

Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies.

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According to the 'push and pull' factors of human trafficking, traffickers and recruiters take advantage of the legal vacuum and of socio-economic problems present in post-conflict areas. Unemployment, poverty, lack of education, gender discrimination and family violence are conditions that turn recruitment into an easy task — especially when future victims are often recruited under false pretences and with false promises. Once recruited, these human beings are most frequently turned into traffickers' commodities and end up as victims of forced labour and sexual exploitation. Besides primary victimization, practice shows that when 'caught' by law enforcement officers these human beings, are often identified as illegal migrants and neither recognized nor protected as victims. This paper intends to show the importance of proper help and protection for trafficked victims. 'Best practices' such as reflection delay, the permit to stay in the country, psychological and social assistance both before and after repatriation to the country of origin, may help to empower victims and to convince them to contribute to the criminal justice system. Trafficked victims who are sufficiently supported and protected are more likely to report the crime and to contribute to investigations by identifying and testifying against the offenders. If trafficked victims are not recognized as such, criminal justice systems lose important evidence and are unable to enforce criminal law against traffickers. Moreover, the promotion of victims' needs is essential for the promotion of human security, which should also be a target of the counter-trafficking policies.

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I. Introduction

The core of the concept of human trafficking is “*exploitation of people against their free will*”². Although different definitions and varieties on this concept exist in academic and legal discourse, it is the definition put forward in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children that is most widely adopted and discussed. According to this definition trafficking of human beings includes different actions such as to “*recruit, transport, transfer, harbour or receive by means of threat or force or other forms of coercion, within the purpose of exploitation.*”³

Trafficking, as an international phenomenon, has many causes however three interdependent factors must be named: (1) the differences in wealth between different countries and regions in the world, (2) the strict immigration policies of the more wealthy countries and (3) the relatively ineffective law enforcement. Demand for sexual services and a variety of push factors in the countries of origin are stimuli for potential migrants to leave their home country.⁴ Cross-checking the trafficking routes against the GDP indices of the countries included in these routes, it becomes apparent that the countries of origin are mostly the ones with the lowest indexes for GDP per capita (developing countries and post-conflict societies)⁵ and that the countries of destination are more likely to be the ones with higher GDPs per capita (developed countries).⁶ This reinforces the conclusion that traffickers and recruiters take advantage of the socio-economic problems in the poorer countries and the differences with the more developed countries. In addition, it is also feeds the thesis that the legal vacuum present in developing countries or in post-conflict areas serves the recruitment of victims. High rates of unemployment, poverty, lack of education, gender discrimination and family violence,

² Dijck, Maarten van, *Trafficking in Human Beings: a Literature Survey. Report to the 6th Framework Programme of the European Commission*, June 2005, at p. 11.

³ United Nations (UN), *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime*, Art. 3 (a).

⁴ Dijck, Maarten van, *Trafficking in Human Beings: a Literature Survey. Report to the 6th Framework Programme of the European Commission*, at p. 11.

⁵ United Nations Office on Drugs and Crime (UNODC), *Trafficking in Persons: Global Patterns*, 2006. This correlation was confirmed by Jan van Dijk during his keynote lecture at the XII International Symposium of the World Society of Victimology. For more on trafficking routes, see: Dijck, Maarten van, *Trafficking in human beings: a literature survey. Report to the 6th Framework Programme of the European Commission*, June 2005, at pp. 38-46. For more on the profile of countries of origin and destination, see: Kangaspunta, Kristiina, *Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings*, in: Forum on Crime and Society (Volume 1, Numbers 1 and 2), UNODC, Vienna, December 2003, pp. 81-103, at pp. 90-94.

⁶ Kangaspunta, Kristiina, *Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings*, at pp. 90, 96.

as well as expectations of employment, improvement in social status and access to Western goods⁷ are some of the issues that turn recruitment into an easy task.

Themes commonly addressed with regard to human trafficking are push and pull factors, forms of trafficking, forms of recruitment, modus operandi, social background and personal characteristics of victims of trafficking, patterns of cooperation between traffickers, role of the government in terms of policies (not necessarily practice) and law enforcement.

In terms of statistics, studies mostly cover country overviews, migration figures and estimates on the number of people involved in the sexual service. The mix of smuggling and trafficking data,⁸ lack of common definitions and methods to collect statistics⁹ and the great number of cases that go unnoticed¹⁰ turns the quantitative measurement of trafficking in a difficult task. Besides that, statistics on trafficking are not only often difficult to access, but similarly to what had happened with statistics on partner violence until the 1970s-80s, they are almost impossible to be measured because victims are not recognized as such and, therefore, often feel not enough empowered to report offenders. Without victims reporting, it is rather impossible to have reliable statistics which properly reflect reality. Statistics based on law enforcement or other official data merely portrait the cases which came to the attention of the police or of the aid institutions. These are the reasons why we prefer not to refer to trafficking statistics in this paper.

