

FINAL REPORT

# Determinants of Anti-Trafficking Efforts



BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW

## Determinants of Anti-Trafficking Efforts

This report 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:  
[www.biicl.org/projects/determinants-of-anti-trafficking-efforts](http://www.biicl.org/projects/determinants-of-anti-trafficking-efforts)

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## List of Acronyms

AIAMP	Ibero-American Association of Public Ministries
ASEAN	Association of Southeast Asian Nations
CSOs	Civil Society Organisations
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings
ECOWAS	Economic Community of West African States
FSI	Fragile States Index
GLAA	Gangmasters and Labour Abuse Authority (United Kingdom)
GPI	Global Peace Index
GRETA	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
IACAT	Inter-Agency Council Against Trafficking (Philippines)
IAWG	Inter-Agency Working Group (Armenia)
ILO	International Labour Organisation
IOM	International Organisation for Migration
IOs	International Organisations
MITP	Intersectoral Table on Trafficking in Persons
NRM	National Referral Mechanism
OAS	Organisation of American States
OSEC	Online Sexual Exploitation of Children
REDTRAM	Ibero-American Network of Prosecutors Specialized in Trafficking in Persons and Smuggling of Migrants
SDGs	Sustainable Development Goals
TIP Report	US State Department Trafficking in Persons Report
TRNC	Turkish Republic of Northern Cyprus *
UNCTOC	United Nations Convention against Transnational Organised Crime
UNODC	United Nations Office on Drugs and Crime
UNTBs	United Nations Treaty Bodies

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\* The United States does not recognize the TRNC, nor does any other country except Turkey.

# Introduction

This project sought to set out the determinants of anti-trafficking efforts, understood as factors shaping governments' anti-trafficking efforts and influencing compliance with – and implementation of – international standards. It sought to do so through a review of available literature and data, a series of over 50 semi-structured interviews with stakeholders at the international and regional level, a global survey with some 200 responses, and 14 country case studies. This report presents the main findings of the research in the form of analysis of specific determinants: how they are understood, manifest, and interact across the various countries considered in this project. Before that specific analysis, it is however worth considering some of the overarching issues that have been identified, particularly about the way in which determinants are **inter-connected**, **inter-dependent**, and **non-linear**.

The impact of determinants cuts across a range of responses. They may influence whether trafficking is acknowledged as a problem, prioritised as a policy concern, and/or responded to. They influence whether trafficking efforts against specific forms of exploitation are prioritised over others. Determinants will also impact the frame through which trafficking is addressed, the allocation of resources, and the way in which efforts are implemented, monitored, and evaluated. Different determinants are likely to result in different modes of responses, from more formalistic responses (involving the mere adoption of laws and policies) to more substantive, practice-focused approaches (such as those involving the resourcing and training of anti-trafficking stakeholders, including specialised anti-trafficking bodies). One may well lead to the other – the adoption of a formal policy can result in significant practical improvements, assuming that it is accompanied by adequate resources and that the political will for its implementation is sustained.

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 State in question. Examples of internal factors include pressure from local non-governmental organisations and political or economic situations, whilst external factors include international law, influence from monitoring bodies (e.g., Council of Europe's Group of Experts on Action against Trafficking in Human Beings, US State Department Trafficking in Persons Report, etc), and transnational contextual influences (such as migration patterns). Like all categorisations of determinants, however, these distinctions are fluid – notably because of the ways internal and external measures interact. For instance, civil society (usually considered to be internal) will often use opportunities in the international sphere to exert pressure (such as through shadow reporting to human rights treaty bodies) and will in turn use reports by such international bodies to inform and support their own advocacy at the national level.

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, for example, general international law and the

domestic political or economic situation. These are factors that frame anti-trafficking efforts by providing the structure within which developments are considered, adopted, and implemented. Factors categorised as pressure points include the threat of sanctions, civil society campaigning, and the availability of data, which can be used as tools to create pressure. As is clear from this explanation, the same individual factor often fits within multiple typologies.

Determinants can be **positive, neutral, or negative**. A positive determinant pushes in the direction of better anti-trafficking policies, whilst a negative determinant hinders improvements. A positive determinant can be identified through positive impetus in presence or negative impetus in absence: for instance, political will is identified as both pushing for positive developments when present, and as being a hindrance when absent (or when it exists but focusses narrowly on limited anti-trafficking efforts). Issues like corruption for instance are negative determinants, as they tend to hinder developments (or negative developments) through their presence. Some determinants are **active**, actively influencing change and others are **passive**, impacting changes by providing the background for other factors.

Determinants may be trafficking **specific, contextual, or tangential**. Determinants that are linked specifically to anti-trafficking include monitoring bodies established pursuant to anti-trafficking instruments, the signing up to international and regional anti-trafficking legislation and treaties amongst others. Contextual determinants are probably the widest category, and they include all determinants that relate to the broader context of state action, even if some manifestations are trafficking specific. For example, governments may be keen to maintain a positive reputation for their State with the international community – that is contextual, manifesting itself amongst other things in how the State behaves on anti-trafficking matters. One example is the adherence by a State to broader human rights obligations which indirectly benefit anti-trafficking. In some situations, the determinant emerges from other policy fields with the benefit for anti-trafficking being indirect or tangential. This might include, for instance, the ratification of a children’s rights instrument or the ability of individual complaints to be submitted before a human rights treaty body. The nature of trafficking, pervasive across a range of areas and influenced by developments across a broad range of policy spaces, makes it such that determinants of anti-trafficking efforts may, directly or indirectly, be found across many fields.

On a related note, determinants can be thought about as being **direct or indirect**. Direct determinants will have a direct impact on anti-trafficking efforts. A decision by a court requiring the government to revisit the legislation, or indeed advocacy for better protections for trafficked persons, is a direct determinant as it has a direct influence on anti-trafficking efforts. The political will to maintain a good reputation in the international community may still influence anti-trafficking efforts, albeit indirectly. Indirect determinants will sometimes act on their own speed whilst in others they will strengthen, support, or dilute direct determinants.

Determinants are then **context specific**. They change according to the social, cultural, political, and legislative context of the specific country. They change over time and may change depending on the form of trafficking or type of response being discussed. The broader context will also impact the anti-trafficking context. For example, a curtailment of civil society space in a country will impact the role of civil society in the anti-trafficking space. Moreover, different people, based on their own background and experience, will look at the same developments but identify different, conflicting determinants for them or give different weights to different determinants.

Critically, determinants of anti-trafficking efforts **do not stand alone**. Put differently, there is no silver bullet, no single thread to pull if one is seeking to promote (positive) changes in a State's anti-trafficking efforts. Our research clearly highlights how intersectional, inter-connected, and inter-dependant determinants are. For instance, the acknowledgement of trafficking as a concern cuts across political will, data and research, civil society engagement, and events and crises amongst others. It is supported by external monitoring and case-law and framed by international law instruments. It intersects how involved actors see the role of the State, and the relationship with the international community. Acknowledgement then can lead to trafficking being prioritised, whilst migration, gender, and other policies and cultural perspectives will intersect with both the understanding and the prioritisation of trafficking as a policy concern.

Determinants are **personal, institutional, and cultural**. Political will can start from a personal conviction or interest, which coupled by political and other opportunities can ripple into significant influences on anti-trafficking efforts. Civil society, including smaller organisations with a clear focus, can equally inform and influence anti-trafficking developments. Determinants at the institutional level include decisions coming from and received by institutions in the state – including institutions empowered by broader competences to implement those changes. Equally, specialised anti-trafficking institutions, themselves an outcome of other determinants, can help promote further measures and build capacity towards achieving significant anti-trafficking accomplishments.

Anti-trafficking developments are **non-linear**, and neither are the factors that influence them. It is not uncommon for steps forward to be reversed. This is most obvious in situations where a change of administration or indeed a crisis results in changing priorities. However, various determinants are likely to push States in different directions, for instance with some determinants resulting in improvements in a specific type of response (e.g., external monitoring and the trafficking protocol focusing on law enforcement approaches), whilst others push for developments in other responses (for example civil society may push for more protection-focused responses to trafficking).

Some factors may at the same time be determinants of anti-trafficking efforts, **outcomes of other determinants**, and **determinants of other determinants**. For example, political will is clearly a determinant of action. However, it is often an outcome of other factors – including, amongst others, acknowledgement, civil society pressure and international reputation. It is

equally, however, a determinant of other determinants, including, for example, the ratification of international law instruments, and of anti-trafficking efforts directly, for example through the adoption of anti-trafficking law and policy which directly results in action at the national level. Moreover, the relative importance of specific factors (alone or relative to others) is itself a reflection of other determinants.

There are also multiple ways of reading the same determinants. For example, the findings about engagement with external monitoring, the relevance of international instruments, and the findings about funding opportunities being critical to positive change can be read as highlighting the role of 'international cooperation' as a key determinant of anti-trafficking efforts. Different configurations of the analysed determinants will emerge depending on the particular angle taken reflecting the multi-dimensional nature of these factors.

This report is organised along a series of broad determinants analysed based on the findings from the various components of the project. The above discussion should be read across those specific sections and whilst each determinant may attract interest alone, they must be understood within the broader context. Whilst many of the determinants may appear to be self-evident, this is the first research project (to our knowledge) that has moved away from analysis of specific determinants in specific contexts and has taken a broader perspective that cuts across a whole range of determinants and how they fit together. What is clear, is that efforts to enhance anti-trafficking efforts must engage a whole series of levers in concert – a 'smart mix'. We trust that this research will provide anti-trafficking stakeholders with a strong evidence base to inform their work.

# 1 Political Will

Political will is understood as the **sustained commitment** of key state decision-maker(s) to combat human trafficking and to materially improve their anti-trafficking measures in particular through the development, implementation, resourcing, enforcement, and monitoring of legislative, policy and practical processes.<sup>1</sup> Political will has emerged as a **key determinant** in both the literature review and during expert interviews.<sup>2</sup> It has also emerged as a key determinant in the majority of the 14 case studies undertaken in the context of the project. The presence of political will to address human trafficking has been identified generally as a positive determinant (e.g., in **Armenia, Chile, Guyana, and Thailand**), while the absence of political will to combat trafficking has been identified as a negative determinant of anti-trafficking efforts (e.g., **Algeria, Cyprus, and Georgia**). As presence and absence of political will cannot be understood as fixed and dichotomous categories, our case studies have emphasised that the presence or absence of political will, and therefore its positive or negative impact on anti-trafficking efforts depends, *inter alia*, on the historical moment, the political climate, and the area and nature, or the phases, of anti-trafficking action (e.g., **Argentina, Bahamas, Brazil, and Mozambique**). For example, when political will to address human trafficking is lower than political will to address other areas of public policy (most notably 'irregular' migration), positive consequences on some or all anti-trafficking efforts might be limited (e.g., **Philippines, United Kingdom**).

All case studies – as well as our literature review and expert interviews – have highlighted that political will is not only a determinant, but also a **sum outcome of other determinants** including, for example, international pressure, case-law,<sup>3</sup> pressure from civil society organisations (CSOs), and external funding. The findings from expert interviews and case studies have confirmed what the literature review had already grasped, namely that, 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. In **The Bahamas, Bahrain, and Guyana**, for example, it was suggested that international law and external pressure, such as international monitoring, plays a significant role alongside political will in influencing anti-trafficking efforts, with the determinants being interconnected and interdependent. In **Chile**, it was noted that its anti-trafficking law, Law 20.507, was the result of gender representation in policymaking processes intersecting with international pressure, external monitoring, and advocacy from CSOs that triggered the government's political will and the adoption of the legislation. In addition, it was noted that the prioritisation of trafficking as a policy issue was possible due to the partnership created between CSOs and a congresswoman, Saa, who sponsored the new trafficking bill. In **Thailand**, anti-trafficking

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<sup>1</sup> See Jean-Pierre Gauci and Idel Hanley, 'Political will' (BIICL 2022).

<sup>2</sup> Of 196 survey respondents, 39% noted their state as exhibiting 'somewhat strong political will', 9% as exhibiting 'very strong political will', 28% noted 'somewhat weak political will' and 8% noted 'very weak political will'.

<sup>3</sup> Case-law includes not only decisions of courts and tribunals, but more broadly all elements and processes that form part of the judicial system (e.g., prosecutions, filing of cases).

efforts have been driven by political will, triggered by, *inter alia*, international pressure and CSOs' advocacy (see also 'External Monitoring, State Reputation, and (Threats of) Sanctions').

While most case studies have referred to collective political will (e.g., **Argentina, Armenia, Guyana, and Thailand**), some reports have highlighted the impact of **individual political will** of a key policy maker or official as a key determinant (e.g., **Bahrain, Chile, and United Kingdom**) – although this will depend, *inter alia*, on the position held by the individual and on the nature and structure of the political system.

Collective political will has been central in the analysis of **Argentina's** anti-trafficking efforts, with the country that was among the main sponsors of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol)<sup>4</sup> and, for example, in **Armenia**, where the government has adopted over time a series of innovative and comprehensive laws and policies, allocating also resources to the implementation of the same.

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 **United Kingdom**,<sup>5</sup> with May's individual political will – crucially strengthened by cross-party political support and the consequent allocation of resources and funding – to modern slavery being prioritised on the political agenda. A similar example of individual political will can be found in **Bahrain**, where the current Prime Minister Sheikh Salman bin Hamad Al-Khalifa called in 2008 for the dismantlement of the *kafala* system, arguing that 'sponsorship in [Bahrain] is similar to servitude in the United States 400 years ago',<sup>6</sup> and started the abolition process. Despite having significantly different outcomes, migration and anti-trafficking policy in **Algeria** has been noted to be highly dependent on the focus of key government officials, so that when senior officials change, policies can shift markedly. This means that the agency of individual officials is a key determinant which influences political will and the shape of anti-trafficking policies. In July 2017, current President Abdelmadjid Tebboune – who at the time was Prime Minister under President Bouteflika – proposed a scheme of regularisation of undocumented migrants, which would have benefitted trafficked persons and persons at risk of being trafficked, yet only a month after presenting his proposal he was dismissed and his replacement, Ahmed Ouyahia, opposed Tebboune's regularisation policy. Although individual political will can be readily seen to constitute a key determinant when the individual holds a position of power within the government – as in the case of the United Kingdom and Bahrain – this

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<sup>4</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>5</sup> Rose Broad and Nick Turnbull, 'From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK' (2019) 25(2) European Journal on Criminal Policy and Research 119.

<sup>6</sup> John Deferious, 'Confronting the Taboo of Human Trafficking' (*Khaleej Times*, 13 March 2009) available at <<https://www.khaleejtimes.com/editorials-columns/confronting-the-taboo-of-human-trafficking>> accessed 4 August 2021.

is not a necessary condition. In **Chile**, for example, it was an individual within State authorities, congresswoman Saa, who sponsored a trafficking bill and relied in the technical assistance provided by civil society. Congressman Saa<sup>7</sup> sustained the processing of the bill for 6 years, and although she did not have the support of the government when she introduced the bill, she was able to build such support over time. 52% of survey respondents noted a positive influence of the efforts of individual politicians and/or policy makers on anti-trafficking efforts, with 15% noting a very positive influence. 19% noted a negative influence with 29% noting a neutral influence. However, individual influence only goes so far, and whilst a collective political will may not always be necessary, a degree of cooperation and collaborative working with stakeholders is integral.<sup>8</sup>

## 1 The Relevance Of Political Will: From Acknowledgment Of Trafficking As A Priority To Implementation Of Anti-Trafficking Efforts

The presence of political will has been highlighted as **significant at all stages – from the initial acknowledgment and prioritisation of the trafficking problem to the implementation and evaluation of efforts**. Experts highlighted that there is still a degree of reluctance to accept that trafficking is happening within a particular country, which may lead some governments to avoid acknowledging the fact that it is (see also ‘Acknowledgment and Framing’)<sup>9</sup> and therefore not taking measures to address it/. In other instances, governments do not acknowledge the phenomenon because they (mis-)understand it only as an ‘external’ concern, or one that is to be understood through a single analytical frame (e.g., criminal law, migration issue).<sup>10</sup> Other experts have argued that governments are simply not aware of certain types of trafficking (e.g., trafficking for the purpose of forced labour),<sup>11</sup> or that they are unwilling to acknowledge the problem because it would mean that action(s) has to follow.<sup>12</sup> Against this background, external pressure – in the form of, for example, external monitoring or international jurisprudence – can help trigger political will to acknowledge that trafficking exists within their territory,<sup>13</sup> or that civil society might play a role in shifting

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<sup>7</sup> Family Commission report. Deputy Chamber discussion, April 4, 2007. BCN, Historia de la Ley 20.507 (n 43) p. 33-34.

<sup>8</sup> Commonwealth Parliamentary Association UK, 'Legislating against Modern Slavery, Human Trafficking and Forced Labour: The Role of Parliament to Scrutinise & Raise Awareness' (2020).

<sup>9</sup> Interviews with a member of the International Centre for Missing & Exploited Children (15 April 2020); the Head of Modern Slavery Policy Unit at Justice and Care and the Centre for Social Justice (15 May 2020); and a member of an international organisation (14 April 2020).

<sup>10</sup> Interview with Thomas Harré, Barrister at LawAid International Chambers (8 April 2020).

<sup>11</sup> Interview with a member of an international organisation (n 9). Some experts have explicitly mentioned the problem with lack of data, which is necessary for the phenomenon to be understood and acknowledged. See eg interviews with the Head of Modern Slavery Policy Unit at Justice and Care and the Centre for Social Justice (n 9); a member of the International Centre for Missing & Exploited Children (n 9); Cristina Huddleston, Director of European Operations at Justice and Care (18 March 2020); and the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (21 April 2020).

<sup>12</sup> Interviews with a member of the International Centre for Missing & Exploited Children (n 9); and the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (n 11).

<sup>13</sup> Interview with a member of an international non-governmental organisation (9 April 2020).

governments' attitudes.<sup>14</sup> Lastly, acknowledgment of the problem by a government can be sparked by isolated incidents and events, or crises, that 'force' state authorities to face the existence of trafficking.<sup>15</sup>

Acknowledgment is not binary, however, but it is rather a *continuum* (see also 'Acknowledgment and Framing'). Governments can acknowledge some types of trafficking, or some trafficked persons, or some elements of trafficking under particular lenses. A number of experts have highlighted how some European countries often acknowledge the existence of trafficking, but only in its transnational form.<sup>16</sup> Other have highlighted that some governments have placed particular emphasis on trafficking for the purpose of sexual exploitation, neglecting or ignoring other types of trafficking, or that they fail to identify trafficking situations in the context of forced labour and other forms of labour exploitation.<sup>17</sup> Some experts have pointed out that certain governments might emphasise the trafficking of children as a particularly egregious crime, while dismissing the trafficking of adults, or prioritising actions aimed at 'rescuing' females, dismissing the protection needs of males.<sup>18</sup> 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 (see also 'Acknowledgment and Framing').<sup>19</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>20</sup> Moreover, corruption may limit the impact of political will (see 'Governance, Politics, and Corruption'). A Joint Submission by the Dominicans for Justice and Peace (Order of Preachers) and the Dominican Family in the Philippines to the Universal Periodic Review's Third Cycle National Report on the **Philippines**, for example, suggested 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.<sup>21</sup>

Political will is also inextricably interlinked with *resourcing* and *capacity*. The literature identifies a disconnect between the two concepts; indeed, a lack of political will can prevent

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<sup>14</sup> Interviews with a member of the International Centre for Missing & Exploited Children (n 9); and Nick Grono, CEO of The Freedom Fund (20 March 2020).

<sup>15</sup> Interview with Ruth Van Dyke, Visiting fellow at the Centre for Modern Slavery, St Mary's University (27 February 2020).

<sup>16</sup> Interview with Melita Gruevska Graham, Head of the Anti-Trafficking Programme at the International Centre for Migration Policy Development (ICMPD) (6 May 2020).

<sup>17</sup> Interview with an international expert (30 April 2020).

<sup>18</sup> Interviews with a member of the International Centre for Missing & Exploited Children (n 9); and Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>19</sup> United States Department of State, '2019 Trafficking in Persons Report' (2019) 13.

<sup>20</sup> *ibid* 4.

<sup>21</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/UN-DOC/GEN/G17/046/69/PDF/G1704669.pdf?OpenElement>> accessed 14 April 2020.

the allocation of commensurate capacity.<sup>22</sup> This points to the fact that resourcing is itself a political and policy decision. Political will is both necessary for, and reflected through, resourcing.<sup>23</sup> However, the relationship between will and capacity is nuanced; political will cannot necessarily overcome a lack of capacity and resourcing (see 'Economic Conditions and External Funding'). 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>24</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 solutions and the fact that the perpetrators are rarely States themselves or entities which States can control.<sup>25</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 in the 'Economic conditions' section).

## 2 Political Will: Between Formalistic and Substantive Efforts

The literature alludes to the influence of political will at the governmental level; yet, political will is not depicted as triggering a straightforward cause and effect relationship whereby its very existence ensures that change will follow. Rather, political will must be *sustained* and *substantive*. 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>26</sup> Observations in reports from the Group of Experts on Action against Trafficking in Human Beings (GRETA), further

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<sup>22</sup> Farrell, Pfeffer and Bright, 'Police perceptions of human trafficking' (2015) 38(3) *Journal of Crime and Justice* 315, 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>23</sup> United States Department of State, '2019 Trafficking in Persons Report' (n 19) <<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>> accessed 8 April 2020. In addition, as the 2019 TIP report suggests, the initial adoption of the Palermo Protocol must be followed through with 'dedication, focus, and resources'.

<sup>24</sup> Thomas Jaye, 'The security culture of the ECOWAS: origins, development and the challenge of child trafficking' (2008) 26(2) *Journal of Contemporary African Studies* 151; Anna Stephens, 'Climate change and human trafficking: an investigation into how climate change and natural disasters increase the risk of human trafficking and how it can be intercepted in the future' (Master Thesis Series in Environmental Studies and Sustainability Science, 2019).

<sup>25</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 Garciandia, 'State Responsibility for Modern Slavery: Uncovering and Bridging the Gap' (2019) 68 *International and Comparative Law Quarterly* 539.

<sup>26</sup> Emily J Born, 'Too Far and Not Far Enough: Understanding the Impact of FOSTA' (2019) 94 *New York University Law Review* 1623.

corroborate that political will is influential in recognising and prioritising anti-trafficking aims, but for change to occur, such political will must be sustained and extend to implementation.<sup>27</sup>

Expert interviews have expanded on sustained political will as a determinant, and case studies have provided insights into the formalistic and substantive elements of political will. Expert interviewees have repeatedly suggested that, in its formalistic element, political will may be driven by the governments' quest for easy and short-term solutions to respond to international pressure (e.g., in the context of the ratification of the Palermo Protocol,<sup>28</sup> or in response to external monitoring<sup>29</sup>) without fully committing to systemic change.<sup>30</sup> According to some interviewees, various States are aware of their reputation and operate on *de minimis* terms to ensure that their reputation is maintained (see also 'External Monitoring, State Reputation, and (Threats of) Sanctions').<sup>31</sup> Such targeted measures, however, while potentially benefitting the State's reputation do not necessarily bring about substantive improvements for trafficked persons, or persons at risk of being trafficked. A number of experts shared concerns around the collection, use, and evaluation of data, in particular quantitative data, as an indicator of progress in anti-trafficking actions, which allows for a culture of 'arrest-driven' and 'prosecution-driven' enforcement, in order for governments and authorities to be able to show that they have higher number of arrests and prosecutions (see 'Data and Research'). This culture, however, undermines working towards more meaningful results and enables States to ignore the quality of prosecutions and the needs for prevention and protection, which are less easily quantifiable.<sup>32</sup>

States' responses to international pressure – in the form of international law, external monitoring, or threats of sanctions – may be driven by political will, but their results tend to be less sustainable and more likely to be (mostly) formalistic: often there will not be adequate resources allocated to anti-trafficking efforts,<sup>33</sup> or there will not be specialised actors established to ensure continuity and harmonisation of efforts.<sup>34</sup> An example of sustained and substantive political will is **Armenia**, where trafficking has been placed on top of the political agenda, and resources allocated in the context of the National Action Plans have

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<sup>27</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>28</sup> Interviews with an independent consultant (7 May 2020); Adie Teshome, Academic at La Trobe Law School, Australia (26 May 2020); and a member of the International Centre for Missing & Exploited Children (n 9).

<sup>29</sup> Interviews with an inter-governmental agent (17 April 2020); Gary Craig, Professor of Social Justice at University of Newcastle upon Tyne, Law School (15 April 2020); and Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020).

<sup>30</sup> Interview with an international expert (7 January 2020); an international expert (n 17); Adie Teshome (n 28); and Melita Gruevska Graham (n 16).

<sup>31</sup> Interviews with Gary Craig (n 29); an international expert (n 17); the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (n 11); and Suzanne Hoff, International Coordinator at La Strada International (23 April 2020).

<sup>32</sup> Interviews with Fiona David, Inaugural Research Chair at Minderoo (8 May 2020); Marika McAdam (n 29); a UN official (17 April 2020); Ruth Van Dyke (n 15); Thomas Harré (n 10); and an international expert (n 30).

<sup>33</sup> Interviews with Suzanne Hoff (n 31); a member of an international organisation (n 9); and an international expert (5 May 2020).

<sup>34</sup> Interviews with an international expert (n 33); and a member of an international organisation (n 29).

remained stable or increased every year (including during the Covid-19 pandemic). In addition, the government's will to improve its anti-trafficking efforts has been instrumental in the creation of partnerships, both locally and internationally, to share anti-trafficking experiences and to facilitate capacity building. Similarly, in **The Bahamas**, the government has set up several specialised institutions – e.g., Trafficking in Persons Inter-Ministerial Committee, National Task Force on Trafficking in Persons, and a specialised Trafficking in Persons Investigating Unit in the Bahamas Police Force – and it has not only elevated trafficking to the Prime Minister's Delivery Unit to show leadership at the highest political levels, but it has also allocated significant financial resources to trafficked persons' care and assistance (including housing and welfare). On the other hand, are instances where political will is formalistic, or entirely absent. In **Chile**, for example, despite the government's stance on the prioritisation of anti-trafficking efforts, no budget has ever been assigned to the specialised Intersectoral Table on Trafficking in Persons (MITP) and there is shortage of resources and lack of personnel in specialised units within the Public Ministry and both national police forces – which in turn hinders implementation of anti-trafficking legislation and policy. In **Cyprus**, it has been observed that any political will is derived from international pressure – especially in the area of protection of trafficked persons. While international pressure, most notably in the form of regional courts' case-law (see 'Case Law'), tends to result in short-term improvement, it rarely results in sustained change. Indeed, initiatives for better implementation of anti-trafficking obligations are not always followed through, and resources are often lacking.

### 3 (Lack Of) Political Will As A Hindrance

When political will is absent, and no other determinants are able to trigger it, anti-trafficking efforts are inevitably hindered. But even in contexts where political will exists, if it is only concerned with *certain* aspects of anti-trafficking efforts, it will be a limiting factor for other efforts. In **Chile**, for example, political will has been identified as a positive determinant of anti-trafficking efforts in prosecution, protection, and partnership – but lack of political will has been highlighted as a negative determinant of trafficking prevention. While the research did not identify why this is the case, it was suggested that the low number of identified trafficked persons acts as a hindrance in mobilising political will for preventative actions. Similarly, political will has been emphasised as a positive determinant in **Guyana's** anti-trafficking efforts in the context of prosecution and protection, but with respect to prevention a lack of political will was identified, which in turn led to comparatively fewer efforts in the specific area. While government officials denied that the focus on prosecution was driven by the United States Trafficking in Persons (TIP) Report, and its particular attention to prosecution, it was also reported that a key concern of the government was avoiding being downgraded – which suggests that external monitoring is a trigger for political will.

