'.<sup>181</sup> Whilst they delineate the problems that occur with such a focus on cooperation, they suggest that sanctions or the threat of sanctions is not a tool that is utilised to trigger change. It is of course important to note that States within ASEAN have varying responses to sanctions.<sup>182</sup>

The role of sanctions in triggering change is dependent on the target State's economic conditions. Referring back to the discussion of the cost of compliance with international law above, Stobb and McDonald find that whilst Germany can bear the cost of non-compliance sanctions, Hungary cannot afford this to the same degree. Therefore, whilst Germany can choose to comply or not, Hungary

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<sup>173</sup> Isabelle Cheng and Lara Momesso, 'Look, the World Is Watching How We Treat Migrants! The Making of the Anti-Trafficking Legislation during the Ma Administration' (2017) 46 *Journal of Current Chinese Affairs* 61; Segrave (n 70).

<sup>174</sup> Cheng and Momesso (n 173) 72.

<sup>175</sup> Segrave (n 70).

<sup>176</sup> Segrave (n 70).

<sup>177</sup> Niina Meriläinen and Marita Vos, 'Public Discourse on Human Trafficking in International Issue Arenas' (2015) 5 *Societies* 14.

<sup>178</sup> Meriläinen and Vos (n 177) 16.

<sup>179</sup> Solomon Major, 'Timing Is Everything: Economic Sanctions, Regime Type, and Domestic Instability' (2012) 38 *International Interactions* 79; Dursun Peksen, 'When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature' (2019) 30 *Defence and Peace Economics* 635; Dursun Peksen, 'Autocracies and Economic Sanctions: The Divergent Impact of Authoritarian Regime Type on Sanctions Success' (2019) 30 *Defence and Peace Economics* 253.

<sup>180</sup> Peksen, 'When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature' (n 179) 638.

<sup>181</sup> Nur Iman Subono and Meidi Kosandi, 'The Regionalism Paradox in the Fight against Human Trafficking: Indonesia and the Limits of Regional Cooperation in ASEAN' (2019) 16(2) *Journal of Leadership, Accountability and Ethics* 89, 95.

<sup>182</sup> Kneebone and Debeljak (n 72).



does not have the same economic and political conditions and flexibility to afford this.<sup>183</sup> The threat of sanctions can be used to encourage States to refrain from certain activities, or to incentivise them to take positive action. Beyond financial repercussions, reputational costs are also interconnected with the impact that sanctions, or the threat thereof, may have. Whilst the threat of sanctions may damage States' international reputations, States' ability to withstand reputational damage depends on how powerful they are.<sup>184</sup>

The question of sustained change is further highlighted by the threat of trade sanctions targeted at the Thai fishing industry.<sup>185</sup> The initial impact of the 2015 yellow card issued by the European Commission, on the basis of the forced labour and trafficking on Thai fishing vessels and Thailand's legal framework concerning labour in its fishing industry which contravened the Illegal, Unreported and Unregulated Fishing Regulation, is evidenced within the literature.<sup>186</sup> Signalling a warning before a red card, which would trigger a trade ban on all Thai fishing imports to the EU, the threat of trade sanctions from the yellow card prompted legislative change. This is undoubtedly interlinked with Thailand's economic situation and international reputation: the EU represented Thailand's third largest trading partner, and in 2014, exports from Thai fisheries to the EU alone, represented EUR 575 million.<sup>187</sup> This threat is compounded by the media exposure, as explored below, which exerted international pressure and raised awareness, triggering Thailand to act. Thailand was also downgraded in the US TIP report to Tier 3.<sup>188</sup> In response, Thailand's National Council for Peace and Order 'overhauled [the] fishing industry monitoring, control, and management regimes', created 'interagency inspection frameworks' and employed officials to check fishing boats departing and arriving at ports. There was also a strengthening of laws and increase of penalties for infringing fishermen's rights.<sup>189</sup>

However, despite this initial impact, the US sanctions on the import of Thai shrimp<sup>190</sup> and continued reports of incidents of human trafficking within Thailand's fishing industry<sup>191</sup> bear witness to the limited impact of the EU's threatened sanctions. This criticism is furthered by Stephens who reveals the adverse impact that the EU's yellow card system had in its attempt to influence Thailand's anti-trafficking efforts in its fishing industry. He notes how the industry reforms made by the Thai government in response to those sanctions required boats to register migrant workers and undergo new licensing for the boat and equipment, all of which increased the price of seafood and prevented many crews from operating at all. Multiple fishermen whose businesses were suddenly made inequitable turned to the more lucrative one of human trafficking.<sup>192</sup> The human rights abuses of fishermen are found to have continued 'at the hands of ship owners, senior crew, brokers, and

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<sup>183</sup> Stobb and McDonald (n 87) 828.

<sup>184</sup> Stobb and McDonald (n 87) 816–817.

<sup>185</sup> Daniel Murphy, 'Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry' (*Human Rights Watch*, 23 January 2018) <<https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>> accessed 15 September 2020.

<sup>186</sup> Vandergeest, Tran and Marschke (n 2); Laurence Vandewalle, 'Thailand in 2016: Restoring Democracy or Reversing It?' (European Parliament Study PE578.931, 2016).

<sup>187</sup> Vandewalle (n 186).

<sup>188</sup> Daniel Murphy (n 185) 2.

<sup>189</sup> Daniel Murphy (n 185) 2.

<sup>190</sup> John Le Fevre, 'Trump's GSP Seafood Cut Gives Thailand 2020 GDP an Early Whack (Video)' (*AEC News Today*, 27 October 2019) <<https://aecnewstoday.com/2019/trumps-gsp-seafood-cut-gives-thailand-2020-gdp-an-early-whack/>> accessed 12 June 2020.

<sup>191</sup> Human Rights Watch et al, 'Joint Letter on Thailand to EU Commissioner for Fisheries, Maritime Affairs and Environment' (*Human Rights Watch*, 25 February 2016) <<https://www.hrw.org/news/2016/02/25/joint-letter-thailand-eu-commissioner-fisheries-maritime-affairs-and-environment>> accessed 12 June 2020.

<sup>192</sup> Stephens (n 2).

police officers' and due to the poor implementation and enforcement, 'the impact of stronger regulatory controls on improving conditions of work at sea has been limited'.<sup>193</sup>

## Structural Conditions

### Governance and Political Situation

The adoption and implementation of anti-trafficking measures is context-dependent, and not solely shaped by external factors shaping international norms or pressuring governments to act. **States' willingness to adopt and capacity to enforce measures, is shaped by their internal governance and political situation, broadly denoting the processes, structures and institutions within the country.** The literature highlights the impact of different **regime types and adherence to the rule of law, political contexts, levels of corruption and national governance structures.** These aspects in turn reflect entrenched cultural values, particularly in relation to gender and attitudes towards the migration of migrant workers.

The impact of different regime types and State governance structures is reflected in the literature on compliance with international human rights standards (broadly), which suggests that compliance is impacted by whether a regime is democratic or autocratic, whether the processes of implementation are centralised or decentralised, and whether States are materially, economically or socially vulnerable.<sup>194</sup> Indeed, the Spiral Model, as mentioned above, suggests that compliance with international human rights standards is shaped by the State's administrative capacity, and willingness to allocate such capacity, to enforce international obligations, including human rights standards.

With regards to anti-trafficking measures, the US State Department suggests that 'healthy, vital democratic pluralism is the single most prevalent feature of states conducting effective anti-trafficking efforts'.<sup>195</sup> Democratic States are better equipped in terms of capacity to combat trafficking, and have space for civil society organisations to collaborate with governments and hold them to account.<sup>196</sup> Democratic values not only reduce the levels of trafficking, but also ensure the independence of the judiciary and the rule of law to protect trafficked persons, and prosecute traffickers.<sup>197</sup> The importance of the rule of law in ensuring the compliance with international anti-trafficking obligations and implementation thereof is accentuated. Moreover, the negative effects of a collapse of the rule of law are pronounced in conflict situations. Not only do conflict situations give rise to new vulnerabilities and increased levels of trafficking, the breakdown of the rule of law results in impunity, providing traffickers with a 'fertile terrain to carry out their operations'.<sup>198</sup>

Some quantitative studies explore correlations between types of regimes and their impact on anti-trafficking measures. Relying on the '3P index' (and therefore subject to the same methodological disclaimers noted above), Amahazion's analysis finds that the effectiveness of governance and

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<sup>193</sup> Daniel Murphy (n 185) 3.

<sup>194</sup> See Risse, Ropp and Sikink (n 89).

<sup>195</sup> United States Department of State, '2008 Trafficking in Persons Report' (2008) <<https://2009-2017.state.gov/documents/organization/105501.pdf>> accessed 14 April 2020.

<sup>196</sup> United States Department of State, '2008 Trafficking in Persons Report' (n 195) 34–35.

<sup>197</sup> United States Department of State, '2008 Trafficking in Persons Report' (n 195) 34–35.

<sup>198</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (United Nations 2018) 11.

State-level institutions impacts States' 'capability to actually carry out policy'.<sup>199</sup> Focusing on victim protection measures, he argues that governments with higher levels of legitimacy and 'internal authority' require greater coordination between agencies and government levels, and are therefore better able to support the implementation of such policies.

## Corruption

Embedded within discussions of political processes and institutions, is how the level of corruption and perceived corruption influences States' anti-trafficking measures. **Corruption has been the subject of specific attention, especially in how it implicates States' capacity to implement their anti-trafficking measures.** Corruption is an internal structural factor, particularly found to be an obstacle to States' compliance with, and implementation of, their international legal obligations.<sup>200</sup> The impact of corruption on anti-trafficking efforts resounds through the grey literature. The US TIP Reports persistently highlight this. In the 2019 report, corruption was found to be inhibiting law enforcement in various countries.<sup>201</sup> Amnesty International and Human Rights Watch highlight corruption amongst government and security officials as an underlying cause of human trafficking.<sup>202</sup> These social conditions create a cycle of exploitation that requires structural change and solutions to the root causes.<sup>203</sup>

Both quantitative and qualitative research methods have been used to explore the impact of corruption. Quantitatively, a link is found between the prevalence of corruption and failures to implement anti-trafficking efforts.<sup>204</sup> Van Dijk and Klerx-Van Mierlo found 'statistically significant inverse correlations' between their indicators of corruption and the 3P sum scores, confirming the link between prevalence of corruption within customs and law enforcement officials, and failures to implement anti-trafficking policies.<sup>205</sup>

A central contention with the quantitative assessments is whether the link between corruption and the failure to implement anti-trafficking policies would be strongest in prosecution efforts. Given that prosecution relies on law enforcement bodies, it may be intuitive to hypothesise that corruption is

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<sup>199</sup> Amahazion (n 4) 176.

<sup>200</sup> DiRienzo (n 106); Cho, Dreher and Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (n 92); Hanna Bennett, 'Leverage and Limitations of the EU's Influence in the Eastern Neighbourhood: A Study of Compliance with the EU's Justice and Home Affairs' Standards in Georgia, Moldova and Ukraine' (PhD Thesis, London School of Economics 2012) <<https://ezproxy.soas.ac.uk/login?url=https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,shib&db=edsble&AN=edsble.571072&site=eds-live>> accessed 2 March 2020.

<sup>201</sup> United States Department of State, '2019 Trafficking in Persons Report' (n 16).

<sup>202</sup> Meriläinen and Vos (n 177) 32. This study is based on a systematic content analysis of 240 documents from Amnesty International, Human Rights Watch and the European Parliament.

<sup>203</sup> Meriläinen and Vos (n 177); Chenda Keo et al, 'Human Trafficking and Moral Panic in Cambodia' (2014) 653 *The Annals of the American Academy of Political and Social Science* 202, 220–221.

<sup>204</sup> Jan Van Dijk and Fanny Klerx-Van Mierlo, 'Revisiting the Link between Corruption Prevalence and Implementation Failure in Anti-Trafficking Policies' (2013) 7(2) *International Perspectives in Victimology* 1; Jan Van Dijk and Fanny Klerx-Van Mierlo, 'Quantitative Indices for Anti-Human Trafficking Policies: Based on Reports of the U.S. State Department and the Council of Europe' (2014) 61 *Crime, Law and Social Change* 229; Jan Van Dijk and Fanny Klerx-Van Mierlo, 'Indicators of Corruption: Further Explorations of the Link between Corruption and Implementation Failure in Anti-Trafficking Policies' (2011) University of Tilburg International Victimology Institute Working Paper

<<http://lastradainternational.org/lsidocs/indicators%20of%20corruption.%20link%20between%20corruption%20and%20trafficking.pdf>> accessed 8 April 2020; Cho, Dreher and Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (n 92); Lauren R Heller et al, 'Is Human Trafficking the Dark Side of Economic Freedom?' (2018) 29 *Defence and Peace Economics* 355.

<sup>205</sup> Van Dijk and Klerx-Van Mierlo, 'Quantitative Indices for Anti-Human Trafficking Policies: Based on Reports of the U.S. State Department and the Council of Europe' (n 204) 233–234.

most significant in hindering prosecution efforts. However, the correlations suggest '[c]ontrol of corruption improves prevention and protection policies, but not those relating to prosecution'.<sup>206</sup> This is corroborated by Van Dijk and Klerx-Van Mierlo, whose statistical analysis 'challenges assumptions about the impact of a culture of corruption on the efficacy of investigation of trafficking cases and criminal proceedings against traffickers'.<sup>207</sup> As Van Dijk and Klerx-Van Mierlo caveat however, the ranking methods to quantify compliance with prosecution obligations are partially subjective and fail to measure implementation beyond legislative change. Therefore, the correlations may not capture the 'aspects of prosecution that are most vulnerable' to being obstructed by corruption.<sup>208</sup>

The link between the prevalence of corruption and a lack of implementation of anti-trafficking efforts is further highlighted by the qualitative analysis. However, unlike the quantitative research, corruption is found to be a key obstacle to effective law enforcement; not only in whether prosecutions of trafficking happen but also in whether the right prosecutions happen in the right way.<sup>209</sup> As Keo, T. Bouhours, Broadhurst and B. Bouhours found, in Cambodia, corruption is integral in causing the 'unfair application of the law'.<sup>210</sup> Over half of the sample of 91 incarcerated traffickers (representing 45.7 per cent of all incarcerated traffickers at the time), were considered to have had miscarriages of justice because of corruption within the law enforcement mechanisms.<sup>211</sup> Similarly, Thai officials have been found to collaborate in the trafficking of Burmese women and girls into Thailand, and Thai police monitoring checkpoints have been found to be bribed by traffickers.<sup>212</sup>

The impact of corruption is unsurprising given how the phenomenon of human trafficking itself is interconnected and often a product of other structural problems. Indeed, Zhang and Pineda describe corruption as a predictor of human trafficking.<sup>213</sup>

## Gender Representation in Policy-Making Processes

A particular aspect of State governance and political structures that has been explored by scholars is gender representation in policy-making processes and relevant institutions. The specific focus on the influence of gender representation is derived from a number of academic research pieces having a unique focus on this determinant. **In determining whether, and if so how, governments' gender representation influences their anti-trafficking efforts, scholars have drawn varying and nuanced conclusions.** Three studies focus specifically on the impact of gender compositions, each

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<sup>206</sup> Cho, Dreher and Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (n 92) 446.

<sup>207</sup> Dijk and Klerx-Van Mierlo, 'Indicators of Corruption: Further Explorations of the Link between Corruption and Implementation Failure in Anti-Trafficking Policies' (n 204) 25.

<sup>208</sup> Dijk and Klerx-Van Mierlo, 'Indicators of Corruption: Further Explorations of the Link between Corruption and Implementation Failure in Anti-Trafficking Policies' (n 204) 25–26.