According to the literature reviewed, studies which focus on the support or protection of trafficked victims are exceptional. The main sources of information on this topic are reports of international organizations, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs), and their experience in practice. Certainly, assistance and protection is important for victims of any type of crime but considering that trafficked victims are even more vulnerable, their support and protection becomes essential, if not vital. Trafficked persons are victims – and witnesses – considered as the best source of information for police investigation. Without their col-

⁷ Maljevic, Almir, *Trafficking in women in Bosnia and Herzegovina*, in: Duyne, Petrus C. van, Klaus von Lampe, Maarten van Dijck and James L. Newell (eds.), *The Organized Crime Economy: Managing Crime Markets in Europe*, Wolf Legal Publishers, Nijmegen, 2005, pp. 277-290, at p. 287; Klopcic, Alja, *Trafficking in Human Beings in Transition and Post-Conflict Countries*, in: Human Security Perspectives Journal (Volume 1, Issue 1) European Training and Research Centre for Human Rights and Democracy, Graz, 2004, pp. 7-12, at p. 8.

⁸ Goodey, Jo, *Migration, crime and victimhood: responses to sex trafficking in the EU*, in: Punishment & Society (Volume 5, Number 4), Sage Publications, Thousand Oaks, 2003, pp. 415-431, at p. 420.

⁹ Dijck, Maarten van, *Trafficking in Human Beings: a Literature Survey. Report to the 6th Framework Programme of the European Commission*, at p. 12.

¹⁰ Friesendorf, Cornelius, *Pathologies of Security Governance: Efforts against Human Trafficking in Europe*, in: Security Dialogue (Volume 38, Number 3), Sage Publications, Thousand Oaks, 2007, pp. 379-402, at p. 381.

laboration, evidence is often difficult to access and the application of domestic criminal laws against traffickers, read prosecution and punishment, becomes impossible.

Even of more relevance than the outcomes of the criminal lawsuits or the 'success' of the criminal justice system is the protection of the fundamental rights of these persons, which shall be observed independently from their collaboration with law enforcement agencies. Unfortunately practice shows that victims are more or less worth protection or support depending on their contribution to the criminal justice system and importance to the criminal lawsuit than as a result of their human condition. Whereas the need for victim's testimonies in criminal procedure is welcomed as a catalyst for developments towards better arrangements for the victims, the underlying motive should not be in the desire to make law enforcement more effective, but in the protection of human rights and in particular the dignity of the victims as human beings. In other words, victim empowerment is not merely to be recognized as a means towards better law enforcement, but as an end by itself. In addition, how victims are treated by the authorities may add to or subtract from the trauma of victimization.¹¹ Bearing this in mind, victim-centred law enforcement policies are needed particularly in the case of trafficking.

The current paper intends to show the importance of the assistance and the protection of trafficked victims. In the first item, to provide a background to the reader, we will present the origin of victim support's policies linking such a movement to the role of the victim in crime reporting and police statistics. Following, we will consider the aspects of the support and the protection of trafficked victims who have special needs and face different difficulties than other crime victims. In this concern, necessary provisions and practices for the well being of trafficked victims will be highlighted. Further, and based on the literature reviewed, we will demonstrate that trafficked victims who are supported and protected are more likely to report the crime and to contribute to the investigation. As a consequence, these criminal lawsuits are more likely to become successful, meaning that traffickers are identified and trafficking networks are dismantled. At the end we will highlight the importance of the victim as a human being independently of his or her contribution to the criminal justice system and the need for a victim-centred anti-trafficking policy in which the human rights related interests are brought in balance with the interests of effective prosecution (and participation of the victim therein) of human traffickers as part of a broader approach oriented on the prevention of human trafficking.

¹¹ For more on secondary victimization see Resick, Patricia A., *Victims of sexual assault*, in: Lurigio, Arthur J., Wesley S. Skogan and Robert C. Davis (eds.), *Victims of Crime. Problems, Policies and Programs*, Sage Publications, Thousand Oaks, 1990, pp. 69-86; Tondonato, Pamela, and Edna Erez, *Crime punishment and victim distress*, in: *International Review of Victimology* (Volume 3, Numbers 1, 2), World Society of Victimology, 1994, pp. 33-55; Wemmers, Jo-Anne, *Victim notification and public support for the criminal justice system*, in: *International Review of Victimology* (Volume 6, Number 3), World Society of Victimology, 1999, pp. 167-178.