The presence or absence of political will has been further recognised as a determinant in the **United Kingdom**: while the presence of political will has been found to positively

influence the creation and establishment of partnerships, both internally across sectors and internationally, its weakness in the context of protection has been highlighted as a negative determinant. In particular, the research emphasised tensions between protection and the dominant security lens through which trafficking is framed, which have increased over the years and reached an apex with the proposal in 2021 of the new Nationality and Borders Bill, which prioritises security over protection. The security lens, and more specifically the immigration lens, is not the only lens that can hinder anti-trafficking efforts. In **Brazil**, for example, it was highlighted that willingness (or lack thereof) of the government to uphold human rights can influence anti-trafficking efforts.<sup>35</sup> Specifically, interviewees noted the shift from previous governments which had built momentum in developing anti-trafficking efforts, and the attitude of the current government following the 2019 election, which is hostile towards a human rights agenda,<sup>36</sup> and had a negative impact on the country's anti-trafficking efforts. Attitudes towards criminality can further hinder anti-trafficking efforts, and trigger political will in *other* areas. For example, **Argentina** was one of the States that promoted the creation of the Palermo Protocol, driven by its interest in combatting human trafficking of minors along with promoting an understanding of human trafficking as a transnational organised crime. Interviewees have highlighted the importance of political will as determinative of whether the State will (or will not) consider issues raised by CSOs and other stakeholders.<sup>37</sup> Interviewees highlighted political will as a key determinant in **Argentina**,<sup>38</sup> particularly impacting upon resource allocation and capacity building.<sup>39</sup> Yet, (the lack of) political will has also hindered certain types of anti-trafficking actions – including, in particular, actions against trafficking for the purpose of forced criminality. It has been argued that the main reason for the (lack of) engagement with trafficking for the purpose of forced criminality is the State's overriding interest in combatting drug trafficking.<sup>40</sup> Indeed, recognising a 'mule' as a trafficked person – and therefore an opening for the possibility of the application of the non-punishment principle – is seen as potentially setting a precedent in acknowledging 'impunity' of a participant in the illicit drug trade.<sup>41</sup>

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<sup>35</sup> Interviewee BR03.

<sup>36</sup> *ibid.* See also Interviewee BR04.

<sup>37</sup> Interviewee AR02; Interviewee AR04; Interviewee AR09; Interviewee AR08; Interviewee AR14; Interviewee AR16.

<sup>38</sup> Interviewee AR14; Interviewee AR15.

<sup>39</sup> Interviewee AR08.

<sup>40</sup> Interviewee AR02; Interviewee AR03.

<sup>41</sup> Interviewee AR03. However, the absence of political will has been counter-balanced by the impact of judicial decisions, which have acquitted 'mulas' who were identified as having been trafficked: see for example For example: Martínez Hassan, Lourdes Silvana *s/recurso de casación*; Fiscales, "Sobresayeron a cuatro personas utilizadas como "mulas" e imputaron a dos hombres por trata de personas con fines de explotación" (*Fiscales Website*, 2 October 2019) <<https://www.fiscales.gob.ar/trata/sobresayeron-a-cuatro-personas-utilizadas-como-mulas-e-imputaron-a-dos-hombres-por-trata-de-personas-con-fines-de-explotacion/>> accessed 10 October 2021.

## CONCLUSION

The influence of political will on anti-trafficking efforts has been recognised as significant across the literature review, expert interviews, and the vast majority of our case studies. Such influence, however, cannot be easily understood as either positive or negative. Indeed, presence of political will to combat human trafficking can be a positive determinant for all or some anti-trafficking efforts, but can be a negative determinant for others (e.g., prevention or protection more often than prosecution and partnerships). On the other hand, absence of political will to combat human trafficking is almost always understood as a hindrance. Political will can also be assessed and understood as collective, institutional, or individual: collective when shared by the government as a whole (e.g., as seen in parliamentary debates and/or voting patterns); institutional when mobilised by specific sectors of the government or government-funded specialised institutions; and individual when particular actors (e.g., individuals in positions of political power, and also individuals with other levels of influence) push for better anti-trafficking efforts. Political will is then also understood as both a determinant and a sum outcome of other determinants, where it is influenced – and to a certain extent it is the *result* of other factors, including *inter alia* external monitoring, external funding, threat of sanctions, CSOs advocacy, and/or case-law. In most case studies, political will has been found to be a sum outcome of other determinants and concerns have been raised about the lack of *internalisation* of political will, which may lead to issues with respect to sustainability of anti-trafficking efforts. Yet, similar concerns have been voiced with respect to *internalised* political will, e.g., when a country is faced with ‘competing’ crises, budget limitations, or even a government change. Formalistic or substantive approaches to anti-trafficking cannot therefore be conclusively linked to certain characteristics of political will – whether it is a determinant or a sum outcome, or whether or not it has been *internalised*. What is clear, on the other hand, is that to ensure continuity, significance and sustainability, political will must be accompanied by allocation of resources and must lead to the establishment of specialised anti-trafficking bodies and mechanisms, which are able to monitor the country’s implementation and to develop an adequate level of expertise to steer further efforts.

## 2 ACKNOWLEDGMENT AND FRAMING OF TRAFFICKING

The way in which trafficking is acknowledged, understood, and framed impacts upon governments' anti-trafficking efforts. Trafficking is a legally complex phenomenon that intersects, at a minimum, with migration law, labour law, criminal law, and human rights law, resulting in competing frames.<sup>42</sup> The framing of trafficking may be influenced by international legal instruments, data and research, political will, civil society organisations and academia, as well as the media. In each of these contexts, the framing of trafficking is not neutral, and it is itself determined by a series of other factors. The lens through which human trafficking is understood is highly context-dependent and embedded in a country's history, cultural and social norms.<sup>43</sup> The way human trafficking is framed, understood, and presented in the country was seen as a positive influence on anti-trafficking efforts by 48% of the survey respondents. 32% noted it as a negative influence whilst 21% responded that it was neutral.

It follows that the framing of trafficking determines whether and the extent to which combating trafficking is prioritised, what aspects of trafficking are focused on, which kinds of responses are engaged, how the responses are designed and how they are implemented – which in turn impacts upon the way in which trafficking is framed, understood, legislated and addressed. Indeed, governments' own framing of trafficking is often a conscious effort to justify their response. Different frames are mobilised according to government priorities.<sup>44</sup> This is particularly stark with the emotional and moral lens through which trafficking is depicted, which elevates the governments' position to the saviour and places the blame solely on the traffickers, ignoring structural factors (and other policy decisions) that allow, or even facilitate, trafficking. Government anti-trafficking efforts are also influenced by, and in turn influence, how trafficking is framed by the media and public opinion. The role of the media, as further explored below, and public opinion are integral in shaping the nature of the debate and determining what policies will be publicly popular or not.

### 1 GOVERNMENT ACKNOWLEDGMENT OF TRAFFICKING

In evaluating how governments frame trafficking, it is important to reflect on their acknowledgment of the phenomenon. The lack of acknowledgment of trafficking within a particular jurisdiction makes it 'difficult to move forward to actually structure a legal framework, for example, to structure the policies to put together an action plan'.<sup>45</sup> Governments are often unwilling (for a wide range of reasons) to acknowledge that trafficking is a reality within

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<sup>42</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>43</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>44</sup> Interview with Kate Elsayed-Ali, International Advocacy Manager at Anti-Slavery International (18 November 2020).

<sup>45</sup> Interview with a member of an international organisation (14 April 2020).

their territories. There tends to be, as an expert interviewee argued, 'reluctance to accept that modern slavery or human trafficking is happening [and] very often [there is] the stereotype of [trafficking] happening elsewhere in poor countries'.<sup>46</sup> Other factors influencing the lack of acknowledgment are absence of resources, or unwillingness to allocate resources – as acknowledging the problem then requires resources to combat it, which can deter governments to start the process in the first place<sup>47</sup> – and fear of (negative) repercussions on public opinion, especially in democratic political systems.<sup>48</sup> Lastly, lack of available data may hinder acknowledgment of the scale and nature of trafficking in certain jurisdictions, causing responses that are based on assumptions and stereotypes. For example, in **Chile**, lack of reliable data obstructs the effectiveness of policy responses by hindering the understanding of the scale and nature of trafficking and the implementation of evidence-based responses.

Against this scenario, are certain factors that might push governments to acknowledge trafficking in their jurisdictions. The first factor is political will, coupled with international law, as in the case of the **United Kingdom**, and external pressure – in the form, *inter alia*, of external monitoring, including the United States Trafficking in Persons (TIP) Report, as in the case of **Guyana** and the **Philippines** – and international or regional pressure from neighbouring countries or economic partners – as in the case of **Thailand**. A crucial role is also played by civil society organisations (CSOs) that can both expose trafficking experiences to the general public, and can engage with the government to ensure that it is equipped to acknowledge and combat the phenomenon,<sup>49</sup> as highlighted in the case studies on the **United Kingdom** and **Argentina**. Most efforts from external monitoring bodies and CSOs must be grounded in data, which is considered necessary to understand and acknowledge the problem,<sup>50</sup> and which can force the government to recognise the magnitude of trafficking. Often, governments only acknowledge the existence of trafficking when faced with particular events or crises, or with media exposure of trafficking cases, whereby denial is not an option anymore<sup>51</sup> – as in the case of **Thailand**, where several interviewees confirmed that reports of human trafficking cases or problems of law enforcement have had a positive impact in the sense that the government initiated, or scaled up, measures against human trafficking, and the **Philippines**, where in a sponsorship speech of her bill amending RA 9208, Senator Loren Legarda itemised media-documented human trafficking cases to argue the need to amend the law. More recently, a congressional resolution calling for review of RA 9208, as amended by RA 10364, was filed in the House of Representatives after media

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<sup>46</sup> Interview with the Head of the Modern Slavery Policy Unit (15 May 2020).

<sup>47</sup> Interviews with the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (21 April 2020); and a member of the International Centre for Missing & Exploited Children (15 April 2020).

<sup>48</sup> Interview with a member of the International Centre for Missing & Exploited Children (n 47).

<sup>49</sup> Interviews with a member of the International Centre for Missing & Exploited Children (n 47); and Nick Grono, CEO at The Freedom Fund (20 March 2020).

<sup>50</sup> Interviews with a member of the International Centre for Missing & Exploited Children (n 47); and Cristina Huddleston, Director of European Operations at Justice and Care (18 March 2020).

<sup>51</sup> Interview with Ruth van Dyke, Visiting fellow at the Centre for Modern Slavery, St Mary's University (27 February 2020).

coverage of the Mary Jane Veloso case.<sup>52</sup> Another factor is surely **media reporting** on specific incidents, as in the case of Armenia, where the prosecution of a single case of trafficking in persons for the purpose of organ removal in 2012 led the government to acknowledge this form of trafficking and, following broad media coverage, to sign the Council of Europe Convention against Trafficking in Human Organs in 2018.

Acknowledgment is however not binary – there are nuances within acknowledgment that ought to be considered carefully. Indeed, certain governments might acknowledge only specific types of trafficking, or certain trafficking experiences, while denying others. In European countries, for example, it is more common for governments to acknowledge transnational trafficking and the existence of foreign trafficked persons, while it is more difficult to have governments acknowledge that trafficking exists internally and that nationals could be trafficked.<sup>53</sup> Another expert interviewee emphasised that certain countries might be keen on acknowledging child trafficking because it is considered to be an issue that enjoys support across different parts of the political spectrum (bi-partisan support), while acknowledging the existence of trafficking for the purpose of forced labour may be considered too risky from a political standpoint.<sup>54</sup> Governments might be unwilling to recognise trafficking for the purpose of sexual exploitation due to concerns around morality and religion, and might prefer to ignore the phenomenon, as acknowledgment would lead to uneasy conversations about sexuality and cultural norms. Expert interviewees also pointed to cultural barriers and gendered narratives of victimhood as reasons for governments to avoid recognising that men can be trafficked, which would undermine the mainstream narrative that sees *ideal victimhood* as linked to (a specific kind of) womanhood.<sup>55</sup>

Once trafficking is acknowledged as an issue – whether partially or in its totality – governments retain a level of discretion with respect to the way in which they frame the phenomenon.

## 2 GOVERNMENTS' FRAMING OF TRAFFICKING

The law is of the most powerful framing tools for governments. How trafficking is defined in legislation determines what is looked for, who is identified and what is considered within

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<sup>52</sup> [PRETITLE] Resolution Directing the Appropriate House Committee to Conduct a Full Review of the Expanded Anti-Trafficking of Persons Act of 2012 or Republic Act 10364, and the Performance of the Inter-Agency Council Against Trafficking (IACAT), in Light of the Mary Jane Veloso Case and Other Similar Cases Involving Human Trafficking and Illegal Drugs. Mary Jane Veloso was a human trafficking victim used as a drug mule and was sentenced to death after Indonesian authorities found heroine in her suitcase.

<sup>53</sup> Interview with Melita Gruevska Graham, Head of the Anti-Trafficking Programme at the International Centre for Migration Policy Development (ICMPD) (6 May 2020).

<sup>54</sup> Interviews with an international expert (30 April 2020); and a member of the International Centre for Missing & Exploited Children (n 47).

<sup>55</sup> Interviews with an international expert (n 54); Zoe Sakellidou, Crime Prevention & Criminal Justice Officer at UNODC (5 May 2020); Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020); and a member of the International Centre for Missing & Exploited Children (n 47).

the category of trafficking. For example, in **Brazil** the Criminal Code had historically exclusively criminalised trafficking for the purpose of sexual exploitation, which shaped the focus of early anti-trafficking policies and developments,<sup>56</sup> and was only amended in 2016. In **Armenia**, the definition of trafficking in Article 132 of the Criminal Code does not refer specifically to the exploitation of criminal activities as one of the forms of exploitation – even if the Armenian authorities have stated that forcing children to commit criminal offences would be considered a form of forced labour, relying on Article 3 of the International Labour Organisation (ILO) Convention on the Worst Forms of Child Labour (see case ԵԿԴ/0148/01/13).<sup>57</sup>

As argued in ‘International Law’, the definition in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)<sup>58</sup> has played a significant role in influencing national definitions.<sup>59</sup> Yet, the definition of trafficking is not entirely consistent across countries – even those that have ratified the Protocol. This, on the one hand, prevents clarity and comparability of the phenomenon. On the other hand, it shows how governments can maintain discretion in framing trafficking even when bound by the same international definition.<sup>60</sup> It further highlights a concern about the how the Protocol trafficking definition is employed in instrumental ways.

The competing frames and the focus of governments on particular aspects and understandings of the trafficking definition also impacts upon how advocates shape their own arguments and attempt to raise the consciousness of governments – a relationship that also goes the other way around, with particular advocacy campaign that influence governments’ understanding of trafficking. There are various entry points, depending on the government’s own conceptualisation, from conservative views about sex work, linking trafficking to irregular migration, or trafficking as a labour rights issue.<sup>61</sup> The choice of frame might also be linked to strategic assessments, as the case study on **Chile** showed – it was indeed noted by interviewees that the anti-trafficking bill that gave rise to Law 20.507 managed to capture the attention and obtain the support of congressmen only once it was framed as an organized crime issue.<sup>62</sup> A similar assessment has been given to the global efforts resulting in the adoption of the Palermo Protocol.

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<sup>56</sup> Interviewee BR09.

<sup>57</sup> This effort of the State is directly linked with the implementation of the non-punishment provision as required by the Council of Europe Convention on Action against Trafficking in Human Beings (see ‘International Law’).

<sup>58</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>59</sup> Interviews with Kristina Touzenis, Head of International Migration Law at IOM (15 April 2020); and an independent consultant (7 May 2020).

<sup>60</sup> Interview with a member of an international non-governmental organisation (9 April 2020).

<sup>61</sup> Interview with Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020).

<sup>62</sup> Interview with María Antonieta Saa, councillor, Santiago Metropolitan Regional Council, former congresswoman, author of bill 3887-18 (Santiago, Chile, 12 August 2021).

Incomplete or unclear definitions, or the adoption of a particular frame at the expense of others, can hinder how anti-trafficking efforts are implemented in practice. This is evidenced, for example, in the conflation of trafficking and smuggling;<sup>63</sup> in the blurred definitions of trafficking for the purpose of forced labour and violations of labour laws; in the different approaches to trafficking for the purpose of sexual exploitation between abolitionism and legalisation of sex work; and in the language chosen by governments when discussing the phenomenon of trafficking.

The framing of trafficking as a migration issue, and in such context the conflation between trafficking and smuggling and/or the emphasis on transnational trafficking, is a key depiction that is found to be influential. Trafficking is often framed as interlinked with irregular migration, and thus becomes subsumed into migration control measures which focus on border security and control.<sup>64</sup> This becomes particularly complicated when there are contrasting framings and contrasting priorities: for example, when a State views irregular migrants and trafficked persons from a security/immigration lens, rather than a protection one.<sup>65</sup> In **Algeria**, for example, it is impossible to talk about the government's anti-trafficking response without discussing its response to migration and transnational crime as a whole, as the government's uniform response towards the phenomena of human trafficking, asylum, and irregular migration – as well as terrorism and other forms of transnational crime – has been to criminalise irregular migration and deport migrants without screenings for trafficking victimisation or their protection needs, including asylum. In addition, a focus group participant stated that the authorities, in their public communications, only speak of the trafficking of migrants in Algeria, drawing very little attention to the trafficking of Algerian nationals to the extent that this notion is 'removed from public discourse.' The demonisation of immigration in public discourse and the media, and the framing of the *ideal victim*, fuels this conflation,<sup>66</sup> and puts governments in a position where they do not want to be seen as weak on irregular immigration or to be giving 'too much' protection and assistance.<sup>67</sup> More broadly, the migration frame shifts the focus on stemming migration flows as a preventative measure, rather than addressing the root causes. In turn, broader questions and co-existing perspectives are overlooked, such as those concerned with roots causes, problems with the labour market,<sup>68</sup> and framings around public health.<sup>69</sup>

In the **United Kingdom**, the prioritisation of immigration policy has resulted in human trafficking being framed in immigration and economics contexts – although interestingly it

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<sup>63</sup> Interviews with a member of an international non-governmental organisation (23 April 2020); and an international expert (n 54).

<sup>64</sup> Interviews with Federica Toscano, Head of Advocacy and Migration at Missing Children Europe (5 March 2020); and an international expert (5 May 2020).

<sup>65</sup> Interviews with Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020); and Gary Craig, Professor of Social Justice at University of Newcastle upon Tyne, Law School (15 April 2020).

<sup>66</sup> Interview with Tamara Barnett, Director of Operations at the Human Trafficking Foundation (10 April 2020).

<sup>67</sup> Interview with Kristina Touzenis (n 59).

<sup>68</sup> *ibid.*

<sup>69</sup> Interview with international expert (7 April 2020).

was observed that the inclusion of increasing numbers of British nationals in the modern slavery narrative may hinder the government's approach of viewing trafficking through an immigration lens to justify the introduction of tougher immigration and border controls. The **United Kingdom's** 'security' approach is also evident in the context of trafficking for the purpose of forced criminality, especially insofar as terrorism is concerned. Some interviewees highlighted, in relation to grooming and trafficking for the purposes of terrorism, the case of Shamima Begum<sup>70</sup> as illustrative of the government's refusal to accept terrorism-related cases as being situations of human trafficking. The (proposed) 2021 Nationality and Borders Bill unequivocally illustrates the government's position in relation to suspected trafficked persons who are or have been involved in terrorism-related activity, seeking to exclude this category from being conclusively identified as trafficked by the Competent Authority, and consequently from accessing protection and assistance,<sup>71</sup> which would also in turn lead to the non-application of the non-punishment principle.

The framing of trafficking through a criminal lens, which places attention on the individual trafficker rather than on structural vulnerability factors, falls into the trap of creating a 'tunnel vision on a criminal justice approach',<sup>72</sup> ignoring systemic issues (including reflections on economic structures)<sup>73</sup> and paving the way for policy-makers to frame trafficking 'as a problem with national security implications',<sup>74</sup> representing trafficking solely as an international problem. The emphasis on the criminal lens and approach can be detrimental in that it may create hierarchies of suffering, which in turn hinder access to protection and remedies for cohorts of people with lived experiences of trafficking and exploitation. In **Chile**, for example, the presence of labour breaches in cases of trafficking for forced labour automatically draws prosecutors and judges to disregard forced labour and criminal charges for trafficking – and thus limit access to trafficking-specific protective measures for the trafficked person – unless gross denigration, humiliation, and inability to leave are present in the case.<sup>75</sup> This approach has been found to be influenced not only by definitional issues, but also by economic conditions, considered Chile's dependence on migrant workers and the (in)visibility of that population in the political debate and as a political priority.

With regard to language, the terminology and definition of 'modern slavery' plays a role in framing trafficking, and influences how it is understood and responded to. Some emphasise that 'modern slavery' has no legal meaning and therefore has the potential to

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<sup>70</sup> *R (Begum) v Special Immigration Appeals Commission, R (Begum) v Secretary of State for the Home Department* [2021] UKSC 7.

<sup>71</sup> Clause 51, Nationality and Borders Bill.

<sup>72</sup> Interview with a UN official (17 April 2020).

<sup>73</sup> *ibid.*

<sup>74</sup> Amy Farrell and Stephanie Fahy, 'The problem of human trafficking in the U.S.: Public frames and policy responses' (2009) 37(6) *Journal of Criminal Justice* 617, 622. See also interview with an international expert (7 January 2020).

<sup>75</sup> *Ministerio Público C/ Linfeng Cheng y Aiyun Zhang, RIT 21-2020, Tercera sala del Tribunal de Juicio Oral en lo Penal de La Serena, Sentencia de 8 julio de 2020.* To the point that Internal statistics from the Public Ministry show that more than 50% of reported forced labour trafficking cases ends up in early terminations of administrative nature.

be harmful.<sup>76</sup> However, despite the lack of international legal rooting, the terminology of 'modern slavery' is found to be effective in raising public consciousness and for creating a global framework with the Sustainable Development Goals (SDGs).<sup>77</sup> Language is also relevant in the framing of victimhood, which in turn impacts anti-trafficking efforts. Paternalistic constructions of the trafficked person as passive, weak and in need of saving is found to align with governmental assumptions of vulnerability and victimhood.<sup>78</sup> This ignores the complexities of trafficking situations, and the agency of trafficked persons, and results in a political agenda which excludes certain categories of individuals from the 'victim' category – most notably males, as well as females who do not reflect societal constructs of womanhood.<sup>79</sup> The research on **Argentina** highlighted that 'myths' behind human trafficking are a barrier to detecting 'atypical' incidents. Specifically, these atypical incidents are framed in opposition to the archetypical ideas of what human trafficking is or 'should' be, including trafficked and trafficker profiles and the actions or circumstances of events. Some interviewees considered how sexual exploitation has greater visibility and how this impacts upon relevant determinants. Such awareness is linked not only to the efforts of the feminist movements, CSOs and social media, but also to the government's own framing of trafficking. Also relevant to framing was the elimination of the *means* element in Law 26.842, which risks increasing the risk of wrongful conviction and opens the door to the treatment of sex work as synonymous with exploitation – which in turns would exacerbate vulnerabilities for sex workers. Similarly, in **Bahrain**, the government's conflation of human trafficking with trafficking for the purpose of sexual exploitation means that identified and protected trafficked persons are almost exclusively female victims of sexual exploitation. Non-governmental organisations (NGOs) expressed their difficulties in advocating for the protection of individuals trafficked for forced labour on the basis that government officials lack an expansive understanding of trafficking, in spite of the nuanced understanding of trafficking within published government materials.

Another element that influences framing is presence or absence of data. While an in-depth analysis of data and research as determinants is available (see 'Data and Research'), a number of case studies have addressed the issue of biases in, and quality of, available data. Indeed, presence or lack of data is not entirely and not always an objective matter. In **Chile**, for example, data derives internally from the government's own processes, thus there is a selection bias in data collection that distorts the understanding of the phenomenon as it only includes those cases that are formally identified. Data collection therefore faces definitional challenges that impede, *inter alia*, identifying trafficking for forced labour and

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<sup>76</sup> Interview with an international expert (n 74).

<sup>77</sup> Interview with Katharine Bryant (n 65).

<sup>78</sup> Rachealle Sanford, Daniel E Martínez and Ronald Weitzer, 'Framing Human Trafficking: A Content Analysis of Recent U.S. Newspaper Articles' (2016) 2(2) *Journal of Human Trafficking* 139, 142; 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(1) *The International Journal of Human Rights* 67.

<sup>79</sup> Maggy Lee, *Trafficking and Global Crime Control* (SAGE Publications Ltd 2011). See also Interview with Tamara Barnett (n 66).

understanding the crime of promotion of child prostitution as internal trafficking. The statistical data reflects the dominant frame of trafficking as a criminal justice issue, in connection with political priorities such as internal security and the protection of borders. Similarly, in the **Turkish Republic of North Cyprus (TRNC)**, although there is considerable trafficking for forced labour in the construction, agriculture, domestic work, restaurant and retail sectors, because labour trafficking is not as visible as the sexual exploitation taking place in night-clubs, the data on the phenomenon is extremely limited and no efforts are being made to fight this particular form of exploitation.<sup>80</sup> The same findings were echoed in the report on the **Philippines**, where the government is more focused on responding to trafficking for the purpose of sexual exploitation because there are more cases of sexual exploitation reported and recorded<sup>81</sup> – so trafficking for the purpose of sexual exploitation is ‘what they see and what they know’.<sup>82</sup> There is still a lack of public awareness of human trafficking as encompassing other forms of exploitation other than sexual exploitation. This lack of awareness prevents cases of trafficking for forced labour from being brought to the attention of Philippine anti-trafficking law enforcement and criminal justice practitioners, who admit that they do not have a lot of operations on trafficking for forced labour.<sup>83</sup> In the past year, only 3 out of the 73 convicted traffickers were convicted of trafficking for forced labour.<sup>84</sup>

### 3 MEDIA EXPOSURE AND FRAMING

The literature points to the media – both traditional and new – playing a significant role in framing human trafficking, and thus influencing responses.<sup>85</sup> Moreover, 58% of survey respondents noted media coverage (including news media and social media) as having a positive influence on anti-trafficking efforts in their country. 19% noted a negative influence whilst 23% noted a neutral influence. 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>86</sup> The media therefore 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>87</sup>

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<sup>80</sup> Serban and Goynuklu, ‘Report on Trafficking in Human Beings in the Northern Part of Cyprus’; KISA & Turkish Cypriot Human Rights Foundation, ‘Mapping out the situation of labour trafficking in Cyprus’ (2014), available at <[https://kisa.org.cy/wp-content/uploads/2014/12/map\\_report.pdf](https://kisa.org.cy/wp-content/uploads/2014/12/map_report.pdf)>.

<sup>81</sup> Interviews with Mel Senen Sarmiento (6 July 2021); Maria Sheila Portento (6 August 2021); and Reynaline Francisco-Tan (7 July 2021).

<sup>82</sup> Interview with Francisco-Tan (n 81).

<sup>83</sup> Interviews with Portento (n 81); and Francisco-Tan (n 81).

<sup>84</sup> United States Department of State, ‘2021 Trafficking in Persons Report’ (June 2021).

<sup>85</sup> Gretchen Soderlund, ‘The Rhetoric of Revelation: Sex Trafficking and the Journalistic Expose’ (2011) 2 *Humanity* 193, 206.

<sup>86</sup> Sanford, Martínez and Weitzer (n 78) 141.

<sup>87</sup> Farrell and Fahy (n 74) 618.

Described broadly, media impact anti-trafficking efforts in at least two ways. Firstly, the media can catalyse reactive responses. Through exposing particular cases of trafficking, the media shine light on the issue and can directly contribute to exerting pressure on a government,<sup>88</sup> hold them to account and tarnish (or improve) their domestic and international reputation. Secondly, the media has an indirect influence through its ability to raise public and government consciousness, shape public opinion and influence the framing of trafficking.

### 3.1 Media exposure

Media outputs can have an impact through exposing particular cases, both by reporting stories and investigating to uncover cases of human trafficking. Through this exposure and increased visibility,<sup>89</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>90</sup> In **Chile**, media exposure of trafficking cases triggered the passing of a 1995 bill<sup>91</sup> introducing the crime of international trafficking for prostitution in Article 367 *bis* of the Penal code, as well as the approval of Law 19.927 in 2004.<sup>92</sup> In **Cyprus**, a few high-profile cases of labour exploitation in the farming, agricultural, and construction sectors reported in the media and heard in court, momentarily captured the public's attention and resulted in institutional changes, such as the establishment of the Labour Inspectorate Service in 2017.<sup>93</sup> In **Mozambique**, interviewees highlighted that investigative journalism reports gave substance to the anti-trafficking movement and plays a crucial role – although almost exclusively with respect to trafficking for the purpose of sexual exploitation. For example, deep investigative journalism media reports about girls trafficked to the Republic of South Africa, Angola, Italy, and Portugal were found to have put pressure on the Mozambican government to adopt anti-human trafficking legislation.

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

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<sup>88</sup> Interview with Pierre Cazenave, Europe Programme Manager - Children and Youth in Migration at Terre des Hommes (27 February 2020).

<sup>89</sup> Commonwealth Parliamentary Association UK, 'Legislating against Modern Slavery, Human Trafficking and Forced Labour: The Role of Parliament to Scrutinise & Raise Awareness' (2020).