<sup>209</sup> Keo et al (n 203); Stephens (n 2).

<sup>210</sup> Keo et al (n 203) 217.

<sup>211</sup> Keo et al (n 203) 220.

<sup>212</sup> Janie Chuang, 'Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts' (1998) 11 *Harvard Human Rights Journal* 65, 71.

<sup>213</sup> Sheldon X Zhang and Samuel L Pineda, 'Corruption as a Causal Factor in Human Trafficking' in Dina Siegel and Hans Nelen, *Organized crime: culture, markets, and policies*, vol 7 (Springer 2008).

of which focuses on a different context: Bartilow looks globally, Wittmer and Bouché focus on the US, and Schönhöfer analyses 33 democratic Member States of the EU and the OECD.<sup>214</sup>

These studies build on substantial research into the impact of gender representation on policy-making processes which specifically interrogates the relationship between gender representation and the substantive outcomes for policy issues concerning women.<sup>215</sup> Here, **scholars demonstrate that female legislators are more likely to be concerned with, prioritise, sponsor and vote for legislation which is framed as 'women's issues'**.<sup>216</sup>

Furthering this research, Bartilow's analysis suggests that social attitudes towards women's equal rights and female representation amongst legislators and in the cabinet, are both significant indicators of a State's compliance with international anti-trafficking law.<sup>217</sup> His comparative analysis further suggests that gender representation is a more significant indicator for such compliance, in comparison to whether a State is a democracy or the extent to which there is pressure from other States. Similarly, Schönhöfer examines the impact that varying levels of representation of different groups within cabinets has in influencing States to comply with the victim protection articles of the Palermo Protocol.<sup>218</sup> She highlights that States aren't 'unitary, coherent and rational actors', and that internal governmental characteristics play a role in shaping victim protection and international compliance. From this perspective, Schönhöfer finds that numbers of female parliamentarians and left wing or social democratic parties in the cabinet are 'significantly and positively associated with stronger efforts to protect' trafficked persons.<sup>219</sup> Specifically, she finds that this is true of the existence and enforcement of policies assisting trafficked persons.

This is corroborated by Wittmer and Bouché's examination of the impact of gendered leadership, specifically female representation, on American states' anti-trafficking bills and investment of resources to the issue.<sup>220</sup> Based on their contention that commitment and prioritisation of an issue is indicated by 'passing legislation that invests resources', they compare their analysis of state legislation and investment levels from 2003 to 2008, to the percentage of women who sponsored the legislation and the percentage of total sponsors who were women.<sup>221</sup> Through this comparison, the research echoes the influence that female representation on legislatures has, and further suggests that female sponsorship is also likely to result in increased state investment in a 'women's issue'. However, their research extends the focus from female representation, to suggest that the balance between the proportion of female and male representation is also important, reflecting 'the complicated link between descriptive and substantive representation'.<sup>222</sup>

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<sup>214</sup> Bartilow (n 88); Wittmer and Bouché (n 88); Schönhöfer (n 2).

<sup>215</sup> For example, see Kathleen A Bratton, 'Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures' (2005) 1 *Politics & Gender* 97; Shannon Jenkins, 'How Gender Influences Roll Call Voting' (2012) 93 *Social Science Quarterly* 415; Michelle A Barnello and Kathleen A Bratton, 'Bridging the Gender Gap in Bill Sponsorship' (2007) 32 *Legislative Studies Quarterly* 449; Jane Mansbridge, 'Quota Problems: Combating the Dangers of Essentialism' (2005) 1 *Politics & Gender* 622.

<sup>216</sup> See Wittmer and Bouché (n 88).

<sup>217</sup> Bartilow (n 88).

<sup>218</sup> Schönhöfer (n 2).

<sup>219</sup> Schönhöfer (n 2) 153.

<sup>220</sup> Wittmer and Bouché (n 88).

<sup>221</sup> Wittmer and Bouché (n 88) 247.

<sup>222</sup> Wittmer and Bouché (n 88) p248.

Although these studies focus on the impact of gender composition, this factor does not work in isolation. Rather, it intersects with multiple determinants including the political situation (eg whether the type of regime is democratic or not) and how human trafficking is framed. As Wittmer and Bouché argue, trafficking is an issue ‘that has become gendered’; anti-trafficking measures are ‘perceived to benefit female constituents disproportionately or that fall within the stereotypical female domain(s)’.<sup>223</sup> Their research on the impact of gender representation is predicated on trafficking being framed as a ‘woman’s issue’<sup>224</sup> due to the legislature historically building on feminist debates, as well as the media and interest groups framing it as an issue disproportionately affecting women, and that sexual exploitation is dominant.<sup>225</sup> Such framing underpins whether and how gender representation impacts anti-trafficking measures. Indeed, there may be a correlation between the way that trafficking is approached as a ‘woman’s issue’ and the deficiencies in the specific responses aimed at combating trafficking of women and girls.

### Economic Conditions

In tandem with the political situation, it is evident that countries’ economic conditions impact their anti-trafficking efforts. The economic situation is an internal, structural determinant that can indirectly shape a State’s anti-trafficking efforts. **Consistent with the literature on capacity and funding, as referenced in the section on political will and further explored below, without sufficient economic resources, a State has limited power to improve, enforce, monitor and evaluate its anti-human trafficking law and policy.**<sup>226</sup> Moreover, there is often little economic incentive to address trafficking given that exploitation may be profitable for the State, such as when related to labour exploitation which benefits the economy.

However, whilst macro-economic factors, such as the economic system, GDP per capita, trade agreements, trade openness, and dependence on migrant labour can shape anti-trafficking measures, the link is not a direct causal one. Amahazion’s analysis examines the variables that lead to such a global variance in a State’s implementation of victim protection policies.<sup>227</sup> Neither a State’s GDP rate per capita nor its total foreign trade (as a proportion of GDP) were found to be significant. Instead, a State’s political regime, particularly the competition of political participation, was found to have a larger impact on a State’s propensity to implement protection policies for those trafficked for sexual exploitation. Whilst this should not be taken as a universal conclusion, and perhaps raises questions about whether economic conditions and political regime should be compared as such, it nevertheless points to the need for analysis on the influence of GDP and foreign trade.

Using trade openness as an indicator of levels of social control, Jiang and LaFree’s quantitative study reveals that the level of trade openness may impact the levels of trafficking itself.<sup>228</sup> Therefore, they tentatively suggest that policies favouring globalisation and economic openness may indirectly

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<sup>223</sup> Wittmer and Bouché (n 88) 255.

<sup>224</sup> See Bratton (n 215) 106.

<sup>225</sup> Wittmer and Bouché (n 88) 255.

<sup>226</sup> Jaye (n 13); Dean (n 8).

<sup>227</sup> Amahazion (n 4).

<sup>228</sup> Bo Jiang and Gary LaFree, ‘Social Control, Trade Openness and Human Trafficking’ (2017) 33 *Journal of Quantitative Criminology* 887.

improve a government's anti-trafficking efforts.<sup>229</sup> For countries which already have economic openness, and are close to the tipping point identified by Jiang and LaFree, further opening up is likely to reduce trafficking. However, for countries towards the closed end of the trade continuum, greater opening up may actually increase levels of trafficking.<sup>230</sup> Whilst these findings relate to levels of trafficking, and although Jiang and LaFree acknowledge the need for subsequent research, these initial findings demonstrate the potential for the economic conditions of a State to impact a country's anti-trafficking efforts, albeit indirectly.<sup>231</sup>

Related to economic conditions is the question of dependence of a particular State on migrant workers, and the level of protection provided by State policies. Indeed, analysis of Japan's improvement in anti-trafficking law and policy, suggests that Japan's dependence on migrant labour was significant in shaping their anti-trafficking measures.<sup>232</sup> A number of factors were found to be competing regarding Japan's stance on combating human trafficking. On the one hand, the government had a stated desire to comply with SDG 8.7 regarding alliance on eradicating forced labour, and the Palermo Protocol. On the other hand, this was offset by a competing desire to maintain its zero-immigration policy, and a belief that full compliance with both the Palermo Protocol and SDG 8.7 would create a 'pull' factor for migrants. Kuga found that Japan's labour shortage eventually led to a shift in its overall migration policy and improved its performance on anti-human trafficking indicators. With an ageing population and a shortage of its own population in care roles especially, Japan was incentivised to alter its stance on zero-immigration, even introducing a new unskilled working visa in 2018 so as to allow enough migrant labour to service its ageing population.<sup>233</sup> This move coincided with protection for foreign workers. Under the new visa scheme, foreign workers now have the ability to apply for other employment whilst in Japan, thus alleviating vulnerability to human trafficking.<sup>234</sup>

## Civil Society: Non-Governmental Organisations and Trade Unions

The influence of civil society organisations on State anti-trafficking efforts is, broadly, twofold: first, they **provide services** on behalf of or independently of government;<sup>235</sup> second, they **advocate for change** in national policies and legislation<sup>236</sup> and **hold governments to account**.<sup>237</sup> Civil society organisations are significant actors who exert pressure on governments both internally and externally. National and international NGOs play a role in pressuring and advocating for change;

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<sup>229</sup> Jiang and LaFree (n 228) 905–8.

<sup>230</sup> Jiang and LaFree (n 228) 905–8.

<sup>231</sup> Jiang and LaFree (n 228) 905–8.

<sup>232</sup> Kimiko Kuga, 'Human Trafficking, Modern Slavery and Discursive Institutionalism: Entertainers, Foreign Trainees and Interns in Contemporary Japan, 1990-2017' (PhD Thesis, University of Oxford 2018).

<sup>233</sup> Shunsuke Shigeta, 'How Japan Came around on Foreign Workers' *Nikkei Asian Review* (25 June 2018) <<https://asia.nikkei.com/Politics/How-Japan-came-around-on-foreign-workers>> accessed 1 May 2020.

<sup>234</sup> Kuga (n 232).

<sup>235</sup> Ramona Vijayarasa, 'The State, the Family and Language of "Social Evils": Re-Stigmatising Victims of Trafficking in Vietnam' (2010) 12(supp 1) *Culture, Health & Sexuality* S89; Jyothi Kanics, Gabriele Reiter and Bärbel Heide Uhl, 'Trafficking in Human Beings – A Threat Under Control? Taking Stock Four Years After Major International Efforts Started' (2005) 16 *Helsinki Monitor* 53.

<sup>236</sup> Cheng and Momesso (n 173); Kanics, Reiter and Uhl (n 235).

<sup>237</sup> Dina Francesca Haynes, 'Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers' (2009) 23 *Notre Dame Journal of Law, Ethics & Public Policy* 1.

international NGOs are often pivotal in supporting local advocacy projects. Their advocacy and lobbying work can have a direct impact on improving anti-trafficking efforts. However, the impact that civil society has varies widely from country to country; in some cases, they work in cooperation with the government, in other cases their very right to exist is challenged. Civil society organisations may also be relied on to prop up State efforts, allowing States to avoid taking responsibility. A State's structural conditions, namely the political and economic situation, can determine the extent to which civil society influences anti-trafficking measures. As above, democratic and transparent States are associated with more effective accountability structures and mechanisms. Similarly, the economic conditions can affect the resources and funding available to civil society organisations.

**Anti-trafficking policies and legislation are not always top-down initiatives; civil society organisations, including non-governmental organisations (NGOs) and trade unions can play an integral role in pressuring, lobbying and advocating for change.** The literature is denser on the question of NGOs' impact and sparser regarding the role of trade unions, with a dearth of literature regarding the influence of survivor groups and 'survivor activism'. The literature on the impact of faith-based organisations is similarly sparse, with a notable focus of the literature on the Christian involvement in anti-trafficking work in the US.<sup>238</sup> This disproportionate coverage in the literature may be a result of NGOs' playing a central role in fighting sex trafficking since the start of the anti-trafficking movement in the 1990s and thus becoming more well-established than the subsequent intervention by trade unions in the field of trafficking for labour exploitation. Moreover, trafficking is often demarcated from migrant worker issues, overlooking the points of convergence.

Civil society organisations are diverse in form and focus; ranging from the grassroots to the international, they are agile and dynamic actors whose influence on governments must not be homogenised.<sup>239</sup> The literature reviewed draws attention to the importance of **specialised knowledge and cooperation** for effective civil society advocacy, and a **series of tools** employed to influence governmental change. Although the various types of civil society organisations, namely NGOs and trade unions, are very different entities, the literature broadly points to similar themes with regards to their influence. This section will focus on these three themes, citing literature that deals with a range of civil society organisations.

### **Specialised Knowledge and Services**

The literature strongly reflects the view that NGOs' and trade unions' strength stems from their grassroots **knowledge and specialised services**. Through working directly with trafficked persons through their services, and producing reports informed by such lived experiences, NGOs are able to advocate for change and improvement in an evidenced and informed manner. Indeed, 'with their expertise, knowledge and experience of directly working with victims of human trafficking, NGOs also contribute to making anti-trafficking legislation and policies more responsive to the realities of trafficking'.<sup>240</sup> For example, Women's Rights Organisations which are found to have

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<sup>238</sup> For example, see Yvonne C Zimmerman, 'From Bush to Obama: Rethinking Sex and Religion in the United States' Initiative to Combat Human Trafficking' (2010) 26 *Journal of Feminist Studies in Religion* 79.

<sup>239</sup> The divergences between CATW and GAATW are a prominent example of this.

<sup>240</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'The Critical Role of Civil Society in Combating Trafficking in Human Beings' (Organization for Security and Co-operation in Europe 2018) 39 <[https://www.osce.org/files/f/documents/b/3/405197\\_0.pdf](https://www.osce.org/files/f/documents/b/3/405197_0.pdf)> accessed 21 September 2020.



influence over anti-trafficking policies, regularly rely on their knowledge and experience in working both with governments and women who use their services, particularly in shaping policies regarding sex trafficking.<sup>241</sup> Similarly, interest groups can play a role in setting governmental policy agendas, as seen by the influence of ‘nonprofessional criminal justice’ interest groups in setting the US policy agenda to focus on criminal justice.<sup>242</sup> The direct work of NGOs and trade unions with trafficked persons not only provides them with an informed and evidenced position from which to advocate and to educate policy-makers, it also suggests that their input should be considered in policy- and legislation-making processes.

In contrast, as Marks and Olsen note that whilst the strength of trade unions is also partially derived from their ‘unique knowledge, representational legitimacy and capacity’, their influence has only become possible and increasingly prevalent with a broader conceptualisation of human trafficking from a labour (and human) rights approach.<sup>243</sup> The influence of trade unions is thus dependent on a broad framing of trafficking within the context of migration and labour laws.

## Cooperation

Secondly, the influence of civil society organisations is amplified where there is **cooperation with decision-makers**. Civil society advocacy has limited impact when it does not have a receptive audience. The value and importance of such cooperation is emphasised by international bodies. Civil society input into the review and monitoring mechanisms, such as the Country Reports of the United Nations Special Rapporteur on Trafficking in Persons<sup>244</sup>, GRETA<sup>245</sup> and the US State Department TIP report is explicitly encouraged. This is particularly highlighted by obligations under the Council of Europe Anti-Trafficking Convention, which encourages cooperation and partnerships with civil society organisations.<sup>246</sup> The country visits are key to a dialogue with civil society organisations.<sup>247</sup> Such co-operation with trade unions, however, has been found by GRETA to be lacking ‘in some countries [where] trade unions are not yet recognised as a partner in anti-trafficking work’.<sup>248</sup> GRETA specifically found that trade unions had ‘not been involved in action against THB [(trafficking in human beings)] in Bosnia and Herzegovina’,<sup>249</sup> recommended Portugal’s network of NGOs to protect trafficked persons to expand to include trade unions,<sup>250</sup> and urged Armenian authorities to expand their civil society cooperation to include trade unions in their

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<sup>241</sup> Sam R Bell and Victoria Banks, ‘Women’s Rights Organizations and Human Trafficking’ (2018) 99 *Social Science Quarterly* 362.