II. The Origin of Victim Support's Policies and Programs

Originally, the criminal justice system was established in order to maintain social control and control crime, sanctioning those who violate the criminal laws of a state and re-establishing order. The crime is therefore seen as an offence to the social order and to the legal system of a state. This is to say, although criminal conflicts involve persons, they are depersonalized the moment they are introduced into the criminal justice system.

With the victims' movement, this vision started to change. After the Second World War, the role of the victim in the criminal conflict became an object of interest of academics.¹² But it was only in the sixties that the importance of providing protection to crime victims was highlighted. Among other reasons, such demand was encouraged by the alienation of the victim from the criminal justice system, revealed by the Crime Victims Surveys.¹³ Crime rates registered by the police were significantly lower than the victimization rates registered by such surveys. Victims did not prefer to come to the attention of law enforcement authorities because they felt that they had little to gain from reporting, they feared reprisals from the criminal and the authorities would not offer them protection (Shapland, Duff & Willmore, 1985; Waller, 1990).

¹² von Henting, Hans, *The criminal and his victim*, Yale University Press, New Haven, 1948; Mendelsohn, B., *Une nouvelle branche de la science bio-psycho-sociale: victimologie*, in: *Revue Internationale de Criminologie et de Police Technique* (Volume X, Number 2) Geneva, 1956, pp. 95-109; Wolfgang, Marvin E., *Patterns in criminal homicide*, University of Pennsylvania Press, Philadelphia, 1958.

¹³ The Crime Victims Surveys (ICVS) were introduced in the United States in the 1960s in order to measure the prevalence of criminal events which went unreported. As the name explains, it aims to identify the number of people who were victimized in a certain period (usually the last five years) and which kind of offenses they had been through. In 1973 the US government decided to run victim surveys every year and those became a permanent source of statistics, together with the Federal Bureau of Investigation statistics. Worldwide, the method was recognized as appropriate to measure crime or "count victims." Thus, with the support of the United Nations Office on Drugs and Crime (UNODC) and the United Nations Interregional Crime and Justice Research (UNICRI) organizations around the world began to conduct ICVS in cooperation. Concerning the interviews, in some countries participating in the ICVS the technique for selection of participants is the Computer Assisted Telephone Interviewing (CATI) through which home telephone numbers are selected and households are interviewed. In other countries, although more costly, interviews are conducted face-to-face. For statistics on trafficking it is not an appropriate tool for counting victims and therefore victims of trafficking because those are frequently sent back to their home towns which are developing countries or post-conflict societies where Victimization Surveys are rarely held. In fact, only some developing countries of origin of trafficked victims, such as Argentina, Brazil, Bulgaria and Cambodia were involved in the last ICVS. Moreover, when trafficked victims are authorized to stay in the country of destination it is only for a short period of time in order to provide sufficient information as victims-witnesses, besides the protective measures which might prevent them to talk about the victimization to any person except law enforcement authorities and victim's support workers dealing with the case. For more on Crime Victims Surveys see Killias, Martin, *Précis de Criminologie*, 2^{ème} édition, Stämpfli Editions SA, Berne, 2001, at pp. 64-81. For the latest results of the ICVS, see Dijk, Jan van, Jon van Kesteren and Paul Smit, *Criminal Victimization in International Perspective*, Boom Juridische uitgevers, The Hague, 2007. Available online at: http://www.unicri.it/wwd/analysis/icvs/pdf_files/ICVS2004_05report.pdf. All websites used in this essay were last checked on 29 February 2008.

Gradually victim support programs started to appear. Between 1965 and 1975 — the first wave of the victims' movement —¹⁴ special services for categories of victims such as battered children and survivors of concentration camps were established. In addition to victim support programs, in New Zealand and England, authorities concerned with the financial hardship that victims encounter after the crime as a result of insufficient social security, created the first compensation programs.¹⁵

In the early seventies, particularly in the United States, victim-witness assistance programs were established to support and encourage victims to report the crime and to collaborate with the investigation.¹⁶ While the government was more focused on victims of ordinary crimes, such as burglary, robbery and theft committed by strangers, feminist movements were mainly responsible for the creation of shelters for battered women and victims of sexual assault — inaugurating the second wave of the victims' movement.¹⁷ Meanwhile, in civil society, mostly law and order, civil rights and grass-root groups began to draw public attention to the severe psychological, physical and financial damages that crime could inflict on victims. In addition these same groups began to highlight some of the victims' needs which were being neglected by the criminal justice system and the government in general.¹⁸