<sup>90</sup> 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>91</sup> Ley 19.409 *Agrega artículo 367 bis al Código Penal*, promulgada 31 de Agosto de 1995, available at <https://www.bcn.cl/leychile/navegar?idNorma=30776> accessed 20 September 2021. Art. 367 bis sanctioned the promotion or facilitation of people to or out of the country for prostitution and established as aggravated circumstances the minority of age and the use of violence, intimidation, deceit, abuse of vulnerability or economic helplessness, family affiliation or dependency with the victim, or regularity in the conduct.

<sup>92</sup> The Spiniak case in 2004 allowed the enactment of Law 19.927 *Modifica el Código Penal, el Código de Procedimiento Penal y el Código Procesal Penal en Materia de Delitos de Pornografía Infantil* that reformed the criminal norms regarding sexual crimes, and the crimes of promotion of child prostitution and trafficking for prostitution. Denisse Araya Catelli and Iria Mendaña Retuerto, 'Manifestaciones locales de la ESCNNA en Chile: dinámicas, espacio y género' (ONG Raices, 2010) 17.

<sup>93</sup> GRETA, 'Cyprus: Third Evaluation Round' (2020) para 142.

the public who often lobby their governments directly,<sup>94</sup> as in the case of the **United Kingdom**, where the 2014 media exposure of forced labour in prawn supply chains of UK supermarkets<sup>95</sup> was referenced throughout parliamentary debates on the Modern Slavery Bill which, when combined with the effective and unified lobbying from civil society organisations alongside the business sector, pressured the government to relent on its initial refusal to introduce supply chain provisions.

Exposure of individual stories can influence and shape public opinion, which in turn, can affect the political climate and policy priorities.<sup>96</sup> It can assist and support governments' preventative efforts, as recognised in **The Bahamas**, where expert interviewees argued that the media has played an important role in disseminating anti-trafficking messages to hard-to-reach communities, and that 'the success of public awareness [and prevention] programmes in the Bahamas is underpinned by the media'.<sup>97</sup> It can also increase self-identification and reporting, as highlighted in **Brazil**, a connection was made between a prime-time soap opera featuring a protagonist who was subjected to trafficking,<sup>98</sup> which aired in 2011/2012, and a corresponding increase in reporting of and public attention towards trafficking.

However, as highlighted by Das, DiRienzo, Lanier and Rich, this 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>99</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>100</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. Interestingly, in our research on **Bahrain**, the role of the media has been identified as a positive determinant despite all media in the country being state-controlled and online media criticising the government being banned.<sup>101</sup> Even if it is not possible for the media to influence the executive branch of government, media sources have been pointed to as relevant in raising awareness of human trafficking amongst the public, which in turn motivates prosecutions against traffickers in the courts. In

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<sup>94</sup> Das et al (n 90).

<sup>95</sup> The Guardian, "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", "Walmart, Tesco and Costco among retailers responding to revelations of slavery in prawn supply chains" (10 June 2014).

<sup>96</sup> Erin Denton, 'International News Coverage of Human Trafficking Arrests and Prosecutions: A Content Analysis' (2010) 20 *Women & Criminal Justice* 10.

<sup>97</sup> Interview with Interviewee No. 1, Bahamas Red Cross, Nassau, The Bahamas (19 July 2021).

<sup>98</sup> Interviewees BR04, BR06, BR07; As a cultural side note, soap-operas in Brazil, especially those aired in Brazil's largest broadcast company and during prime-time, play a strong cultural role and may even shape the public discourse.

<sup>99</sup> Das et al (n 90) 3.

<sup>100</sup> *ibid.*

<sup>101</sup> HRW, 'Bahrain: Events of 2019' (2019) available at <<https://www.hrw.org/world-report/2020/country-chapters/bahrain>> accessed 3 September 2021.

the Anita Devi Verma case,<sup>102</sup> for example, the swiftness of the prosecution was attributed to the high level of coverage the case received in English-language newspapers.<sup>103</sup>

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.

In **Thailand**, for example, it was a combination of the threat of sanctions with the EU's yellow card, criticism in the US TIP Report and robust investigative journalism that triggered a state response against trafficking for the purpose of forced labour in the fishing industry.<sup>104</sup> The media exposition caused public outrage and triggered consumer demand for change, as well as drawing global attention to ongoing exploitation, thus causing international pressure on Thailand.<sup>105</sup> With the threat of trade sanctions, this international pressure had an economic aspect which threatened Thailand's third greatest export, fishing.<sup>106</sup> In **Argentina**, it was the combination of landmark case-law, CSO advocacy, and media exposure that created a demand for state intervention in the anti-trafficking field. The media was particularly important in bringing awareness to key cases of human trafficking in Argentina – one interviewee highlighted the role of the media in publishing developments in the *Verón* and in the *Montoya* cases, with the latter resulting in a notable positive development that provided – for the first time – compensation to trafficked person.

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 examining policy and legislative change, the media then also 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. The exposition from investigative journalism can exert direct pressure and thus contribute to triggering political will.<sup>107</sup> However, the impact of the media depends on the country's political and social situation; having a free press is a prerequisite to the media being able to influence the government.<sup>108</sup> In States which lack a free press and have high levels of censorship, the influence that the

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<sup>102</sup> Alistair Baptista, 'Fast track abuse cases appeal', *Gulf Daily News*, available at <<http://www.gulf-daily-news.com/Print.aspx?storyid=125046>> accessed 3 September 2021.

<sup>103</sup> Embassy Manama, 'GOB Engaged in Anti-Trafficking Measures; Welcomes IOM Capacity Building Project', Cable No. 08MANAMA165\_a, dated 15 September 2004. <[https://wikileaks.org/plusd/cables/04MANAMA1425\\_a.html](https://wikileaks.org/plusd/cables/04MANAMA1425_a.html)> accessed 9 September 2021.

<sup>104</sup> Interview with a UN official (n 72).

<sup>105</sup> Interview with Katharine Bryant (n 65).

<sup>106</sup> *ibid*; see also interview with a UN official (n 72).

<sup>107</sup> Interview with a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (15 April 2020).

<sup>108</sup> Interviews with an independent consultant (n 59); and Adie Teshome, Academic at La Trobe Law School, Australia (26 May 2020).

media may have is inhibited.<sup>109</sup> In contrast, where the press is 'allowed to criticize government, then [it] can be a very effective tool'.<sup>110</sup>

### 3.2 Media framing

The portrayal espoused by the media, and the stories it chooses to report, are of course critical to how trafficking is framed. Indeed, exposure is never neutral – thus an analysis of media framing and its role in influencing anti-trafficking action is crucial.<sup>111</sup> This is particularly noted with regards to, *inter alia*, whether trafficked persons are stereotyped as poor and passive, whether there is blame attached to the individual, whether it is framed as an issue of migration, crime or human rights, and whether there is a conflation of trafficking and smuggling.<sup>112</sup> Whilst it is not always necessary that the media captures the nuances, 'what is important is that they are informed' and are not spreading mis-information.<sup>113</sup> When this happens, 'the general population gets the wrong idea and then politicians and rule makers think they need to cater to that wrong idea'.<sup>114</sup> Indeed, whilst the media can play a powerful role in raising awareness of human trafficking, the former UN Special Rapporteur on Trafficking in Persons highlighted that there have been 'repeated examples of media sensationalism, manifested for example through a prurient and overly narrow focus on sexual exploitation'.<sup>115</sup> The quality of media reporting on trafficking, with sensational stories of sexual exploitation and real identities of trafficked persons revealed, was an issue for a long time in **Armenia**. In addition to deepening stigma, such mistakes made by media in reporting in some cases compromised the safety of trafficked persons. NGOs were perpetually raising concerns on professional and ethical coverage of trafficking cases. To regulate this area, in 2014, the Anti-Trafficking Council initiated a Mass Media Award on professional reporting about trafficking, and state funding was allocated to the Ministry of Education, Science, Culture and Sport (MESCS). Though an evaluation of the impact of this initiative was not performed, interviewees affirmed that trafficking coverage in mass media has become more professional, less aggressive, and does not create double-stigma as before.

Scholars have found that media outlets focus on cases of the sex trafficking of women and minors in an often-sensationalised manner to provoke outrage and pity.<sup>116</sup> This often

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<sup>109</sup> Interviews with an independent consultant (n 59); and a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (n 107).

<sup>110</sup> Interview with an independent consultant (n 59).

<sup>111</sup> Interview with Melita Gruevska Graham (n 53).

<sup>112</sup> Interview with an international expert (n 64).

<sup>113</sup> Interview with Kristina Touzenis (n 59).

<sup>114</sup> *ibid.*

<sup>115</sup> Joy Ngozi Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children' (2014) UN Doc A/69/269, 15.

<sup>116</sup> Farrell and Fahy (n 74); 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 78). An expert interviewee also discussed the so-called 'Taken effect': 'Taken' is a 2008 French English-language action-thriller film – written by Luc Besson and Robert Mark Kamen, and directed by Pierre

involves a gendered narrative, in which the trafficked person is framed as a vulnerable woman or girl, trafficked for sexual exploitation, often by a male perpetrator (see also 'Culture, Victimhood, and Discrimination'). Even if in the past decade there has been an expansion in the media's framing and coverage of human trafficking to include trafficking for labour exploitation – e.g., The Guardian's and Associated Press's reporting of exploitation of men in the Thai fishing industry – media exposure of trafficking for the purpose of sexual exploitation is still disproportionate to other types of trafficking, and 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 *ideal victim*. In the **Philippines**, for example, the media has been found to be essential in shaping the narrative around the issue of trafficking and eliciting response from the public.<sup>117</sup> However, media outlets report only on a focused form of exploitation or a specific trafficking victim profile, producing a harmful public inference that other forms of exploitation are less severe and less damaging to the trafficked person.<sup>118</sup> Thus, less attention and resources are given to combat 'non-exposed' forms of trafficking.

The impact of media on trafficking is demonstrated by policy shifts in response to dominant media framings.<sup>119</sup> Yet, the media's reporting on human trafficking can also echo the existing political priorities and government line.<sup>120</sup> Where this occurs, the power of the media in defining worthy issues becomes a tool for reinforcing and justifying, rather than challenging or evolving, the existing government priorities.<sup>121</sup> Sanford, Martínez 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>122</sup> This has impacts not only for governments' anti-trafficking efforts, but also for NGOs and their advocacy work.<sup>123</sup> The images constructed in the media – including in the context of celebrity campaigns<sup>124</sup> – are often found to diverge from how trafficked persons see themselves, and thus undermines their agency. Cojocarú, who herself was trafficked, sheds light on how the media framing is often

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Morel – where a former CIA operative tracks down his teenage daughter and her best friend Amanda after the two girls are kidnapped by Albanian human traffickers while traveling in France during a vacation. The movie has been heavily criticised for its simplistic and unrealistic depiction of human trafficking.

<sup>117</sup> Ralph Catedral, 'Focus Group Discussion with Non-State Actors on the Determinants of Anti-Trafficking Efforts in the Philippines' (24 July 2021).

<sup>118</sup> Focus Group Discussion with Non-State Actors on the Determinants of Anti-Trafficking Efforts in the Philippines 24 July 2021).

<sup>119</sup> Farrell and Fahy (n 74) 623.

<sup>120</sup> Girish J Gulati, 'News Frames and Story Triggers in the Media's Coverage of Human Trafficking' (2011) 12 Human Rights Review 363.

<sup>121</sup> *ibid* 370.

<sup>122</sup> Sanford, Martínez and Weitzer (n 78) 153.

<sup>123</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.

<sup>124</sup> DF Haynes, 'The Celebrityization of Human Trafficking' (2014) 635 Annals of the American Academy of Political and Social Science 25.

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 be beneficial to trafficked persons.<sup>125</sup>

## CONCLUSION

Governments’ anti-trafficking efforts are heavily influenced by whether and how trafficking is acknowledged, understood, and framed. The lens through which human trafficking is understood is highly context-dependent and embedded in a country’s history, cultural and social norms, thus making it difficult to generalise. Indeed, acknowledgment and framing involve a multitude of actors, including the government, CSOs, and the media, as well as tools, including international law, data and research, and external monitoring.

Acknowledgment of the problem is usually the first, and a necessary, step. Governments are often unwilling to acknowledge that trafficking exists within their territories, for a range of reasons including, but not limited to, fear of diminished international reputation, limited expertise to tackle the problem and availability of data, and absence of resources or unwillingness to allocate them. These obstacles can be overcome through, for example, political will coupled with external pressure (**Guyana** and the **Philippines**). Political will to acknowledge the existence of trafficking can also be triggered through international or regional pressure from neighbouring countries or economic partners (**Thailand**) or media reporting (**Armenia**). Acknowledgment is, however, not binary: certain governments might acknowledge some types of trafficking, or certain trafficking experiences, while denying others. It is in this space of discretion that framing becomes significant.

Governments can use framing to justify acknowledgment, or they can use acknowledgment to support a specific framing. Framing is operationalised through law and/or policy, and is sometimes supported by other determinants (e.g., CSOs, media, data and research, international law). The most common framing tensions that our research encountered are the conflation of trafficking and smuggling; the blurred definitions of trafficking for the purpose of forced labour and violations of labour laws; the different approaches to trafficking for the purpose of sexual exploitation between abolitionism and legalisation; and the language chosen by governments when discussing trafficking. Because determinants are inter-connected, our research pointed to the media – both traditional and new – as a significant actor in framing human trafficking, and thus influencing responses.

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<sup>125</sup> Claudia Cojocaru, ‘My Experience is Mine to Tell: Challenging the abolitionist victimhood framework’ (2016) 7 *Anti-Trafficking Review*.

The media plays a key role in both exposing and framing trafficking. In terms of exposure, its role can be critical in yielding political will (**Argentina, Chile, Cyprus, Mozambique, Thailand**), in building awareness (**Bahamas, Brazil**), and in supporting CSOs' advocacy efforts (**United Kingdom**). Yet, because exposure is never neutral, the media reporting also – consciously or not – supports or challenges how trafficking is framed. Media sensationalism in particular has been an issue in several of our case studies (**Armenia, Bahamas, Cyprus, Mozambique, Philippines, United Kingdom**) and the subject of heavy criticism by, *inter alia*, the UN Special Rapporteur on Trafficking in Persons. Problematic media framing often involves a highly gendered narrative, which results in stereotyping and in patronising accounts, and a focus on specific forms of trafficking and exploitation, which results in other types of trafficking being side-lined and under-reported.

## 2a DATA AND RESEARCH

To address trafficking and formulate effective policy responses, the scale and nature of the phenomenon must be understood and appreciated.<sup>126</sup> Data and research play a role in influencing State policy responses: while **new data can facilitate change**, the **lack of reliable data can obstruct the effectiveness of policy responses**. The availability of data, research and analysis about the nature and extent of trafficking in the country was considered to be a positive influence by 40% of survey respondents, whilst 38% of respondents noted it as a negative influence. The latter may reflect the fact that the lack of available data and research is a negative influence. 21% noted a neutral influence. While data is often presented as 'objective', and 'evidence-based policy' as the gold standard, the nature of the trafficking phenomenon presents **inherent difficulties in collecting and analysing data**, and data collection often suffers from **collection biases and definitional challenges**.<sup>127</sup> What data that is collected, and the way in which data is collected may indeed reflect a particular framing of trafficking (see also 'Acknowledgment and Framing'), which may be in itself shaped by (and in turn influence) policy priorities (see also 'Political Will'), and it is influenced by other determinants – including **availability of resources** and the **role of media and civil society organisations**.

Generally, data is collected by both governments and organisations external to governments (including, e.g., international organisations and civil society organisations). According to the nature of the body involved in data collection, **research efforts can have different aims and, thus, different impacts on anti-trafficking policies**. There is evidence that appointing specific bodies to monitor and collect data on trafficking can be a response to an increase in human trafficking within the country. This was the case of **Mozambique**, where a specialised agency under the coordination of the Attorney-General's Office (PGR) and the National Criminal Investigation Service (SERNIC) was created in response to a rise in trafficking, prompting the sharing of national information broadly and providing data to ensure protection.<sup>128</sup> As sparsely affirmed in the existing literature<sup>129</sup> and the expert

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<sup>126</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>127</sup> Scarpa, 'Contemporary Forms of Slavery' (n 304) 7; Del Frate (n 306); Guri Tyldum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking' in Frank Laczko and Elzbieta Gozdziaik (eds), *Data and Research on Human Trafficking: A Global Survey*, vol 43 (1/2) (International Organization for Migration 2005) 18 <<http://lastradainternational.org/lisidocs/282%20IOM%20survey%20trafficking%20%28Global%29.pdf>>.

<sup>128</sup> Alfredo Libombo F Thomas, 'Determinants of Anti-Trafficking Efforts: Mozambique' (BIICL, 2022).

<sup>129</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (2018) 16; United States Department of State, '2019 Trafficking in Persons Report' (2019) 16; GRETA, '4th General Report on GRETA's Activities' (2015) 36, available at <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805aa45f>> accessed 8 April 2020; GRETA, '5th General Report on

interviews appointing **independent national rapporteurs** (i.e. the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children in Netherlands<sup>130</sup> or the Labour Inspection to monitor occupational safety and deter labour trafficking in Georgia<sup>131</sup>) or **monitoring mechanisms** to evaluate States' policies and collect data on the dynamics of trafficking is crucial to improve anti-trafficking efforts.

When governments collect data, they make a **political decision** on whether or not to collect it, and if they decide to collect it, on which data to collect and how it is collected.<sup>132</sup> This decision is inextricably linked with the government's political will (broadly understood), as well as with its acknowledgment and framing of trafficking (see 'Political Will' and 'Acknowledgment and Framing'). In **Chile**, for example, interviewees argued that there is a selection bias in the government's data collection process that distorts the understanding of human trafficking, since data collection mostly focuses on cases of trafficking for the purpose of sexual exploitation while side-lining the identification of trafficking for forced labour as well as the acknowledgement of internal trafficking.<sup>133</sup> The statistical databases, interviewees affirmed, reflect the dominant frame of trafficking as a criminal justice issue, confirming the primacy of political priorities such as internal security and border control.<sup>134</sup> In **Armenia**, data on identification is not disaggregated (e.g., by sex, gender, age, and other characteristics), which prevents a more nuanced analysis of trends and profiles of trafficked persons. In the **Turkish Republic of Northern Cyprus (TRNC)**, authorities do not keep statistics of anti-trafficking efforts, including of any arrests or prosecutions – which results in a lack of understanding of the crime of human trafficking and in an unwillingness to invest resources to address it.

Governments are often the only actor that has full access to the data and rarely share not only raw and disaggregated information, but also the methodology through which data was collected, the definitions applied and the assumptions made. While the reliability (and the comprehensiveness) of such data may be questioned, its analysis will form the basis for governments' anti-trafficking actions including the allocation of resources, and will often be relied upon by external monitoring bodies in their evaluation of States' efforts. In so far as forming the basis of anti-trafficking actions, data sharing and data interpretation are crucial.

With regard to data sharing, the lack of public access to the information gathered and the unavailability of data for comparison or dissemination purposes constitute recurrent problems. This is evident in **Algeria**, where – according to interviewees – security authorities have decided neither to share data on trafficking publicly nor to use such information to

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GRETA's Activities' (2016) 40 available at <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063093c>> accessed 8 April 2020.

<sup>130</sup> GRETA, '4th General Report on GRETA's Activities' (n 129) 36.

<sup>131</sup> Tamar Tomashvili, Tina Burjaliani, and Tinatin Goletiani, 'Determinants of Anti-Trafficking Efforts: Georgia' (BIICL, 2022).

<sup>132</sup> Interview with an international expert (7 January 2020).

<sup>133</sup> Carolina Rudnick, 'Determinants of Anti-Trafficking Efforts: Chile' (BIICL, 2022).

<sup>134</sup> *ibid.*

develop targeted anti-trafficking policies.<sup>135</sup> In **Armenia**, the inconsistency between data collection formats significantly impairs anti-trafficking efforts. Indeed, data on identified cases and prosecuted cases are classified in different ways and cannot be compared, making it impossible to detect which case identified by the police reached the court and which were dropped or reclassified.<sup>136</sup> Moreover, the lack of access to publicly available data on trafficking tends to hinder the **role of media**, limiting their ability to report on and challenge governments' efforts in addressing trafficking.

With respect to data interpretation, then, while data is generally considered to be an 'objective' measure, it can be (and often is) used 'subjectively'. Taking the example of data on prosecutions, low prosecution numbers may reflect poor infrastructure and commitment to pursuing trafficking cases and investigations, or they may be taken by governments as evidence that there are few trafficking cases.<sup>137</sup> Similarly, when the number of identified trafficked persons is low, trafficking may be seen as a minor problem, rather than as a sign of insufficient, or inefficient, identification processes. The same applies for specific forms of trafficking.

When data is collected externally, governments have a degree of discretion in acknowledging, accepting, and responding to it. Indeed, **external data can be distrusted, delegitimised, or ignored by governments** – either on the basis of justified concerns such as partiality, or as a means of political strategy.<sup>138</sup> For governments to respond, expert interviewees argued, there has to be an alignment between data and government priorities. For example, whilst 'research can just be ignored' or dismissed as someone's opinion or discredited as a piece of advocacy, when it touches on government priorities, such as trade or revenue streams, the government 'will actively engage'.<sup>139</sup> Yet, when **data** is externally collected and shared, it **can become available also to a whole range of actors within and beyond the State**, including external monitoring bodies, civil society organisations (CSOs), the media, and funders. These actors can, individually or jointly, use the available data to exert pressure on States to improve their anti-trafficking efforts, or more broadly to evaluate their anti-trafficking action. For instance, in **Brazil** and in the **Philippines** data gathered by CSOs and non-governmental organisations (NGOs) have often been disseminated by national media, which reported cases of trafficking to raise public awareness and trigger local government's response.<sup>140</sup>

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<sup>135</sup> Ali Adenwala, Massinissa Benlakehal, and Mina Chiang, 'Determinants of Anti-Trafficking Efforts: Algeria' (BIICL, 2022).

<sup>136</sup> Viktoria Avakova, 'Determinants of Anti-Trafficking Efforts: Armenia' (BIICL, 2022).

<sup>137</sup> Interview with an international expert (n 132).

<sup>138</sup> Interviews with Fiona David, Inaugural Research Chair at Minderoo (8 May 2020); and an international expert (5 May 2020).

<sup>139</sup> Interview with Fiona David (n 138).

<sup>140</sup> Marina Farias, 'Determinants of Anti-Trafficking Efforts: Brazil' (BIICL, 2022); Angeli Patricia Romero, 'Determinants of Anti-Trafficking Efforts: Philippines' (BIICL, 2022).

Data and research are **insufficient to trigger change alone**. Rather, the impact of data and research is amplified by media coverage<sup>141</sup> and a broader advocacy strategy, including public campaigning, partnerships and behind-the-scenes work, which prevents governments from just ignoring the analysis.<sup>142</sup> Data and research are indeed **essential tools used by NGOs, inter-governmental organisations and others to pressure and influence government action**. They are persuasive because they evidence and sustain advocacy campaigns,<sup>143</sup> which can be particularly decisive to raise awareness and persuade governments to acknowledge human trafficking as an issue of concern.<sup>144</sup> In **Armenia**, reliable data is one of the critical factors for CSOs to attract State attention toward the phenomenon. Available data on nature of the crime, type of exploitation, the main population groups affected is also used by NGOs to trigger the State response. However, the way CSOs use data is also determined by their own specific priorities. Moreover, there remain **limits to the potential influence that data and research can have on governments**, including contested numbers, unclear methodologies,<sup>145</sup> and definitional tensions.<sup>146</sup>

According to the level of accuracy of the information gathered and the nature of the entity involved in collecting findings, research can influence anti-trafficking efforts in different ways. Indeed, **accurate datasets and research on human trafficking allow authorities to properly frame the phenomenon and shape evidence-based responses**. In particular, detecting new trends concerning trafficking purposes and trafficked persons' profiles (i.e. age, gender, nationality) is integral for States to adjust their policies, resourcing and efforts. When governments – like in the case of the **Philippines** – lack data on trafficking-related issues, CSOs can be crucial in influencing States' responses by compensating their inadequate research efforts with the provision of independently gathered information on emerging trends of trafficking and exploitation.<sup>147</sup> Similarly, investigations conducted by national and international NGOs (i.e. Raíces and Save the Children-Sweden) in **Chile** outlined the nature and scope of trafficking in the country, engaging local police in the mapping activities, enhancing prevention efforts and extracting relevant information that served as a basis for the 2005 bill on human trafficking.<sup>148</sup> Moreover, Chilean CSOs and international organisations (IOs) have highlighted how public authorities' understanding of trafficking is still largely inadequate and outdated. Indeed, although the International Labour Organisation (ILO) addressed labour exploitation as the most common form of

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<sup>141</sup> Interview with a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children Robbert Hoving (5 April 2020).

<sup>142</sup> Interviews with Fiona David (n 138); and a Civil Society Organisation officer (9 April 2020).

<sup>143</sup> Interview with Suzanne Hoff, International Coordinator at La Strada International (23 April 2020).

<sup>144</sup> Interviews with Cristina Huddleston, Director of European Operations, Justice and Care (8 March 2020); Euan Fraser, Public and Corporate Affairs Manager, International Justice Mission UK (16 April 2020); Federica Toscano, Head of Advocacy and Migration, Missing Children Europe (5 March 2020); and Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020).

<sup>145</sup> Interview with Gary Craig, Professor of Social Justice, University of Newcastle upon Tyne, Law School (15 April 2020).

<sup>146</sup> Interview with an international expert (n 138).

<sup>147</sup> 'Determinants of Anti-Trafficking Efforts: Philippines' (n 140).

<sup>148</sup> 'Determinants of Anti-Trafficking Efforts: Chile' (n 133).

exploitation in the country and the International Organisation for Migration (IOM) identified Chile as a State affected by both international and internal trafficking, the local government kept categorising victims of labour trafficking as migrant workers. In **Armenia**, the share of detected persons trafficked for the purpose of forced labour has increased over the last decade. That data helped draw public authorities' attention to this long-neglected issue eventually.<sup>149</sup>

**Data and research can be used** not only to monitor the phenomenon and adapt, or advocate for the adaptation of, anti-trafficking measures accordingly but **also to reinforce ongoing efforts**, as findings can prove their effectiveness. There are however two major obstacles in terms of monitoring and evaluation of efforts: there is generally little attention and funding to perform such an analysis (with monitoring and evaluation often an afterthought for projects), and the range of anti-trafficking efforts means that some efforts are more easily monitored and evaluated than others. With respect to monitoring and evaluation of ongoing efforts, our case studies have pointed to lack of political will and insufficient resources as the two main drivers of the shortcomings in this area. In **Georgia**, there is a lack of studies that would evaluate the impact of undertaken efforts and reveal hidden challenges in order to sustain required counter-trafficking strategies. In **Guyana**, it has been 'difficult to monitor and evaluate' due to lack of political will and resources, with stakeholders suggesting that academia should be engaged to conduct such research. Secondly, not all anti-trafficking efforts are easily quantifiable. **Prosecution efforts**, for example, **allow to quantify and publicise outcomes more easily than other kinds of measures** (e.g., prevention policies). Often times, this will result in **channelling major investments towards prosecutions at the expense of other areas of the anti-trafficking response**,<sup>150</sup> including prevention and protection. In these areas, data and research are more scarce and, when present, tend to be qualitative rather than quantitative. With regard to the **United Kingdom**, for instance, the identification of tangible results through prosecution efforts was used by the government to justify the allocation of resources and attract more fundings (see also 'Economic Conditions and External Funding').<sup>151</sup>

Accurate data collection is crucial to fully acknowledge the nuanced nature of human trafficking in context, allowing States to adjust their anti-trafficking responses to the latest trends in exploitation and prioritise the most relevant issues. However, data collection and analysis are not always adequate or sufficient due to lack of resources, lack of political will, or different policy priorities. To fill the consequent information gaps and promote informed effective responses to human trafficking, external stakeholders such as IOs, NGOs and CSOs play a key role in conducting investigations and reporting relevant data on the topic supplementing and often challenging official data. However, despite the impact of data collection procedures on anti-trafficking measures is often tangible (especially in the case of

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<sup>149</sup> 'Determinants of Anti-Trafficking Efforts: Armenia' (n 136).

<sup>150</sup> *ibid.*

<sup>151</sup> Maria Moodie, 'Determinants of Anti-Trafficking Efforts: United Kingdom' (BIICL, 2022).

prosecution), this influence usually depends on the interaction with other variables (i.e. media and external monitoring) that disseminate information, contributing to raise awareness and to shape evidence-based policies.