<sup>242</sup> Barbara Stolz, ‘Educating Policymakers and Setting the Criminal Justice Policymaking Agenda: Interest Groups and the “Victims of Trafficking and Violence Act of 2000”’ (2005) 5 *Criminology & Criminal Justice* 407.

<sup>243</sup> Eliza Marks and Anna Olsen, ‘The Role of Trade Unions in Reducing Migrant Workers’ Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion’ [2015] (5) *Anti-Trafficking Review* 111, 113–114.

<sup>244</sup> Anne T Gallagher and Joy Ngozi Ezeilo, ‘The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review’ (2015) 37 *Human Rights Quarterly* 913, 920.

<sup>245</sup> Planitzer (n 141).

<sup>246</sup> Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) (2006) 45 *ILM* 12, art 35.

<sup>247</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 41.

<sup>248</sup> Group of Experts on Action against Trafficking in Human Beings, ‘7th General Report on GRETA’s Activities’ (Council of Europe 2018) 43 <<https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>> accessed 8 April 2020.

<sup>249</sup> Group of Experts on Action against Trafficking in Human Beings, ‘Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina: Second Evaluation Round’ (Council of Europe 2017) 39 <<https://rm.coe.int/greta-2017-1-5-fgr-bih-en/1680782ac1>> accessed 15 June 2020.

<sup>250</sup> Group of Experts on Action against Trafficking in Human Beings, ‘Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal: Second Evaluation Round’ (Council of Europe 2017) 41 <<https://rm.coe.int/greta-2017-4-fgr-prt-en/16806fe673>> accessed 15 June 2020.

work on discouraging demand.<sup>251</sup> Given the complex nature of human trafficking, a multi-disciplinary and multi-agency effort to combat it is particularly welcome. Civil society actors are considered to have specialised expertise, particularly in identifying and protecting trafficked persons. This necessitates the 'systematic consultation between governmental and non-governmental actors' in the development, implementation and evaluation of anti-trafficking measures.<sup>252</sup>

The impact of this cooperation is underscored by the work and functioning of the OSCE, which is found to have been 'uniquely equipped to jump-start a dialogue among all relevant stakeholders as well as to continue facilitating such dialogue until local actors ... assume full responsibility and ownership'.<sup>253</sup> Such promotion and facilitation of cooperation is crucial in garnering trust and communication between the State and civil society organisations. The effectiveness of practical cooperation is demonstrated by the development, implementation and monitoring of the National Referral Mechanism whereby States are encouraged to include representatives from the civil society sector. This dialogue and partnership are part of a 'process of democratic institution building', suggesting that the more structural and embedded the communication exchanges are, the more effective civil society input is.<sup>254</sup> Indeed, as the OSCE suggests, 'NGO participation in such legislative and policy developments enhances the quality and transparency of these democratic processes'.<sup>255</sup> More broadly, civil society input is much more critical and effective in democratic States. This reflects how the governmental structures indirectly affect anti-trafficking efforts (as explored above).

Indeed, the example of NGO participation in OSCE countries' national co-ordination mechanisms (NCMs) demonstrates that 'NGOs are often critical partners of governments' and in many cases have been 'instrumental in developing and setting up such co-ordination structures or devising national action plans'.<sup>256</sup> Their influence, however, varies across the OSCE region, and is dependent on how formalised the structures are, the context of each country, and whether NGOs are recognised as full members of the mechanism, as advisors, or as observers.<sup>257</sup> Through their grassroots work and expertise, NGOs are found to have considerable impact, when provided such a platform to do so. However, obstacles remain even where cooperation is formalised, such as unreasonable timelines, lack of transparency on what NGOs can contribute to, and a lack of resources and funding to follow through on the implementation of national action plans.<sup>258</sup>

However, civil society organisations are often only as influential as the State permits them to be. Rose's research on the creation of a review mechanism for UNTOC demonstrates how State resistance to cooperation with civil society actors prevents them from having any influence. She finds that in developing the final review mechanism, Cuba, Egypt, Malaysia, Singapore and South Africa were unwilling to allow for civil society participation, despite the explicit requirement of such

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<sup>251</sup> Group of Experts on Action against Trafficking in Human Beings, 'Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia: Second Evaluation' (Council of Europe 2017) 40 <<https://rm.coe.int/16806ff1ad>> accessed 15 June 2020.

<sup>252</sup> Group of Experts on Action against Trafficking in Human Beings, '8th General Report on GRETA's Activities' (n 11) 35.

<sup>253</sup> Kanics, Reiter and Uhl (n 235) 55.

<sup>254</sup> Kanics, Reiter and Uhl (n 235) 56.

<sup>255</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 40.

<sup>256</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 38.

<sup>257</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 38.

<sup>258</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 39.

involvement in the UNTOC Protocols. This presented a major obstacle to reaching consensus in negotiations on the Review Mechanism for the UNTOC and Protocols. States' resistance to criticism from civil society actors, as well as from the international community, demonstrates the necessity for cooperation to facilitate communication and influence.

The ensuing compromise on the role of civil society involves 'a regular and mandatory form of engagement between States and civil society to discuss, following the conclusions of the thematic working groups' sessions, the implementation of the convention and where improvements need to be made'.<sup>259</sup> However, whilst the influence of civil society in this mechanism, and indeed the influence of the mechanism itself, is yet to be seen, there is criticism of the timings of dialogue with civil society, namely that they will only take place after the working-group sessions have happened, and after the adoption of their reports. This risks 'thwart[ing] attempts by civil society to hold a rigorous and frank discussion on states' implementation of UNTOC and wider efforts on organized crime, and will be effective in stifling critical voices'.<sup>260</sup>

More broadly, Maria Grazia Giammarinaro, the former Special Rapporteur on Trafficking in Persons, Especially Women and Children, highlighted in her final Report that anti-trafficking policies must be designed and implemented 'in close cooperation with trade unions, civil society organizations and the private sector, including in countries in which exploitation takes place as a result of violations occurring in the supply chains'.<sup>261</sup> She highlights that cooperation with civil society organisations allows for multi-disciplinary approaches, thus avoiding protection measures being determined by 'law enforcement and/or immigration authorities alone' and facilitating full integration with other protection procedures.<sup>262</sup> Civil society engagement can be very influential in shaping the type of response, even if the engagement itself is dependent on governmental openness.

The impact of cooperation is further reflected in **cooperation across individual civil society organisations**. With reference to trade unions Marks and Olsen underscore that the influence of their specialised knowledge prevails when it is 'part of a multi-stakeholder response'.<sup>263</sup> The necessity of cooperation to amplify trade unions' impact is reflected by global affiliations with bodies such as the ILO and international trade union and civil society partners. In the context of the Greater Mekong Subregion and Malaysia, trade unions' cooperation through the ILO's tripartite structure, as well as with the emergence of the labour rights approach, has 'allow[ed] unions to closely cooperate at the policy level'.<sup>264</sup> Moreover, alongside such global affiliations, trade unions' derive their impact from domestic cooperation to share information and create partnership networks. This is demonstrated by the collaboration of three groups to create the informal network, Cambodia Trade Union Committee on Migration (CTUC-M) 'to share information

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<sup>259</sup> Mark Shaw et al, 'What to Make of the New UNTOC Review Mechanism?' (*Global Initiative Against Transnational Organized Crime*, 2 November 2018) <<https://globalinitiative.net/untoc-review-mechanism/>> accessed 21 September 2020.

<sup>260</sup> Shaw et al (n 259).

<sup>261</sup> United Nations Human Rights Council, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children' (6 April 2020) UN Doc A/HRC/44/45, para 9. <[https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_44\\_45\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_44_45_E.pdf)> accessed 1 October 2020.

<sup>262</sup> United Nations Human Rights Council, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children' (n 261) para 9.

<sup>263</sup> Marks and Olsen (n 243) 9.

<sup>264</sup> Marks and Olsen (n 243) 6.

and put forward areas of common concern'.<sup>265</sup> Through this cooperation, the CTUC-M were able to contribute to the Technical Working Group's drafting of the ministerial orders 'supporting Sub Decree 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies', and were also able to facilitate a 'Memorandum of Understanding between Trade Unions in Cambodia and Trade Unions in Thailand on Protection of Migrant Workers' Rights in 2013'.<sup>266</sup> Moreover, cooperation between NGOs nationally and internationally is also found to be influential, through creating a common voice in joint advocacy, campaigns and interventions. Examples include the KOK network of anti-trafficking NGOs in Germany and La Strada International in Europe.<sup>267</sup>

Moreover, this is reflected in the cooperation between trade unions and NGOs. As explored in the joint report from International Trade Union Confederation (ITUC) and Anti-Slavery International, 'Never Work Alone', the aims of NGOs and trade unions overlap and cooperation can strengthen efforts to influence law and policy.<sup>268</sup> Peppered with good practices, the report emphasises human trafficking and forced labour as 'matters that demand the attention of NGOs as well as trade unions'.<sup>269</sup> Despite organisational differences, the impact of NGO-trade union alliances in campaigning include the broadening of channels of support, routes of advocacy and bolstering credibility. The OSCE corroborates this, pointing to examples of NGO-trade union cooperation under the EU-funded FINE TUNE project, led by ITUC, in cooperation with Anti-Slavery international and the Churches' Commission for Migrants in Europe, which brought together organisations working in Austria, Belgium, the Czech Republic, Finland, Ireland, Lithuania, Romania, Spain and the UK.<sup>270</sup> Whilst no explicit discussion is had in the literature as to the impact of this particular collaboration, such partnerships are regularly lauded as positive. However, these occurrences are few and far between.

### Civil Society's Tools for Advocacy

Civil society organisations cannot be divorced from the series of tools they use to advocate for change and to hold governments to account. International and domestic law standards are an integral tool used by civil society advocates, to ensure fulfilment of obligations, but also to advocate for further legislative change. For example, Haynes suggests that civil society, NGOs and (non-)citizen groups can be critically influential in 'wielding tools of human rights law', and in doing so, become 'the best, if not only means available to protect those' subject to labour exploitation.<sup>271</sup> Analysing the labour exploitation of migrants, Haynes suggests that civil society actors can also work to campaign amongst voters on the need to eliminate exploitation, thereby making anti-trafficking a political priority.<sup>272</sup> In addition, on the international level, NGO shadow reporting to bodies such as CEDAW and UPR, allows them to 'highlight issues not raised by their own

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<sup>265</sup> Marks and Olsen (n 243) 7.

<sup>266</sup> Marks and Olsen (n 243) 7.

<sup>267</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 40.

<sup>268</sup> International Trade Union Confederation, 'Never Work Alone: Trade Unions and NGOs Joining Forces to Combat Forced Labour and Trafficking in Europe' (2011).

<sup>269</sup> International Trade Union Confederation (n 268) 39.

<sup>270</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 41.

<sup>271</sup> Haynes, 'Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers' (n 237) 67.

<sup>272</sup> Haynes, 'Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers' (n 237) 67.

governments or point out where the government's information may not fully reflect the real situation'.<sup>273</sup>

Moreover, **civil society builds on external pressures exerted on governments through international monitoring bodies.** Cheng and Momesso explore how civil society advocacy and political opportunities interact with external factors. In addition to the direct influence, and some success, that the TIP report had on Taiwan's anti-trafficking efforts, civil society organisations and transnational advocacy organisations were able to use the 'public shame brought by the international scrutiny via the TIP reports' and push for legislative reform.<sup>274</sup> Using statistical evidence and migrant workers' accounts of exploitation from networks with local organisations, institutions, faith-based organisations and other migrants groups, the Asia Pacific Mission for Migrants (APMM) published investigative reports in 2009 and 2013 which exerted additional pressure on the government towards legislative and policy reform. This built on two external factors: first Taiwan's desire to be perceived internationally as a model democracy, and second Taiwan's willingness to accept the discourses and content of the TIP Report. The APMM heightened the pressure which served to challenge Taiwan's international reputation and reinforced the pressure being exerted on the government.<sup>275</sup>

Whilst civil society's potential impact is evident, **such influence can be limited by a lack of capacity to take on new issues beyond their immediate sector and limited capacity to trigger substantial change.** Ford challenges ITUC's view that 'efforts to reduce forced labour can be incorporated into trade unions' existing work' suggesting that this 'belies the fact that unions' willingness and capacity to address it may be severely limited'.<sup>276</sup> Rather, she suggests that due to a lack of capacity, there are only isolated examples where trade unions have 'substantive impact on the prevalence of forced labour through political, solidarity or even industrial initiatives, particularly in the global south'.<sup>277</sup>

Moreover, NGOs' efforts are often dependent on sufficient funding and are equally hampered by a lack of funding. NGOs rely on funds from different sources, including 'international and national governments, foundations, individual donors and, increasingly, corporations'.<sup>278</sup> Indeed, increased funding of NGOs and trade unions has increased their ability to respond to victim needs.<sup>279</sup> Yet, this reliance on funders may result in their efforts being shaped by their funders' mandates. The broader impact of funding for anti-trafficking measures is explored in the following section. At the macro level, the availability of funding and resources impacts civil society organisations. This is illustrated in Hanfstaengl's<sup>280</sup> findings that the 2008 financial crisis significantly impinged on NGO

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<sup>273</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 41.

<sup>274</sup> Cheng and Momesso (n 173) 84.

<sup>275</sup> Cheng and Momesso (n 173) 84–85.

<sup>276</sup> Michele Ford, 'Trade Unions, Forced Labour and Human Trafficking' [2015] (5) *Anti-Trafficking Review* 11, 9.

<sup>277</sup> Ford (n 276) 9.

<sup>278</sup> Suzanne Hoff, 'Where Is the Funding for Anti-Trafficking Work? A Look at Donor Funds, Policies and Practices in Europe' [2014] (3) *Anti-Trafficking Review* 3.

<sup>279</sup> Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9 *Criminology & Public Policy* 235, 241.

<sup>280</sup> Eva-Maria Hanfstaengl, 'Impact of the Global Economic Crises on Civil Society Organizations' (2010) UN Department of Economic and Social Affairs (DESA) Working Papers 97 <[https://www.un-ilibrary.org/economic-and-social-development/impact-of-the-global-economic-crises-on-civil-society-organizations\\_83712f01-en](https://www.un-ilibrary.org/economic-and-social-development/impact-of-the-global-economic-crises-on-civil-society-organizations_83712f01-en)> accessed 18 June 2020.

funding all over the world, and thus their ability to advocate for anti-trafficking policy improvement.<sup>281</sup>

NGOs commonly highlight the difficulties resulting from competition for limited funding pools. For example, Hoff suggests that EU funding is often granted to projects according to specific criteria, such as requiring 'mandatory international cooperation, and under the condition that a project is innovative and cannot have started before the grant agreement is signed'.<sup>282</sup> Whilst she acknowledges that this is 'well-intentioned', the result is that EU grants are awarded to very similar projects. Moreover, there is often a lack of follow-up funding, preventing long-term and sustained influence of NGOs. This targeted funding, and the limited time scale of such grants, shapes the anti-trafficking civil society organisations working in recipient countries, and thus their ability to advocate for legislative and policy change.<sup>283</sup> Of course, funding varies enormously in terms of its impact, whilst grants may fund the maintenance of on-going measures, others may not lead to any change.