Bearing in mind all these different manifestations of pro-victim action, it became clear that civil society was still eager for more. Punishing the offender and re-establishing order was no longer sufficient. The state should give attention to the needs of the victim which were being neglected, particularly to finding a solution for the psychological, financial and physical consequences of a crime. As a result, in the eighties the institutionalization of victims' support and the call for justice inaugurated the third wave of the victims' movement.¹⁹ Most of the victim counselling centres affiliated themselves with pre-existing governmental institutions or started to receive funding from governments. Meanwhile, international and intergovernmental organizations encouraged their Member States to introduce Victim Support Acts, in order to provide to crime victims adequate treatment in the criminal justice system. This is to say, governments were clearly more concerned and were rethinking the services that they could offer in order to empower crimes victims and to enhance their recovery, concurrently with controlling crime.

¹⁴ Dijk, Jan van, *Ideological trends within the victims movement: an international perspective*, in: Maguire, Mike and John Pointing (eds.), *Victims of crime: a new deal?*, Open University Press, Philadelphia, 1988, pp. 115-126.

¹⁵ Dijk, Jan van, *Ideological trends within the victims movement: an international perspective*; Maguire, Mike, *The Needs and Rights of Victims of Crime*, in: *Crime and Justice: An Annual Review of Research* (Number 14), The University of Chicago Press, Chicago, 1991, pp. 363-433.

¹⁶ Maguire, Mike, *The Needs and Rights of Victims of Crime*.

¹⁷ Dijk, Jan van, *Ideological trends within the victims movement: an international perspective*.

¹⁸ Maguire, Mike, *The Needs and Rights of Victims of Crime*.

¹⁹ Dijk, Jan van, *Ideological trends within the victims movement: an international perspective*.

It was the General Assembly of the United Nations (UN) which adopted the first international instrument recommending that victim's rights be recognized by governments: the Resolution n° 40/34, of 29 November 1985, namely UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.²⁰

In Europe, the real thrust of the victim's movement occurred in the 1980s. It was mainly encouraged by intergovernmental documents such as the Council of Europe Committee of Ministers Recommendations N° R (1985) 11 on the position of the victim within the framework of criminal law and procedure; N° R (1987) 21 on assistance to victims and the prevention of victimization; and N. R (77) 27 on Compensation of Victims of Crime, as well as the European Convention on the compensation of victims of violent crimes.²¹

Although not legal binding, certainly these international and regional instruments contributed to the empowerment of the victim in domestic legislation throughout the world and so far several developments favouring crime victims have occurred. For example, following those recommendations most of the countries in the European Union and Switzerland introduced in their criminal justice systems Acts on victims' rights concerning the improvement of the victims' treatment in the criminal justice system as well as the establishment of victims support centres.²²

Bearing that in mind, even though not mentioned by the reviewed literature on human trafficking, the concern with crime victims is not of recent date. Nor is the disregard that victims experience in dealing with criminal justice agencies. The disregard for crime victims, in a more general sense and independent from the type of offence, has its origin in the criminal justice system itself since it was established in order to control crime, but not necessarily to support crime victims. As soon as the crime comes to the attention of law enforcement authorities, the victim loses the ownership of²³ and the control over the case. Conflicts are taken away from the original partners and the criminal conflict becomes a symbolic and bilateral formal conflict between the state and the criminal. Al-

²⁰ United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 1985. Available online at: <http://www.un.org/documents/ga/res/40/a40r034.htm>

²¹ Available online at http://www.coe.int/t/cm/Home_en.asp.

²² In the great majority of countries in Europe, victims' programs are government-run services. For example in France, the services were initiated by the government and now are provided by non-state agencies, although they still receive state support. In Germany, the largest agency is a voluntary organization. In Switzerland the services are run by non-state agencies with financial support of the state. For a review of victim support services and rights in the most of the European countries, see Brienen, M. E. I. and E. H. Hoegen, *Victims of Crime in 22 European Criminal Justice Systems*, Wolf Legal Productions, The Netherlands, 2000.

²³ Christie, Nils, *Conflict as property*, in: *The British Journal of Criminology* (Volume 17, Number 1), Oxford University Press, 1977, pp. 1-15; Hulsman, Louk and Jacqueline Bernat Célis, *Penas perdidas – o sistema penal em questão*, 2. ed. (Translated by Maria Lúcia Karam), Luam, Rio de Janeiro, 1997.

though this is something that has changed in most of the Western judicial systems lately, most provisions in criminal procedural codes deal with the role of the defendant and his/her fundamental rights. Relatively few provisions are dedicated to the role and to the rights of the victims.