## 2b CULTURE, VICTIMHOOD, AND DISCRIMINATION

The social and cultural contexts in a country are found to be significant in shaping how trafficking is framed and understood, and consequently in the choice of, design and implementation of anti-trafficking efforts. The social and cultural context-based framing and understanding might lead governments to include (or exclude) specific categories of trafficked persons, or specific exploitative purposes, in anti-trafficking efforts. It can also explain, in part, why governments choose to prioritise (or de-prioritise) certain areas of intervention (e.g., prosecution over protection) – not only within anti-trafficking, but also between anti-trafficking and other policy areas, including immigration and border control. Finally, the social and cultural context, understood as a set of cultural values, might hinder both anti-trafficking efforts and identification (and self-identification) of trafficked persons.

Two main determinants have emerged from our research and analysis in the context of social and cultural contexts shaping anti-trafficking efforts: victimhood (as it relates to gender and exploitative purposes) and discrimination. The following sections will unpack each of these determinants in turn.

### 1 VICTIMHOOD

#### 1.1 Gender

Expert interviewees emphasised how, due to particular and context-specific cultural and social barriers, some States struggle to understand victimhood beyond the “*ideal*” victim, which leads to stereotyping and to failures to understand victimhood intersectionally. In **Chile**, research has highlighted that Court decisions exhibit a pattern of gender discrimination that hinders detection, prosecution, adequate sanctions, and proper protection of women. Specifically, the standards of proof of the means of deceit, force or coercion are extremely high and acquittals are based on the assumption that there were available options for the trafficked women.<sup>152</sup> Cultural stereotypes affect and interfere in identifying the crime, as certain Latin-American women, the majority of trafficked persons in the context of sexual exploitation, are negatively perceived and judged as sexually active or potential sex workers. This has also been particularly serious for Asian trafficked persons, as case law regarding domestic servitude and forced labour of Chinese and Vietnamese nationals shows how prosecutors and judges perceive the crime as a mere manifestation of cultural norms. Similarly, in **The Bahamas** the principal determinant behind the State’s efforts to identify and protect trafficked females is the government’s recognition of a general vulnerability of

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<sup>152</sup> Tania Gajardo Orellana, Karen Guzmán Valenzuela y Carolina Suazo Schwencke, ‘Interpretación jurisprudencial de los principales tipos penales contenidos en la Ley 20.507’ (2012) 53 Revista Jurídica del Ministerio Público 206-8; *Ministerio Público C/ Amelfi y otros* [2012] RIT N° 287-2012, Cuarto Tribunal Oral en lo Penal de Santiago.

women to exploitation. Several interviewees explained that most of the women who have been identified to date have been foreign women who sought to exercise their agency by attempting to find employment in The Bahamas because of limited employment opportunities, poverty, and discrimination in their countries of origin. In **Georgia**, the report found that case-analysis is extensively used to determine the *profile* of a trafficked person, which risks hindering identification of trafficked persons not fitting such profile. Beyond biological sex, in **Argentina** assumptions around gender and *ideal* victimhood have been found to be problematic for transsexual individuals, who are rarely identified as trafficked and therefore face greater barriers in accessing support and resources,<sup>153</sup> despite being at high risk of being trafficked.

Some States struggle to adopt a comprehensive gender-based approach to anti-trafficking, and 'to appreciate that men can be victims'<sup>154</sup> as the mainstream framing of victimhood is often gendered and centred on sexual exploitation.<sup>155</sup> In the **United Kingdom**, the gendered framing of certain international legal frameworks such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)<sup>156</sup> relating specifically to women and children, and the initial focus on trafficking for sexual exploitation, has contributed to domestic assumptions in relation to certain victim profiles. For example, interviewees noted that women and girls are more readily identified in situations of sexual exploitation than men. These assumptions have hindered the identification and protection of certain trafficked persons. On the other hand, an interviewee from the criminal justice system identified a widespread erroneous misconception that perpetrators are overwhelmingly men, which is contrary to their experience of women being perpetrators (albeit in different roles or tiers of the trafficking chain).<sup>157</sup> In the **Philippines** anti-trafficking efforts are mostly focused on sexual exploitation of children and women and hardly touch on forced labour, particularly of males (see below).<sup>158</sup> In congressional discussions, narratives are always of women and children.<sup>159</sup> Judges are accustomed to women and children as profiles of trafficked persons.<sup>160</sup> When faced with trafficked males, they are

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<sup>153</sup> Interviewee AR11.

<sup>154</sup> Interview with Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>155</sup> Noemi Magugliani, '(In)Vulnerable Masculinities and Human Trafficking: Men, Victimhood, and Access to Protection in the United Kingdom' (2022) *Journal of Human Rights Practice*.

<sup>156</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>157</sup> Maria Moodie, 'Determinants of Anti-Trafficking Efforts: United Kingdom' (BIICL, 2022).

<sup>158</sup> Interviews with Reynaline Francisco-Tan (7 July 2021); and Mel Senen Sarmiento (6 July 2021).

<sup>159</sup> Aniceto Bertiz III, 'Privilege Speech of Rep. Bertiz' (2016) 3 Congressional Record - 17<sup>th</sup> Congress; interview with Sarmiento (n 158); Emmanuel Pacquiao Sr, 'Privilege Speech of Rep. Pacquiao' (2010) 1 Congressional Record - 15<sup>th</sup> Congress; Emmi De Jesus, 'Privilege Speech of Rep. De Jesus' (2016) Congressional Record - 17<sup>th</sup> Congress.

<sup>160</sup> Interview with Francisco-Tan (n 158).

not given the same level of attention and compassion as a trafficked child or woman<sup>161</sup> – largely because of the strong patriarchal values built into Filipino consciousness through socio-cultural-religious institutions most notably the church.<sup>162</sup> Similar issues emerged in the case study on **Brazil**, where (cisgender) women and girls as a group are predominantly associated with victimhood. While focussing on a specific profile of trafficked person (i.e., women and girls trafficked for sexual exploitation) is effective in generating public support regardless of political ideologies,<sup>163</sup> the impact of this narrow framing comes at the cost of erasure – particularly for already marginalised groups, including men and transgender women.<sup>164</sup> In **Bahrain**, the concept of human trafficking as a whole is conflated with sexual exploitation. A 2009 US embassy correspondence noted that suspected trafficked persons referred by the police were ‘nearly always women’.<sup>165</sup> In the same year, the embassy wrote that the government ‘focused on women as the most likely victims’ and ‘all the shelters in the country are for women.’<sup>166</sup> A local activist said that they had only seen females in the Expat Protection Center (EPC) shelter,<sup>167</sup> and another interviewee expressed that it was very difficult to get victims of abuses *other than* sex trafficking (such as non-payment of salary) into the EPC shelter.<sup>168</sup> In **Armenia**, where the majority (72%) of detected labour trafficking cases concern males trafficked to the Russian Federation, men are reluctant to self-identify and seek help due to existing stigma and shame and gender stereotypes related to the role of men in society. Traditional gender attitudes and the tendency to perceive men as less vulnerable to being victimised in trafficking situations lead to underestimating the impact of trauma on men. This undermines the quality and credibility of their statements during investigations and in court proceedings. Recognising this as a hinderance, a special course on the vulnerabilities of trafficked persons, witnesses and suspects and specificities of investigation with their participation, was launched for investigators at the Justice Academy.

## 1.2 Exploitative purposes

Social contexts are found to impact how different types of trafficking are framed in comparison to others – not just between the ‘traditional’ sexual exploitation and forced labour, but

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<sup>161</sup> *ibid.*

<sup>162</sup> Noemi A Medina, ‘The Culture of Patriarchy and Its Effects on the Human Rights of Girl-Children in Cagayan de Oro and Claveria, Misamis Oriental: Implications to Policy Formulation’ (2015) 2015–44 Philippine Institute for Development Studies: Discussion Paper Series; interview with Francisco-Tan (n 158).

<sup>163</sup> Interviewee BR04.

<sup>164</sup> Interviewees BR04; BR06; and BR07.

<sup>165</sup> Embassy Manama, ‘Interim Report on Human Trafficking’ (16 November 2009) Cable No. 09MA-NAMA652\_a, available at <[https://wikileaks.org/plusd/cables/09MANAMA652\\_a.html](https://wikileaks.org/plusd/cables/09MANAMA652_a.html)> accessed 9 September 2021.

<sup>166</sup> Embassy Manama, ‘Embassy Manama’s Input for Bahrain TIP Report’ (22 February 2009) Cable No. 09MA-NAMA107\_a, available at <[https://wikileaks.org/plusd/cables/09MANAMA107\\_a.html](https://wikileaks.org/plusd/cables/09MANAMA107_a.html)> accessed 9 September 2021.

<sup>167</sup> Participant 7, non-state actors Focus Group Discussion (28 July 2021).

<sup>168</sup> Interview with Marietta Dias, co-founder, Migrant Workers Protection Society (18 August 2021).

also with respect to other forms of trafficking, including forced marriage and forced criminality. Some expert interviewees reported that, for example, due to the cultural context and social acceptability, forced labour is reported and acknowledged more frequently than sex trafficking in the Middle East.<sup>169</sup> In contrast, the Indian government is more ready to acknowledge and work on trafficking for sexual exploitation over non-sexual forms of trafficking. An expert interviewee suggested that this 'reflects particular conditions, the caste system in India, approaches to work and exploitation, and gendered approaches to these issues about protecting women'.<sup>170</sup> They suggest that in it can be easier to capture governments' attention in 'more patriarchal societies around [...] sexual exploitation of women and girls rather than labour exploitation'.<sup>171</sup>

In several of our case studies, research has shown a higher propensity of States to engage in efforts against trafficking for the purpose of sexual exploitation. In **Cyprus**, for example, there is a higher number of prosecutions and convictions for trafficking for the purpose of sexual exploitation – although this is not because it is the most prevalent form of trafficking in the Republic. In fact, there are indications of significant forced labour among both males and females that has however received a lot less attention in the Republic, including because many of these cases are treated as labour disputes, rather than as human trafficking.<sup>172</sup> In the Turkish Republic of Northern Cyprus (TRNC) also, there is a lot more emphasis on sexual forms of exploitation because sexual exploitation is more visible and less culturally accepted: 'With labour exploitation, there is a perception that these people are not exploited or trafficked at all. [...] There is serious exploitation in different labour sectors but the practices of exploitation are normalized in the society and the cases are hidden'.<sup>173</sup> In **Bahrain**, the government's conflation of human trafficking with sex trafficking means that identified and protected trafficked persons are almost exclusively females trafficked for the purpose of sexual exploitation. Non-governmental organisations (NGOs) expressed their difficulties of advocating for the protection of victims of forced labour on the basis that government officials lack an expansive understanding of trafficking in persons. In parallel, cultural norms around privacy in homes are a negative determinant which impedes government enforcement and implementation of migrant domestic workers' rights. The most recent 2021 United States Trafficking in Persons (TIP) Report stated that because of 'cultural

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<sup>169</sup> Interview with Melita Gruevska Graham, Head of the Anti-Trafficking Programme at the International Centre for Migration Policy Development (ICMPD) (6 May 2020).

<sup>170</sup> Interview with Nick Grono, CEO of The Freedom Fund (20 March 2020).

<sup>171</sup> *ibid.*

<sup>172</sup> US State Department, 'Trafficking in Persons 2016 Report' (2016) 149; Group of Experts on Action against Trafficking in Human Beings (GRETA), 'Cyprus: Third Evaluation Round: Access to Justice and Effective Remedies for Victims in Trafficking in Human Beings' (2020) para 147.

<sup>173</sup> This overemphasis on sexual exploitation was also discussed during the parliamentary debate for the passing of Art. 254B. For instance, Jale Refik Rogers stated that '[a]lthough prostitution is the first thing that comes to mind when it comes to human trafficking, human trafficking is not only prostitution, it also involves victims working in construction, agriculture and domestic work. We should not ignore this either.' See Parliamentary Debate on the Proposed Amendment to the Criminal Law (9 March 2020) 112.

norms surrounding privacy in homes [...] labour inspectors faced difficulties conducting unannounced inspections of migrant domestic workers' accommodations and investigating allegations of abuse in the absence of an official complaint'.<sup>174</sup>

Trafficking for the purpose of sexual exploitation is viewed in **Armenia** through the lens of prostitution. Stigma towards trafficked persons has historically been high, making it challenging to organize effective anti-trafficking response. Over time, interviewees argued, a transformation among authorities of the attitude towards people trafficked for the purpose of sexual exploitation took place, grounded in the evolution of understanding of the difference between trafficking, slavery, and sex work. Because of the long-standing historical nexus between trafficking and sexual exploitation, investigation for sexual exploitation cases was done more precisely, and it was easier to apply the trafficking articles in the Criminal Code – according to the expert interviewees. They also stressed that recent cases, especially on forced labour exploitation, did not reach the court:<sup>175</sup> for instance, in 2020 authorities dropped seven forced labour cases due to a lack of evidence, compared with four forced labour cases dropped in 2019. More broadly, forced labour convictions have not been issued since 2014, a failure associated with the fact that trafficking for forced labour is more difficult to identify and prosecute, as they are more complex, lack clear evidence, and are mainly based on the testimony of the trafficked person(s).

A cultural factor is also at play In **Argentina**, where individuals trafficked for the purpose of forced labour tend to 'normalise' their exploitation and to not be able to self-identify as trafficked (or exploited),<sup>176</sup> which in turn prevents them from filing complaints or from coming into contact with authorities. This cultural factor also results in resistance from State organs to define certain situations of forced labour as human trafficking. Our research also highlighted another factor influencing the prosecution of sexual exploitation matters – the 'abolitionist' approach to prostitution.<sup>177</sup> Argentina is an abolitionist State, where only 'autonomous' prostitution is legal (meaning that it is performed individually by private actors, while organised prostitution – brothels, prostitution rings and pimping – is illegal). Consequently, any person owning/operating a brothel and/or living off the proceeds of sex work, including benefitting economically from the sexual 'exploitation'/prostitution of a third party, is subject to prosecution. This element raised in the Argentinian context resonates with a suggestion from an expert interviewee, who argued that weaker efforts in the context of forced labour might be related to an under-recognition and identification of forced labour cases.<sup>178</sup> Another expert interviewee corroborated this, and added that when certain practices are embedded in a country where certain working conditions are acceptable and not seen as exploitative, it is trickier to identify cases of trafficking and forced labour.<sup>179</sup> This

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<sup>174</sup> US State Department, 'Trafficking in Persons 2021 Report' (2021) 106.

<sup>175</sup> Interviewees ARM02; ARM04; and ARM05.

<sup>176</sup> Interviewees AR02; AR03; AR08; AR14; and AR16.

<sup>177</sup> Interviewees AR03; AR04; and AR05.

<sup>178</sup> Interview with an independent consultant (7 May 2020).

<sup>179</sup> Interview with Euan Fraser (n 154).

was also highlighted with specific reference to **Brazil**, where judges do not acknowledge the gravity of exploitative situations in the labour context because 'the culture of exploitation is embedded'.<sup>180</sup> Cultural norms in the **Philippines**, albeit indirectly, shape government response to trafficking for the purpose of forced labour, due to the conflict between local cultural norms and legal concepts prescribed by international legal frameworks.<sup>181</sup> In Filipino culture, it is expected that children will contribute to the family livelihood. It is an accepted practice for children to do manual labour to support the families' income, especially in poorer and more remote communities.<sup>182</sup> Older generations believe that their economic situation justifies their children doing hard, manual labour.<sup>183</sup> This mindset accounts for the low levels of child labour trafficking reporting.

Culture also plays a role within anti-trafficking efforts in the context of sexual exploitation, especially as far as imposition of victimhood is concerned. In the **Philippines**, for example, post-colonial beliefs and value systems negatively affect anti-trafficking efforts to address sexual exploitation.<sup>184</sup> During the Spanish colonisation, Filipinos were taught a foreign faith – Catholicism – which redefined values and installed a social structure dictated by Christian morality,<sup>185</sup> that until to this day permeates all aspects of society and social behaviour.<sup>186</sup> Women are judged based on sexual behaviour; thus, women who are in commercial sex work are dismissed as women with loose morals. This cultural mindset has factored into the lack of government attention and anti-trafficking efforts in red light districts.<sup>187</sup> Aggravating the situation, many persons removed from red light districts do not want to be 'rescued'. These women appear belligerent in court and often change their names to circumvent the system – and because of this, some judges and police officers have grown wary and resort to victim-blaming.<sup>188</sup>

### 1.3 Other

The social and cultural context, understood as a set of cultural values, might hinder both anti-trafficking efforts and self-identification of trafficked persons. Filipino culture was identified to hinder government anti-trafficking efforts, because no matter the efforts of the gov-

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<sup>180</sup> Interview with a member of an international organisation (14 April 2020).

<sup>181</sup> See Lise Smit, 'When national law conflicts with international human rights standards' (*BIICL*, 17 May 2018) available at <<https://www.biicl.org/publications/when-national-law-conflicts-with-international-human-rights-standards>> accessed 29 April 2021.

<sup>182</sup> Interview with a member of an international organisation (n 180).

<sup>183</sup> *ibid.*

<sup>184</sup> Interviews with Katrina Valdes (29 June 2021); Antonette Bucasas-Mangrobang (21 July 2021); Aldwin Joseph Empaces (14 July 2021); Maria Sheila Portento (6 August 2021); and Francisco-Tan (n 158).

<sup>185</sup> Dana R Herrera, 'The Philippines: An Overview of the Colonial Era' (2015) 20 *Education About Asia*.

<sup>186</sup> Sharmila Parmanand, 'The Philippine Sex Workers Collective: Struggling to Be Heard, Not Saved' (2019) *Anti-Trafficking Review* 57.

<sup>187</sup> Interviews with Katrina Valdes (n 184); and Bucasas-Mangrobang (n 184).

<sup>188</sup> Interviews with Francisco-Tan (n 158); and Portento (n 184).

ernment, Filipinos have certain values so intrinsically ingrained that are abused by traffickers.<sup>189</sup> Specifically, in the **Philippines** there is a principle called *utang ng loob* – ‘debt of gratitude’ in English – which imposes an obligation for a previous favour or assistance.<sup>190</sup> This begins a vicious cycle of inter-generational exploitation, often seen in the trafficking of fisherfolk or domestic helpers.<sup>191</sup> In parallel, the context-specific post-colonial culture of silence leads Filipinos to choose to detach themselves and stay silent in the face of trouble,<sup>192</sup> which in turn hinders self-identification and reporting. Trafficked persons suffering from trauma and low self-worth choose to keep silent instead of filing a case against their traffickers, who are usually their own blood relatives, to keep appearances and save the family from shame. An interviewee stated that ‘as long as this mindset does not change, the problem will exist, no matter what law, legal system, framework you present to the people. If victims do not file cases, government will not have anything to prosecute’.<sup>193</sup>

## 2 DISCRIMINATION ON THE BASIS OF RACE AND/OR NATIONALITY

Systemic discrimination and racism, both as part of and as detached from social and cultural contexts, are found to shape the functioning of particular identification and protection processes. An expert interviewee suggested, for example, that systemic racism in the **United Kingdom’s** National Referral Mechanism (NRM), based on analysis of the NRM data, prevents policies from being implemented as they were initially designed and laid out.<sup>194</sup> In the United Kingdom, notably, the government views trafficking through an immigration lens and uses human trafficking as a vehicle through which it can justify the imposition of tough immigration and border control measures. Tough immigration policies create a culture of mistrust and disbelief in the government’s response to foreign trafficked persons that hinders identification and protection response. Although the government’s traditional view of human trafficking being a transnational issue has been challenged in recent years due to the increasing number of British nationals being referred into the NRM, the Home Office’s ‘New Plan for Immigration’ and the Nationality and Borders Bill continue to frame trafficking as an *external* phenomenon, linked primarily with immigration.<sup>195</sup>

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<sup>189</sup> Interview with Bucasas-Mangrobang (n 184).

<sup>190</sup> *ibid.*

<sup>191</sup> *ibid.* See also interview with Cecilia Oebanda-Pacis interview (15 July 2021).

<sup>192</sup> Interviews with Bucasas-Mangrobang (n 184); and Empaces (n 184).

<sup>193</sup> Interview with Empaces (n 184).

<sup>194</sup> Interview with Gary Craig, Professor of Social Justice at the University of Newcastle upon Tyne, Law School (15 April 2020).

<sup>195</sup> Home Office’s ‘New Plan for Immigration; Policy Statement’ (March 2021) 31: “However, over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders (FNOs) and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country... Protection from removal, compounded by the fact the threshold for an RG decision is low, means release from immigration detention is very likely, resulting in rising abuse of the NRM”. See also reference within the Nationality and Borders Bill to individuals claiming to be victims of trafficking ‘in bad faith’; Clause 51(1) and Clause 53(5).

The identification and protection responses are also hindered by discrimination and systemic racism in the **Philippines**, where one interviewee observed that the government has been discriminately treating Chinese trafficked persons as illegal workers instead of trafficked persons<sup>196</sup> – which may be linked to the public alarm over the influx of Chinese workers into the Philippines.<sup>197</sup> Similarly, in **Cyprus**, the failure of the authorities to effectively tackle trafficking is connected to the nationality and migrant status of the trafficked person. The Ombudsman has recorded over the years a series of practices, characterised and explained by institutional racism.<sup>198</sup> One example of this is the fact that when a complaint of labour exploitation is made to authorities, the situation is often not investigated and, instead, the complainant is deported back to their home country.<sup>199</sup> Part of this institutional racism is connected to the ‘Cyprus problem’ that permeates and affects even unrelated policy decisions in the Republic of Cyprus. This is evidenced by statements of the Minister of Interior in 2019, when referring to migrants and asylum seekers: ‘There is a danger that in [the Republic of] Cyprus, a Muslim minority will be created. [...] There are settlers in the free areas’.<sup>200</sup>

In **Chile**, migrant workers are often trafficked, yet not only do they themselves avoid being recognised as such because their earning capacity would be damaged, but the government also avoids categorising them as anything other than migrant workers. More broadly, the anti-immigrant sentiment and entrenched racial and social discrimination hinder detection of trafficked persons. Gross violations of rights need to be present in order to surpass the psychological threshold required to be categorized as trafficking, increasing impunity. The Haitian community, for example, encountered entrenched discrimination that

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<sup>196</sup> Interview with Oebanda-Pacis (n 191).

<sup>197</sup> Senator Joel Villanueva, ‘Villanueva’s Opening Remarks during the Hearing on Influx of Chinese Workers in PH’ (26 November 2018) available at <[http://legacy.senate.gov.ph/press\\_release/2018/1126\\_villanueva1.asp](http://legacy.senate.gov.ph/press_release/2018/1126_villanueva1.asp)> accessed 28 September 2021.

<sup>198</sup> A Republic of Cyprus state actor stated in their interview that there is institutional racism in Cyprus, but concluded that it is not having a particularly sizable impact on anti-trafficking efforts.

<sup>199</sup> CEDAW, ‘Concluding observations on the 8th periodic report of Cyprus: Committee on the Elimination of Discrimination against Women’ (CEDAW/C/CYP/CO/8, 25 July 2018) para 28. When 150 foreign domestic workers were asked in 2019-20 whether they would report their physical or sexual abuse to the police, 75% of them said they would not – see Republic of Cyprus’ Ombudsman and Nasia Hadjigeorgiou, ‘Report on the Status of Foreign Domestic Workers in Cyprus’ (2020) 24. Underreporting by trafficked persons is also one of the major difficulties identified in interviews with RoC state actors.

<sup>200</sup> Michalis Polydorou, ‘C. Petrides: Fears that among the migrants that arrive there are Jihadists’ (Reporter, 18 January 2019) available at <<https://www.reporter.com.cy/politics/article/445419/k-petridis-foboi-oti-metaxyton-metanaston-poy-ftthanoy-n-einai-kai-tzichantistes>> [in Greek].

has been extensively covered by the media<sup>201</sup> and academia,<sup>202</sup> and while Haitian nationals have often been the subject of serious labour abuse that could amount to trafficking for forced labour,<sup>203</sup> no trafficking cases involving Haitian victims has ever been prosecuted. In the context of prosecutions, the report highlights a slight tendency to acquit<sup>204</sup> or impose lenient sentences<sup>205</sup> to Chilean and foreign defendants that have high economic and/or political status. Discrimination in the context of prosecution of perpetrators has also been emphasised in **Bahrain**, where racial stereotyping may impact the government's record of convictions in relation to specific nationalities – namely, it could explain the disproportionate number of Bangladeshi nationals convicted of human trafficking offences due to commonly-held stereotypes that they are more likely to commit crimes.

## CONCLUSION

Social and cultural contexts are significant in shaping the way in which trafficking is understood and framed, and in turn in the design and implementation of anti-trafficking efforts. Our research has found that the understanding of victimhood and the presence of discrimination impact substantively on how trafficking is framed, which measures get prioritised, what efforts are being implemented, and who is protected through those efforts. At the core of the concept of victimhood are processes of stereotyping, which act as barriers to the identification of *all* trafficked persons and to the adoption of an inter-sectional and inclusive approach to vulnerability. Cultural stereotypes can affect identification of persons trafficked for the purpose of sexual exploitation, who are judged and stigmatised as promiscuous (**Chile, Philippines**), they can lead states to exclude from the category of 'vulnerable' individuals those who display a degree of agency – yet without taking into account all *means*

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<sup>201</sup> Under the framework of the new migration policy, in 2018 the government initiated its "Humanitarian plan to return to Haiti", that offered the Haitian community the opportunity to return to their country with the compromise of not returning to Chile in 9 years. The measure was highly criticized by civil society and migrants' organizations who claimed the measure was racist by focusing exclusively in the Haitian community, which was only 8,4% of the total migrant population according to the 2017 Census. 'El racismo como política de Estado: La deportación de haitianos en Chile' (*El Desconcierto*, 7 November 2018) available at <<https://www.eldesconcierto.cl/cartas/2018/11/07/el-racismo-como-politica-de-estado-la-deportacion-de-haitianos-en-chile.html>> accessed 30 September 2021

<sup>202</sup> According to Daniela Bonacic, 'Informe sobre la trata de Personas en Chile: Un Análisis legislativo e Institucional en el Marco de la Nueva Ley 20.507' (2012) Informe de Título, Pontificia Universidad Católica de Chile 36, the first action plan did not address the issue of discrimination, particularly the treatment of public officials with direct contact with migrants. Various studies have stated that Chile is a country that discriminates against the Peruvian migrant population, people with Afro-descendant traits or indigenous peoples. This gives rise to perceptions of power and in some cases (labor) abuses.

<sup>203</sup> 'Denuncias de migrantes por abuso laboral se triplican en dos años' (*La Tercera*, 3 June 2019) available at <<https://www.latercera.com/nacional/noticia/denuncias-migrantes-abuso-laboral-se-triplican-dos-anos/682253/>> accessed 24 September 2021.

<sup>204</sup> *Ministerio Público C/Guerra y otro* [2015] RIT N° 31-2015 involved an agricultural businessman, ex presidential candidate; and *Ministerio Público C/ Kang Min Lee y Jaesung Kim* [2015] RIT 291-2015 a Korean businessman.

<sup>205</sup> 'Condenan a empresario gastronómico de la India por trata de personas en Santiago' (*El Mostrador*, 23 January 2018) available at <<https://www.elmostrador.cl/noticias/pais/2018/01/23/condenan-a-empresario-gastronomico-de-la-india-por-trata-de-personas-en-santiago/>> accessed 20 August 2021; *Ministerio Público C/ Espinoza Sáez y otra* [2013] Juzgado de Garantía de Molina, RIT N° 760-2013.

of the trafficking definition (**The Bahamas**), or they can form the basis of the presumption of a *lack of agency*, thus conflating sex work with trafficking and forced prostitution (**Bahrain**). These stereotypes can be driven and reinforced, rather than challenged, by case-law and judicial decision-making (**Georgia**). When stereotypes and assumptions are made about a particular category of individuals, usually on the basis of their biological sex, those who do not conform to discrete categories (**Argentina**) or are not seen as *prima facie* vulnerable (**Brazil, Philippines, United Kingdom**) are at risk of being excluded not only from the discourse, but also from identification and protection.

Social contexts are also found to impact how different types of trafficking are framed in comparison to others. In most of our case studies, research has shown a higher propensity of states to engage in efforts against trafficking for the purpose of sexual exploitation – although this does not hold true for all governments and is subject to country-specific assessments. While engagement with only specific types of trafficking is usually explained by reference to data, one could challenge the very nature of data collection and the biases within (see ‘Data and Research’ as well as ‘Acknowledgment and Framing’). What emerged quite clearly from a number of case studies (**Argentina, Brazil, and Philippines**) is the tendency to see trafficking for the purpose of forced labour being *normalised* more easily than other types of exploitation.