International funding for NGOs can also be constrained by the domestic political situation and national policies. Hoff highlights that some governments' policies 'silence human rights defenders' and some 'aim to maintain control over how money is spent in their country'.<sup>284</sup> She points to the example of Russia, where there are restrictions on civil society organisations receiving funding from non-domestic sources. The result is that NGOs are rendered more dependent on government and obliged to cooperate with them to procure any international funding. This example is an illustration of how external pressures and internal structures interlink to shape internal pressures and ultimately, the government response.

Civil society organisations' influence is compounded by other determinants and the alignment and timing thereof. For example, in Ireland, the Migrant Rights Centre set up a Forced Labour Action Group (FLAG) including migrants exploited for labour. FLAG have pursued court cases, raised public awareness, worked with the media, and partnered with organisations such as ITUC, the Irish Congress of Trade Unions and Anti-Slavery International. Through this multi-pronged approach, FLAG have secured legislative changes, such as the transposition of the EU Anti-Trafficking Directive into the Criminal Law Human Trafficking Act.<sup>285</sup>

**Therefore, the extent of civil society influence depends on how willing political decision-makers are to cooperate, how these communication lines are structurally embedded, and capacity and funding.** Civil society influence is also supported by external pressures such as reports by monitoring bodies and media exposés. The way in which civil society organisations influence government anti-trafficking measures is context dependent. Their ability to lobby and the extent to which such advocacy is listened to is dependent on the political situation, the dynamism of the civil society sector, and the relationship with the State.

### Funding and Resources

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<sup>281</sup> See also Jean M Geran, 'Global Crisis Effects on the Prevention of Human Trafficking in Destination Countries' (Prevention of Modern Slavery: "An Ounce of Prevention is Worth a Pound of Cure", Vienna, 14-15 September 2009) <<https://www.osce.org/files/f/documents/0/f/63582.pdf>> accessed 3 July 2020; Hoff (n 278).

<sup>282</sup> Hoff (n 278).

<sup>283</sup> Hoff (n 278).

<sup>284</sup> Hoff (n 278).

<sup>285</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 240) 40.

Within the context of economic conditions, funding is a logical determinant, if not a prerequisite, for any effort to improve the capacity and resources to initiate, implement and monitor anti-trafficking law and policy. **The availability of funding is interconnected with the economic conditions and wealth of a particular State, as well as the broader macro-economic conditions.** However, there is an 'almost complete lack of transparency among governments, international organisations and civil society concerning funding for anti-trafficking' which makes assessing the impact and influence thereof difficult, and as Dottridge puts it, renders 'the task of assessing "value for money" almost impossible'.<sup>286</sup>

There is an important distinction to be made between internal funding (namely government funding and budget allocation for its own anti-trafficking efforts) and external funding provisions (external donors including other governments, international institutions and funding bodies, who fund States' efforts). Both internal and external funding provisions **are inextricably interlinked with political will, policy prioritisation, political agendas, as well as government and funders' mandates.** Those mandates, in turn, are a reflection of the funders' own priorities and result from their own set of determinants. Funding and resource allocation is of course interlinked with civil society organisations' capacity and ability to influence, as explored above.

Adequate funding is a vital prerequisite for the formulation and implementation of anti-trafficking measures. The impact of insufficient funding on anti-trafficking efforts is particularly noted with regards to trainings for victim support, victim protection provisions and prevention efforts. The literature is replete with examples of the difficulties of improving victim protection measures due to a lack of funding. David argues that insufficient funding for law enforcement, labour inspectors, OHS inspectors and industrial relations tribunals, prevents changes to improve anti-human trafficking measures.<sup>287</sup> This is particularly in regard to the gap between victims identified and victims actually receiving funding support. Oram's analysis of the involvement of healthcare in the UK's anti-trafficking efforts finds that there are insufficient funds directed at delivering trafficking-specific training to NHS staff.<sup>288</sup> Scrutinising the UK's victim protection measures further, Maroukis argues that their low priority has resulted in NRM provisions which fall far short of victims' requirements as well as impacting the police's ability and willingness to identify trafficked persons as such.<sup>289</sup> Bennett also identifies a lack of funding as one of the main determinants hindering improvement in trafficking prevention in the Ukraine.<sup>290</sup>

At the local level of policy change, Jurek and King find that increased funding for police training and capacity-building was a significant factor in the probability that specialised trafficking units would be created within police departments.<sup>291</sup> Police responses and prioritisation are found to be closely tied to the information made available to them through awareness-raising, for which funding is required; an example of two factors which can mutually reinforce each other to lead to policy

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<sup>286</sup> Mike Dottridge, 'Editorial: How is the Money to Combat Human Trafficking Spent?' [2014] (3) *Anti-Trafficking Review* 3, 5–6.

<sup>287</sup> David (n 279).

<sup>288</sup> Siân L Oram, 'Human Trafficking and Health in UK Public Policy' (PhD Thesis, Faculty of Epidemiology & Population Health, London School of Hygiene & Tropical Medicine 2011) <<http://researchonline.lshtm.ac.uk/id/eprint/1440244/>> accessed 2 March 2020.

<sup>289</sup> Thanos Maroukis, 'Keeping Up Appearances: The British Public Policy Response to the Trafficking of Domestic Workers in a Changing Regime of Social Protection' (2017) 15 *Journal of Immigrant and Refugee Studies* 155.

<sup>290</sup> Bennett (n 200).

<sup>291</sup> Alicia L Jurek and William R King, 'Structural Responses to Gendered Social Problems: Police Agency Adaptations to Human Trafficking' (2020) 23 *Police Quarterly* 25.

change. It has been suggested that the inducement of funding (and sanctions) from the EU could be instrumental in addressing corruption in Bulgaria, aiding in its counter-trafficking agenda.<sup>292</sup> Analysing the effects of EU funding on Ukraine and Georgia, Bennett finds that funding in other areas has had positive indirect impacts on trafficking.<sup>293</sup> Funding for justice sector reform in Georgia incidentally increased the volume of trafficker prosecutions. The prevalence of trafficking in Ukraine was also lowered by the EU's funding to support Ukrainian border guard reform.

Many organisations report adapting their missions in line with donor priorities to survive.<sup>294</sup> Funding may be explicitly for organisations advocating for particular policies, or organisations who have a particular focus within their anti-trafficking work.<sup>295</sup> For example, Bouché, Farrell and Wittmer-Wolfe<sup>296</sup> found that organisations with a focus on trafficking of minors had an advantage over those serving adult victims in the US. This has led to a potential skew in the framing of victims as being predominantly minors, given that fewer non-minor victims are identified when the funds there are lacking.<sup>297</sup>

The lack of funding has further implications for the collection of data to inform policies, and evaluation processes of existing efforts. Indeed, Harkins finds that while funding in the US overwhelmingly prioritises prosecution mechanisms, very little funding has been allocated to testing the assumption of whether prosecution actually serves as a deterrent to traffickers.<sup>298</sup> More broadly, Harkins finds that there is insufficient funding allocated to the monitoring and evaluation, including impact assessments, of anti-trafficking initiatives all over the world.<sup>299</sup> Amongst the challenges of evaluating anti-trafficking programmes, USAID identify the lack of time and funding as a difficulty as '[m]easuring the impact of interventions requires analysis of change over time, specifically as compared to a baseline, and generating baseline data can require substantial resources'.<sup>300</sup> Such lack of funding reflects a lack of curiosity and investigation into evidence-based policy development. As Gallagher and Surtees highlight, deficient funding risks that decision-making on anti-trafficking law and policy lacks empirical evidence.<sup>301</sup> Moreover, the lack of funding available to States and NGOs is also found to cause skewed data.<sup>302</sup> Having to compete for limited funding is believed to incentivise those working in anti-trafficking to inflate their estimates of the incidence of human

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<sup>292</sup> 'Sofia's Mean Streets' (*Transitions Online*, 25 April 2008).

<sup>293</sup> Bennett (n 200).

<sup>294</sup> Foerster (n 145).

<sup>295</sup> Foerster (n 145); Alison Clancey, Noushin Khushrushahi and Julie Ham, 'Do Evidence-Based Approaches Alienate Canadian Anti-Trafficking Funders?' [2014] (3) *Anti-Trafficking Review* 87.

<sup>296</sup> Vanessa Bouché, Amy Farrell and Dana E Wittmer-Wolfe, 'Challenging the Dominant Frame: The Moderating Impact of Exposure and Knowledge on Perceptions of Sex Trafficking Victimization' (2018) 99 *Social Science Quarterly* 1283.

<sup>297</sup> Bouché, Farrell and Wittmer-Wolfe (n 296).

<sup>298</sup> Benjamin Harkins, 'Constraints to a Robust Evidence Base for Anti-Trafficking Interventions' [2017] (8) *Anti-Trafficking Review* 113.

<sup>299</sup> Harkins (n 298).

<sup>300</sup> USAID, 'An Evaluation Framework For USAID-Funded TIP Prevention and Victim Protection Programs' (2009) xii <[https://pdf.usaid.gov/pdf\\_docs/PNADR431.pdf](https://pdf.usaid.gov/pdf_docs/PNADR431.pdf)> accessed 1 October 2020.

<sup>301</sup> Harkins (n 298) 80; Anne T Gallagher and Rebecca Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who Decides—and How?' [2012] (1) *Anti-Trafficking Review* 10

<<http://www.anti-traffickingreview.org/index.php/atjournal/article/view/17>> accessed 12 June 2020; Mike Dottridge, 'Research Needs Concerning the Monitoring, Evaluation and Impact Assessment of Both Research about Human Trafficking and Projects and Programmes to Address Human Trafficking' in 'Human Trafficking: New directions for research' (IOM 2008) 57.

<sup>302</sup> Charmaine Patricia Jelbert, 'Sex Trafficking and State Intervention: Conflicts and Contradictions during the 2012 London Olympics' (PhD Thesis, University of Cambridge 2016) <<https://www.repository.cam.ac.uk/handle/1810/271625>> accessed 21 March 2021.



trafficking, thus justifying the need for their intervention.<sup>303</sup> The funding (or prioritisation) that would allow underlying assumptions and the status quo way of responding to be reviewed, is lacking; efforts are therefore continuously channelled into the same ways of working, based on the same assumptions.

**External funding, from international donors, other States or regional bodies, can also influence national anti-trafficking efforts.** Analysing external funding from the EU to States in South Asia and South-East Asia, Scarpa suggests funding patterns lack the overarching framework and objective of tackling trafficking from a multi-dimensional approach.<sup>304</sup> EU funding for anti-trafficking work is often derived from budgets for areas such as migration and combating violence against women. This can create inefficiencies in funding allocation and makes it difficult to trace the impact of particular funds.

The objectives and conditions of a donor-government may shape the recipient State's anti-trafficking efforts. For example, funding from UK DFID to anti-trafficking measures in Nigeria resulted in the distribution of videos which encouraged women to stay and work in Nigeria, rather than migrate.<sup>305</sup> The UK's prioritisation of stemming migration over protecting and preventing trafficking, is reflected by the Home Office's international funding being exclusively available for measures in countries that have high numbers of trafficked people in the UK (Albania, Nigeria, Vietnam), rather than countries that have high numbers of trafficking overall. Funding for anti-trafficking efforts from the EU is used for migration control measures, such as preventing boats from departing across the Mediterranean.

## Understanding of Trafficking

### Data and Research

Data and research play a role in influencing State policy responses; **new data can facilitate change, whilst the lack of reliable data can obstruct the effectiveness of policy responses.** Data may be derived internally from governments' own processes, from civil society organisations, or from external bodies, such as the UNODC and ILO. However, the acknowledgement, interpretation and use of data, as well as the curiosity to improve statistic collection, interacts with political will in terms of whether, and if so how, such data is collected and used.

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<sup>303</sup> Jelbert (n 302); In contrast, the literature demonstrates that increased funding for NGOs and trade unions increases their ability to respond to victim needs. For example, see David (n 279) 241; Harkins (n 298); 'Department of Justice Expands Services for Crime Victims' (*United States Department of Justice*, 8 August 2016) <<https://www.justice.gov/opa/pr/departement-justice-expands-services-crime-victims>> accessed 12 June 2020.

<sup>304</sup> Silvia Scarpa, *Contemporary Forms of Slavery* (European Parliament Study PE 603.470, 2018) 52 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO\\_STU\(2018\)603470\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf)> accessed 21 September 2020.

<sup>305</sup> For example, see Nellie Peyton, "'I Am Not for Sale' Say Nigerian Women in Anti-Trafficking Campaign' *Reuters* (15 April 2019) <<https://uk.reuters.com/article/us-nigeria-trafficking-women/i-am-not-for-sale-say-nigerian-women-in-anti-trafficking-campaign-idUSKCN1RR1U7>> accessed 5 January 2021; Catherine Wylie and Peter Stublely, 'Nigerian Women Warned Not to Come to Britain in Government Campaign' *The Independent* (15 April 2019) <<https://www.independent.co.uk/news/uk/home-news/nigeria-uk-modern-slavery-women-human-trafficking-campaign-not-sale-a8869736.html>> accessed 5 January 2021; Independent Commission for Aid Impact, 'Report: The UK's Approach to Tackling Modern Slavery through the Aid Programme' (2020) <<https://icai.independent.gov.uk/html-report/tackling-modern-slavery-through-the-aid-programme/>> accessed 5 January 2021.

To address trafficking and formulate effective policy responses, the scale and nature of the phenomenon must be understood.<sup>306</sup> However, the nature of the phenomenon presents inherent difficulties in collecting and analysing statistics. The hidden nature of trafficking renders trafficked persons often inaccessible and particularly excludes those still under traffickers' control from data collection. Due to the fear of authorities and fear of criminal punishment, there is a selection bias in data collection as it only includes those who are formally identified.<sup>307</sup> There are also definitional challenges in data collection, as explored below. Moreover, migrant workers are often trafficked; yet not only do they themselves avoid being recognised as such because their earning capacity would be destroyed, but governments also avoid categorising them as anything other than migrant workers. The difficulties in data collection may therefore distort our understanding of the phenomenon. Accurate statistics and research which clearly explains its limitations (eg data sources) is integral to triggering effective responses.

The direct impact of data collection on government efforts is highlighted by the grey literature reviewed. Reports from the UNODC, US State Department and GRETA's monitoring processes underscore the importance of reliable data to inform and shape effective policies. Given the difficulties in collecting accurate statistics on human trafficking, there is a persistent call to improve data collection and research as 'a key activity to enhance national responses'.<sup>308</sup> An example of this is the Multiple Systems Estimation methodology which allows an estimate to reveal the most hidden trafficked persons. The results for the Netherlands revealing the most hidden victims 'to be underage Dutch girls trafficked for sexual exploitation', triggered 'policy-level discussions as to whether enhanced trafficking awareness campaigns should be introduced in the country's schools'.<sup>309</sup> Data collection is also integral to needs assessments which are often a starting point for critical re-thinking, adjustment and re-shaping of responses. The OSCE's assessment of victim assistance and protection in Ukraine led to the development and adoption of the comprehensive Counter Trafficking in Human Beings Law, Government Regulations on the NRM, victim identification processes and financial assistance.<sup>310</sup> Latvia, the UK and Ireland have increased and tailored their 'training, capacity building, and enhanced cooperation, including joint investigative teams' following research that increased awareness on exploitative sham marriages.<sup>311</sup> The awareness and insight that data and research provides is central to shaping and improving government policies.

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<sup>306</sup> Anna Alvazzi del Frate, 'Complex Crimes' in Stefan Harrendorf, Markku Heiskanen and Steven Malby (eds), *International Statistics on Crime and Justice* (HEUNI Publication Series No 64 2010) <[https://www.unodc.org/documents/data-and-analysis/Crime-statistics/International\\_Statistics\\_on\\_Crime\\_and\\_Justice.pdf](https://www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf)> accessed 22 April 2020.