The portrait is not different for trafficked victims, who likewise other crime victims, go through several inconveniences in the criminal justice system. More than that, as a result of their special needs, trafficked victims are more vulnerable. Particularly, the crime of trafficking has major impacts on the mental health of victims. The continuous aspect of the crime — i.e. trafficking victims stay in the ‘hands’ of the offender for a long period who has plenty of opportunities for intimidation — provokes in the victims fear of reprisals and for the safety of their families in case of reporting the crime to the police. In addition, the possibility to be sent back to the same environment from which they decided to leave, and without money, decreases the likelihood of trafficking victims to talk to the police.

Without adequate support, it is almost impossible that trafficked victims would come to the attention of law enforcement authorities and contribute to the criminal proceedings.

III. Necessary Provisions (and Practices) for the Support of Trafficked Victims and for the Success of the Criminal Justice System against Traffickers

Support is therefore important not only to enhance victim’s recovery but also to increase the likelihood of trafficked victims to report crimes and contribute to the criminal lawsuit. Bearing this in mind, Victims Support Centres were established as a claim of the victims’ movement. Such services have the aim to offer the victim certain basic needs which emerge with the crime, such as medical care, psychological and social assistance and financial aid. In addition, they have the task to inform the victim about his/her rights, offer legal advice and sometimes represent the victim in the criminal and civil lawsuit.

Besides these kinds of support, trafficked victims require specific protective and urgent measures that should be taken into account by service providers and law enforcement authorities. These are recovery and reflection delay, residence permit and protection. These measures are laid down by the Council of Europe Convention on Action Against Trafficking in Human Beings and they cover the so called three P’s of a counter-trafficking policy: prevention, protection and prosecution.²⁴

²⁴ These are the three pillar of the counter-trafficking policy of the European Commission: prevention of human trafficking, the protection of victims and the effective prosecution of traffickers.

The reflection delay allows persons who were trafficked to remain legally in the country whilst they recover from their situation and consider their options. During this time they have access to shelter, legal advice, counselling and medical care. It is a period that enables the victim to recover from the trauma and to reflect on whether to contribute with criminal justice, to pursue a civil action against the trafficker, or to return to her or his country of origin.

One of the objectives of counselling during this period is to introduce to the victim his/her options and rights and to empower the victim through counselling and psychological support. Moreover, sharing experiences with other trafficked victims is proved to help in the victims' healing process and to contribute to victims' empowerment. These are necessary tools for a victim to make an informed decision whether he/she wants to contribute to the investigation and testify against the trafficker. Besides, if psychological needs are neglected it becomes more difficult for trafficked victims to contribute to criminal proceedings because they do not remember everything at once, lack trust against others and experience confusion and inconsistency in their discourses as a consequence of the trauma.²⁵

As an example of practice, in Belgium and The Netherlands, victims who are granted the reflection delay were more likely to press charges against their traffickers. However law enforcement officials seem unwilling to inform possible victims about their right to a reflection delay, because they fear it will prolong the investigations or they simply do not recognize those people as trafficked victims. As a result, most of the victims prefer to return to their countries of origin as opposed to immediate —and, to them, premature— participation in criminal proceedings.²⁶

Trafficked victims may also be granted a **residence permit for temporary stay** under the condition that they will contribute to the criminal proceedings. Countries such as Belgium, the Netherlands, Poland and United Kingdom allow those victims who are willing to assist with investigations and prosecutions the right to temporary stay.²⁷ In extreme cases, this right is even extended to his/her family which is allowed to travel and join the victim in the country of destination.

However, practice shows that this measure is only taken in extreme cases: for example, in Germany, because victims violated the Aliens Law, deportation measures were com-

²⁵ Cathy Zimmerman, Researcher from the London School of Hygiene and Tropical Medicine during the High-Level Conference of the Alliance against Trafficking in Persons, Vienna, 17 March 2006.

²⁶ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection (research report)*, 2002, at p. 42. Available online at: <http://www.antislavery.org/homepage/resources/humantraffic/Hum%20Traff%20Hum%20Rights.%20red%20vic%20protec%20final%20full.pdf>.

²⁷ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 3.

menced against 55% of them; only 13% were given temporary residence permits and 5% appeared as witnesses in court proceedings.²⁸

Moreover, the residence permit is limited to the length of investigations or judicial proceedings.²⁹ In this regard, victims may face increased risk of reprisals (or at least think so) if, after the proceedings, they return to the home country. This has a negative influence on the decision by victims to testify.