Lastly, systemic discrimination and racism, both as part of and as detached from social and cultural contexts, are found to shape the functioning of particular identification and protection processes. Discrimination impacts significantly on (lack of) identification and protection (**Chile, Cyprus, Philippines, the United Kingdom**) as well as on prosecutions (**Chile, Bahrain**), with foreign nationals found to be more easily convicted and to receive harsher penalties, but less likely to be identified as trafficked and protected as such.

## 2c RELIGION AND MORALITY

Together with other socio-cultural factors, religion – and to a certain extent morality – contributes to shaping the way trafficking is understood, framed (see also ‘Acknowledgment and Framing’), and countered by public authorities. Although religion is presumed to extensively forge both perceptions of, and responses to, trafficking, neither the literature review nor the expert interviews have scrutinised the topic. This may suggest that **such determinant has a more limited impact on States’ anti-trafficking efforts than expected, or that its impact is understood as part of a broader determinant associated with the results of religion-based frames (as analysed in ‘Culture, Victimhood, and Discrimination’).**

**Religion, and to a certain extent morality, often show some overlaps with normative framework and public policies, influencing official bodies’ mission and agenda as well.** For instance, in Bahrain public morals and religious claims have forged the common perception of trafficking in such an extensive way that the national antitrafficking unit at the Department of Investigation and Criminal Evidence is explicitly called ‘the Department of Combatting Trafficking and Protection of Public Morals’. Bahraini anti-trafficking efforts, mainly focused on sexual exploitation, mirror, indeed, both its Islamic identity and national morals. Taking strong actions against prostitution – and by extension sex trafficking, as it is understood as inextricably linked to prostitution – is both politically convenient and culturally urgent to the Bahraini authorities. In this way, authorities **show both their compliance with religious duties and their commitment to maintain Bahrain’s regional reputation, and the consequent benefits deriving from it** (see ‘External Monitoring, State Reputation, and (Threats of) Sanctions’), despite previous prostitution-related scandals. Indeed, when Manama was named the 8<sup>th</sup> ‘Sin City’ in the world by AskMen magazine in 2009 due to the high rate of prostitution, local newspapers were in uproar and condemned sexual exploitation in Bahrain as a scourge against public decency and national reputation.<sup>206</sup>

**Morality and religion play an important role in shaping the concept of reputation.** Whether a State is compliant with moral and religious standards that are commonly accepted at the regional – or, sometimes, at the international – level, has an impact on the way its agency will be perceived and judged by other countries. For instance, some of our interviews mentioned the **United Kingdom’s** desire to elevate its international reputation and be viewed as a world-leader in combating modern slavery.<sup>207</sup> In light of this ambition, colonial past and religious values seem to play a key role in the decisions of certain political

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<sup>206</sup> Ali Adenwala, Khalil Buhazaa, and Mina Chiang, ‘Determinants of Anti-Trafficking Efforts: Bahrain’ (BIICL, 2022).

<sup>207</sup> Maria Moodie, ‘Determinants of Anti-Trafficking Efforts: United Kingdom’ (BIICL, 2022).

actors – such as Theresa May – to introduce a morality and abolitionist character to the framing of anti-trafficking efforts.<sup>208</sup>

**Taboos about sexuality may further impact on anti-trafficking efforts in a negative way.** According to our research, this was the case in **Algeria**, where the taboo around openly discussing sex has contributed to hamper public acknowledgement of the issue of internal trafficking for the purpose of sexual exploitation, hindering any attempt at prevention (see ‘Level of Immigration’).<sup>209</sup>

**Religion can be a positive catalyst to advocate for change and influence serious matters of concern, as it usually occurs within faith-based platforms.** Notably, the literature is replete with references on the impact of faith-based organisations in tackling human trafficking, focusing in particular on the Christian involvement in anti-trafficking efforts in the US.<sup>210</sup> However, **its positive impact as a determinant seems to be partial and, in some cases, even questionable.** With regard to **Algeria**, the religious pressure to shut down brothels has not been followed by any other significant improvement in countering human trafficking for sexual exploitation.<sup>211</sup> Indeed, there have been no prosecutions of sex trafficking perpetrators for two years and potential victims have not been proactively identified. Furthermore, the authorities have largely overlooked internal trafficking for the purpose of sexual exploitation, focusing on international trafficking instead (see ‘Level of Migration’). Furthermore, if religion has any impact on anti-trafficking efforts, **it has tended to primarily enhance efforts to counter human trafficking for sexual purposes rather than for forced labour, aiming at promoting an abolitionist agenda** (see also ‘Culture, Victimhood, and Discrimination’). For instance, some interviews have pointed out that US faith-based organisation have undertaken a long-standing commitment to contrast sex trafficking with the actual abolitionist purpose of eradicating prostitution.<sup>212</sup> In the **United Kingdom**, higher political will has been shown in tackling trafficking for the purpose of sexual exploitation and criminalising the purchase of sexual services rather than in discouraging demand for cheap goods that are often product of forced labour.<sup>213</sup>

Despite their limited impact on states’ anti-trafficking efforts, religion and morality – understood narrowly and not as part of the broader ‘culture’ determinant – seem to still play some role in influencing public measures and political decisions to manage and counter trafficking. They can be a positive trigger to enforce anti-trafficking policies by leveraging on states’ compliance with religious values and national reputation. They can also trigger the establishment of significant anti-trafficking players. On the contrary, religion and

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<sup>208</sup> *ibid.*

<sup>209</sup> Ali Adenwala, Massinissa Benlakehal, and Mina Chiang, ‘Determinants of Anti-Trafficking Efforts: Algeria’ (BIICL, 2022).

<sup>210</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>211</sup> ‘Determinants of Anti-Trafficking Efforts: Algeria’ (n 209).

<sup>212</sup> ‘Determinants of Anti-Trafficking Efforts: United Kingdom’ (n 207).

<sup>213</sup> *ibid.*

morality can hinder efforts to combat trafficking, disguising some relevant dynamics (i.e. internal human trafficking) and prioritising certain aspects of the phenomenon (i.e. trafficking for the purpose of sexual exploitation) as well as specific categories of trafficked persons (i.e. child trafficking).

## 2d LEVELS OF IMMIGRATION

The overlay of immigration, mobility, and trafficking is a key factor in the way in which States understand human trafficking (see also 'Acknowledgment and Framing').<sup>214</sup> The literature analysis and expert interviews identified that framing trafficking within the broader context of migration allows anti-trafficking efforts to be included within migration priorities (see also 'Political Will'). Yet, and despite the frequent intersection between the phenomena of migration and human trafficking, **conceiving human trafficking only in connection with migration flows risks side-lining the internal dimension of trafficking, rendering states' anti-trafficking efforts partial and ineffective.** For instance, interviews have pointed out that **Algerian** local authorities usually associate human trafficking with international migration, failing to address internal trafficking in official communications and policies. The over-concern with international migration and the levels of immigration into the country diverts attention away from internal trafficking. Indeed, the struggle against 'irregular' migration as well as the other determinants underpinning securitisation (i.e., regional instability, overlapping transnational crime networks, and the preservation of the economic situation and political system) are perceived as urgent and key to national security, minimizing the attention on the serious impact of internal trafficking within the country.<sup>215</sup>

In addition, the politicisation of anti-trafficking work can be used 'as a repressive tool against migration'<sup>216</sup> **and efforts to control migration affects anti-trafficking efforts.**<sup>217</sup> Indeed, commitments to counter trafficking can be a pretext for a broader purpose. For example, states' anti-trafficking efforts may serve as **a façade to disguise securitisation and promote restrictive immigration policies,** tightening border controls and fostering the criminalisation of migration – and of migrants. The '**crimmigration**' narrative has become widespread since 2018, when – as literature reviewed confirms – it was a relevant feature of **United States'** reaction to the Venezuelan migration crisis (see 'Acknowledgment and Framing'). Indeed, state concerns over national security had a negative impact on the way migrants were perceived, negatively impacting victims' identification and linking the provision of adequate protection to criminal proceedings.<sup>218</sup> **Crimmigration produces other additional negative effects that hinder States' anti-trafficking efforts.** In such a hostile environment, the level of vulnerability of migrants – in particular those in 'irregular' situations – increases, creating favourable conditions for trafficking and exploitation to

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<sup>214</sup> Ridwanul Hoque, 'Determinants of Anti-Trafficking Efforts: Thailand' (BIICL, 2022).

<sup>215</sup> Ali Adenwala, Massinissa Benlakehal, and Mina Chiang, 'Determinants of Anti-Trafficking Efforts: Algeria' (BIICL, 2022).

<sup>216</sup> Interview with Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020).

<sup>217</sup> Interview with Wanchai Roujanavong, Senior Consultant Prosecutor at the Office of the Attorney General of Thailand (20 April 2020).

<sup>218</sup> Carolina Rudnick, 'Determinants of Anti-Trafficking Efforts: Chile' (BIICL, 2022).

occur,<sup>219</sup> whilst negatively impacting the likelihood of positive engagement by stakeholders in anti-trafficking efforts.

While conflation of migration and trafficking, on the one hand, and securitised approaches to migration, on the other hand, can be seen as responses that hinder anti-trafficking efforts, our research also highlighted instances where, faced with an increase in levels of immigration, States have adopted measures that positively impacted on anti-trafficking efforts. For instance, when **Armenia** saw a significant and rapid rise in new arrivals that threatened to increase migrant vulnerability, the government responded by initiating the drafting of the '2021-2031 Strategy of the Migration Policy of the Republic of Armenia on Regulation of Integration and Reintegration Issues'. The strategy included outlines of reforms in the institutional framework for integration and reintegration, capacity building and competence development for migration staff, as well as goals relating to shelter and living conditions, rights and social assistance, access to health care and education, economic inclusion, cultural integration and reintegration, and cultivating an accepting environment.<sup>220</sup> These measures indirectly supported improvements in anti-trafficking efforts and helped reduce vulnerability to trafficking.

Level(s) of immigration – and consequent political decisions on migration management – influence states' anti-trafficking agenda in different ways. They can hamper governmental efforts in countering trafficking, as in the case of 'cimmigration' policies, and can lead to skewed anti-trafficking policies prioritising international trafficking while ignoring internal trafficking. Yet, the level of migration can also trigger (directly or indirectly) positive anti-trafficking efforts and help reinforce anti-trafficking commitments.

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<sup>219</sup> *ibid.*

<sup>220</sup> Viktoria Avakova, 'Determinants of Anti-Trafficking Efforts: Armenia' (BIICL, 2022).

### 3 GOVERNANCE, POLITICS, AND CORRUPTION

The governance structures and practices of individual States is explicitly or implicitly identified as a determinant across the literature review, the expert interviews, the survey, and across all the case studies. When asked about the influence of the country's political situation (rule of law, transparency, integrity, governance structures), 45% of survey respondents noted a positive influence whilst 29% noted a negative influence on anti-trafficking efforts. 25% noted a neutral influence. Governance and politics are not only determinants of anti-trafficking efforts *per se*, but also have a significant impact on other determinants, including but not limited to, Civil Society Organisations, international law, external monitoring, and acknowledgment and framing.

This analysis focusses on governance structures as direct and indirect determinants of anti-trafficking efforts, as well as on corruption as the main (governance-related) hindrance to anti-trafficking efforts.

#### 1 GOVERNANCE STRUCTURES AND ANTI-TRAFFICKING PLAYERS

The governance structure impacts which actors are engaged in anti-trafficking efforts and which players have an influence on anti-trafficking outcomes, and political contexts influence the extent to which actors are involved in decision-making and in shaping anti-trafficking efforts (as well as public policy more broadly). Existing literature identifies regime types, adherence to the rule of law, and governments' structure as key factors in this regard.

The **political configuration** of a country is found to be an important backdrop in shaping anti-trafficking efforts. The type of regime can determine whether, and if so, how, trafficking is dealt with by a government. Expert interviews drew a distinction between autocracies and democracies, arguing that, as a general rule, democracies are associated with having a more and active civil society and more transparent accountability mechanisms, thus facilitating pressure to be exerted on governments and for them to be held to account. In contrast, autocracies tend to have state-run media outlets, repeating messages from governments' reports and tend to suppress civil society and minimise the impact of international advocacy.<sup>221</sup> In **Algeria**, the capacity for combating trafficking is severely limited by Algeria's 'top-heavy authoritarian system', which concentrates power in the hands of the military and security elite. This results in individual officials' agency having disproportionate impact on national policy at higher-levels, and in some regions, a disproportionate impact on responses to policy at lower-levels. In turn, this allows the political class to sustain Algeria's securitisation agenda, to the detriment of protection-based anti-trafficking efforts.

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<sup>221</sup> Interviews with a member of Myria (Federal Migration Centre, Independent national rapporteur on trafficking) (4 March 2020); and Adie Teshome, Academic at La Trobe Law School, Australia (26 May 2020).

Presumptions of homogeneity among States on the basis of their type of regime should be avoided, and although our case studies generally reinforce the argument that democracies are associated with stronger anti-trafficking efforts, they also reveal some exceptions. In **Brazil**, anti-trafficking legislation was largely brought into force by way of decrees, which do not give rise to parliamentary debates and side-line the parliament's active participation in the design and adoption of legislation – thus 'un-democratising' the process. By contrast, in **Bahrain** 'the political culture ... centralises decision-making power in key individuals', enabling the agency of individual officials to act as a key determinant. As positive determinants, they empowered specific 'technocrats' uniquely passionate about counter-trafficking to initiative reforms. Importantly, that individual role has also been identified in other case studies with more democratic structures such as the **United Kingdom** (see 'Political Will'). In democratic States, and arguably in autocratic States – albeit to a lesser extent – a **change in government** can bring about both challenges and opportunities, as the prioritisation of issues could be rediscussed.<sup>222</sup> Whilst anti-trafficking can be seen to be an issue supported across different sides of the political spectrum, this is not always the case. In particular, approaches to anti-trafficking, and priorities within anti-trafficking responses are likely to vary significantly between parties and leaders (see also 'Acknowledgment and Framing' and 'Political Will'). Governmental instability can also hinder anti-trafficking efforts by undermining continuity. In the **Turkish Republic of Northern Cyprus (TRNC)**, no government completed its five-year election cycle in the last 20 years. This has a fundamental effect in terms of anti-trafficking efforts: even if non-governmental organisations (NGOs) start building a positive relationship with Ministers in charge of fighting trafficking, they are soon replaced and human capital, as well as expertise and relationships, are lost and need to be re-built.

Another factor that influences anti-trafficking efforts is a country's **adherence to the rule of law**. Our analysis of correlations between datasets noted a positive correlation between the United States Trafficking in Persons (TIP) Report ranking and the rating in the rule of law index, meaning that when a State performs better on the rule of law index, it is likely to perform better in its anti-trafficking ranking (and vice-versa). Chronic under-performance of official bodies has also been identified as a critical concern in case studies, and in particular in the **Republic of Cyprus**. This is linked to a lack of accountability, which in turn links to the rule of law. In **Georgia**, a negative determinant for prosecution is the lack of an independent judiciary and the (limited) quality of the judicial decisions. It is important however to be cautious about over-generalisations. Indeed, it would be superficial to suggest that strong adherence to the rule of law inherently results in effective anti-trafficking measures.<sup>223</sup> Nevertheless, a robust rule of law is usually associated with governments being held to account and with more effective means to formulate and implement anti-trafficking

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<sup>222</sup> Interview with an inter-governmental agent (17 April 2020).

<sup>223</sup> Interview with Borislav Gerasimov, Communications and Advocacy Coordinator at Global Alliance Against Traffic in Women (11 November 2020).

measures.<sup>224</sup> For instance, in **Armenia**, the launch of reforms in areas of public administration, rule of law, anti-corruption and the fight against criminal subcultures has informed improvements in the field of anti-trafficking. These changes were in turn underpinned by a democratic mandate. On the other hand, weak adherence to the rule of law has been found to prevent access to justice for those who have been trafficked and to hamper the functioning of systems in place. The (negative) impact of poor rule of law is remarkably stark in situations of crisis, including natural disasters or conflicts,<sup>225</sup> and is exacerbated when States' institutions are unable to function – especially the judiciary.<sup>226</sup>

Both regime type and adherence to the rule of law are also determinants of other determinants – most notably civil society organisations (CSOs), case-law, and external monitoring (which are discussed in detail in the respective sections). Yet, there is a third element worth discussing in the context of governance as a determinant *per se*: **governance structure(s)**,<sup>227</sup> understood as the way in which States organise their anti-trafficking response in practice, who has responsibility for anti-trafficking action, and whether there is coordination on anti-trafficking efforts between different actors and stakeholders. Anti-trafficking work indeed involves, or at least should involve, a cross-departmental approach, comprising horizontal collaboration from migration, labour and social ministries (to name a few).<sup>228</sup> Often times, there will be tensions between different priorities and perspectives on the issue,<sup>229</sup> and this may result in complex relationship within governments, as well as between governments and the implementers of national laws. Unclear governance structures are negative determinants of anti-trafficking efforts, as seen in **Algeria**, where a civil society member states that organisations 'don't know to whom [they] should address [their] queries, and to whom [they] should reach out', because it is unclear who has responsibilities for anti-trafficking action. On the other hand, clear governance structures can benefit anti-trafficking efforts, as seen in **Argentina**, where interviewees highlighted that having specialised institutions, and 'good leadership' in such institutions, can ensure consistency and stability in designing, adopting, and implementing anti-trafficking actions.

When anti-trafficking efforts are decentralised (as, for example, in the context of federal States or States where local authorities have strong autonomy), decentralisation might result in fragmentation, rather than specialisation, preventing a unified approach.<sup>230</sup> Decentralisation can however have significant, positive effects of anti-trafficking efforts – especially when there are open communication channels between the local and the national authorities. In **Romania**, the National Agency against Trafficking has 15 regional offices which

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<sup>224</sup> Interview with an international expert (18 June 2020).

<sup>225</sup> Interviews with Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020); and Zoi Sakellidou, Crime Prevention & Criminal Justice Officer at UNODC (5 May 2020).

<sup>226</sup> Interview with Zoi Sakellidou (n 225).

<sup>227</sup> Interviews with Federica Toscano, Head of Advocacy and Migration at Missing Children Europe (5 March 2020); and an international expert (5 May 2020).

<sup>228</sup> Interview with a member of an international non-governmental organisation (23 April 2020).

<sup>229</sup> Interview with an international expert (n 224).

<sup>230</sup> Interview with Cristina Huddleston, Director of European Operations at Justice and Care (18 March 2020).

include social workers, lawyers, and police officers who decide on a trafficked person's protection status: 'they work together to capture the local, and move it up to the national level and vice versa the national down to local'.<sup>231</sup>

## 1.1 The role of women in policy making

Historically, trafficking has been framed as a 'women's issue' – and, arguably, it is still vastly understood as a phenomenon impacting disproportionately on women and girls (see 'Acknowledgment and Framing'). Scholars have argued that legislation framed as 'women's issues' is more likely to be prioritised, sponsored, and voted for by female legislators,<sup>232</sup> and that a higher number 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>233</sup> Both arguments are supported by some of our case studies. Indeed, our research found that in **Chile** 'the work and advancement of the anti-trafficking policy has laid on the shoulders of women'. Consistent and strategic actions steered by **women-led civil society organisations and female public officers and politicians** have been able to trigger and sustain political will and promote awareness raising and cooperation strong enough to adopt legislation, promote capacity-building and provide assistance to victims with no allocated resources. Similarly, in the **Republic of Cyprus** 'trafficking has been an issue that has mostly been addressed by women.' While an in-depth analysis of the consequences of trafficking's framing as a 'women's issue' is performed elsewhere (see 'Acknowledgment and Framing'), it is important to note that framing is not inconsequential. Indeed, it relates to the way trafficking is understood, which 'types' of trafficking are prioritised, which 'types' of trafficked persons are identified, and which 'types' of anti-trafficking efforts will be prioritised in terms of adoption and implementation.

## 2 CORRUPTION

Corruption is, as highlighted in the literature, expert interviews, our global survey, and across the majority of case studies, a systemic problem that hinders anti-trafficking efforts.<sup>234</sup> It may hinder the adoption of anti-trafficking responses in and of themselves, or it can hinder their implementation.<sup>235</sup> Corruption is an internal structural factor, particularly found to be

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<sup>231</sup> *ibid.*

<sup>232</sup> See Dana E Wittmer and Vanessa Bouché, 'The Limits of Gendered Leadership: Policy Implications of Female Leadership on "Women's Issues"' (2013) 9(3) *Politics & Gender* 245.

<sup>233</sup> Johanna Schönhöfer, 'Political determinants of efforts to protect victims of human trafficking' (2017) 67(2) *Crime, Law and Social Change* 153, 153.

<sup>234</sup> Interviews with an independent consultant (7 May 2020); Fiona David, Inaugural Research Chair at Minderoo (8 May 2020); an international expert (8 January 2020); an international expert (9 April 2020); an international expert (7 January 2020); an international expert (6 January 2020); and Zoi Sakellidou (n 225).

<sup>235</sup> Interview with Katharine Bryant, Lead - European Engagement at Minderoo - Walk Free (16 April 2020).

an obstacle to States' compliance with, and implementation of, their anti-trafficking obligations.<sup>236</sup> The impact of corruption on anti-trafficking efforts resounds through the grey literature: quantitatively, a link has been found between the prevalence of corruption and failures to implement anti-trafficking efforts;<sup>237</sup> qualitatively, corruption is found to be a key obstacle to effective law enforcement.<sup>238</sup>

This was corroborated in our case studies. In **Chile**, research undertaken by NGOs has highlighted corruption as a hindering factor of prosecution. In 2013, a police officer working in border control was convicted in a case of trafficking for the purpose of sexual exploitation: in exchange of a payment, he ensured that trafficked persons were cleared at border controls. Police officers have also been found to 'protect' clandestine brothels or demand sexual favours at border controls and migration proceedings. In **Argentina** an interviewee expressed that 'the highest criminal tribunal in Argentina has concluded several times that the commission of any organised crime is not possible without – at least – the acquiescent behaviour of the ones in charge to enforce the law'. Corruption of government officials is often linked with their involvement with criminal networks, as highlighted in **Guyana**. Further, 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>239</sup>

Indeed, the presence of corruption contributes to the creation, or the maintenance, of a **culture of impunity**.<sup>240</sup> In **Mozambique**, there have been allegations of police corruption and involvement in human trafficking networks, with at least one officer being identified as part of a known-human trafficker's 'payroll', and many accused of accepting bribes from human traffickers. However, no officials were investigated for their complicity in human trafficking crimes. In the **Philippines**, a whistle blower exposed in 2020 the 'pastillas

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<sup>236</sup> Cassandra DiRienzo, 'Compliance with anti-human trafficking policies: the mediating effect of corruption' (2018) 70(5) *Crime, Law and Social Change* 525; Seo-Young Cho, Axel Dreher and Eric Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (2011) 3376 *CESifo Working Papers*; 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).

<sup>237</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; Cho, Dreher and Neumayer (n 236); Lauren R Heller et al, 'Is Human Trafficking the Dark Side of Economic Freedom?' (2018) 29 *Defence and Peace Economics* 355.

<sup>238</sup> 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; 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(3) *Emory International Law Review* 477.

<sup>239</sup> Janie Chuang, 'Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts' (1998) 11 *Harvard Human Rights Journal* 65, 71.

<sup>240</sup> Interview with an international expert (n 234).

scheme', wherein immigration officers receive grease money rolled in white paper resembling local milk-based confection, 'pastillas', for each Chinese national to pass through passport checks smoothly. This undermines the government's anti-trafficking efforts by allowing the continued commission of the crime and facilitating impunity, while reinforcing the general lack of public trust in law enforcement and government and discouraging trafficked persons from seeking help and reporting these crimes to law enforcement.

Corruption may further hinder the investigation and prosecution of trafficking cases, **preventing the impartial and independent functioning of courts**,<sup>241</sup> which are integral to the anti-trafficking system and, in order to be effective, have to be independent.<sup>242</sup> By contrast, anti-corruption efforts can have positive impacts on anti-trafficking efforts. In **Armenia** for instance, according to official statistics, the government's anti-corruption efforts led to a notable increase in the number of officially registered employees in the country, which in its turn decreased risks of exploitation and trafficking.

Harnessing political will for anti-trafficking work in states with high level of corruption involves 'fundamental reform(s)' around improving transparency, eradicating opportunities for corruption, and creating a system that is 'less corruptible, that is less dependent on those individual decisions'.<sup>243</sup> Yet, where corruption is endemic in a political system, those in positions of power will have little interest in addressing it.<sup>244</sup>

### 3 DE JURE AND DE FACTO JURISDICTION

Our analysis of correlations between existing indices found a moderate negative correlation (-0.55) between the TIP ranking and the Fragile States Index (FSI). The more fragile a state is, the weaker they are likely to perform on anti-trafficking issues. This is further supported by the Global Peace Index's (GPI) negative correlation with the TIP Report ranking.<sup>245</sup> The negative correlation means that the higher the score on the GPI (meaning the less peaceful the country is considered to be) the weaker its performance on the TIP Ranking. Moreover, our case studies highlight how the inability or unwillingness to exercise jurisdiction over portions of a State's territory can hinder anti-trafficking efforts. Two of our case studies provide a significant insight into anti-trafficking efforts in 'contested' territories. In **Cyprus**, the *de facto* division between the areas that are under the effective control of the Republic of Cyprus and those that are under the effective control of the Turkish Republic of Northern Cyprus creates challenges for the implementation of anti-trafficking efforts. The two areas are separated by a porous Green Line, which allows criminals, including human traffickers, to operate on both sides, and largely with impunity. While the Republic of Cyprus and the

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<sup>241</sup> Interview with the Head of Modern Slavery Policy Unit (15 May 2020).

<sup>242</sup> Interview with an independent consultant (n 234).

<sup>243</sup> Interview with Fiona David (n 234).

<sup>244</sup> Interview with Martin Reeve, Regional Advisor at UNODC (10 September 2020).

<sup>245</sup> GPI is a composite index measuring the peacefulness of countries made up of 23 quantitative and qualitative indicators each weighted on a scale of 1-5. The lower the score the more peaceful the country.

Turkish Republic of Northern Cyprus' law enforcement agencies have established a communication mechanism (the Joint Communications Room), this does not appear to have contributed to better policing of human trafficking. In Georgia, as a consequence of armed conflicts in early 1990s, the government ceased to exercise effective control over the Autonomous Republic of Abkhazia and the Autonomous District of South Ossetia. Following the invasion of Russian armed forces in August 2008, these regions fell under effective control of the Russian Federation and were consequently designated as occupied territories. While Georgia maintains *de jure* jurisdiction and expands state services and protection to individuals in the occupied territories as much as practically feasible, it does not have *de facto* control over the territories. The Russian Federation who, as an occupying power ought to be responsible for the protection of human rights in the territories, refuses to perform its duties referring to these territories as independent states. In this 'grey zone', Georgia's ability to implement its international obligations as well as national legislation is extremely limited, and anti-trafficking efforts are therefore hindered. Anti-trafficking responses in such contested contexts and in occupied territories is a subject that could benefit from more research.

## CONCLUSION

Governance structures and practices are a key determinants, both directly and indirectly, of anti-trafficking efforts. As direct determinants, the type of regime, adherence to the rule of law, and gender representation in policy-making contribute to determining whether, and if so, how, trafficking is dealt with by a government. Contested territories present significant challenges – in territories where *de jure* and *de facto* jurisdiction are disconnected, there is often inability, and sometimes unwillingness, to engage in meaningful anti-trafficking efforts, with instability and political tensions acting as hindrances. As indirect determinants, governance structures and practices have a substantial impact on, *inter alia*, CSOs, international law, external monitoring, and acknowledgment and framing, by building the structure in which determinants interact and are deployed. Corruption has been identified as a systemic problem that hinders anti-trafficking efforts, not only as it contributes to the creation (or maintenance) of a culture of impunity, but also as it can disperse political will and have a negative impact across determinants.

### 3a PARTNERSHIPS

The establishment and the operationalisation of partnerships have emerged as key determinants of anti-trafficking efforts. Our research has found that **cross-sector, inter-governmental, and international collaboration agreements and mechanisms have a positive impact on governments' anti-trafficking action**. Often times, partnerships fill a gap when governments possess political will to counter trafficking, but lack resources, expertise, and capacity to design and implement anti-trafficking efforts. While partnerships, especially at international level, may also constitute the foundation for economic assistance, this section deals exclusively with **technical**, or operational, **collaboration** between anti-trafficking stakeholders.