<sup>307</sup> Andrea Di Nicola, 'Researching into Human Trafficking: Issues and Problems' in Maggy Lee (ed), *Human Trafficking* (2nd edn, Routledge 2012) 53–56.

<sup>308</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (n 198) 16; United States Department of State, '2019 Trafficking in Persons Report' (n 16) 16; Group of Experts on Action against Trafficking in Human Beings, '4th General Report on GRETA's Activities' (Council of Europe 2015) 36 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805aa45f>> accessed 8 April 2020; Group of Experts on Action against Trafficking in Human Beings, '5th General Report on GRETA's Activities' (Council of Europe 2016) 40 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063093c>> accessed 8 April 2020.

<sup>309</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (n 198) 34.

<sup>310</sup> Andrea Sölkner, 'Needs Assessment of the National Referral Mechanism for Victims of Trafficking in Human Beings in Ukraine' (Organization for Security and Co-operation in Europe 2008) <<https://www.osce.org/files/f/documents/e/f/37380.pdf>> accessed 17 September 2020.

<sup>311</sup> United States Department of State, '2019 Trafficking in Persons Report' (n 16) 19; Madina Jarbussynova, 'Report by OSCE Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, Madina Jarbussynova, Following Her Official Visit to Denmark 15-17 May 2017' (Organization for Security and Co-operation in Europe 2018) <<https://www.osce.org/secretariat/368561?download=true>> accessed 14 April 2020.

**The collection of statistics and data is not an independent determinant, but rather is linked to the political will and resources focused on monitoring and evaluation mechanisms.** GRETA emphasises the advantages of appointing independent national rapporteurs or independent monitoring mechanisms to evaluate the ‘activities of state institutions and [collect] information on the dynamics of trafficking in human beings’.<sup>312</sup> A key example is that of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children which was set up as an independent body responsible for ‘collecting and publishing statistical data on trafficking in human beings, carrying out research, reporting on a regular basis to the government, publishing thematic reports and making recommendations’.<sup>313</sup> Intent and capacity has to exist to create a body that is effective and independent. This is further explored below in the context of conflicts and natural disasters where a breakdown of governance structures can hamper data collection processes.<sup>314</sup>

**Moreover, how data is collected is also impacted by the definition and framing of trafficking, which in itself may be shaped by policy priorities.**<sup>315</sup> Crucially, competing definitions and mandates of external bodies prevent statistics from being comparable. Whilst some consistency is derived from the international legal definition in the Palermo Protocol, Kelly demonstrates how the definitional debates and blurred realities of ‘facilitation, smuggling, trafficking and exploitation’, prevent comparable data from being captured, and therefore impact how data is used to inform anti-trafficking efforts.<sup>316</sup> In the European context, Kelly thus advocates for the collection of ‘baseline data ... in the same format’.<sup>317</sup> Scarpa corroborates this, suggesting that the lack of consensus on what constitutes ‘slavery’ and ‘human trafficking’ results in unreliable data and estimates, due to a lack of ‘clear and coherently shared definitional frameworks’.<sup>318</sup> As Del Frate notes, interacting with the different framings of human trafficking, the data collection often reflects the dominant frame, such as by becoming reliant on criminal justice statistics.<sup>319</sup>

The difficulties with data collection further impact the influence of other determinants, such as external monitoring, the US TIP Report, NGO advocacy and commensurate funding and resource allocation. These difficulties are echoed in the sections on the respective factors. As Gallagher highlights, the difficulties in collecting reliable data present a key obstacle for the UNODC’s Global Report and the US TIP Report, whilst the lack of incentives for honest self-reporting further impedes the collection of reliable data.<sup>320</sup> Moreover, as above, the lack of funding for data collection over time impedes NGO advocacy and the ability of governments to produce evidence-based policies and prioritisations.

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<sup>312</sup> Group of Experts on Action against Trafficking in Human Beings, ‘4th General Report on GRETA’s Activities’ (n 308) 36.

<sup>313</sup> Group of Experts on Action against Trafficking in Human Beings, ‘4th General Report on GRETA’s Activities’ (n 308) 36.

<sup>314</sup> Marika McAdam, ‘Countering Trafficking in Persons in Conflict Situations: Thematic Paper’ (UNODC 2018) 35 <[https://www.unodc.org/documents/human-trafficking/2018/17-08776\\_ebook-Countering\\_Trafficking\\_in\\_Persons\\_in\\_Conflict\\_Situations.pdf](https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf)> accessed 14 April 2020.

<sup>315</sup> Amy Farrell and Stephanie Fahy, ‘The Problem of Human Trafficking in the U.S.: Public Frames and Policy Responses’ (2009) 37 *Journal of Criminal Justice* 617; Deborah A Stone, ‘Causal Stories and the Formation of Policy Agendas’ (1989) 104 *Political Science Quarterly* 281, 299.

<sup>316</sup> Liz Kelly, ‘Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe’ (International Organization for Migration 2002) 14 <[https://publications.iom.int/system/files/pdf/mrs\\_11\\_2002.pdf](https://publications.iom.int/system/files/pdf/mrs_11_2002.pdf)> accessed 24 April 2020.

<sup>317</sup> Kelly (n 316) 21.

<sup>318</sup> Scarpa, ‘Contemporary Forms of Slavery’ (n 304) 7.

<sup>319</sup> Del Frate (n 306).

<sup>320</sup> Gallagher, ‘Improving the Effectiveness of the International Law of Human Trafficking’ (n 132) 7–8; 11.

**Given their seemingly objective and reliable nature, statistics can also be used to further political agendas whilst creating an illusion of truth.**<sup>321</sup> The literature highlights that statistics are inflated to show the spread and scale, accompanied by victim narratives evoking pity and depictions of villainous criminals, used to evoke moral reactions and 'justify draconian solutions'.<sup>322</sup> The manipulation of statistics and use of numbers without context is obscured by the illusion of a semblance of indisputability and paves a path for the pursuit of particular political and policy agendas.<sup>323</sup> Crucially, Sharapov, Hoff and Gerasimov point to a key question for agnotology (the 'study of manufactured and productive ignorance'), which not only asks 'how we know' but 'why don't we know what we don't know?', suggesting 'that power sits not with those in possession of knowledge, but with those in control of its production and distribution'.<sup>324</sup>

## Media Framing of Trafficking

Beyond empirical data and research, the way in which trafficking is framed impacts government's anti-trafficking efforts. Trafficking is a legally complex issue that intersects, at a minimum, migration, labour, criminal and human rights law and gender, thus facilitating its competing frames.<sup>325</sup> The framing of trafficking may be influenced by data and research or international legal instruments, as explored above in the section on the<sup>326</sup> Palermo Protocol. However, the media and public opinion also play a crucial role in influencing how trafficking is framed, and thus how anti-trafficking measures are created. The framing of trafficking is not a neutral process and is itself determined by a series of other factors.

Discussion of each of these frames, framing theory and the broader anti-trafficking discourse is beyond the scope of this review; rather, this section will focus on the role of the media and public opinion in influencing anti-trafficking efforts.

The literature specifically points to the media playing a significant role in framing human trafficking and thus influencing responses. Rather than being a matter of semantics, the media's framing can 'have broad policy implications and even more pointedly become the hinge on which legal definitions turn'.<sup>327</sup> There is extensive literature on how the media constructs images, perpetuates stereotypes, and promotes certain narratives within the context of human trafficking, and thus how

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<sup>321</sup> Guri Tyldum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking' in Frank Laczko and Elzbieta Gozdzia (eds), *Data and Research on Human Trafficking: A Global Survey*, vol 43 (1/2) (International Organization for Migration 2005) 18 <<http://lastradainternational.org/lsidocs/282%20IOM%20survey%20trafficking%20%28Global%29.pdf>>.

<sup>322</sup> Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35 *Politics & Society* 447, 448.

<sup>323</sup> Ann Jordan, 'Fact or Fiction: What Do We Really Know about Human Trafficking?' (Issue Paper 3, Washington College of Law: Center for Human Rights and Humanitarian Law, May 2011) <<http://sxpolitics.org/wp-content/uploads/2011/08/issue-paper-3.pdf>> accessed 17 April 2020.

<sup>324</sup> Kiril Sharapov, Suzanne Hoff and Borislav Gerasimov, 'Editorial: Knowledge Is Power, Ignorance Is Bliss: Public Perceptions and Responses to Human Trafficking' [2019] (13) *Anti-Trafficking Review* 1, 1.

<sup>325</sup> Alice Edwards, 'Traffic in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor' (2007) 36 *Denver Journal of International Law and Policy* 9.

<sup>326</sup> For further discussion on the Protocol's provisions, see David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and Its Protocols* (Oxford University Press 2007).

<sup>327</sup> Gretchen Soderlund, 'The Rhetoric of Revelation: Sex Trafficking and the Journalistic Expose' (2011) 2 *Humanity* 193, 206.

they shape public opinion and political discourse.<sup>328</sup> What this section is concerned with, however, is how the media's framing and portrayal affects governments' anti-trafficking efforts.

Building on the discussion of political will, the influence of framing is pervasive throughout the policy-making and implementation processes. It is integral in shaping the policy problem and necessitating (and justifying) a certain policy response. This (political) framing is not a neutral process. Rather, **the literature interrogates how certain rhetoric and framings are mobilised to justify specific policy and legislative responses**, such as a focus on prosecution or measures<sup>329</sup> which securitise migration.<sup>330</sup> The lens through which human trafficking is understood is highly context-dependent and embedded in a country's history and social norms; indeed, human trafficking is not a neutral term.<sup>331</sup> Rather, **the framing of trafficking determines whether and the extent to which combating trafficking is prioritised, what aspects of trafficking are focused on, how the responses are designed and how they are implemented.** The framing of trafficking is therefore interlinked with the political situation and political priorities of the national government. The complexity of human trafficking, facilitates framing it through multiple lenses, including (but not limited to) as an issue of gender and gender-based violence, organised crime, labour rights and migrant workers, immigration, State security, and human rights.<sup>332</sup> Whilst not mutually exclusive, these various frames require, facilitate and legitimise diverging responses.

**In reflecting, reinforcing and influencing governments' dominant narratives, the influence of media on legislators and policy-makers stems from its ability to define what is worthy of public and governmental attention.**<sup>333</sup> This links to the theorisation of policy-formulation on the basis of who is 'deserving' of policy attention<sup>334</sup>, and how the media can influence the 'distrib[ution of] political power' if their reporting favours a particular angle or a certain framing of an issue.<sup>335</sup> Corroborating this, Farrell and Fahy note how the media acts as 'a vehicle for anti-trafficking stakeholders to convey messages to the public and legitimise particular problem frames' and in turn, 'media representation both in response to and in furtherance of claim makers at different stages illustrate publicly accepted definitions of and solutions to the problem'.<sup>336</sup>

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<sup>328</sup> Farrell and Fahy (n 315); Kinney (n 55); Catherine Dauvergne, *Making People Illegal: What Globalisation Means for People and Law* (Cambridge University Press 2008); Weitzer (n 322); Rutvica Andrijasevic et al (eds), 'Special Issue—Trafficking Representations' [2016] (7) *Anti-Trafficking Review* <[https://gaatw.org/ATR/AntiTraffickingReview\\_issue7.pdf](https://gaatw.org/ATR/AntiTraffickingReview_issue7.pdf)> accessed 5 October 2020; Kiril Sharapov, Suzanne Hoff and Borislav Gerasimov (eds), 'Special Issue – Public Perceptions and Responses to Human Trafficking' [2019] (13) *Anti-Trafficking Review* <[https://gaatw.org/ATR/AntiTraffickingReview\\_issue13.pdf](https://gaatw.org/ATR/AntiTraffickingReview_issue13.pdf)> accessed 5 October 2020.

<sup>329</sup> Charnysh, Lloyd and Simmons (n 46); Simmons, Lloyd and Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (n 39).

<sup>330</sup> Susan Kneebone, 'The Refugee–Trafficking Nexus: Making Good (The) Connections' (2010) 29 *Refugee Survey Quarterly* 137; Nazli Avdan, 'Human Trafficking and Migration Control Policy: Vicious or Virtuous Cycle?' (2012) 32 *Journal of Public Policy* 171; Hathaway (n 40).

<sup>331</sup> Kuga (n 232).

<sup>332</sup> Edwards (n 325); Also see Farrell and Fahy (n 315); Jo Doezema, 'Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women' (2000) 18 *Gender Issues* 23; Donna M Hughes, 'The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women' (2000) 53 *Journal of International Affairs* 1; John Salt, 'Trafficking and Human Smuggling: A European Perspective' (2000) 38 *International Migration* 31; Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling' (n 38).

<sup>333</sup> Rachealle Sanford, Daniel E Martínez and Ronald Weitzer, 'Framing Human Trafficking: A Content Analysis of Recent U.S. Newspaper Articles' (2016) 2 *Journal of Human Trafficking* 139, 141.

<sup>334</sup> Anne L Schneider and Helen M Ingram, *Deserving and Entitled: Social Constructions and Public Policy* (State University of New York 2005).

<sup>335</sup> Robert M Entman, 'Framing Bias: Media in the Distribution of Power' (2007) 57 *Journal of Communication* 163, 165.

<sup>336</sup> Farrell and Fahy (n 315) 618.

This impact of media frames is demonstrated by analysis of the shifts in policies in response to dominant media framings. For example, examining the US media from 1990 to 2006, Farrell and Fahy identify shifts in the frames from human rights, to crime and criminalisation, and then to a national security frame. Accordingly, they argue that the framing of trafficking as a problem of crime and increasingly as a phenomenon that has national security implications, has justified 'policies aimed at identifying and prosecuting offenders and assisting victims who are willing to cooperate with federal law enforcement in the investigation of human trafficking cases and illicit trafficking networks'.<sup>337</sup>

However, the media's reporting on human trafficking can echo the existing political priorities and government line.<sup>338</sup> **Where this occurs, the media's power in defining worthy issues becomes a tool for reinforcing and justifying the existing government priorities.** According to Gulati's analysis of the articles published by the New York Times and Washington Post between 1980 and 2006, 60% were responding to government action, and therefore served to legitimise 'consensus among policymakers'.<sup>339</sup> In this same study, whilst the media was sometimes found to present alternative views, this was reliant on sufficient consensus in policy-making, and did not extend to discussing alternative policy responses.<sup>340</sup> Scholars highlight that where there is a reliance on governmental sources, the media 'serves to reinforce official trafficking frames'.<sup>341</sup>

This reciprocal relationship between the media's and government's framing is evident in the narratives espoused. Of course, the relationship is dependent on the extent to which the media and government are independent, as explored below in relation to the role of a free press. Whilst the media can play a powerful role in raising awareness of human trafficking, the former UN Special Rapporteur on Trafficking in Persons highlights that there have been 'repeated examples of media sensationalism, manifested for example through a prurient and overly narrow focus on sexual exploitation'.<sup>342</sup> Scholars have found media outlets focus on cases of the sex trafficking of women and minors, in an often-sensationalised manner to provoke outrage and pity.<sup>343</sup> Typically, discourse depicts trafficking as a heinous crime in which a malicious trafficker exploits a passive victim. This often involves a gendered narrative, in which the trafficked person is framed as a vulnerable woman or girl, trafficked for sexual exploitation. The paternalistic construction of the victim as passive, weak and in need of saving is found to align with governmental assumptions.<sup>344</sup> Not only does this ignore the complexities of trafficking situations, and the agency of trafficked persons, Lee suggests that this results in a political agenda which sees women as exclusively victims and excludes

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<sup>337</sup> Farrell and Fahy (n 315) 623.