Another measure which favours trafficking victims is granting **permanent residence**. Once again, practice shows that victims are only allowed to stay, thus protected, while their collaboration is of relevance. In case victims are granted permission to stay it is temporary or in the interest of the justice which needs the victim as a witness. This shows that victims are mere tools of the investigation and prosecution of the traffickers, and in case they are not anymore useful to the criminal justice system of a country, they are sent back to their countries of origin, even under the risk of reprisals.

The last but not the least important measure for trafficked victims is protection which is even more important in case of repatriation of the victim. It is known that the risk of reprisal is higher in the countries of origin³⁰ and victims may not be willing to report or contribute to the investigations since protection will only be available during their temporary stay in the foreign country. Moreover, often protection means repression of victims' rights. According to personal professional experience, in most of the protection programs victims have to change their life styles in order to avoid exposition to risk and are not allowed to communicate with their friends or family, in case they do not move together, meaning that victims seem to be the ones who are being somehow punished.

In sum, studies suggest that although legislation was amended, practice does not necessarily consider the needs of the trafficked victims. This is to say, among the three P's, prosecution has taken all the attention whereas prevention and protection are of secondary importance or even neglected. For example, in destination countries, provision of state-funded services for trafficked persons was generally dependant on their having already been formally identified as trafficked. To be formally identified, it requires a bureaucratic process that can take some time and delays the provision of support.³¹ Meanwhile, the victim's basic needs such as housing, counselling, legal advice are neglected, as well as other special needs such as recovery or reflection period, non punishment provisions and protection.

²⁸ Herz, Annette Louise, *Trafficking in Human Beings. An Empirical Study in Criminal Prosecution in Germany*, Research in Brief, Max Planck Institute for Foreign and International Criminal Law, Freiburg, 2006, at p. 18-19.

²⁹ United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, UNODC, New York, 2006, at p. 120.

³⁰ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*.

³¹ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*.

IV. Law Enforcement and the Collaboration of Trafficked Victims

It is of common sense in the literature that victims' participation in criminal justice is essential for crime reporting and the success of prosecution.³² The conviction of criminals for human trafficking often depends on the number and of reliable victim testimonies. "*Many data stem from victims accounts, obtained during police investigations (testimonies, informal talks, trafficking intelligence), obtained by organizations such as those which provide shelter or obtained by researcher and journalist conducting interviews with (former) victims.*"³³

Research shows that some countries which fared better in prosecuting and convicting traffickers from various crimes were the ones (e.g. Belgium, Italy, the Netherlands, United States,³⁴ Germany³⁵) which also had the most comprehensive measures for assisting victims, including temporary residency permits for those prepared to testify against their traffickers. For example, in Germany, of victims who were taken care of by specialized relief organizations, the frequency of convictions for charges of trafficking proved to be higher.³⁶

Because of poor implementation of counter-trafficking protection measures very few victims have been willing to collaborate with the criminal justice system and testify against traffickers. "*In far too many cases, victims are not only exploited by their traffickers, they are then subsequently discriminated against and disenfranchised by the civil and criminal justice systems that are supposed to exist to help them as vulnerable victims of crime*".³⁷ Also in the case of Germany, victims often refuse to make statements as they are afraid to be deported for illegal prostitution.³⁸ As a consequence, "*public prosecutor regularly stopped trafficking proceedings on the grounds that the*

³² Waller, Irvin, *The police: First in Aid?* in: Lurigio, Arthur J., Wesley S. Skogan and Robert C. Davis (eds.), *Victims of Crime: Problems, Policies and Programs*, Sage Criminal Justice System Annuals (Number 25), Sage Publications, USA, pp. 138-155; Killias, Martin and Thierry Berrueux, *La Dénonciation a la Police: Une Décision qui n'est pas Laissée au Hasard*, in: *Crimiscope* (Number 3), Université de Lausanne, Lausanne, 1999.

³³ Dijck, Maarten van, *Trafficking in Human Beings: a Literature Survey. Report to the 6th Framework Programme of the European Commission*, at pp. 19, 25; International Organization for Migration, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, 2007, at p. 274.

³⁴ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 2.

³⁵ Herz, Annette Louise, *Trafficking in Human Beings. An Empirical Study in Criminal Prosecution in Germany*, at p. 21

³⁶ Herz, Annette Louise, *Trafficking in Human Beings. An Empirical Study in Criminal Prosecution in Germany*, at p. 21.

³⁷ International Organization for Migration, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, at p. 277.

³⁸ Herz, Annette Louise, *Trafficking in Human Beings. An Empirical Study in Criminal Prosecution in Germany*, at p. 18-19.

victim was not ready to testify, the testimony was not credible, the victim's testimony was insufficient evidence."³⁹

Following, we will highlight some of the victims' reasons for not trusting in the authorities.