Generally speaking, the complexity of trafficking necessitates **cross-sectoral collaboration**. This includes collaboration between law enforcement, civil society organisations (CSOs), social services, government bodies, the private sector, medical staff, and the care sector. Different partnerships not only complement each sector's work, but also facilitate a pooling of knowledge, resources, and funding.<sup>246</sup> Such cross-sector collaboration facilitates sustained and long-term change.<sup>247</sup> Moreover, such partnerships are important where governments lack capacity.<sup>248</sup> Within governments, anti-trafficking efforts require shared expertise across different ministries and the sharing of information and evidence across different agencies.<sup>249</sup> In the **Philippines**, individual member-agencies became more confident in leading initiatives and partnering with local and international allies, following the proactive leadership of the Inter-Agency Council Against Trafficking (IACAT). In 2015, IACAT organised the first Manila International Dialogue, a platform for local and international conversation and cooperation to end human trafficking. The event brought together delegates from 19 different embassies in the Philippines, 11 non-governmental organisations (NGOs) and 15 government agencies and culminated in the signing of the 'Manila Declaration to Enhance International Cooperation in Combating Human Trafficking'. **Coordination across government departments** helps ensure that the different areas of anti-trafficking measures are sufficiently addressed,<sup>250</sup> and it facilitates political commitment and resourcing to trickle down anti-trafficking efforts through different agencies and different levels of government.<sup>251</sup> These collaborations are necessary to maximise resources, time, and expertise, which are channelled into anti-trafficking work.<sup>252</sup> In **Armenia**, the establishment of the Inter-Agency Working Group (IAWG), composed of staff from the relevant state and non-state bodies directly

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<sup>246</sup> Interview with a member of International Centre for Missing & Exploited Children (15 April 2020).

<sup>247</sup> Interview with a UN Official (17 April 2020).

<sup>248</sup> Interviews with an inter-governmental agent (17 April 2020); and an international expert (23 April 2020).

<sup>249</sup> Interview with Cristina Huddleston, Director of European Operations, Justice and Care (8 March 2020).

<sup>250</sup> Interview with an international expert (5 May 2020).

<sup>251</sup> Interviews with an inter-governmental agent (n 248); and a UN Official (n 247).

<sup>252</sup> Interview with an inter-governmental agent (n 248).

involved in the implementation of anti-trafficking actions, was highlighted as a positive determinant of anti-trafficking efforts – leading, *inter alia*, to the adoption of National Action Plans.

Beyond collaboration *within* governments, **collaboration between governments** can incentivise and facilitate improvements to national anti-trafficking efforts. Intergovernmental cooperation can influence national efforts through facilitating knowledge exchange, providing a space for pressure to be exerted, and amplifying concerns of reputation.<sup>253</sup> In the **Philippines**, for example, the Australian Government Department of Foreign Affairs and Trade has partnered with and supported the Supreme Court for the past eight years, through training and capacity building of police officers, prosecutors, judges, and social workers. As a result, there has been a marked increase in convictions in the past 5 years due to these trainings.

The importance of intergovernmental collaboration is acutely highlighted with cross-border trafficking.<sup>254</sup> Cooperation between governments was crucial in **Armenia** for the safe, voluntary return of trafficked persons to their countries of origin: in 2015-2017, the police, the Ministry of Foreign Affairs, the Ministry of Diaspora, the International Organisation for Migration (IOM), and several NGOs (both Armenian and Russian) and Russian authorities successfully coordinated efforts to ensure safety and security of trafficked persons returning to Russia after having been trafficked to Armenia. Cooperation has also improved transnational anti-trafficking efforts in the **Philippines**, where, in response to an increase of Chinese nationals among trafficked persons, the government has collaborated with the National Bureau of Investigation, hiring Chinese agents to decipher traffickers' strategies. The government of the Philippines has also established in 2019 the Philippine Internet Crimes Against Children Center (PICACC) in response to the increase of cases of online sexual exploitation of children (OSEC). The established of PICACC was possible thanks to the partnership of local and international law enforcement – namely the Philippine National Police, Philippine National Bureau of Investigation, Australian Federal Police, United Kingdom National Crime Agency – and the NGO International Justice Mission. The PICACC is the first of its kind, allowing global law enforcement collaboration in the conduct of OSEC investigation, rescue, and arrest operations.

Cooperation between governments is however a field charged with political tension, and diplomatic obstacles can prevent effective collaboration. **Algeria's** regional rivalry with Morocco, for example, has precluded a coordinated anti-trafficking response on their shared border. In August 2021, due to diplomatic tensions, Algeria cut all diplomatic ties with Morocco. The Organised Crime Index (OCI) argues that the lack of cooperation between Algeria and Morocco is a 'serious gap' due to the scale and range of criminal markets operating across this border. This is made worse by corruption on both sides of the

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<sup>253</sup> Interview with a Ministry of the Interior Official, Republic of Latvia (21 April 2020).

<sup>254</sup> Interview with Federica Toscano, Head of Advocacy and Migration, Missing Children Europe (5 March 2020).

border. As a result, migrants forcibly crossing this border are particularly vulnerable to being trafficked, and the Algerian-Moroccan rivalry impedes the Algerian government working bilaterally with Morocco to prevent trafficking and protect trafficked persons on this border.

Regional cooperation, especially when implemented in a structured regional framework, may be extremely beneficial. For example, as a member state of the Organisation of American States (OAS), **Chile** is part of the Meeting of Ministers of Justice or other Ministers or Attorneys General of the Americas (*Reunión de Ministros de Justicia o de Ministros Procuradores Generales de las Américas*, REMJA) and of the Meeting of National Authorities on Trafficking in Persons, the political forum for decision-making regarding the prevention and combat of trafficking and the assistance and protection of trafficked persons. Chile is also part of MERCOSUR as an associated State, and in that capacity has endorsed resolutions on the matter and participates in the specialized bodies created to address trafficking in persons. The Public Prosecutor's Office is part of the Ibero-American Association of Public Ministries (*Asociación Iberoamericana de Ministerios Públicos*, AIAMP), a non-profit entity that integrates the Public Ministries of the Americas, Spain and Portugal, and promotes international cooperation and information exchange through the creation of specialized networks of prosecutors. In 2011, jointly with the Specialized Meeting of Public Ministries of Mercosur and Associated States (REMPM), AIAMP created the Ibero-American Network of Prosecutors Specialized in Trafficking in Persons and Smuggling of Migrants (REDTRAM). Since then, 21 member countries – including **Argentina** and **Brazil** – have designated a national contact point to integrate this network and agreed on some common objectives. A pivotal instrument of this network is the Protocol of Inter-institutional cooperation to strengthen the Investigation, Attention and Protection of victims of the crime of human trafficking and smuggling of migrants amongst the Ibero-American Prosecutors (2017). Prosecutors in charge of the Prosecution Office for Human Trafficking and Exploitation (PROTEX) are frequently invited to Expert Meetings in Trafficking in Persons organized by the United Nations Office on Drugs and Crime (UNODC).

Regional cooperation may also assist in overcoming bilateral hurdles. Indeed, interviewees have pointed to how inter-governmental cooperation may be easier to initiate and sustain between states within a regional bloc compared to cooperation between States from different regional blocs.<sup>255</sup> For example, in the regional bloc of the Association of Southeast Asian Nations (ASEAN), there is positive influence between States and collaboration to share good practices, which incentivises governments to adopt good practices from neighbouring countries.<sup>256</sup> This may also be aided by regional instruments (including soft law). Regional instruments can provide the framework for more effective international coopera-

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<sup>255</sup> Interview with Wanchai Roujanavong, Senior Consultant Prosecutor at the Office of the Attorney General of Thailand (20 April 2020).

<sup>256</sup> Interview with an international expert (n 248).

tion. Indeed, when countries are situated in different parts of the world with varying legislative frameworks, cooperation is more difficult. Similarly, regional processes can facilitate collaboration.<sup>257</sup> In **Algeria**, despite the resistance to bilateral cooperation highlighted above, there are indicators that the government's concerns for its regional reputation have motivated it to collaborate with its African neighbours on anti-trafficking efforts. In 2018, Algeria worked to enhance regional anti-trafficking coordination through the African Union Mechanism for Police Coordination. A national expert interviewee stated that the African Union was 'probably an influential external actor in the development of Algeria's anti-trafficking policies'. The same year, Algeria hosted the UNODC's regional forum, bringing together human trafficking experts from across North African and the Sahelian states.

Often times, and mostly due to lack of resources or expertise, governments will engage with **international organisations**, which are integral actors in influencing national governments' legal frameworks, providing practical assistance and increasing awareness of the trafficking situation in particular States and/or regions. 67% of survey respondents noted a positive influence of 'contributions and pressure by international organisations' with 19% noting that efforts were very positively influenced. Only 6% noted a negative influence with 27% noting a neutral influence. International organisations' offer and provision of practical assistance can both develop existing national efforts and incentivise new responses. Expert interviewees highlighted the role of international organisations, particularly the UNODC and the International Labour Organisation (ILO), on influencing States to both ratify international legal instruments and comply with their obligations.<sup>258</sup> In **Algeria**, much of the country's anti-trafficking efforts have been achieved in coordination with international organisations, namely the IOM and UNODC, including the drafting of the upcoming anti-trafficking law. Regional organisations complement the work of international organisations, as the example of **Armenia** shows – in 2021, a new Criminal Code has been promulgated after several years of meticulous work of the Armenian authorities in cooperation with the Council of Europe. In **Cyprus**, the European Union has played a central role by making funding available for the organisation of trainings across different sectors of the executive and the judiciary, and by sharing knowledge and best practices from other Member States.

The influence of international organisations in compliance revolves around assistance with drafting legislation and capacity building to ensure that commitments are being implemented in practice. The UNODC and IOM are particularly instrumental in assisting States to meet the standards of the Palermo Protocol through assessing the gaps and needs of national legislation.<sup>259</sup> Their assistance ranges from help with drafting legislation, to reviewing legislation as well as help to build operational capacity to implement such commitments.<sup>260</sup> In **Bahrain**, for example, the government collaborated with UNDOC and IOM to

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<sup>257</sup> Interview with an inter-governmental agent (n 248).

<sup>258</sup> Interviews with Zoi Sakelliadou, Crime Prevention & Criminal Justice Officer at UNODC (5 May 2020); and a member of an international organisation (14 April 2020).

<sup>259</sup> Interview with Zoi Sakelliadou (n 258).

<sup>260</sup> *ibid.*

establish its National Referral Mechanism. In **Guyana**, the collaboration between the government and IOM led to the adoption of Standard Operating Procedures for investigation and prosecution of human trafficking cases. The ILO also provides assistance with legislation, development of national action plans and policies, as well as capacity building. In **Brazil**, the ILO has been particularly active, including through joint projects with the US Department of Labour to address trafficking for forced labour and through initiatives to elaborate upon the National Policy on Combatting Human Trafficking and the National Plans for Combatting Human Trafficking. The J/TIP Office has provided bilateral support to many governments in improving specific aspects of their anti-trafficking response.

International organisations are influential in increasing awareness amongst national governments. They can garner a political consciousness and interest to develop anti-trafficking frameworks, as well as advise on the impact trafficking is having on national economies and societies.<sup>261</sup> They also provide reliable data on trends of trafficking, which influence both understanding and tailored responses. The ILO's promotion of the ratification of the 2014 Forced Labour Protocol, served to highlight that forced labour is a form of exploitation that needs equal attention as sexual exploitation.<sup>262</sup> The UNODC, ILO, and Alliance 8.7 also aim to raise awareness and promote the interests of their international legal instruments.<sup>263</sup> In **Chile**, the ILO and IOM supported and assisted, technically and financially, initiatives undertaken by NGOs that advanced local knowledge on trafficking and raised awareness.

This effectiveness of international organisations is however dependent on States' political and economic situation and their diplomatic relations with the international organisation in question.<sup>264</sup> The receptiveness and political will of the national government shape the nature of international organisations' influence – some States accept assistance to avoid being seen as uncooperative and the potential damage to international reputation, some accept assistance to secure the funding, whilst other may actively initiate international organisations' assistance on legislative drafting and capacity building.<sup>265</sup> As highlighted in our country report on **Guyana**, effectiveness is also linked to continuity and sustainability: a sudden withdrawal of assistance, be that technical or economic, will likely have detrimental effects on anti-trafficking efforts (see also 'Economic Conditions and External Funding').

Another key area of partnerships is **collaboration between NGOs and governments** – or between NGOs and other CSOs, which can amplify their influence on governments. NGO collaboration with national governments can provide a platform for advocacy, which is an essential component of NGOs' work alongside public-facing campaigning.<sup>266</sup> Such collaborations can facilitate NGOs to raise awareness with the government, have significant

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<sup>261</sup> Interview with an international expert (8 January 2020).

<sup>262</sup> Interview with Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020).

<sup>263</sup> Interview with a member of an international organisation (n 258); and Zoi Sakelliadou (n 258).

<sup>264</sup> Interview with Zoi Sakelliadou (n 258).

<sup>265</sup> Interview with Martin Reeve, Regional Advisor at UNODC (10 September 2020).

<sup>266</sup> Interview with Fiona David, Inaugural Research Chair at Minderoo (8 May 2020).

involvement in consultation processes, and to assist in, *inter alia*, the drafting and implementation of law and policy.<sup>267</sup> In **Armenia**, for example, our country report highlighted that close partnerships between NGOs and law enforcement contributed to the decline of stigma among police officers towards individuals trafficked for the purpose of sexual exploitation, through *inter alia* training, workshops, and meetings that created an atmosphere of empathy, acceptance, and improved cooperation. In the **Bahamas**, the government has integrated CSOs into its Trafficking in Persons Task Force, and various NGOs, in particular the Red Cross, have in turn provided a safe space wherein state officials could conduct interviews with potentially trafficked persons.

However, such collaborations are only effective if genuine. Whilst NGO consultations may seem like cooperation, they can be just a surface-level exercise to ensure that the government is not criticised.<sup>268</sup> Moreover, NGOs have to recognise that not all their recommendations will be taken on board, regardless of the degree of collaboration with the government. One of our interviewees emphasised that ‘cooperation is the best way [to influence governments]. If we cooperate more with governments, we in general have more impact and effect of our work. But it is not always possible, of course, sometimes you have to be very critical and strongly oppose’.<sup>269</sup> Governments’ partnerships with CSOs have major limitations in various countries. For example, in **Bahrain**, such relationships have been especially strained since the 2011 Arab Spring protests. These limitations are grounded in Bahrain’s political culture and a lack of democratic institutions, leading to hyper-sensitivity and disengagement with respect to human rights issues.

NGOs collaboration with national governments is not the only way in which NGOs establish partnerships to influence States’ action. NGOs often time collaborate with one another and coordinate their advocacy, awareness raising, and lobbying efforts. NGO networks, such as PICUM, La Strada and the Anti Trafficking Monitoring Group, were identified as successful collaborative models for effective advocacy.<sup>270</sup> Despite different focuses across the NGO members, the unity that networks provide on common issues, campaigns and recommendations facilitates more influential lobbying including through multi-level coordination. Coalitions amplify the importance of the issue and recommendation, and can therefore be more influential than the voice of a single NGO.<sup>271</sup> This is seen through joint reports, letters and campaigns.<sup>272</sup> This is further reflected in international NGO structures, where there is cooperation between the international organisation and the grassroots partners.<sup>273</sup>

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<sup>267</sup> Interview with a member of International Centre for Missing & Exploited Children (n 246); and Suzanne Hoff, International Coordinator at La Strada International (23 April 2020).

<sup>268</sup> Interview with Suzanne Hoff (n 267).

<sup>269</sup> *ibid.*

<sup>270</sup> Interviews with a PICUM officer (3 March 2020); Suzanne Hoff (n 267); and Ruth van Dyke, Visiting fellow, Centre for Modern Slavery, St Mary’s University (27 February 2020).

<sup>271</sup> Interviews with Suzanne Hoff (n 267); and Euan Fraser, Public and Corporate Affairs Manager, International Justice Mission UK (16 April 2020).

<sup>272</sup> Interviews with Ruth van Dyke (n 270); and Suzanne Hoff (n 267).

<sup>273</sup> Interviews with Peter Williams, Principal Advisor, Modern Slavery, International Justice Mission (23 September 2020); and Nick Grono, CEO of The Freedom Fund (20 March 2020).

The combination of local knowledge and a broader advocacy strategy can be very powerful in influencing national change.<sup>274</sup>

In addition to governments, international organisations, and NGOs, the **private sector** can also be a strategic and relevant partner in anti-trafficking action and contribute to shape States' efforts. Existing relations between the private sector and governments provides them with the basis to raise awareness, lobby for certain actions and trigger political will to legislate or ratify international conventions.<sup>275</sup> In particular, the private sector is influential in combatting trafficking for forced labour and exploitation within the supply chain. For example, businesses were instrumental in advocating for the inclusion of Section 54 of the **United Kingdom Modern Slavery Act**.<sup>276</sup> Moreover, as it is in businesses' interest to prove to buyers that their supply chains are being held to account and audited,<sup>277</sup> businesses may exert pressure on governments to establish and enforce a 'solid inspection mechanism'.<sup>278</sup> In Brazil, the National Pact to Eradicate Slave Labour was signed by more than 400 businesses who voluntarily monitor the 2004 'dirty list' of suppliers that engaged in forced labour, and restrict commercial relations with anyone listed. Through this, businesses are engaged in monitoring supply chains, and often threaten to stop buying unless there is corrective action.<sup>279</sup> The private sector is found to exert particular pressure where there is an economic benefit to influencing governments' work against trafficking for labour exploitation.<sup>280</sup> The influence of the UN Guiding Principle on Business and Human Rights and related measures at regional and national levels is interesting in this regard.

Collaboration between the private sector and civil society is found to amplify pressure on governments. Working together, the private sector's support of civil society advocacy can increase their credibility and profile. Private companies are able to provide a certain credibility when advocating with the government and thus provide an additional lever. Their sponsorship augments civil society capacity to influence and advocate.<sup>281</sup> However, business interests can also be an obstacle to governments' anti-trafficking efforts, and the governments' interest in listening to the private sector can hinder efforts. The question of whether certain government measures will upset certain businesses and the contracts the government has with them, is an underlying consideration.<sup>282</sup> Not only is there a disincentive to tackle systemic issues, within this, there is a lack of incentive for governments to confront exploitation in the supply chains or to investigate CEOs.<sup>283</sup> Such a systemic approach would not

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<sup>274</sup> Interview with Peter Williams (n 273).

<sup>275</sup> Interview with a member of an international organisation (n 258).

<sup>276</sup> Interviews with Katharine Bryant (n 262); and an international expert (30 April 2020).

<sup>277</sup> Interviews with Sara Carnegie, Director of Legal Projects at IBA, and Maria Pia Sacco, Senior legal advisor at IBA (7 December 2020); and a member of an international organisation (n 258).

<sup>278</sup> Interview with a member of an international organisation (n 258).

<sup>279</sup> *ibid.*

<sup>280</sup> *ibid.*

<sup>281</sup> Interview with Federica Toscano (n 254).

<sup>282</sup> Interview with an international expert (n 276).

<sup>283</sup> Interviews with an international expert (7 January 2020); and an international expert (n 276).

only require an overhaul of the labour markets, but it would be seen as a disservice to business interests.

## 3b SPECIALISED ANTI-TRAFFICKING INSTITUTIONS

While specialised institutions could be understood as a form of partnership, their impact on anti-trafficking efforts ought to be evaluated separately in light of their unique nature and characteristics. While the literature review and our expert interviews have not captured specialised anti-trafficking institutions as key determinants of anti-trafficking efforts – rather understanding them as *outcomes* of other determinants – some of our case studies have indicated that they also play a determining role for broader anti-trafficking efforts.

The role of anti-trafficking institutions has been identified as being, first and foremost, one of **coordination and streamlining of the implementation of anti-trafficking efforts**. In **Chile**, the Intersectoral Table on Trafficking in Persons (*Mesa Intersectorial de Trata de personas*, MITP) – established in 2008 and operational since 2011 – has led anti-trafficking public policy in the country for the past decade. Led by the Ministry of Interior and Public Security (*Ministerio del interior y Seguridad Pública*, MISP), the MITP is a multistakeholder body that gathers all public stakeholders and civil society organisations (CSOs) to coordinate measures and policies on trafficking. The creation of the MITP and its efforts in coordination<sup>284</sup> allowed the country to advance its anti-trafficking efforts and its rank in the TIP report in 2014, advancing from historical Tier 2 to Tier 1. Since then, Chile has been permanently ranked as a Tier 1 country. In **Brazil**, the anti-trafficking network has been identified as a developing determinant. The anti-trafficking network is a composed of federal law-enforcement agencies, along with state-level networks and the State Committees on Anti-Trafficking efforts. This network, alongside other partnerships established with CSOs, has played a crucial role in the implementation of anti-trafficking policies and has actively participated in the elaboration of the National Plans to Combat Human Trafficking. In **Georgia**, the Inter-Agency Coordination Council on Fight against Trafficking was found to be a key strategic player by most interviewees, especially through its activities in developing expertise and skills among line ministries in the country.

Specialised institutions have also been found to be key for **advancement in prosecutorial efforts and data collection**. In **Armenia**, for example, the establishment of the Investigative Committee in 2014 played a crucial role in defining the parameters for the classification of the offence of human trafficking, and for guiding the evidence gathering process for trafficking cases. The General Prosecutor's Office (GPO) has a department for the investigation of 'especially important cases' that employ prosecutors specialized in trafficking offences. Each month, information about trafficking cases is collected from all subdivisions at the GPO according to the special order of the Prosecutor General. Thus, information flows are regulated and institutionalised, leading to better data that, in turn, can inform better policies (see also 'Data and Research'). In **Georgia**, the Prosecutor's Office Strategy

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<sup>284</sup> Mainly its first national action plan, the interagency agreement that approved it, and the creation of a national referral and assistance mechanism.

and Action Plan is considered as a positive determinant influencing prosecutorial policy against human trafficking by law-enforcement authorities. Specialised Investigation Units exist, under the Anti-Trafficking Unit of the Criminal Police Department of the Ministry of Internal Affairs of Georgia, in the capital, Tbilisi, and in the Adjara region – and expertise in countering trafficking for the purpose of sexual exploitation has increased (also) thanks to the units' specialisation.

Due to the cross-sectoral nature of anti-trafficking efforts, specialised institutions in fields related to, albeit not focussed on, anti-trafficking have also proven to be instrumental in the improvement of anti-trafficking efforts. A key example is that of **Chile**, where efforts in awareness raising regarding trafficking (and anti-trafficking) have been possible due to the political will of specialised agencies created in the recent years – including the Child Ombudsman established in 2018.

Specialised institutions are often perceived and understood as outcomes of other determinants, but rarely analysed as (potential) determinants in and of themselves. While the literature does not address specifically their role in shaping anti-trafficking efforts – maybe because their establishment is recent and is limited to a minority of States worldwide – our case studies have shown that they can be a significant factor.

## 4 INTERNATIONAL LAW

**International and regional legal frameworks** have been identified as key determinants of anti-trafficking efforts across the literature analysis, the expert interviews, and the country-specific case studies – where they have been highlighted as positive determinants in almost all countries. 76% of our survey respondents noted that their State’s anti-trafficking efforts were positively influenced by the country’s international obligations, including the Palermo Protocol. 33% noted a very positive influence. Only 5% of respondents noted a negative influence.

International and regional legal frameworks set standards that States Parties are obligated to translate into their domestic legislation and enforce internally. The literature review captured in particular the significant influence of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol),<sup>285</sup> as well as of regional and sub-regional frameworks – including Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (EU Directive),<sup>286</sup> the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT),<sup>287</sup> and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).<sup>288</sup>

In addition to specialised anti-trafficking instruments, a number of case studies have emphasised the role of other, non-specialised instruments of international law in shaping anti-trafficking efforts. For example, international legal frameworks such as the UN Convention on the Rights of the Child (UNCRC), informed the Children Act 1989 in the **United Kingdom**, creating a child protection framework applicable to all children, meaning that the government’s response to trafficked children necessarily differs from the response to trafficked adults. Similarly, the international children’s rights agenda has been successful in mobilising political will in **Chile**. From 1990 onwards, as Chile was returning to democracy, many international human rights instruments were ratified. The situation of children was a matter of priority, reflected both in the early ratification of international instruments and in the building up of a public policy focused on addressing child labour and worst forms of child labour, both issues directly impacting Chile’s efforts in combatting child trafficking. In **Mozambique**, over the last two decades a strong international normative framework has been shaped to ensure protection against human trafficking, with Mozambique ratifying the

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<sup>285</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>286</sup> Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims 2011 [2011/36/EU].

<sup>287</sup> Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) CETS 197.

<sup>288</sup> ASEAN Convention Against Trafficking in Persons, Especially Women and Children (adopted 21 November 2015, entered into force 8 March 2017).

UNCRC and its Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) and the International Labour Organisation (ILO) Convention No 182 on the prohibition and immediate action for the elimination of the worst forms of child labour (1999) alongside the Palermo Protocol. In **Thailand**, a key determinant behind the government's measures to specifically address trafficking for the purpose forced labour was the country's joining the ILO Forced Labour Convention No 29 and, notably, the 2014 Protocol to that Convention. In addition, the country's membership to the ILO Fishing Convention has also been a factor influencing State action.

Interestingly, some case studies – in particular the United Kingdom, Argentina, and Bahrain – have also touched upon the role of international law in adjudicating cases before courts and tribunals in allowing civil society organisations to advocate for improved anti-trafficking efforts (see also 'Case Law'). With respect to the former, in **Argentina**, for example, the country report highlights how in the *Montoya* case the domestic court relied extensively on the American Convention on Human Rights (ACHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and furthermore, how the Federal Chamber of Criminal Cassation frequently references international legal obligations on human trafficking in its jurisprudence.<sup>289</sup> In so far as the impact on civil society organisations (CSOs) is concerned, in the **United Kingdom** it was noted that the existence of international and regional legal frameworks empowered civil society actors to advocate more powerfully for improvements in domestic efforts and to hold the government to account. Similar findings emerged from the reports on **Chile** and **Georgia**.

The case study on Cyprus revealed another significant lens in evaluating the role of international law. In the **Republic of Cyprus**, international standards, coupled with international pressure and case-law, have been found to be among the main drivers of improvements of anti-trafficking efforts. In contrast, a significant and interesting case is that of the **Turkish Republic of Northern Cyprus (TRNC)** – which emerged from the case study on the Republic of Cyprus: while international standards have had some impact in anti-trafficking efforts, this has been indirect because of the lack of recognition of the TRNC by the international community. The lack of recognition has contributed to the development of other negative determinants as well, such as an unstable government and an economy that has come to rely on money from illicit activities (both of which reduce the political willingness to fight human trafficking). Even though the TRNC Assembly adopted the Palermo Protocol in 2018, there is a general unwillingness to combat trafficking, which 'is reported to have many underlying reasons, including the lack of international recognition resulting in the northern part of Cyprus lying outside the jurisdiction of international law and its mechanisms.

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<sup>289</sup> PROTEX, "Reseña jurisprudencial sobre casos de trata de la Cámara Federal de Casación Penal" (MPF Website, 2016) available at <<https://www.mpf.gob.ar/protex/files/2016/04/rese%C3%B1a-de-la-CNCP-sobre-trata-de-personas.pdf>> accessed 10 October 2021.

Consequently, the local responsible bodies are not exposed to any international pressure with no responsibility towards the international arena.<sup>290</sup>

Across the literature review and the fourteen case studies, as well as in light of the expert interviews, the Palermo Protocol emerged as a key determinant – especially in contexts where no other regional anti-trafficking instruments have been adopted and/or ratified.

## 1 THE ROLE AND INFLUENCE OF THE PALERMO PROTOCOL

The **Palermo Protocol** is often understood as evidence of a global commitment to the fight against human trafficking, as it provides the first international legal framework and definition of trafficking.<sup>291</sup> Indeed, it triggered the widespread adoption of the international norms in regional and domestic regimes. The significant support for the Protocol, reflected by the 178 States Parties to it, can also be considered a reflection of States' political will to address trafficking.<sup>292</sup> However, the collective will of the international community in so far as it is manifested in the negotiation of the Palermo Protocol, was not unanimous, uncontentious nor a linear process. In the process of negotiating the United Nations Convention against Transnational Organized Crime (UNTOC), 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 organised criminal groups operating across national borders, that provided the true driving force behind such efforts'.<sup>293</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 providing the international standard for anti-trafficking legislation and its role in shaping States' understanding and framing of trafficking.<sup>294</sup>

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<sup>290</sup> Mihai Serban and Ceren Goynuklu, 'Report on Trafficking in Human Beings in the Northern Part of Cyprus' (2016) 8. Yet, despite the very limited international pressure on the TRNC because of its non-recognised status, it has had at least some impact: this is illustrated by the fact that during the debate for the passing of Art. 254B, many Assembly deputies made reference to international law and the need to comply with it. See Parliamentary Debate on the Proposed Amendment to the Criminal Law (9 March 2020) 105-20.