<sup>338</sup> Girish J Gulati, 'News Frames and Story Triggers in the Media's Coverage of Human Trafficking' (2011) 12 Human Rights Review 363.

<sup>339</sup> Gulati (n 338) 370; 363.

<sup>340</sup> Gulati (n 338) 375-376.

<sup>341</sup> Sanford, Martínez and Weitzer (n 333) 142; Anne Johnston, Barbara Friedman and Autumn Shafer, 'Framing the Problem of Sex Trafficking' (2014) 14 Feminist Media Studies 419; Doreen Marie Marchionni, 'International Human Trafficking: An Agenda-Building Analysis of the US and British Press' (2012) 74 International Communication Gazette 145.

<sup>342</sup> Ezeilo (n 18) 15.

<sup>343</sup> Farrell and Fahy (n 315); Carole Vance, 'Innocence and Experience: Melodramatic Narratives of Sex Trafficking and Their Consequences for Law and Policy' (2012) 2 History of the Present 200; Anne Johnston, Meghan Sobel and Barbara Friedman, 'Framing an Emerging Issue: How U.S. Print and Broadcast News Media Covered Sex Trafficking, 2008-2012' (2015) 1 Journal of Human Trafficking 235; Sanford, Martínez and Weitzer (n 333).

<sup>344</sup> Sanford, Martínez and Weitzer (n 333) 142; McSherry and Kneebone (n 59).

female traffickers and male trafficked person.<sup>345</sup> Indeed, it serves to affirm the public's view that the problem is the trafficker and the organised crime, thus necessitating criminal justice responses. This contributes to the framing of trafficking as a criminal justice issue. Farrell and Fahy demonstrate how this evolves further with the representation of trafficking solely as an international problem (which is how the international community continues to portray the issue), thus paving the way for policy-makers to frame trafficking 'as a problem with national security implications'.<sup>346</sup> However, it is important to note that such focus is driven by particular mandates and agendas of funders or legal cultures.<sup>347</sup>

Sanford, Martinez and Weitzer argue that **the reciprocal relationship between the media and policy-makers not only shapes public opinion, but also influences 'the ways in which the government prioritizes different aspects of the problem and commits resources to agencies and nongovernmental organizations in order to combat human trafficking'**.<sup>348</sup> Whilst these narratives and frames serve to bolster the government's agenda and justify their policy responses, they risk hindering advocacy work of NGOs aiming to improve anti-trafficking efforts. Research suggests that media outputs risk creating negative perceptions of trafficked persons due to the simplified and limited representations. Herzog argues that the media can create a 'whore stigma' which ignores the distinction between trafficking for sexual exploitation and other forms of exploitation, and perpetuates victim-blaming narratives.<sup>349</sup> This is of course not exclusive to the media, with the distinction between deserving and undeserving victims permeating the discourse of decision-makers.<sup>350</sup> There has been an expansion in the media's framing and coverage of human trafficking to include trafficking for labour exploitation, in the past decade, most notably The Guardian and Associated Press's reporting of exploitation of men in the Thai fishing industry (as further explored below).

The interviews conducted by Houston-Kolnik, Soibatian and Shattell with Chicago-based NGOs further reveal the challenges that the media's misinformation creates in their advocacy work.<sup>351</sup> The images constructed are often found to diverge from how trafficked persons see themselves, and thus undermines their agency. Cojocar, who herself was trafficked, sheds light on how the media framing is often not only misleading in not reflecting the needs and experiences of trafficked persons, but also risks further stigmatisation and exploitation. Whilst the media framing 'justifies a range of coercive interventions, from stigmatizing labelling, to highly intrusive and destabilising rescue missions', the framing also normalises the exclusion of trafficked persons' voices from policy-making and facilitates a gap between policies influenced by the media and policies which would

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<sup>345</sup> Maggy Lee, *Trafficking and Global Crime Control* (SAGE Publications Ltd 2011).

<sup>346</sup> Farrell and Fahy (n 315) 622.

<sup>347</sup> Claudia Cojocar, 'My Experience Is Mine to Tell: Challenging the Abolitionist Victimhood Framework' [2016] (7) *Anti-Trafficking Review* 12.

<sup>348</sup> Sanford, Martínez and Weitzer (n 333) 153.

<sup>349</sup> Sergio Herzog, 'The Lenient Social and Legal Response to Trafficking in Women: An Empirical Analysis of Public Perceptions in Israel' (2008) 24 *Journal of Contemporary Criminal Justice* 314.

<sup>350</sup> Susan Kneebone, 'Migration Marriage and Gender: A Site for Crimmigration? - An Australian Case Study' in Peter Billings, *Crimmigration in Australia* (2019); Susan Kneebone, 'Human Trafficking and Refugee Women' in Efrat Arbel, Catherine Dauvergne and Jenni Millbank (eds), *Gender in Refugee Law: From the Margins to the Centre* (Routledge 2014).

<sup>351</sup> Jaclyn D Houston-Kolnik, Christina Soibatian and Mona M Shattell, 'Advocates' Experiences with Media and the Impact of Media on Human Trafficking Advocacy' (2020) 35 *Journal of Interpersonal Violence* 1108.

be beneficial to trafficked persons.<sup>352</sup> The influence of the media's framing is interconnected with funding and government agendas.

Moreover, the lack of governmental focus on training to identify trafficked persons, and the predominance of crime and security frames pervading the media, leave police and other officials to rely on such imagery and narratives as a means to understand the phenomenon. Therefore, the circulation of certain framings within the media risks impeding law enforcement as they act as substitute guidance on identifying perpetrators and trafficked persons. The relationship between civil society and the media can shift the media from being an advocacy tool, to NGOs having to work to counteract these misperceptions and draw light to the unreported stories such as barriers to rehabilitation.<sup>353</sup>

One aspect of the influence of the media's framing is the link with celebrities; Haynes finds that 'policy-makers allow celebrity activists to influence their opinions and even consult with them for advice regarding public policies'.<sup>354</sup> Haynes highlights the nexus between celebrities, the media and public audiences, in shaping policy. The media often picks up stories about celebrities' efforts in order to attract readers and expand their audience; yet this in turn adds volume and legitimacy to their simplistic views and quick-fix solutions. This crucially perpetuates the reductive and misleading narratives, espoused by celebrities. Moreover, there is an increased receptiveness of legislators to take advice and be influenced by celebrities. For example, Haynes finds that celebrities testify at congressional hearings, upon invitation, and legislators are found to 'solicit not just testimony but actual recommendations and solutions from celebrity witnesses'.<sup>355</sup> This is '[e]mblematic of larger, fundamental problems with the dominant discourse, funding allocations, and legislation in current anti-trafficking initiatives...'.<sup>356</sup>

### Media Exposure of Trafficking Cases

**Beyond the media's role in framing human trafficking, thus influencing governments' understanding and agenda-setting processes, the literature further reveals how the media can influence change in governments' anti-trafficking efforts, through its reporting and exposure of specific cases.** Media outputs can have an impact through exposing particular cases, both through reporting stories and investigating to uncover cases of human trafficking. Through this exposure and increased visibility,<sup>357</sup> the media plays a role in raising public and political awareness, and calls on governments to take action in improving their anti-trafficking efforts.<sup>358</sup> The revelation of particular human rights abuses brings State violations to the public eye, which puts direct pressure on States to act to avoid further scrutiny, and indirectly via the public who often lobby their governments

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<sup>352</sup> Cojocaru (n 347) 39.

<sup>353</sup> Houston-Kolnik, Soibatian and Shattell (n 351) 1115-6.

<sup>354</sup> DF Haynes, 'The Celebritization of Human Trafficking' (2014) 635 *Annals of the American Academy of Political and Social Science* 25.

<sup>355</sup> Haynes, 'The Celebritization of Human Trafficking' (n 354) 37.

<sup>356</sup> Haynes, 'The Celebritization of Human Trafficking' (n 354) 25.

<sup>357</sup> Commonwealth Parliamentary Association UK (n 24).

<sup>358</sup> Das et al (n 88).



directly.<sup>359</sup> Both the framing and the exposure of individual stories can influence and shape public opinion, which in turn, can affect the political climate and policy priorities.<sup>360</sup>

However, as highlighted by Das, DiRienzo, Lanier and Rich, this scrutiny and influence from the media seems to be limited to countries with a free press able to 'expose the atrocities associated with human trafficking on both the domestic and international stage and use this platform to call for action and to hold government officials accountable to the international anti-trafficking laws'.<sup>361</sup> In contrast, a controlled and censored press might not only lack the freedom to report on such violations or in a way that reflects negatively on the government, the State may also manipulate stories as a means of propaganda.<sup>362</sup> Further analysis of if, and how, journalists might shape governments' anti-trafficking efforts in countries with a controlled press, is lacking in the literature.

Through magnifying issues and raising awareness, the media is one means through which pressure is placed on governments to respond, reimagine their policy prioritisations, and rectify violations of human rights. Yet, the media does not operate in a vacuum and is rarely referred to as a determinant of change in and of itself. Rather, the media is part of a network of different pressure points. A central example of this is the reporting by the Associated Press and The Guardian in 2015 which investigated and exposed the exploitation of fishermen in the Thai fishing industry. As explored in the section on Sanctions above, this reporting catalysed public outrage and awareness on the issue, as well as compounding international pressure and damaged Thailand's international reputation and trade opportunities.<sup>363</sup>

Moreover, the influence of the media stems from how its reporting is used by actors such as civil society and the public. The literature particularly highlights how the media can be an influential tool for civil society advocacy. In evaluating the failure of the US's 2018 legislation Fight Online Sex Trafficking Act (FOSTA) to achieve its legal objectives, Born outlines the processes which prompted the passage of the Act.<sup>364</sup> An integral trigger was the Backpage scandal, in which many who had been trafficked for sexual exploitation through the Backpage website were unable to sue the site and hold it legally liable. Whilst FOSTA was a response to this legal issue, the public outcry and media coverage amplified the issue and sparked political response. The public protested at Village Voice Media, which owned Backpage, advertisers removed their adverts from the site in response to an online petition, and Nicholas Kristof 'published a series of editorials slamming the website and sharing the stories of minors trafficked on it'.<sup>365</sup> The media coverage exposed the lived realities and raised awareness on the scandal. Media outputs was one of a cocktail of factors that sparked the passage of FOSTA in the aim to close the legal loophole.

In addition to amplifying individual stories, the media is also a tool used by NGOs and interest groups to further their advocacy work in pressuring change and improvement at the government level. The media's ability to frame and expose cases cannot be divorced from the actors who use

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<sup>359</sup> Das et al (n 88).

<sup>360</sup> Erin Denton, 'International News Coverage of Human Trafficking Arrests and Prosecutions: A Content Analysis' (2010) 20 *Women & Criminal Justice* 10.

<sup>361</sup> Das et al (n 88) 3.

<sup>362</sup> Das et al (n 88).

<sup>363</sup> Daniel Murphy (n 185).

<sup>364</sup> Born (n 10).

<sup>365</sup> Born (n 10) 1630.

the media as an advocacy tool. As above, a central case study is that of the exposure of forced labour in the Thai fishing industry, where international advocacy aligned with the media attention. Moreover, analysing Israel's anti-trafficking measures, Bensinger highlights the importance of the stories of women being trafficked for sexual exploitation that emerged in the media in the 1990s, in mounting the pressure on the Israeli government to improve their protection.<sup>366</sup> These media stories, for example the account of 'the torching of a brothel in Tel Aviv in 2000 that killed four women trafficked from the former Soviet Union into prostitution in Israel', not only raised public consciousness and sympathy<sup>367</sup> but were also critical in allowing the human rights advocates to apply pressure on the Israeli government to improve their protection of trafficked persons, and to shift the criminalisation away from trafficked women and towards the traffickers. Similarly, the UK Commonwealth Parliamentary Association highlights the impact of the Free for Good Campaign in increasing visibility for a Private Members' Bill on Victim Support with reporting in The Times, The Sun and The Guardian.<sup>368</sup>

The portrayal espoused by the media, and the stories it chooses to report are of course critical to the change it plays a role in shaping. As discussed above, reporting on human trafficking is often criticised for embedding a particular narrative of the evil perpetrator and passive victim, and entrenches the stereotype of the perfect victim. The media has a role to play in exposing new stories, and challenging the dominant discourses and framings. Indeed, as GRETA questions: 'Do the media take sufficient interest in the different manifestations of trafficking and what falls outside the clichés about victims and traffickers? Do they have the impulse to identify new trends and alert the authorities and the general public?'.<sup>369</sup> They emphasise that the media, alongside public authorities and legislators 'must act as a driving force'.<sup>370</sup>

In examining policy and legislative change, the media emerges as an influential factor in the initial stages of raising public and political awareness and triggering action within government. There is less analysis within the literature of whether, and if so how, the media plays a role in sustaining this interest and ensuring the enforcement of legislative or policy changes.

## Events and Crises

Alongside the factors which pressure and catalyse governments to change, **the literature points to the significance of one-off events, such as sporting events, natural disasters, protests and conflicts in triggering government responses.** As highlighted above with reference to the 2015 Village Voice protests triggering FOSTA,<sup>371</sup> when sufficiently publicised in the media, coupled with corporate pressure, celebrity presence, civil society, and case law, one-off events such as protests can have significant impact on changing a government's anti-trafficking response.

## Conflicts and Natural Disasters

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<sup>366</sup> Bensinger (n 166).

<sup>367</sup> Bensinger (n 166) 282.

<sup>368</sup> Commonwealth Parliamentary Association UK (n 24) 89.

<sup>369</sup> Group of Experts on Action against Trafficking in Human Beings, '5th General Report on GRETA's Activities' (n 308) 6.

<sup>370</sup> Group of Experts on Action against Trafficking in Human Beings, '5th General Report on GRETA's Activities' (n 308) 6.

<sup>371</sup> Born (n 10).

Much has been written about the impact of conflicts and natural disasters on increasing vulnerabilities for individuals to being trafficked,<sup>372</sup> as well as on increasing the demand for exploited labour during and in the aftermath of conflicts, to finance armed groups and States.<sup>373</sup> Environmental change is also correlated with increased risk of trafficking.<sup>374</sup> The impact that natural disasters and conflicts have on States' propensity to change their responses to human trafficking is less investigated. Within the current research, however, there is consensus that they hinder States' efforts. Research highlights that conflicts and natural disasters generate 'protection gaps' and exacerbate vulnerability to trafficking.<sup>375</sup> Yet, State responses have not always been found to respond to increased vulnerabilities and evolving trafficking situations. For example, despite increased situations of vulnerability due to conflict in the Middle East and the 2015 migration, there was not a significant increase in identification of trafficking.<sup>376</sup>

**This lack of government focus on combating trafficking in conflict and natural disaster situations is thus closely linked with political will, both to acknowledge the issue and to allocate sufficient resources and capacity to it.** The resources and capacity available in countries prone to conflict are often limited; such limitation of resources, in turn, tend to be exacerbated in the event of conflicts and natural disasters.<sup>377</sup> Where resources are stretched thin, and an immediate response is required, political will to act on non-emergency issues is naturally superseded. As anti-trafficking efforts 'are not necessarily understood as immediately life-saving in an emergency situation',<sup>378</sup> **governments tend not to prioritise anti-trafficking efforts as an issue requiring an immediate response, in this context.**

The consequences that conflicts and natural disasters can have on anti-trafficking law and policy are **further interlinked with a State's governance and political situation.** The violence and coercion characteristic of armed conflict often leads to a breakdown in the rule of law, on which traffickers capitalise to act with greater impunity.<sup>379</sup> In Libya, the erosion of rule of law has generated impunity, allowing trafficking of persons to go undetected and unpunished.<sup>380</sup> Criminal justice

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<sup>372</sup> Randall KQ Ackee et al, *Migration and Culture: Frontiers of Economics and Globalization*, vol 8 (Emerald Group Publishing 2010); A Cooper Drury and Richard Stuart Olson, 'Disasters and Political Unrest: An Empirical Investigation' (1998) 6 *Journal of Contingencies and Crisis Management* 153; United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (n 198).