A. Victims' Identification by the Police

First of all, trafficked persons "*are rarely treated or identified as victims of crime.*"⁴⁰ Usually, they are classified as illegal migrants, read criminals, because of their irregular residence or employment status, or in view of the fact of being sex workers. Thus police who is neither sensitive nor trained enough to realize that those are victims of trafficking, put them in detention centres. It is the migration-crime-security continuum in which "*migrants themselves become criminalized and their experiences of victimization are overlooked.*"⁴¹ For example, in the Netherlands, law enforcement officials have guidelines concerning the information that they should give to alleged trafficked persons about their rights. In practice, these guidelines are not or not always followed because law enforcement officials do not recognize such persons as possible victims, but as undocumented migrants.⁴² This increases the fear to report: from the private properties, rooms or brothels of traffickers to the raids of police stations. Unfortunately, misidentifications based on the subjectivity, sometimes discrimination, of law enforcement officers leads to the mistrust of the victim in the criminal justice system.

After detention, some are deported to their home countries⁴³, named to be 'the cheapest choice' for governments.

Increasingly, governments have responded to trafficking through restrictive immigration policies. These not only render migrants more vulnerable to traffickers but often lead to trafficked persons being swiftly returned to their home countries as undocumented migrants, returned to the very same conditions from which they left, rather than being identified as victims of crime.⁴⁴

³⁹ Herz, Annette Louise, *Trafficking in Human Beings. An Empirical Study in Criminal Prosecution in Germany*, at p. 17-18.

⁴⁰ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 33.

⁴¹ Goodey, Jo, *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, at p. 416.

⁴² Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 40.

⁴³ Klopčič, Alja, *Trafficking in Human Beings in Transition and Post-Conflict Countries*, at p. 10.

⁴⁴ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 2.

“*Out of sight, out of mind*”⁴⁵. The fear of deportation leads to other reasons for not reporting: some trafficked victims do not want to turn back to their countries of origin because they fear reprisals⁴⁶, they are ashamed of the family⁴⁷, they fear stigmatization⁴⁸, apart from all the other push factors such as unemployment and poverty that had already influenced them to live their country.

B. Grating the Victim Status

Second, if they are ‘lucky’, they are recognized as trafficking victims but for them to be granted the status of victim, there are other conditions which shall be fulfilled. Victims must be ‘reliable’. However, people involved in human trafficking are part of a group which is not very commonly addressed as ‘reliable’ by law enforcement authorities. They are usually illegal migrants and criminalized by default because of their illegal status, they are over-represented in police statistics.⁴⁹ Their statements are frequently subject of doubt. They simply do not fit to the expected profile or the usual image of a ‘victim’; they are not even close to the label of ‘innocent victim’; in fact they fit more to the label of ‘voluntary victim’.⁵⁰ The literature on human trafficking is rich of stories of women who joined trafficking knowing that they would work as sex workers. These women were recruited and accepted the condition of becoming sex workers in another country in order to ‘make some money’ and to start a ‘new life’ in a developed country, making an informed choice in this regard. However, they were not aware (and would have never learned in advance) that they were engaging in sexual exploitation. This is to say, they volunteered to work although this might be interpreted as contribution to the criminal act.

⁴⁵ Sembacher, Anke, *The Council of Europe Convention on Action Against Trafficking in Human Beings*, in: Tulane Journal of International and Comparative Law (Volume 14, Issue 2), Tulane University Law School, New Orleans, Spring 2006, pp. 435-454, at p. 443.

⁴⁶ Goodey, Jo, *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, at p. 424. For victims’ statements on this topic, see Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*.

⁴⁷ UNODC, *Toolkit to combat trafficking in persons*, at p. 132.

⁴⁸ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*.

⁴⁹ Goodey, Jo, *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, at p. 418.

⁵⁰ For more on this issue see Mendelsohn’s Typology of Criminal Victims, according to which victims may be classified in completely innocent, victim with minor guilt, voluntary victim, victim guiltier than the offender, victim who alone is guilty, and the imaginary victim (Mendelsohn, B. *Une nouvelle branche de la science bio-psycho-sociale: victimologie*, in: *Revue Internationale de Criminologie et de Police Technique* (Volume X, Number 2), Geneva, 1956, pp. 95-109; Wolfgang, M., *Patterns in criminal homicide*, University of Pennsylvania Press, Philadelphia, 1958). Another suggested bibliography would be Audet, J. & J. – F. Katz, *Précis de victimologie générale*, DUNOD, Paris, 1999. For the record, the author does not agree with this typology and its moralistic overtones. Besides being discriminative, it may cause secondary victimization.