<sup>291</sup> Daphna Hacker, 'Strategic Compliance in the Shadow of Transnational Anti-Trafficking Law' (2015) 28 *Harvard Human Rights Journal* 11, 13.

<sup>292</sup> Some expert interviewees have highlighted that domestic adoption and application beyond ratification has not been universal. Whilst it has been instructive for certain States, the Palermo Protocol has had a varied impact in terms of the extent others adhere to the Protocol. See e.g., Interview with Ruth Van Dyke, Visiting fellow at the Centre for Modern Slavery, St Mary's University (27 February 2020).

<sup>293</sup> Anne Gallagher, *The International Law of Human Trafficking* (CUP 2010) 71.

<sup>294</sup> Laura L Shoaps, 'Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act' (2013) 17(3) *Lewis & Clark Law Review* 931).

## 1.1 The Palermo Protocol and the setting of standards

The **definition of trafficking** in the Palermo Protocol has been adopted extensively by regional instruments and national legislation.<sup>295</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 the (ir)relevance of consent, and in the fact that most jurisdictions replicate the Palermo Protocol's definition *verbatim* in their domestic legislation.<sup>296</sup> The Protocol has had a particular influence on how trafficking is defined and broadly understood by national governments. The establishment of the first internationally agreed definition is noted as having considerable influence on national legislation (see 'Acknowledgment and Framing').<sup>297</sup>

In the **United Kingdom**, it was noted that international and regional legal frameworks played a pivotal role in compelling the government to adopt legislation. The Palermo Protocol created the criminal justice framework response that led to the initial enactment of domestic criminal legislation.<sup>298</sup> In **Guyana**, which became a State Party to the UN Palermo Protocol in 2004, the ratification of the Protocol prompted the drafting of national legislation. Similarly, in **Algeria** and in **Armenia** the domestic definitions of human trafficking in the criminal codes replicate the Palermo Protocol definition. In **Chile**, Bill 3778-18 was introduced in January 2005 shortly after the ratification of the Palermo Protocol.<sup>299</sup> That Bill establishes the crime of trafficking of children and adults and sets out norms for its prevention and for more effective criminal prosecution. In **Brazil**, the adoption of the Palermo Protocol was crucial in establishing Brazil's current legal and policy framework. By 2006, the National Policy to Combat Trafficking in Persons already mirrored elements contained in the Protocol.<sup>300</sup> Most importantly, one national interviewee highlighted that the anti-trafficking policy drew from ideas in the Protocol, which in turn became a foundation for the new

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<sup>295</sup> Anne Gallagher and Marika McAdam, 'The Role of "Consent" in the Trafficking in Persons Protocol' (2014) UNODC Issue Paper.

<sup>296</sup> *ibid.*

<sup>297</sup> Even if expert interviewees questioned the clarity of this international definition; in particular, they noted the lack of concrete international definition on trafficking for labour exploitation, suggesting that this was left intentionally vague. See e.g., interviews with Suzanne Hoff, International Coordinator at La Strada International (23 April 2020); and an independent consultant (7 May 2020).

<sup>298</sup> Section 57-59 Sexual Offences Act 2003 criminalised trafficking for the purposes of sexual exploitation (applicable to England, Wales and Northern Ireland, in Scotland the equivalent provision was s.22 Criminal Justice (Scotland) Act 2003), s.4 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 criminalised trafficking for exploitation including forced labour, slavery and organ harvesting (applied to England, Wales, Scotland and Northern Ireland), and s. 71 Coroners and Justice Act 2009 criminalised slavery, servitude and forced and compulsory labour (applicable to England, Wales and Northern Ireland and in Scotland the equivalent provision was s.47 Criminal Justice and Licencing (Scotland) Act 2010). These offences, as later amended, were consolidated into ss. 1 and 2 of the Modern Slavery Act 2015 (England and Wales), ss 1 and 4 [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) and ss 1 and 2 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>299</sup> Chamber of Deputies, Bill 3778-18 *It typifies the crime of trafficking of children and adults and establishes norms for its prevention and more effective criminal prosecution.* <<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=4172&prmBOLETIN=3778-18>>

<sup>300</sup> ICMPD, 'Guia de Assistência e Referenciamento de Vítimas de Tráfico de Pessoas' [2020], p. 30.

legislation of Law 13.344/2016.<sup>301</sup> In the **Bahamas**, interviewees felt that the Palermo Protocol has played a significant role in influencing improvements in the anti-trafficking field: according to the Chair of the TIP Task Force, Superintendent Tess Newbold, 'the Palermo Protocol influenced the adoption of the 2008 TIP legislation. It also influenced the adoption of the 2012 Guidelines on Victim Identification and Referral.'<sup>302</sup> In **Mozambique**, the Attorney-General's Office's Deputy emphasised that the mandate to have anti-trafficking legislation was determined by the fact that Mozambique had ratified the Palermo Protocol and that, in order to achieve compliance with the Convention, it needed to adopt a domestic legislative framework in line with accepted international standards and parameters. The Palermo Protocol influenced the adoption of anti-trafficking legislation in **Thailand** even before the country officially ratified the Protocol. Indeed, the Prevention and Suppression of Human Trafficking Act (PSHTA) was drafted based on the Palermo Protocol, which was signed in 2001 but ratified only five years after the Act was enacted.

The impact of international legal obligations is dependent upon, and interacts with, other determinants. Expert interviewees highlighted how States' political context, such as the level of compliance with the rule of law,<sup>303</sup> and governments' political will to ratify, adopt, and enforce their commitments determines the extent of the influence of international legal instruments. Similarly, the economic conditions of a country may act as a barrier to implementing international obligations. Ratification of relevant treaties is indicative of the commitment to work on combatting human trafficking and, as in Southeast Asia and the Pacific, the Palermo Protocol can play a role in building 'political momentum' across a region.<sup>304</sup>

## 1.2 The Palermo Protocol as a determinant of States' understanding of trafficking

The influence of the Protocol cannot be divorced from the factors that influenced its own formulation and adoption.<sup>305</sup> The Protocol and its definition of trafficking 'did not emerge in a vacuum',<sup>306</sup> but was rather 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>307</sup>

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<sup>301</sup> Interviewee BR04.

<sup>302</sup> Interview with Superintendent Tess Newbold, Chair of the Bahamas Anti-Trafficking Inter-Agency Committee, Nassau, The Bahamas (22 July 2021).

<sup>303</sup> Interviews with a member of an international non-governmental organisation (23 April 2020); and the Head of Modern Slavery Policy Unit at Justice and Care and the Centre for Social Justice (15 May 2020).

<sup>304</sup> Interview with an inter-governmental agent (17 April 2020).

<sup>305</sup> 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.

<sup>306</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>307</sup> Gallagher (n 293) 54–68.

Two elements are worth highlighting: the criminal lens and the gendered nature of the Protocol (see also 'Acknowledgment and Framing').

Sitting under the aegis of the UNCTOC, the Protocol frames trafficking as a transnational organised crime, which plays an influential role in norm diffusion.<sup>308</sup> This framing is reflective of the States' priorities and understanding of trafficking and facilitated the collective agreement amongst the States represented at the negotiations. The framing of trafficking as a transnational and organised crime in the Protocol has justified national responses that prioritise prosecution over other aspects of the response.<sup>309</sup> Expert interviewees echoed the broader criticism levied at the Palermo Protocol's focus on criminal justice; arguing that this in turn influences how national governments frame the phenomenon and their responses. In particular, there is emphasis on how the prosecution lens has precipitated a criminal justice focus at the national level. In **Chile**, trafficking is addressed from a security and public order perspective, in line with the Protocol's focus on transnational organized crime.<sup>310</sup> In the introduction of the bill on trafficking, the government prioritised the need to confront the rise of organised crime and its potential threat to Chile, with victim protection a secondary argument.<sup>311</sup> Most of the materials elaborated within the Intersectoral Table on Trafficking in persons (MITP) have focused on guidelines and protocols regarding investigation and prosecution.<sup>312</sup> Public policy has stressed the view of trafficking as transnational organised crime, and consequently, prioritises detection, investigation and prosecution of international trafficking. The transnational crime framing can be traced also to regional international bodies' narratives regarding the issue. In effect, the link between trafficking and migration is stated in the first documents that establish the background and justification for

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<sup>308</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>309</sup> Jonathan Mendel and Kiril Sharapov, 'Human Trafficking and Online Networks: Policy, Analysis, and Ignorance' (2016) 48 *Antipode* 665.

<sup>310</sup> Carolina Otárola, 'Trata de Personas: Voces y Silencios del ilícito en la sociedad, profesionales y víctimas' (2015) 97, available at <<http://repositorio.uchile.cl/bitstream/handle/2250/136570/Tesis%20-%20Correccion%20final-%20Carolina%20Ot%C3%A1rola%2026.08.pdf?sequence=1&isAllowed=y>> accessed 21 June 2021.

<sup>311</sup> BCN, *Historia de la Ley 20.507* (2015) 3. The Palermo Protocol's emphasis on organized crime and border control had not been the focus of police forces before the enactment of Law 20.507. In 2005, the National Headquarters of the Family (JENAFAM) of PDI organised a series of conferences on trafficking, with a focus on women and child victims, and conformed in 2006 a multidisciplinary team to address the crime, training police officers from sexual crimes units throughout the country and even developing in 2007 the first training program for sex workers to act as preventive agents. ONG Raíces, OIM, 'Trata de Niños/as y Adolescentes: Una realidad oculta. Estudio Exploratorio sobre Trata con Fines de Explotación Sexual en Niños, Niñas y Adolescentes en las Regiones I, V y Región Metropolitana' (2007) 20.

<sup>312</sup> The MITP has elaborated the Guide of Good Practices in criminal investigation of the crime of trafficking in persons (2015), the Guide for the detection and referral of victims of human trafficking (2016) and the Action guide for intersectoral inspections on trafficking in persons (2017). **Error! Hyperlink reference not valid.**

creating a political forum in the Organisation of American States (OAS) to address trafficking.<sup>313</sup>

The gendered framing in which the definitional debates concerning consent are bound has also influenced State anti-trafficking measures. The inclusion of 'especially Women and Children' in the title of the Protocol shapes how trafficking is perceived as an issue that affects and concerns 'vulnerable' women. It has been argued that the homogenised framing of both groups not only suggests that they are particularly at risk, but also infantilises women.<sup>314</sup> Requiring the same special attention as children, women are seen as lacking agency and in need of greater protection.<sup>315</sup> Furthermore, this framing risks overlooking men's vulnerabilities.<sup>316</sup> This not only creates stigma but can also lead to deficient State response with regard to identifying and protecting male victims, particularly in the context of sexual exploitation.<sup>317</sup> In the **United Kingdom**, it was highlighted that the gendered framing of certain international legal frameworks such as the Palermo Protocol relating specifically to women and children, and the initial focus on trafficking for sexual exploitation, has contributed to domestic assumptions in relation to 'victim profiles'. For example, interviewees noted that women and girls are more readily identified in situations of sexual exploitation than men. These assumptions have hindered the identification and protection of certain trafficked persons.

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<sup>313</sup> OEA, Consejo Permanente de la Organización de los Estados Americanos. Comisión General. Reunión Hemisférica sobre la Trata de Personas. Antecedentes y Justificación. Proyecto De Temario. OEA/Ser.G/CP/CG-1610/05 10 February 2005, <<http://www.oas.org/consejo/sp/COMGRAL/trata.asp>> Accessed 25 September 2021.

<sup>314</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>315</sup> Annie George, U Vindhya and Samwya Ray, 'Sex Trafficking and Sex Work: Definitions, Debates and Dynamics – A Review of Literature' (2010) 45(17) *Economic and Political Weekly* 64; Neil Howard and Mumtaz Lalani, 'Editorial Introduction: The Politics of Human Trafficking' (2008) 4(1) *St Antony's International Review* 5.

<sup>316</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.

<sup>317</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; 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; Samuel Vincent Jones, 'The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking' [2010] *Utah Law Review* 1143.

## 2 COMPLIANCE WITH THE PALERMO PROTOCOL

The literature questions the extent to which international law is a factor which influences and determines governments' anti-trafficking efforts, beyond initial ratification and national adoption.<sup>318</sup> Although ratification entails a positive obligation to pursue implementation,<sup>319</sup> there is often an implementation gap between domestic laws which are seemingly consistent with the Palermo Protocol, and their lack of enforcement in practice.<sup>320</sup> Thus, a lens through which our research question has been addressed is that of *compliance* with anti-trafficking legal frameworks.

The **Bahamas'** Minister of National Security, Hon. Marvin Dames, discussing training in the context of the 2020 Trafficking in Persons Judiciary Awareness Campaign, is quoted as having said training was essential because: 'As a state party to the United Nation's Protocol, the Commonwealth of The Bahamas had made a binding obligation and was fully committed to taking the necessary actions required to implement its provisions'<sup>321</sup> – thus suggesting that the Palermo Protocol in and of itself acted as a determinant in complying with international obligations. In **Guyana**, while there is a persistent gap between Guyana's international obligations and its enforcement, with anti-trafficking legislation unevenly applied across the country, it has been noted that while the UN Protocol has had a 'very strong' impact in shaping national legislation.<sup>322</sup>

The literature highlights a series of internal and external impediments to compliance, including cost,<sup>323</sup> capacity,<sup>324</sup> pressure from external bodies,<sup>325</sup> and corruption.<sup>326</sup> It also identified incentives such as international reputation,<sup>327</sup> ranking in the US State Department's

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<sup>318</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>319</sup> Interview with Sara Carnegie and Maria Pia Sacco, Senior Legal Advisor at the International Bar Association (7 December 2020).

<sup>320</sup> *ibid*; interviews with Ruth Van Dyke, Visiting fellow at the Centre for Modern Slavery, St Mary's University (27 February 2020); Interview with Jason Haynes, Deputy Dean (Graduate Studies & Research) at the University of the West Indies, Cave Hill Campus, Barbados (22 January 2021); Interview with Maria Grazia Giammarinaro, former UN Special Rapporteur on Trafficking in Persons, Especially Women and Children (16 December 2020); Interview with Martin Reeve, Regional Advisor at UNODC (10 September 2020); Interview with Peter Williams, Principal Advisor on Modern Slavery at International Justice Mission (23 September 2020).

<sup>321</sup> Eric Rose, 'Minister Dames Lauds The Bahamas' First Trafficking in Persons Judiciary Awareness Campaign' (*Bahamas Information Services*, 19 November 2020).

<sup>322</sup> Interview with DPP (August 2021).

<sup>323</sup> Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-Trafficking Protocol' (2012) 28 *European Journal of Political Economy* 1; 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; Johanna Schönhöfer, 'Political determinants of efforts to protect victims of human trafficking' (2017) 67(2) *Crime, Law and Social Change* 153 (n 2).

<sup>324</sup> Stobb and McDonald (n 323).

<sup>325</sup> *ibid*.

<sup>326</sup> Cassandra DiRienzo, 'Compliance with Anti-Human Trafficking Policies: The Mediating Effect of Corruption' (2018) 70 *Crime, Law and Social Change* 525.

<sup>327</sup> Olga A Avdeyeva, 'Does reputation matter for states' compliance with international treaties? States enforcement of anti-trafficking norms' (2012) 16(2) *The International Journal of Human Rights* 298.

Trafficking in Persons Report,<sup>328</sup> and threat of sanctions and State ability to afford sanctions.<sup>329</sup> The literature also discusses whether the gender composition of governments<sup>330</sup> and the extent to which the State has a free press<sup>331</sup> influence compliance with international obligations. The use of international law as a tool of leverage for non-governmental organisations (NGOs) and trafficked persons to hold governments to account and pressure compliance is also explored.<sup>332</sup> All these elements highlight 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.

### 3 REGIONAL INSTRUMENTS AND THEIR ROLE AS DETERMINANTS

Further to the Palermo Protocol, regional instruments are found to be particularly influential. The EU Directive and ECAT have a comparatively increased focus on support to trafficked persons (in comparison to the Palermo Protocol) and additionally portray trafficking through a human rights lens, thus shaping signatories' obligations to be more centred on trafficked persons' protection.<sup>333</sup> Moreover, as with the Palermo Protocol, regional instruments motivate States to put anti-trafficking on their political agenda; signing regional instruments signals commitment and cooperation to anti-trafficking work. ACTIP, for example, is seen as 'proof of how seriously ASEAN takes the issue'.<sup>334</sup>

In the **Philippines**, the increase in partnerships at the regional level is a result of having systems and structures in place in the ASEAN region, in particular, the establishment of the ASEAN Senior Officials' Meeting on Transnational Crime (SOMTC) born out of the 1999 ASEAN Plan of Action to Combat Transnational Crime. The Department of Interior and Local Government (DILG) sits on the ASEAN SOMTC and is the designated Lead Shepherd on Trafficking in Persons. As Lead Shepherd, the Philippines facilitated the development and drafting of the ACTIP and designed the ASEAN Multi-Sectoral Work Plan, also known as

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<sup>328</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>329</sup> Stobb and McDonald (n 323).

<sup>330</sup> DiRienzo (n 326); Seo-Young Cho, Axel Dreher and Eric Neumayer, 'Determinants of Anti-Trafficking Policies: Evidence from a New Index' (2011) CESifo Working Papers; Horace Bartilow, 'Gender Representation and the Sex Trade: Domestic Sources of International Compliance against Human Trafficking' (2008) *International Studies Association Annual Convention*; Schönhöfer (n 323).

<sup>331</sup> 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>332</sup> Daphna Hacker, 'Strategic Compliance in the Shadow of Transnational Anti-Trafficking Law' (2015) 28(1) *Harvard Human Rights Journal* 11.

<sup>333</sup> Interviews with Ruth van Dyke (n 320); and Borislav Gerasimov, Communications and Advocacy Coordinator at the Global Alliance Against Traffic in Women (11 November 2020).

<sup>334</sup> Interview with Thomas Harré, Barrister at LawAid International Chambers (8 April 2020).

the Bohol TIP Work Plan, in support of the implementation of the ACTIP.<sup>335</sup> International funding agencies have been meeting with the DILG to connect with ASEAN initiatives. The Philippine government, through the DILG, is currently in partnership with ASEAN-Australia Counter-Trafficking and Green Peace Southeast Asia, and is in talks with other international organisations to help implement the provisions of the ACTIP. Having the regional legal framework is a big factor in creating partnerships.<sup>336</sup> Thailand is also part of ASEAN and a party to the ACTIP. The ASEAN Human Rights Declaration and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children, signed by Thailand, established the groundwork for a regional approach in combatting human trafficking in Southeast Asia, with Thailand that was an active advocate for the regional anti-human trafficking regime. Some interviewees think that the ASEAN has enormous potential to be a key determinant of anti-trafficking efforts and actions. While the direct impact of the ASEAN legal framework at the domestic level cannot readily be gauged, the Thai representatives involved with ASEAN can certainly have an impact at the domestic level.

In the **United Kingdom**, Chapter IV of ECAT and Articles 2 to 10 of the 2011 EU Directive placed criminal justice obligations on the UK which formed the backdrop, in combination with other determinants including case-law (see 'Case Law'), to the individual political will of Theresa May introducing the Modern Slavery Bill.<sup>337</sup> Regional legal frameworks, specifically ECAT and the EU Directive, were fundamentally important determinants of improvements to domestic protection efforts. ECAT required the UK to formalise the identification of victims, which led to the creation of its National Referral Mechanism (NRM) in April 2009. However, the influence exerted by ECAT on the government to improve its protection efforts is not absolute.<sup>338</sup> In relation to corporate responsibility and the introduction of supply chain provisions in the MSA 2015, a different set of determinants has been identified. The international and regional legal frameworks obligated the UK to introduce measures to establish corporate liability.<sup>339</sup> ECAT is also particularly influential in **Armenia** and in **Georgia**. In **Armenia**, the obligation of the State to act in line with international conventions they have ratified – including ECAT – and recommendations of the Group of Experts on Action against Trafficking in Human Beings (GRETA), the monitoring body of ECAT, were successful in shaping the state's anti-trafficking response. In addition, ECAT was instrumental in the implementation of the non-punishment principle, which is only indirectly enshrined in the Palermo Protocol but is explicitly provided for in ECAT: Article 132(5) of

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<sup>335</sup> 'Drafting of ASEAN Convention To Combat Human Trafficking Concludes In the Philippines' (1343 Actionline, no date) <<https://1343actionline.ph/1056-drafting-of-asean-convention-to-combat-human-trafficking-concludes-in-the-philippines>> accessed 12 August 2021.

<sup>336</sup> Interview with Lymuel Magsino (9 July 2021).

<sup>337</sup> Theresa May, Written Ministerial Statement to Parliament; Modern Slavery (16 December 2013).

<sup>338</sup> This applies to England and Wales. The provision of assistance to victims of human trafficking is a devolved issue and both Scotland and Northern Ireland opted to place the provision of assistance and support to victims within their primary legislation: s.9 and 10 of the Human Trafficking and Exploitation (Scotland) Act 2015 and Part 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>339</sup> Article 22 of ECAT and Articles 5 and 6 EU Directive 2011/36/EU.

the Criminal Code envisages that a trafficked person is exonerated from punishment for offences of minor or medium gravity which they were involved in during trafficking or exploitation and were forced to commit. Article 8 of the Law on Identification exempts trafficked persons from criminal and administrative liability 'for those offences in which he or she was involved under coercion, within the course of the human trafficking or exploitation committed against him or her.' In **Georgia**, the process of building an anti-trafficking structure began in 2003 with the criminalisation of trafficking, and was followed by the adoption of the Law Combatting Trafficking in Persons in 2006. Since then, its policies and practices have been largely determined by the country's international legal obligations, including in particular ECAT and, indirectly, the Association Agreement with the European Union.

#### 4 THE ROLE OF INTERNATIONAL 'SOFT' LAW INSTRUMENTS

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 existing literature and expert interviews discuss the role of soft law and identify its positive influence on anti-trafficking efforts. 46% of survey respondents noted a positive influence of soft law instruments with 9% identifying a very positive influence and 37% identifying a positive influence. 46% of respondents noted a neutral/no influence. However, soft law has not been found to be a particularly significant determinant in our case studies. This might be due to several reasons, including the limited number of case studies undertaken in the context of the project, the limited familiarity with soft law instruments on the part of interviewed stakeholders, or the actual lack of impact of soft law on States' anti-trafficking actions.

Only in two instances have the SDGs been mentioned as determinants in our case studies – in **Bahrain** and in **Chile**. 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 countries' to create workplans that set out 'priorities, key actions, responsibilities, timelines and budgets' to help that country meet Target 8.7.<sup>340</sup> 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. In **Bahrain**, an interviewee confirmed the importance of SDG Target 8.7,<sup>341</sup> requiring 'immediate and effective measures to eradicate forced labour [and] end modern slavery and human trafficking'<sup>342</sup> in shaping anti-trafficking efforts. In 2019, **Chile** was invited by ILO to be an Alliance 8.7 Pathfinder Country. As part

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<sup>340</sup> 'What is a Pathfinder Country?' (Alliance 8.7) <<https://www.alliance87.org/pathfinder-countries/>> accessed 20 October 2020.

<sup>341</sup> LMRA (Written answers, 12 October 2021)

<sup>342</sup> United Nations, 'SDG 8 – Targets and Indicators', <<https://sdgs.un.org/goals/goal8>> accessed 12 October 2021

of its commitments regarding strengthening forced labour prohibitions, the Undersecretary of Labour promoted the ratification of the 2014 ILO Protocol of the ILO Convention on Forced Labour. In April 2021, Decree 48 of the Ministry of Foreign Affairs was enacted,<sup>343</sup> incorporating the 2014 ILO Protocol into domestic legislation. After Chile's recognition as an ILO Pathfinder country, the Undersecretary of Labour and the Undersecretary of Interior joint forces to undertake a common approach to child labour in the context of their own action plans.<sup>344</sup>

In addition to the SDGs, the Global Compact on Migration (GCM), specifically Objective 10 – which aims to prevent, combat and eradicate trafficking in persons in the context of international migration – has been pointed to in the literature as an important element in strengthening existing binding anti-trafficking obligations.<sup>345</sup> However, the GCM has not been found to be a determinant of anti-trafficking efforts in any of the fourteen case studies.

## 5 CONCLUSION

Across the literature review, expert interviews, and most case studies, international and regional legal frameworks have been identified as key determinants of anti-trafficking efforts. International law – and more specifically the **Palermo Protocol** – have been found to play a significant role in shaping anti-trafficking efforts. The Palermo Protocol has been deemed to be particularly influential in two distinct areas: **standard setting** and **framing**. While a more detailed discussion on framing is available in the output 'Acknowledgment and Framing', in so far as standard setting is concerned, the (minimum) standards enshrined in the Protocol have been transposed into domestic legislation in the majority of our case studies. and legislative debates often mention the Protocol as a source of 'guidance' for anti-trafficking efforts. However, the Protocol does not consistently influence the implementation of anti-trafficking legislation, also in part due to the lack of a proper and enforceable monitoring mechanism to assess **compliance**. Since 2000, **regional instruments** have been adopted to complement, or expand on, the Palermo Protocol, including the Council of Europe Anti-Trafficking Convention, EU Directive(s), and ACTIP. These instruments generally contain higher standards compared to the Palermo Protocol, particularly in the areas of **protection** and **prevention**, and have been found to be influential – especially when coupled with **external monitoring** (see 'External Monitoring, States Reputation, and (Threats of)

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<sup>343</sup> Decreto 48 Promulga el Convenio sobre el Trabajo Forzoso, 1930, y su Protocolo de 2014, ambos de la Organización Internacional Del Trabajo, published 16 September 2021 <<https://www.bcn.cl/ley-chile/navegar?idNorma=1165323>> accessed 23 September 2021

<sup>344</sup> 'Chile país pionero de la Alianza 8.7: Compromiso contra la trata de personas y el trabajo y el trabajo infantil' Mesa de Trata de Personas (1 April 2019) <<http://tratadepersonas.subinterior.gov.cl/noticias/chile-pais-pionero-de-la-alianza-8-7-compromiso-contrala-trata-de-personas-y-el-trabajo-infantil/>> accessed 20 August 2021

<sup>345</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.

Sanctions') – in shaping states' anti-trafficking efforts. Lastly, while the literature review and expert interviews pointed to **soft law** as a determinant of anti-trafficking efforts, in the majority of our case studies (with the exception of Bahrain and Chile) they did not emerge as a relevant factor.

## 5 EXTERNAL MONITORING, STATE REPUTATION, AND (THREATS OF) SANCTIONS

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 in a range of ways – most notably through exerting pressure on governments and institutions. Expert interviewees pointed to an ecosystem of external monitoring processes, both global and regional, with varying mandates and scope of influence.<sup>346</sup> When asked about the influence of ‘Actions and recommendations by international monitoring bodies and processes’, 61% of survey respondents noted a positive influence with 16% noting a very positive influence. Only 8% noted a negative influence while 30% noted no/neutral influence. The impact of particular monitoring processes, namely that of the US Trafficking in Persons (TIP) Report, UN Special Procedures, and the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA), was highlighted across the literature analysis, in expert interviews, as well as in the majority of our case studies.

Within the different external monitoring processes, the US TIP Report is a unique report and process which measures implementation and progress in anti-trafficking actions worldwide, albeit against the United States’ domestic law, rather than against international law. The TIP Report is an annually updated, global assessment of the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it.

In the context of UN Special Procedures,<sup>347</sup> and in particular within the mandate of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, there is a system of country visits and subsequent reports and recommendations that, although not systematic, monitors anti-trafficking developments and gaps globally.

Lastly, GRETA is tasked with monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) by the Parties, through a combination of its monitoring process (including country visits and reports) and the Committee of the Parties’ periodic meetings.

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**.<sup>348</sup> As an expert interviewee highlighted, ‘monitoring rankings and reports play a significant role [as] governments do care, they care about their ranking, they do pay attention to it’.<sup>349</sup> 68% of survey respondents noted a State’s international reputation

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<sup>346</sup> Internal monitoring has mostly been associated with the work of Civil Society Organisations (see ‘Civil Society Organisations’) and the work of investigative journalists (see ‘Acknowledgment and Framing’).

<sup>347</sup> See ‘Case Law’.

<sup>348</sup> See ‘External Monitoring, State Reputation, and (Threats of) Sanctions’.