<sup>373</sup> McAdam (n 314).

<sup>374</sup> Kevin Bales, *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World* (Spiegel & Grau 2016); Susan Martin and Amber Callaway, 'Internal Displacement and Internal Trafficking: Developing a New Framework for Protection' in Khalid Koser and Susan Martin (eds), *The Migration-Displacement Nexus – Patterns, Processes, and Policies* (Berghahn Books 2011).

<sup>375</sup> Drury and Olson (n 372); Susan F Martin, Sanjula Weerasinghe and Abbie Taylor (eds), *Humanitarian Crises and Migration: Causes, Consequences, and Responses* (Routledge 2014); Claire Healy, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons: A Study of Syria, Turkey, Lebanon, Jordan and Iraq* (ICMPD 2015) <[https://www.icmpd.org/fileadmin/ICMPD-Website/Anti-Trafficking/Targeting\\_Vulnerabilities\\_EN\\_SOFT\\_.pdf](https://www.icmpd.org/fileadmin/ICMPD-Website/Anti-Trafficking/Targeting_Vulnerabilities_EN_SOFT_.pdf)>.

<sup>376</sup> Healy (n 375).

<sup>377</sup> Alexis Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger Publishers 2009); Kathrine Olsen Flåte, 'Human Trafficking Following the 2015 Nepal Earthquake: A Case Study of How a Natural Disaster Impacts People's Vulnerabilities and the Role Disaster Response and Recovery Plays in Countering It' (Masters Thesis, International Development Studies, Norwegian University of Life Sciences NMBU 2018); Agnes Tillinac et al, 'Addressing Human Trafficking and Exploitation in Times of Crisis: Evidence and Recommendations for Further Action to Protect Vulnerable and Mobile Populations' (International Organization for Migration 2015) <[https://publications.iom.int/system/files/addressing\\_human\\_trafficking\\_dec2015.pdf](https://publications.iom.int/system/files/addressing_human_trafficking_dec2015.pdf)> accessed 19 June 2020; McAdam (n 314).

<sup>378</sup> Tillinac et al (n 377) 3.

<sup>379</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (n 198).

<sup>380</sup> Tillinac et al (n 377) 14.

frameworks are often 'fragile or broken' in conflict settings.<sup>381</sup> This erosion of governance structures also limits States' ability to uphold their obligations under Article 6 of the Palermo Protocol to protect and assist trafficked persons.<sup>382</sup>

Given the deteriorated State capacity in the face of conflict and disaster, **international organisations play an essential role in shaping government responses to trafficking.** For example, the UN (as well as civil society actors) may be the sole providers of services to protect and assist trafficked persons and are often required to provide such support, as through the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons.<sup>383</sup> McAdam stresses the role the UN and other international organisations can and should play in bolstering an 'enabling environment' to improve States' ability to provide protection and assistance services.<sup>384</sup> Prior to the onset of conflict, international organisations can strengthen State preparedness by determining whether domestic legislation on trafficking complies with international standards and advocate for revision.<sup>385</sup> This has occurred with the legislative reform projects carried out through the Team of Experts on the Rule of Law and Sexual Violence in Conflict, under UNSC Resolution 1888 in Central African Republic, Côte D'Ivoire, Democratic Republic of Congo, Guinea, Iraq, Nigeria and South Sudan.<sup>386</sup> Similar legal advocacy and technical assistance provided to governments in Asia by Liberty Asia (now called Liberty Shared).<sup>387</sup> International organisations and inter-governmental partnerships can also play a role before, during and after the onset of conflict or disaster, to strengthen capacity-building and resourcing. Through the provision of training for law enforcement, a rights-based approach to prosecution and investigation can be fostered.<sup>388</sup>

A harmonised understanding of trafficking in persons is believed to be paramount to the robustness of State responses to trafficking, particularly in situations of conflict and natural disaster,<sup>389</sup> for which ratification of UNTOC and other relevant instruments is crucial.<sup>390</sup> In Turkey, the Directorate General for Migration Management incorporated psychologists, interpreters and a partner NGO into its identification process, which is believed to be partially motivated in preparation for the ratification of the Council of Europe Convention against Trafficking.<sup>391</sup> Its ratification of the CoE Convention also influenced Turkey's new national action plans.<sup>392</sup> This again highlights the role of international law as a determining factor in shaping States' responses.

Moreover, the impact of conflict and natural disaster on anti-trafficking efforts is **intertwined with the role of data and research.** The chaos wrought on governance structures and institutions by the

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<sup>381</sup> McAdam (n 314) 58.

<sup>382</sup> McAdam (n 314) 49.

<sup>383</sup> McAdam (n 314) 52-4.

<sup>384</sup> McAdam (n 314) 49.

<sup>385</sup> McAdam (n 314) 49.

<sup>386</sup> Sofia Coelho Candeias, 'Team of Experts on the Rule of Law and Sexual Violence in Conflict Approach' (Project Brief, United Nations 2019) <[https://www.un.org/sexualviolenceinconflict/wp-content/uploads/1\\_2019twopagerforwebsite.pdf](https://www.un.org/sexualviolenceinconflict/wp-content/uploads/1_2019twopagerforwebsite.pdf)> accessed 19 June 2020.

<sup>387</sup> McAdam (n 314) 61.

<sup>388</sup> McAdam (n 314) 58.

<sup>389</sup> Silvia Scarpa, 'Guaranteeing the Broadest Protection to Minors in the Aftermath of Disasters: Re-Framing the International Discussion in Terms of Child Abduction, Sale, and Trafficking' (2013) 4 *Journal of International Humanitarian Legal Studies* 135.

<sup>390</sup> McAdam (n 314) 58.

<sup>391</sup> Healy (n 375) 118.

<sup>392</sup> Healy (n 375) 118.

onset of conflict and natural disaster hampers logistical and administrative coordination, rendering the collection of relevant, disaggregated data on trafficking acutely difficult.<sup>393</sup> The identification of needs and the development of timely responses suffer greatly as a consequence of that lacuna of relevant data. After the Nepal earthquake, the collapsed administrative structures and increased vulnerabilities allowed for traffickers to capitalise and reach communities.<sup>394</sup>

McAdam highlights that whilst 'it is crucial to do effective research, gather information and conduct analysis ... collecting information in conflict setting is fraught with challenges'.<sup>395</sup> Moreover, data focusing on conflict-related sexual violence or grave violations against children in armed conflict may also be relevant to trafficking, yet is often overlooked. Not only must data be collected, but it also must be shared to improve knowledge about trafficking in conflict situations. The effectiveness of sharing data is highlighted by The Global Protection Cluster which 'collects information and data management tools relating to needs assessments, protection monitoring, population data systems and protection incident systems'.<sup>396</sup> As explored above, when data is collected and shared, such information can play a significant role in shaping anti-trafficking responses during conflicts and natural disasters.

An alternative view of how conflict and natural disaster shape government responses to trafficking in persons can be found in Bowersox.<sup>397</sup> While theoretical rather than applied, Bowersox uses Cho, Dreher and Neumayer's 3P Index<sup>398</sup> in an analysis which suggests that a State's ability to comply with Palermo Protocol responsibilities may actually increase in the aftermath of natural disasters.<sup>399</sup> The reasoning is that States tend to respond to natural disasters in a centralised manner that favours securitisation, thus generating greater capacity to respond to human trafficking. In examining the responses to Hurricane Katrina in the US, Haiti and the Dominican Republic and the 2015 earthquake in Nepal, Bowersox argues that States are likely to improve on anti-trafficking performance in the wake of natural disasters as they have the ability to rapidly mobilise the military and other resources, while restricting the movement of their citizens.<sup>400</sup> This would increase the threat of detection and prosecution through centralised securitisation, which would theoretically lower the incentive for traffickers, despite the fact that vulnerability increases. This tentatively suggests that the type of regime may affect how natural disasters influence governments' anti-trafficking measures; autocratic regimes may have greater ability to effect change. There is also an assumption that a securitisation approach to trafficking is the most effective, which aligns with the criminal justice frame, as set out within the Palermo Protocol. However, States' ability to respond to natural disasters and other one-off events cannot be separated from their resources; that same research indicates that a lack of financial resources severely limits a State's ability to establish the minimum standards for protection.<sup>401</sup>

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<sup>393</sup> McAdam (n 314) 35.

<sup>394</sup> Tillinac et al (n 377) 28.

<sup>395</sup> McAdam (n 314) 35.

<sup>396</sup> McAdam (n 314) 40.

<sup>397</sup> Zack Bowersox, 'Natural Disasters and Human Trafficking: Do Disasters Affect State Anti-Trafficking Performance?' (2018) 56 *International Migration* 196.

<sup>398</sup> Cho, Dreher and Neumayer, 'The Spread of Anti-Trafficking Policies: Evidence from a New Index' (n 83).

<sup>399</sup> Bowersox (n 397).

<sup>400</sup> Bowersox (n 397).

<sup>401</sup> Bowersox (n 397).

## Sporting Events

International sporting events increase attention given to trafficking, and can in turn trigger governments and other entities to respond. Reports of increase in prevalence of trafficking around sporting events have been questioned. However, the perception and fears of increases remain and can be a catalyst for change. International sporting events do not trigger change alone; rather, such events increase awareness and generate a spotlight on human stories and human rights' abuses, thus interacting with public opinion and international pressure, to trigger government action. This often provides civil society actors and journalists with an opportunity to highlight the ongoing abuses. Due to the international spotlight, it raises the question of whether international attention and reputation affects the political will to act. This may also be found in other international events, such as cultural events.

Resonant of the way the media and case law expose stories of trafficking, **international sporting events can also shine a light on trafficking, thus exerting pressure on national governments** in a similar fashion. This is exemplified by research suggesting that FIFA World Cups increase the demand for prostitution. Coupled with the belief that increased demand for prostitution leads to the increased prevalence of trafficking for sexual exploitation, civil society and politicians lobbied for safeguards against that danger surrounding sporting events. Some governments responded to such pressure, and the potential reputational benefit (or cost of not taking action when under the international spotlight). Germany did ratify the Palermo Protocol on the eve of the World Cup (having been a signatory since 2000),<sup>402</sup> which suggests the imminent international attention of the sporting event may have been what was most influential in triggering change. The upcoming World Cup provided the opportunity for such trafficking for sexual exploitation to be exposed in the international arena. Germany also boosted its existing anti-trafficking measures by producing a 'specialised World Cup National Security Concept', which improved the coordination of state and federal police law enforcement and enlarged overall police presence during the World Cup. It is suggested that such measures acted as a deterrent against the perpetration of trafficking, which led to no reported increase of trafficking into Germany during the competition.<sup>403</sup> However, it is to be noted that these measures did not result in sustained policy change.

In a similar manner, the upcoming Qatar World Cup 2022 has sparked change in practices involving labour exploitation in the region, through shining a light on the embedded structures that fail to protect migrant workers. Reports have detailed labour exploitation, injuries and deaths on the construction sites for the World Cup,<sup>404</sup> where the workers are mostly 'visiting migrants' and live in unsanitary conditions.<sup>405</sup> Under the Kafala system, which concerns migrant worker visas, the employer (who sponsors the visa) is fully responsible for the worker's legal status and visa. During the construction in the lead up to the 2022 World Cup, there have been multiple reports concerning kafeels (visa sponsors, who are usually also the employers) illegally withholding migrant-worker

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<sup>402</sup> Morrow (n 4).

<sup>403</sup> Jana Hennig et al, 'Trafficking in Human Beings and the 2006 World Cup in Germany' (International Organization for Migration 2007) <[https://www.un-ilibrary.org/migration/trafficking-in-human-beings-and-the-2006-world-cup-in-germany\\_2fb3af8a-en](https://www.un-ilibrary.org/migration/trafficking-in-human-beings-and-the-2006-world-cup-in-germany_2fb3af8a-en)> accessed 30 April 2020.

<sup>404</sup> Peter Millward, 'World Cup 2022 and Qatar's Construction Projects: Relational Power in Networks and Relational Responsibilities to Migrant Workers' (2016) 65 *Current Sociology* 756.

<sup>405</sup> Sarath K Ganji, 'Leveraging the World Cup: Mega Sporting Events, Human Rights Risk, and Worker Welfare Reform in Qatar' (2016) 4 *Journal on Migration and Human Security* 221.

passports.<sup>406</sup> Ganji explores the different factors that have obstructed regulation of migrant worker exploitation in the past.<sup>407</sup> Firstly, there is a demographic dimension; the limited pool of nationals available in the Gulf States increases the demand for imported, cheap labour, while it is in the governments' interest not to regulate it. Secondly, the economic situation in migrant workers' countries of origin may give the host governments significant leverage over the migrant workers, as the countries of origin may not be able to provide their nationals with adequate protection. Lastly, rather than enabling better protection in the destination countries, when countries of origin demand better labour rights for their nationals, this may lead destination countries to simply freeze the hiring of foreign labour.<sup>408</sup> The upcoming World Cup has shone light on labour exploitation internationally and the factors that hinder government protection of migrant workers in the recruitment process and employment for the Qatar World Cup construction.<sup>409</sup>

However, it is not the event of the World Cup alone that triggered change. Rather, since the Qatari government won the bid to host the World Cup, there has been increased optimism amongst academics, the media and NGOs, about using the event as a lever to initiate reforms.<sup>410</sup> A series of initiatives have been launched by government to address welfare abuses, living conditions and the shortcomings of the Kafala system.<sup>411</sup> Specifically, the Ministerial Decision no 95 (January 2020) aimed to abolish exit permits from kafeels and signals better protection of migrant workers.<sup>412</sup> The pressure to address systemic problems attributed to the kafala system caused 'a succession of government policies that clarify, amend, and expand (and sometimes retract) the rights and duties of all parties under the kafala system'.<sup>413</sup> This shows how sporting events may put government policy under the microscope of the international community, facilitating the scrutiny and pressure to trigger reform.<sup>414</sup>

Furthermore, in the context of sporting events, private companies also push significantly for policy change, specifically as construction companies and sponsors for the event. Their role in influencing change is often due to reputational risks of being associated with allegations of worker rights violations, which generates pressure on governments and self-regulation.<sup>415</sup> The media is also influential in uncovering violations and applying pressure on governments to protect workers.<sup>416</sup>

The way in which sporting events provide an opportunity for international scrutiny, pressure and concerns of reputation, thus triggering change, is further exemplified by the case of Brazil, who hosted the World Cup in 2014 and the Olympics in 2016. As Spalding et al observe, '[m]ega-

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<sup>406</sup> Millward (n 404).

<sup>407</sup> Ganji (n 405).

<sup>408</sup> Ganji (n 405).

<sup>409</sup> Matthew Graham, 'Qatar World Cup: Lessons for Embedding Fundamental Labor Rights in Sport' (2019) 4 *International Labor Rights Case Law* 205.

<sup>410</sup> Ganji (n 405).

<sup>411</sup> Nasser KA Al-Dosari Khalifa, 'Assessing The Impacts Of Mega Sporting Events On Human Rights: A Case Of The 2022 Fifa World Cup In Qatar' (2020) 2 *International Journal of Sociology* 25 <<https://iprjb.org/journals/index.php/IJS/article/view/1129>> accessed 7 November 2020.