Besides their consent, which is not relevant for the characterization of a person as victim of trafficking⁵¹, they are at first sight labelled as prostitutes⁵². Therefore and depending on the criminal code of the country where they were caught, they receive an extra label of criminals due to law laying down the act of prostitution as unlawful. The fact that these are 'victims' before being 'criminals' is not even perceived by law enforcement officers for the simply reason that those women are neither 'naïve' nor 'reliable'. Thus personal characteristics dictate whether a trafficked victim will be entitled to receive or not aid, protection and access to justice. It is not what he/she had been through that is more important, but what he/she is.

C. Secondary Victimization in Court

If granted the victim's status and decided to collaborate with the criminal justice system, the trafficked person will face another battle: the possibility of secondary victimization or trauma in court room. Trafficked victims are seen as potential witnesses for the prosecution thus tools for the law enforcement. They are pressed to give their testimonies, they are obliged to testify in the presence of the defendant, they have to repeat their history several times in detail, they may be asked intimidating questions, they are discredited by defence lawyers and anonymity is not guaranteed.⁵³

V. In Other Words, a Victim-Centred Anti-Trafficking Policy Would Be a Better Alternative...

Jo Goodey suggests "a victim-centred criminal justice intervention that marries the desired goals of policing and punishment of traffickers with the needs and rights of trafficking victims". We would rather be modest and suggest a victim-centred counter-trafficking policy. The victims' movement has aimed for a victim-centred criminal justice's intervention for a long time. However, this aim was never reached and may never be reached. Because originally, the criminal justice system was established in order to maintain social control and control crime, sanctioning those who violate the criminal laws of a state and re-establishing order, it does not focus on victims' support. The disregard of the victim is therefore inevitable. This means that the criminal justice system

⁵¹ According to Art. 3 (b) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

⁵² The author apologizes for the use of this expression which is not politically correct, but this is how some law enforcement officers refer to sex workers. See Klopčič, Alja, *Trafficking in Human Beings in Transition and Post-Conflict Countries*, at p. 10; Goodey, Jo, *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, at p. 427.

⁵³ For more on secondary victimization in the court rooms, see Herman, Judith Lewis, *Justice From the Victim's Perspective*, in: *Violence Against Women* (Volume 11, Number 5), Sage Publications, 2005, pp. 571-602.

in its actual model is unable to provide the victims with an intervention centred in their needs.

Bearing this in mind, the intervention has to be placed in a broader perspective, one that is larger than the ratio of action of the criminal justice system. An effective way of combating trafficking is to ensure that trafficked persons are provided with support that is to say with the necessary help to recover from trauma and to be empowered to make informed decisions. In this regard, at the first place would be the needs of the human being or of the victim, and at a second stage would be the requirements of law enforcement.

*“Law enforcement agencies cannot fight trafficking effectively by simply moving trafficked persons from one system of control into another – that is, from being controlled by traffickers to being controlled by law enforcement officials”*⁵⁴. Victims have to be empowered and thereof to take back the control over their lives. They have to be freed from all the labels that they had received as a result of the victimization, labels such as illegal migrants, sex workers, victims or witnesses. Freed from those labels, people would recover their status of human beings to whom rights are entitled and would collaborate more effectively with the criminal justice system. We acknowledge that the criminal justice system may distinguish between these different roles. However, we believe that recognizing roles or attributing labels, whether there is a clear distinction of roles or not, do not avoid stereotypes. Indeed, it reinforces. In addition, the recognition of one of the roles – e.g. the role of illegal migrant – may have an impact in the recognition of other roles – e.g. victim – and sometimes even provoke the denial of another role – e.g. reliable witness.

Therefore, Prosecution is necessary however it shall not be the ultimate goal because the cycle of trafficking in human beings can only be disrupted with effective support and protection of the victims involved in trafficking.

The implementation of a human rights based approach in which the status and protection of the victims are at the very centre (e.g. granting of reflection period and temporary residence permit irrespective of the victim’s ability or willingness to testify in criminal proceedings).⁵⁵

In this regard, the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Council of Europe Convention on Action against Trafficking in Human Beings are important documents because they both recommend states to provide special and particular protection and support to victims of human trafficking. However, for their implementation, certain changes in the criminal justice systems should be implemented.

⁵⁴ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection*, at p. 34.

⁵⁵ Helga Konrad, Special Representative on Combating Trafficking in Human Beings, during the High-Level Conference of the Alliance against Trafficking in Persons, Vienna, 17 March 2006.

This means that victims' empowerment depends not only on changing provisions and providing support but also on changing the current criminal justice system to a system which would provide the victims with an intervention centred in their needs.