<sup>412</sup> Amanda Garrett, 'The End of Kafala? Evaluating Recent Migrant Labor Reforms in Qatar' (2020) 21 *Georgetown Journal of International Affairs* 201.

<sup>413</sup> Garrett (n 412) 202.

<sup>414</sup> Garrett (n 412).

<sup>415</sup> Ganji (n 405).

<sup>416</sup> Millward (n 404).

events can have mega-effects on a host country's reputation' and can thus trigger change.<sup>417</sup> Although highly scrutinised by the international community for its human rights abuses during the preparations for both events, Brazil made significant efforts to 'stimulate an historic pivot in approaches and attitudes toward corruption', which indirectly improved anti-trafficking efforts.<sup>418</sup> Moreover, in an attempt to improve its international image, Brazil took proactive steps to legislate on welfare rights and safer working conditions for migrant and domestic construction workers.<sup>419</sup> In the context of major sporting events and their aims to improve their US TIP ranking, and thus reputation, the Brazilian government made efforts to improve their anti-trafficking legislation.<sup>420</sup> Overall, in spite of the two major events sparking major human rights abuses, there was also proactive change in preventing human trafficking, and labour exploitation.

However, the impact that sporting events have is not necessarily a lasting and sustained one. This is demonstrated by the London 2012 Olympics. Although there is no evidence that this event increased the prevalence of trafficking, it is nevertheless noted as an event that provided the opportunity for improvement, but lacked the long-term investment to ensure that these efforts were sustained beyond 2012. The London 2012 Olympics **triggered an increased government response to human trafficking**. As 'interventions are inseparable from conceptualisations of the problem',<sup>421</sup> the perception that human trafficking is a crime, migration and gender issue influenced the Policing and Crimes Act 2009 and the policy response in the lead-up to the Olympics.<sup>422</sup> Mayor Boris Johnson established the Human Trafficking and London 2012 Network to develop responses collaboratively amongst different interest groups around prosecution, prevention and protection mechanisms. However, the significant influence of the Association of Chief Police and the Home Office served to shape the Network's focus on prosecution and the policing of migration in line with these bodies' understandings of human trafficking. The gender equality frame seems to have been present as well, as evidenced by Boris Johnson's The Way Forward strategy,<sup>423</sup> which equated human trafficking with prostitution, and prostitution with violence against women. The Network's Action Plan had two key goals: to tackle the demand side of prostitution, and to effectively prosecute perpetrators. Effectively translating as 'prevention', the plan to tackle the demand side of prostitution centred around awareness-raising. The recent Section 14 offence around paying for sex with exploited persons was publicised widely, including within the athletes' Welcome Packs, and the network lobbied for advertisements of sex services to be removed from newspapers.<sup>424</sup> The prosecution efforts focused on raids of brothels, massage parlours and massage entertainment venues and arrests in both the lead-up and during the Olympics.<sup>425</sup> Despite the purported equal priority of both prosecution and prevention, very little government funding was awarded to the Human Trafficking Network to carry out its prevention activities, and the

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<sup>417</sup> Andrew B Spalding et al, 'From the 2014 World Cup to the 2016 Olympics: Brazil's Role in the Global Anti-Corruption Movement' (2014) 21 *Southwestern Journal of International Law* 71, 93.

<sup>418</sup> Andrew B Spalding, 'Brazil's Olympic-Era Anti-Corruption Reforms Symposium: Corruption in International Sports' (2017) 32 *Maryland Journal of International Law* 188, 193.

<sup>419</sup> Kayla Lynn Anderson, 'Cases of Forced Labor and Policy Responses Regarding Human Trafficking Legislation at Mega Sporting Events' (MA thesis, University of Kansas 2015) <<https://kuscholarworks.ku.edu/handle/1808/19531>> accessed 9 November 2020.

<sup>420</sup> Jennifer Gustafson, 'Bronze, Silver, or Gold: Does the International Olympic Committee Deserve a Medal for Combating Human Trafficking in Connection with the Olympic Games?' (2011) 41 *California Western international law journal* 433.

<sup>421</sup> Lee (n 345) 20.

<sup>422</sup> Jelbert (n 302).

<sup>423</sup> Greater London Authority, 'The Way Forward: Taking Action to End Violence against Women and Girls' (Final Strategy Report, 2010).

<sup>424</sup> Jelbert (n 302).

<sup>425</sup> Greater London Authority (n 423).



funding stopped entirely after the Olympics, which suggests that one-off events may not determine sustainable improvement.<sup>426</sup>

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<sup>426</sup> Jelbert (n 302).

## IV. Conclusion

This literature review has sought to scope the existing research concerning factors which influence national anti-trafficking efforts. There is no clear body of literature focusing on determinants of anti-trafficking law and policy around the globe. However, this review has found that existing literature, both directly related to trafficking and otherwise, does identify a number of factors that trigger and shape changes in anti-trafficking efforts.

The literature reviewed reflects the complexity of policy- and law-making processes, as well as the multi-faceted nature of combating human trafficking. Anti-trafficking efforts are varied in their form and focus, and thus the factors which shape them cannot be explained by a linear narrative or a simple cause and effect relationship. Rather, the literature reviewed demonstrates that the factors shaping such efforts are **context-specific, non-linear and multidimensional**.

Determinants are interconnected; they work together in influencing change and each other. Moreover, a particular factor may be a determinant in one context and an outcome in another. With regards to the nature of determinants' effects, specific factors may have a **direct** impact, whilst others influence efforts more **indirectly**. Such impacts may result in **improvement, hinderance or regression** of anti-trafficking efforts. Sometimes there are pressures in the same direction and sometimes in divergent or even opposing directions. Pressures in the same direction may derive from opposing points or sources.

Broadly, we categorise determinants as being **external or internal** factors, and as being embedded **structural factors** or **points of pressure**. Each determinant falls into multiple categories depending on the iteration and context (as detailed in the section titled III. Determinants, on page 7).

The **external** determinants predominantly include international standards and mechanisms; namely international law, regional case law, external monitoring and sanctions. These are instruments and mechanisms which exist outside of a specific country. External structures such as international legal instruments, are recognised in the literature as fundamental to both the global framing of trafficking and anti-trafficking efforts at the national level. This is particularly noted with the Palermo Protocol. Whilst it suffers from limitations (as a result of the compromise solutions reached during drafting) that weaken its direct impact, the Palermo Protocol has simultaneously inspired a range of options for moving its purposes forward. Regional instruments have also been particularly important in this regard—often presenting higher standards, greater legitimacy and more robust monitoring.

External monitoring processes—international and regional monitoring bodies and monitoring by foreign governments (most notably the US State Department TIP Report)—and sanctions (or the threat thereof) present external points of pressure which can trigger change at the domestic level. The mechanisms which assess and monitor national anti-trafficking efforts (which are diverse in their scope, mandates and processes), create pressure for change not only through their recommendations, but also through the reputational, political and financial implications they may pose. Similarly, sanctions are external points of pressure which can directly trigger change. However, both of these determinants are dependent on the country's economic conditions and political concern for reputation. The question remains as to whether these determinants have the capacity to result in sustained and long-term changes. Moreover, civil society advocacy from

international NGOs or partnerships and funding from international bodies or other governments, also act as external determinants.

The external factors interact with the **internal** structural conditions, namely countries' governance and political situations, and their economic conditions. A State's underlying political and economic context creates an environment which indirectly enables or hinders anti-trafficking measures. These conditions are an important backdrop which may influence the State's capacity to address trafficking, and its receptiveness to, and ability to respond to other determinants. Within the context of domestic political and economic conditions, funding and resource-allocation is not a neutral process. Yet, it is an integral determinant for change; for any effort to improve the capacity and resources to initiate, implement and monitor anti-trafficking law and policy.

Internally, civil society advocacy and media exposure create pressure for governments to act, through political lobbying and public campaigning. They interact with public opinion, play a role in raising political awareness, and can influence political prioritisation through shaping electorate interests. However, their influence is dependent on government receptiveness; their impact is found to be greater when combined with other determinants to augment the pressure.

More broadly, governments' understanding and perceptions of trafficking and anti-trafficking (influenced by data, research and the media) influence their agenda-setting processes. Such framing and understanding is a key backdrop influencing their efforts. The key frames are identified in the literature—gender, migration, the human rights and the 'crime' frame. Each of these is in turn impacted by political discourse, international and domestic law, media coverage and the effectiveness of civil society activism. Particular framings not only influence, but crucially require and justify certain responses. For instance, the crime frame justifies a law enforcement approach, whilst the human rights frame requires a more holistic approach covering prevention and protection as well as prosecution. Frames are neither static nor universal and the same frame might be understood differently by different people and in different contexts. Multiple frames are likely to co-exist and may push for different responses.

Underpinning this discussion is the concept of **political will**. Political will is alluded to as being integral and the lack thereof as being an impediment. It is at the heart of triggering change, and is significant throughout the policy and legislative-formation processes, from agenda-setting to implementation, monitoring and evaluation. Political will is also a sum outcome of the other determinants addressed. Therefore, as a determinant, political will is necessary to directly trigger change, but it cannot be divorced from the wider determinants through which it is shaped and mobilised. The notion is further conceptualised and explored here [\[reference other output\]](#).

Any attempt to identify, disaggregate and categorise determinants is arguably imperfect. At the broadest level, the literature it is based on is limited both in range and in scope. In particular, there is a regional focus in much of the literature that makes some of the generalisations somewhat tenuous. Critically, any attempt to quantitatively assess the relevance of particular determinants runs into methodological concerns whereby, whilst one can identify correlations, causality is more difficult to ascertain. Second, the factors and their degree of influence are context and time specific, both because the factors themselves change and because the context in which those factors operate changes. For instance, a trafficking related scandal in the media may receive more or less attention, including political attention, depending on what else might be happening. Third, no one factor is

homogenous. Whether across or within countries, each factor comes with its own divisions. Not all civil society organisations promote the same anti-trafficking priorities. Not all media outlets report in a similar way. Not all 'individual' politicians agree on the best way forward or the best time to take an initiative forward. This is particularly important in understanding the interaction between top-down and bottom-up processes, domestic and international forces, and structures and catalysts, in shaping governments' efforts.

**The determinants presented here are not an exhaustive list of what shapes anti-trafficking measures.** Rather, this review attempts to outline the different factors identified in the literature and seeks to provide a starting point for future discussion and research. The aim to scope and review the existing research concerning our research question is one aspect of a multi-pronged research project aimed at understanding determinants of anti-trafficking measures. The research project will continue the exploration of determinants.

## Appendix

Table 1: Search terms

### Search String 1

	Determin* Factors which influence Influence Cause Result Because of Led to Lead* to Following Due to Response to	Anti-trafficking Human trafficking Trafficking in persons Trafficking in human beings	Response Policy Legislation Law Resource Capacity
<b>Search String 2</b>			
	Improv* Comply Compliant* Respon* Enact Ratify Support Enforce Implement	Anti-trafficking Human trafficking Trafficking in persons Trafficking in human beings	Response Policy Legislation Law Resource Capacity

Table 2: Determinants

	Determinant	Description
	Political Will	Political will is a determinant of anti-trafficking efforts as it is integral to every stage of the policy- and legislative-formation processes, from initial recognition and prioritisation of the problem, to implementation, resourcing, monitoring and evaluation. However, political will is also a sum outcome of the determinants addressed in the rest of the review. Therefore, as a determinant, political will is necessary to directly trigger change, but it cannot be divorced from the wider determinants through which it is shaped and mobilised.
<i>International Standards</i>	International Law	<p>International and regional legal frameworks are critically important in shaping anti-trafficking efforts. International law sets particular standards which States Parties are obligated to translate into their domestic legislation and enforce internally.</p> <p>However, beyond initial ratification and national adoption of international instruments, the extent to which international law itself influences and determines governments’ anti-trafficking efforts is questioned. The factors which influence compliance and domestic implementation are complex and diverse.</p>
	Case Law	Case law from domestic and regional courts can be a decisive factor in influencing national anti-trafficking (legislative) responses. Court decisions are important in clarifying legal questions and reinforcing legal obligations.
	External Monitoring	<p>External monitoring mechanisms can influence change not only through making recommendations to countries of concern, but also through the implications such assessments have for a State’s international reputation.</p> <p>There are a range of mechanisms which assess and monitor national anti-trafficking efforts. They operate in different regions, have different scopes and varying mandates. These include international monitoring bodies and the US State Department’s Trafficking in Persons (TIP) Report.</p> <p>The influence of external monitoring is dependent on a State’s receptiveness, which is often dependent on the State’s economic conditions, concern for international reputation and capacity to implement the recommendations.</p>
	International Sanctions and Threat of Sanctions	The imposition and/or threat of international sanctions act as external points of pressure that can directly trigger a change in anti-trafficking measures. However, their influence is often insufficient in causing change that is sustained and implemented in the long-term.

<b>Structural Conditions</b>	Governance and Politics	<p>The internal governance and political situation of a country, including the regime type and adherence to the rule of law, political contexts, levels of corruption and national governance structures, shape national compliance with international law, the government’s framing of human trafficking and its ability or willingness to implement anti-trafficking efforts.</p> <p>This determinant includes the level of corruption and perceived corruption, as well as the gender representation with particular governmental structures.</p>
	Economic Conditions	<p>The economic conditions of a State indirectly shape its anti-trafficking efforts; without economic resources, a State has limited power to improve, enforce, monitor and evaluate its anti-human trafficking law and policy.</p>
<b>Civil Society</b>	Civil Society Organisations	<p>Civil society organisations firstly provide services to trafficked persons, and secondly advocate for change in national policies and legislation. Civil society organisations include NGOs, trade unions, survivor groups and faith-based organisations.</p> <p>Their influence is interconnected with their data and research, funding and framing. It is also dependent on a particular State’s political situation.</p>
<b>Funding and Resources</b>	Funding and Resources	<p>External funding and internal resource allocation are integral to improving the capacity to initiate, implement and monitor anti-trafficking efforts. Equally, insufficient funding, budget and resourcing is a central obstacle. More broadly, the objectives and conditions of a donor may shape the recipient’s anti-trafficking efforts.</p> <p>This is inter-connected with economic conditions of a particular State.</p>
<b>Understanding Trafficking</b>	Data and Research	<p>Data and research are integral in understanding the scale and nature of trafficking, and thus to acknowledging the phenomenon and formulating effective policy responses. Robust data collection can be influential, new data may trigger policy change, whilst the lack of reliable data can obstruct policy responses.</p>
	Media Framing	<p>The framing of trafficking determines whether and the extent to which combating trafficking is prioritised, what aspects of trafficking are focused on, how the responses are designed and how they are implemented. The media and public opinion play a significant role in shaping how trafficking is framed, and thus influencing responses.</p>
	Media Exposure	<p>The media can directly pressure change through reporting and exposing specific cases. In particular, investigative journalism can be influential as it increases public awareness, tarnishes reputations and fuels international pressure.</p>

<b>Events and Crises</b>	Conflicts and Natural Disasters	Whilst conflicts and natural disasters increase the prevalence of and vulnerability to trafficking, State emergency responses rarely include anti-trafficking efforts. Conflicts and natural disasters can cause a collapse of State institutions and deterioration of existing anti-trafficking processes.
	Sporting Events	<p>International sporting events do not necessarily trigger change alone, but they may increase awareness and throw a spotlight on human trafficking in a particular country. Interacting with public opinion and international pressure, sporting events may trigger government action.</p> <p>Sporting events may also increase the prevalence of trafficking, thus triggering a need for governments to respond. Whether they respond in a sustained and long-term manner, or in a manner that is responsive to evidence-based information, is another matter.</p>



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