<sup>349</sup> Interview with Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020).

as having a positive influence on its anti-trafficking efforts, with 17% noting a very positive influence. 9% noted a negative influence and 17% noting a neutral/no influence. In addition, expert interviewees noted the significance of the broader implications of external monitoring on diplomatic relations, funding, and threat of **sanctions**.<sup>350</sup> Indirectly, external monitoring can support efforts by civil society as reports and evaluation can be used as **advocacy** tools.

International monitoring bodies are integral to holding governments to account and incentivise the implementation of international obligations.<sup>351</sup> The number of monitoring processes is found to have potential negative and positive impacts on influencing anti-trafficking efforts. For some countries, the combination of monitoring processes and recommendations can incentivise change.<sup>352</sup> For others, external monitoring might be perceived as **external interference** in domestic affairs, and they might reject the recommendations of monitoring bodies – or even delegitimise their nature. Denial and deflection, though problematic, can still be seen as engagement, thus suggesting a degree of influence of these monitoring processes on anti-trafficking efforts. Finally, some States see an overload of monitoring mechanisms on anti-trafficking work, which can result in a **monitoring fatigue**.<sup>353</sup> Given that potential fatigue, it is important that States perceive monitoring as a cooperative process which aims not to judge a country, but to assist with action-based suggestions through the provision of clear recommendations that States can work with.<sup>354</sup> Monitoring mechanisms and global rankings not only trigger reactive responses, but can provide avenues for discussion and engagement, which is often initiated by governments themselves.<sup>355</sup>

This analysis will unpack three main areas with respect to external monitoring as a determinant of anti-trafficking efforts: recommendations of external monitoring bodies; consequences on states' reputation; and (threat of) sanctions.

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<sup>350</sup> See 'External Monitoring, States' reputation, and (Threats of) Sanctions'.

<sup>351</sup> Interview with Melita Gruevska Graham, Head of the Anti-Trafficking Programme at the International Centre for Migration Policy Development (ICMPD) (6 May 2020).

<sup>352</sup> Interview with Rebekah Armstrong, Director of Business & Human Rights Consultants NZ (16 April 2020).

<sup>353</sup> This may be exacerbated by the addition of the Palermo Protocol's new monitoring mechanism, especially for EU member states and Council of Europe States which get monitored by the EU and by GRETA.

<sup>354</sup> Interview with an international expert (5 May 2020).

<sup>355</sup> Interviews with Katharine Bryant (n 349); Nick Grono, CEO of The Freedom Fund (20 March 2020); and a member of an international organisation (14 April 2020).

# 1 THE IMPACT OF EXTERNAL MONITORING ON ANTI-TRAFFICKING EFFORTS

## 1.1 Recommendations and constructive dialogue

### 1.1.1 TIP Report

The influence of the TIP Report in initiating change has been described as nuanced and context-specific,<sup>356</sup> and has been highlighted in the vast majority of our expert interviews<sup>357</sup> and case studies. In particular, the process of reporting can trigger governments to start engaging in discourse confronting the problem of human trafficking<sup>358</sup> and the ranking can incentivise improvements, as demonstrated by the adoption of anti-trafficking laws, policies and action plans.<sup>359</sup>

67% of survey respondents noted a positive influence of the TIP Report ranking as having a positive influence, with 25% noting a very positive influence, whilst only 9% noted a negative influence. 24% noted a neutral/no influence. The Report has been pointed to as a key determinant in the majority of jurisdictions examined through the project's case studies. Most reports, however, highlight the influence of the TIP Report as linked to international pressure and to the threat of sanctions, rather than to its constructive dialogue and potential of recommendation (see below at 1.2.1). This being said, the role of the TIP Report in providing specific recommendations has been emphasised, for example, in **The Bahamas**. Superintendent Tess Newbold noted that the government has tried its best to implement the TIP Reports' recommendations. She alluded to the government's hosting of the Judicial Conference in 2020, the setting up of the TIP hotline, and the appointment of the Trafficking in Persons Secretariat whose sole responsibility is trafficking matters, as positive developments that were largely due to the recommendations included in prior TIP Reports.<sup>360</sup> Separately, Tess Newbold pointed to the law enforcement and prosecution authorities as well as the judiciary receiving training in 2020 at the insistence of the US, through its TIP reports.<sup>361</sup> In **Thailand**, there have been visible efforts and actions as well as lobbying on the part of the government to achieve an upgraded tier ranking in the TIP Report. The TIP report is not reported to have attracted debates in the Thai National Assembly, but it is often used in the public discourse and advocacy by non-governmental organisations (NGOs) and civil society organisations (CSOs). This has also been the case in **Armenia**, where recommendations

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<sup>356</sup> Gallagher, 'The 2015 US Trafficking Report: Signs of Decline?' (Open Democracy, 31 July 2015).

<sup>357</sup> Interviews with, *inter alia*, a member of an international non-governmental organisation (9 April 2020); Nick Grono (n 355); an inter-governmental agent (17 April 2020); Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020); and Rebekah Armstrong (n 352).

<sup>358</sup> Frances Bernat and Tatyana Zhilina, 'Trafficking in Humans: The TIP Report' (2011) 5(6) *Sociology Compass* 452.

<sup>359</sup> Susan Tiefenbrun, 'Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad' (2005) 11(3) *William & Mary Journal of Race, Gender, and Social Justice* 317.

<sup>360</sup> Interview with Superintendent Tess Newbold, Chair of the Bahamas Anti-Trafficking Inter-Agency Committee, Nassau, The Bahamas (22 July 2021).

<sup>361</sup> *ibid.*

generated by monitoring mechanisms, including the TIP Report, were used both by the government for framing and improving policies and by NGOs for supporting their advocacy efforts, and in **Mozambique**, where prosecutorial efforts were substantially strengthened, including through the delivery of judicial trainings, in response to the recommendations of the 2010 TIP Report.

### 1.1.2 The Council of Europe

GRETA is tasked with monitoring the implementation of ECAT by the Parties. Through the combination of its monitoring process (including country visits and reports), the Committee of the Parties' periodic meetings and international pressure (see below at 1.2.2), GRETA exerts considerable influence. Whilst there are no implications for funding or threat of sanctions tied to GRETA,<sup>362</sup> the legal obligation to implement recommendations (arising from ECAT) provides a strong foundation for GRETA's influence.<sup>363</sup> Moreover, such legal basis provides GRETA with authority and a robust structure.<sup>364</sup>

As experts interviewees highlighted, GRETA's reports are of particular use to advocacy from officials and civil society: government and experts use the reports and recommendations as tools to plan initiatives and justify the necessity of such work, and National Rapporteurs are able to utilise GRETA's reports in their advocacy.<sup>365</sup> In addition, as publicly available reports, they can be used as advocacy tools by other actors,<sup>366</sup> and are effective in providing leverage for experts to call for implementation of obligations.<sup>367</sup>

In the context of case studies, four countries out of the 14 in the project are subject to the jurisdiction of GRETA – **Armenia, Cyprus, Georgia, and the United Kingdom**. In **Armenia**, years of meticulous work of the Armenian authorities in cooperation with the Council of Europe resulted in 2021 in the promulgation of the amended Criminal Code and in the adoption of a Law on Identification and Support, which established a National Referral Mechanism reflecting the fundamental principles of the Council of Europe Anti-Trafficking Convention. Similarly, following GRETA's recommendation in its Second Evaluation Round report, Armenia signed the Council of Europe Convention against Trafficking in Human Organs in 2018. In **Cyprus**, the country report highlighted GRETA's influences as being linked, in particular, to the fact that the reporting takes place regularly, and engages both the State and NGOs, allowing for continuous monitoring and demands that the State presents evidence of year-on-year improvement. In **Georgia**, concerns raised by GRETA in its Second

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<sup>362</sup> Interview with an international expert (n 354).

<sup>363</sup> Interview with Suzanne Hoff, International Coordinator at La Strada International (23 April 2020).

<sup>364</sup> Interviews with an international expert (n 354); Katharine Bryant (n 349); and an international expert (30 April 2020).

<sup>365</sup> Interview with the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (21 April 2020).

<sup>366</sup> Interview with Melita Gruevska Graham (n 351).

<sup>367</sup> Interviews with an international expert (n 354); and the National Anti-Trafficking Coordinator at the Ministry of the Interior, Republic of Latvia (n 365).

Evaluation Round report in 2012 around the implementation of ECAT led to the establishment of a multi-faceted approach to prevention through the creation of partnerships and specialised institutions to carry out preventive work in various Ministries. While in these three instances, GRETA and its recommendation were deemed to be influential in advancing anti-trafficking efforts, in the **United Kingdom** it was noted that monitoring processes have not motivated the government to trigger a remedial response (see below at 1.2.2).

### 1.1.3 United Nations Treaty Bodies and Special Procedures

With regards to the influence of UN Special Rapporteurs,<sup>368</sup> the system of country visits and subsequent reports and recommendations is noted as influential, particularly when they focus on a specific policy area. Governments are responsive because country visits take place amongst existing discussions and engagements about legislative change and improvements. Concerns of reputation and international relations are at play, but what is important to enable such influence is trust and dialogue. Whilst there is minimal influence on governments that do not engage and cooperate with country visits, where there is a dialogue and a receptiveness to visits, changes are likely to follow suit.<sup>369</sup>

In **Argentina**, for example, former UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo, conducted a mission in 2011.<sup>370</sup> In her report, the Special Rapporteur recommended the establishment of a holistic national plan of action to fight human trafficking, to create a fund to compensate victims, and to train State officials. These recommendations informed legislative developments in Argentina, including the enactment of Law 26.842 and Law 27.508, which addressed many of these concerns. In **Armenia**, recommendations made by the UN Special Rapporteur on the Sale and Sexual Exploitation of Children contributed to both the amendment of the Family Code by setting the minimum age for concluding a marriage at 18 against concerns around forced child marriage, and the ratification of the Lanzarote Convention in 2020. In **Chile**, observations of UN Committees<sup>371</sup> were part of the arguments expressed during the discussion of the trafficking bill in Parliament.<sup>372</sup>

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<sup>368</sup> See also 'Case Law'.

<sup>369</sup> Interview with Maria Grazia Giammarinaro, former UN Special Rapporteur on Trafficking in Persons, Especially Women and Children (16 December 2020).

<sup>370</sup> UNGA, 'Report by Special Rapporteur Joy Ngozi Ezeilo' (24 May 2011) UN Doc A/HRC/17/35/Add.4.

<sup>371</sup> According to the Universal Periodic Review (UPR) in 2006, CEDAW remained concerned by the insufficient information available on the causes and extent of trafficking in Chile as an origin, transit and destination country, the lack of national legislation, and the absence of adequate measures to combat the phenomena of trafficking and exploitation of prostitution. In 2008, CRC noted that not all forms and types of trafficking (e.g., trafficking for forced labour and internal trafficking) were prohibited under article 367 (b) of the Criminal Code, and recommended adopting the bill which was before the Senate, aimed at criminalising trafficking in children in accordance with the Palermo Protocol; Committee on the Rights of the Child, 47<sup>o</sup> session, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 18 February 2008, CRC/C/OPSC/CHL/CO/1, para 23.

<sup>372</sup> BCN, Historia de la ley 20.507 (2015) 30.

While there are no individual complaints involving the projects' fourteen jurisdictions before United Nations Treaty Bodies insofar as trafficking is concerned, there has been a substantial degree of engagement of the UN Special Rapporteur through letters and communications. In March 2021, several mandates, including the mandate of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, addressed with concern the information received on the deteriorating environment for civil society organisations in **Cyprus** in the context of the 2020 amendment to the 2017 Law on Associations and Foundations and Other Related Issues. In particular, the letter was concerned with the alleged deregistration of Action for Support, Equality and Antiracism (KISA) from the Register of Associations and Foundations on 14 December 2020.<sup>373</sup> KISA is an NGO that, *inter alia*, provides support to migrants, asylum seekers and trafficked persons. In addressing the Government of Cyprus, the Special Rapporteurs drew attention to the Palermo Protocol, ratified by Cyprus in 2003, which obliges State Parties to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, including to prevent and combat trafficking in persons, to ensure assistance to trafficked persons, and to provide effective remedies. Whilst a definitive understanding of the impact of such engagement is not possible, it is nonetheless noted as a potential factor of influence. The United Nations Special Procedures have engaged with the British Government on a number of occasions with respect to anti-trafficking efforts.<sup>374</sup> It is particularly worth mentioning that in January 2021, several mandates issued a letter to, *inter alia*, the United Kingdom's Government with respect to the situation of the Al-Hol and Roj camps located in North-East Syria.<sup>375</sup> The letter called on States to be particularly mindful of 'the potential for coercion, co-opting, grooming, trafficking, enslavement and sexual exploitation when examining [women's and girls'] agency, or lack thereof' in the context of their association with terrorist groups. The letter further emphasised the positive obligation on States to identify trafficked persons, as 'a failure to identify a trafficked person correctly is likely to result in a further denial of that person's

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<sup>373</sup> OHCHR (31 March 2021) Ref AL CYP 1/2021, available at <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26312>>.

<sup>374</sup> There has only been limited engagement of UN Treaty Bodies, e.g., Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (7 June 2019) UN Doc CAT/C/GBR/CO/6, paras 58-59: 'The State party should: (a) Enhance its efforts to investigate claims of human trafficking and prosecute perpetrators and ensure that victims of trafficking obtain compensation, including by considering creating a civil remedy for victims of trafficking; (b) Ensure access to sufficient protection and support for all victims of trafficking and, in particular, ensure that the State party's establishment of a child trafficking protection fund results in an improvement in the availability of specialist care and support for child victims of trafficking'; and CEDAW, Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland (26 February 2019) UN Doc CEDAW/C/GBR/CO/8, para 34: 'The Committee recommends that the State party: (a) Ensure that the definition of trafficking in persons in its national legislation is in line with the internationally agreed definition set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [...]; (b) Adopt a comprehensive national strategy to combat trafficking in women and girls [...]; (c) Continue to improve the national referral mechanism [...]'.

<sup>375</sup> OHCHR (26 January 2021) Ref AL GBR 2/2021. In the past, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Combatting Terrorism also intervened in the Shamima Begum case: see both interventions at <<https://www.ohchr.org/EN/Issues/Terrorism/Pages/AmicusBriefsExpertTestimony.aspx>>.

rights'. Despite the Government only partially agreeing with the assertions made by the Special Rapporteurs, its response provided justifications for existing practices and policies that allow for a better understanding of, and arguably provide for better counter-argumentation against, such practices and policies.

#### 1.1.4 Other monitoring bodies

The role of monitoring bodies not specifically linked to trafficking but which also raise trafficking in their considerations is also identified as a potential determinant. In **Guyana**, the policy on anti-trafficking as it relates to children has been mainly driven by external pressure from international agencies. The United Nations International Children's Emergency Fund (UNICEF) in particular has influenced anti-trafficking efforts, driven by its concerns around Guyana's heavy reliance on extractive and timber industries, which might generate violations of children's rights, and by the findings that 50% of trafficked persons in Guyana are under the age of 18 (see also 'Culture, Victimhood, and Discrimination').<sup>376</sup>

## 1.2 International and regional reputation and pressure

International and regional reputation and pressure have been found to be key determinants in the majority of case studies, alone and in conjunction with external monitoring. In fact, most country reports have analysed external monitoring as producing national, regional, or international pressure, and have emphasised this relationship in promoting positive change in anti-trafficking efforts – more so than in the context of constructive dialogue. This is supported by the survey findings where 68% of respondents noted a State's international reputation as having a positive influence on its anti-trafficking efforts, with 17% noting a very positive influence. 9% noted a negative influence with 17% noting a neutral/no influence.

In **The Bahamas**, for example, there is overwhelming evidence that international reputation is one of the key determinants underpinning its improved efforts to combat trafficking in persons. The Bahamas is only one of a few countries globally that has successfully managed to maintain its Tier 1 ranking in the US TIP Reports for six consecutive years (see below at 1.2.1).<sup>377</sup> Similarly, in **Bahrain**, international reputation was a key factor motivating the government to pass its anti-trafficking law in 2008, which in turn contributed to the acquisition of its Tier 1 status on the US TIP Report. This achievement created opportunities for Bahrain to heighten its regional reputation in the region, including through the establishment of a regional capacity-building hub in partnership with the United Nations Office on Drugs and Crime (UNODC): the Regional Centre for Excellence for Capacity Building in the Field

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<sup>376</sup> UNICEF, 'Situational Analysis of Children and Women in Guyana' (July 2016) 14, available at <[https://www.academia.edu/31408944/The\\_Situation\\_Analysis\\_of\\_Children\\_and\\_Women\\_in\\_Guyana](https://www.academia.edu/31408944/The_Situation_Analysis_of_Children_and_Women_in_Guyana)> accessed 20 August 2021.

<sup>377</sup> 'Bahamas Maintains Trafficking in Persons Ranking' (ZNS Bahamas, 19 January 2021) available at <<https://znsbahamas.com/bahamas-maintains-trafficking-in-persons-ranking/>>.

of Combatting Trafficking in Persons. The Bahraini government seems to have prioritised combatting trafficking for the purpose of sexual exploitation, driven by the urge to 'clean up' Bahrain's regional reputation amidst allegations the capital is the 'Sin City' of the Gulf, therefore realigning the country with the region's Islamic identity. Chile's international reputation was also highlighted as a matter of serious concern for State authorities,<sup>378</sup> in particular with respect to its lack of proper criminalisation of trafficking, which was criticised by, *inter alia*, UN Committees and the TIP Report, and which was remedied through Law 20.507 in 2011. Its relatively small position in the global market renders its reputation as a democratic and law-abiding country, respectful of human rights, a cherished value of the political system.

Elevation of the international reputation of the **United Kingdom** and a desire to be viewed as a world-leader in combating modern slavery was a factor that underpinned the individual political will and cross-party support for improving the UK's anti-trafficking efforts and inspired efforts to rally international commitment, including a 2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking at the UN General Assembly. However, once the UK obtained 'leader status' – including through the adoption of the 2015 Modern Slavery Act, described as a 'flagship Bill'<sup>379</sup> – risk of damage to its international reputation was not perceived as a determinant that has influenced the government to improve anti-trafficking measures, even in the face of external monitoring mechanisms' criticism. For example, a number of interviewees observed that the current government has introduced the Nationality and Borders Bill unfazed by the breadth of criticism received by its New Plan for Immigration Consultation. This criticism has not deterred it from pursuing its political prioritisation of immigration control, even if this comes at the cost of hindering and undermining anti-trafficking efforts and undermining its international reputation. It is possible that the government is unperturbed by external criticism, based on the overall high regard in which its anti-trafficking efforts are viewed when compared to other countries and the associated low risk of being downgraded in its international rankings.

In **Thailand**, the country report highlighted that the consensus that international pressure, in particular the pressure stemming from the US TIP Reports and the European Union (as a trade partner), channelled through and coupled with political will, have shaped, driven, or informed Thailand's anti-trafficking efforts substantially. Elevation of the international reputation of Thailand and a desire to avoid criticism/pressure from the US Govern-

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<sup>378</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with Paz González Lever, public administrator, Director Social Unit, Libera Foundation (Santiago, Chile, 12 August 2021).

<sup>379</sup> Theresa May, Written Ministerial Statement, 16 December 2013. See also, Report of the Modern Slavery Bill Evidence Review "Establishing Britain as the World Leader in the Fight against Modern Slavery" (2013) 5: 'Those who present this report naturally wish for Britain to set the standard for the rest of the world in countering modern slavery. We believe that, if implemented, our recommendations will achieve exactly that, hence our chosen title for the report.'

ment and the EU, as well as a desire to be counted as a regional leader within the Association of Southeast Asian Nations (ASEAN) in fighting human trafficking were significant factors that informed, influenced, and underpinned efforts such as policy and legislative reforms against human trafficking. Similarly, in **Georgia**, there is a shared understanding that its reputation as a human rights-abiding State is interlinked with its image in the international arena as a country that aims at becoming a member of the European Union and NATO, and thus complying with the high standards set by these institutions. In this context, fighting trafficking in human beings is an integral part of the country's fight against organised crime, a topic high on the agenda of two principal partners of Georgia – the EU and the US.

Interestingly, regional and international pressure and reputation have also been found to have a limited role to play as positive determinants of **Algeria's** anti-trafficking efforts, although for different reasons than in the United Kingdom. In Algeria, deflection and denial are two common tactics used by the government to avoid taking responsibility for combating trafficking, especially in the face of international pressure, and including with respect to the US TIP Report (see below at 1.2.1). The Algerian State's sensitivity to criticism, and the consequential determinants of deflection and denial, is rooted in its political situation and concerns about foreign interference (see below at 2.1). On the other hand, there are positive signs that Algeria's concern for its regional reputation motivates the government to collaborate with its African neighbours on anti-trafficking efforts. Algerian diplomacy significantly waned under President Bouteflika. A key priority for his successor, Tebboune, is to 'rebuild ... Algeria's international standing', particularly with regards to its 'African partners'.<sup>380</sup> In 2018, Algeria worked to enhance regional anti-trafficking coordination through the African Union Mechanism for Police Coordination. The same year, it hosted the UNODC's regional forum, bringing together human trafficking experts from across North Africa and the Sahelian States.<sup>381</sup> While regional pressure has had a limited impact in leading Algeria to combat trafficking, the opportunity to enhance its regional reputation through anti-trafficking diplomacy has been more impactful.

### 1.2.1 TIP Report

The TIP report has specifically been found to influence the diffusion of the criminal justice approach to addressing human trafficking.<sup>382</sup> Intersecting with the influence of framing, the TIP report, the Trafficking Victims Protection Act (TVPA) and its sanctions regime has diffused the crime frame and criminal justice response to human trafficking globally.<sup>383</sup> Broadly, the

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<sup>380</sup> Chloe Teevan, 'Algeria: Reforming Migration and Asylum systems in a time of Crisis' (2020) ECDPM.

<sup>381</sup> United States Department of State, '2018 Trafficking in Persons Report' (2018) 70.

<sup>382</sup> Beth A Simmons, Paulette Lloyd and Brandon M Stewart, 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' (2018) 72(2) *International Organization* 249.

<sup>383</sup> Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking' (2006) 26 *Michigan Journal of International Law* 437; US Committee on Foreign Relations, *Trafficking of Women and Children 2000* [106th Congress].

influence of the TIP Report and Ranking is derived from two areas: (1) firstly, the implications that country rankings have on funding and the fear of losing funding; (2) and secondly, how the TIP Report affects States' international reputation.

Whilst international reputation may be affected and shaped by other review processes, monitoring bodies, commissions, and civil society work, the TIP Report is found to wield significant influence.<sup>384</sup> Reputational concerns are noted in both the context of competition with neighbouring countries, and the aim to ensure countries are seen as reputable by the US, to aid their diplomatic relations. With regards to competition with neighbouring countries, particular regions are noted, where the competition generates energy for change.<sup>385</sup> In Southeast Asia, for example,<sup>386</sup> interviewees highlighted that there is competition between neighbouring countries that do not 'want to be viewed as less successful than their neighbours in that region'.<sup>387</sup> Anecdotally, Ghanaian officials were seeking 'suggestions on how they could be the first Tier 1 country in sub-Saharan Africa', and this was incentivised by a sense of reputation and pride.<sup>388</sup> This is reflected in countries in Eastern Europe, where there is a 'desire to be seen to be proactive on this or to have under control ... for the EU and others to look favourably on them'.<sup>389</sup> In contrast, China for example has less impetus to improve such credentials.<sup>390</sup> More broadly, concerns about a country's reputation in the eyes of the US links to the influence of the TIP report in diplomatic relations with the US. Motivated by reputation, States with lower rankings were seemingly seeking out training opportunities and undertaking positive action.<sup>391</sup> Moreover, the fear of falling in rank can also influence pre-emptive action to improve efforts.<sup>392</sup>

The report on **Argentina** has highlighted that a key determinant of anti-trafficking efforts is international reputation as derived from the TIP Report: for example, in the process of drafting Law 26.364, one legislator expressed concern that: 'The U.S State Department has pointed out that Argentina does not comply with the minimum standards for the elimination of trafficking in persons. This is motive of concern, because in these topics it is important to respond to the international considerations on the subject matter'.<sup>393</sup> International reputation was considered a key determinant in relation to external monitoring also in the context of partnerships and the establishment of specialised anti-trafficking institutions, as Argentina 'need[ed] to show international organs that monitored Argentina that the State

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<sup>384</sup> Interview with Pierre Cazenave, Europe Programme Manager - Children and Youth in Migration at Terre des Hommes (27 February 2020).

<sup>385</sup> Interview with Peter Williams, Principal Advisor on Modern Slavery at International Justice Mission (23 September 2020).

<sup>386</sup> Interviews with an independent consultant (7 May 2020); and a UN official (17 April 2020).

<sup>387</sup> Interview with an independent consultant (n 386).

<sup>388</sup> Interview with Katharine Bryant (n 349).

<sup>389</sup> Interview with Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>390</sup> Interview with Nick Grono (n 355).

<sup>391</sup> Interview with an independent consultant (n 387).

<sup>392</sup> Interview with a member of a Ministry of Justice (20 August 2020).

<sup>393</sup> *ibid.*

was doing something to fight TIP'.<sup>394</sup> In contrast, in the specific context of prosecutions, the report noted that the judiciary is less concerned with international reputation than is the government, with an interviewee expressing the view that judicial power is unconcerned with international reputation, as improvements to its ranking according to any international organs pales *vis-à-vis* the necessity of producing 'good' judicial cases.<sup>395</sup>

In **The Bahamas**, the success in implementing the recommendations of the US TIP Reports was first heralded in a 2015 statement in the House of Assembly by the then Minister of National Security, Dr. Bernard Nottage.<sup>396</sup> He noted that the Bahamas was at the time 'the only country in the region that has achieved a tier-one ranking',<sup>397</sup> which suggests that the country sees itself as being in competition with its Caribbean neighbours. This also suggests that the country places considerable weight on maintaining a good international reputation. Also in terms of international reputation as a specific determinant of prosecutorial efforts, the US TIP Reports, which attributed the low numbers of prosecutions and convictions in 2015 and 2016 to the absence of an amendment to the Criminal Procedure Code to allow for the prosecution of TIP cases in the Supreme Court, underpinned the amendment that was made in 2017.

In **Bahrain**, international reputation, particularly through the US TIP Report, was found to be a key determinant that applies to prosecution, protection, prevention, and partnership. International reputation has been named as one of the two most important determinants by almost all interviewees and focus group participants and, as a U.S. embassy official put it, Tier 1 status is a 'source of pride for Bahrain'.<sup>398</sup> The National Assembly debate on 31<sup>st</sup> December 2007, immediately prior to the passing of Bahrain's anti-trafficking law (Law No. 1/2008), demonstrates the influence of international reputation. MP A. Rahman Jamshir said that the anti-trafficking bill would 'help Bahrain improve its image', explicitly linking this to Bahrain's position as a 'second or third' Tier country in the US TIP Report.<sup>399</sup>

In **Guyana**, stakeholders have noted that the TIP Report provides guidelines and recommendations for their actions, especially in the context of prosecutions. However, they were reluctant to say that their efforts are driven by this. Instead, what has emerged from the conversations is that *in an effort to appear serious* about combatting trafficking and prevent themselves from being downgraded in the TIP report, Guyana has taken several steps.<sup>400</sup> Some of the NGO stakeholders were of the view that anti-trafficking efforts were image-driven, so that the country appeared to be doing a lot and providing support, but it was responding to the TIP Report and what was needed to maintain a Tier 1 status.

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<sup>394</sup> Interviewee AR08.

<sup>395</sup> *ibid.*

<sup>396</sup> 'Bahamas Receives Top Ranking in Human Trafficking Report' (*The Bahama Journal*, 30 July 2015).

<sup>397</sup> *ibid.*

<sup>398</sup> Interviewee 0308 (Virtual, 3 August 2021).

<sup>399</sup> *ibid.* (own translation).

<sup>400</sup> Interview with Minister Hon. Gail Teixeria, Minister of Parliamentary Affairs and Governance (July 2021).

The Philippines also recognises and values the TIP Report as an international monitoring mechanism, and Philippine anti-trafficking stakeholders take immense pride in achieving and holding a Tier 1 ranking in the TIP Report for six consecutive years. The rank is seen as a key indicator of the country's collective efforts to combat trafficking in persons. Similarly, in Thailand and in Georgia, the TIP Report is particularly impactful in bolstering governmental efforts against human trafficking. In 2008 and 2009, Thailand was in Tier 2 of the TIP Report ranking. In 2010-2013, Thailand's position went one step down to Tier 2 watch list, while in 2014-2015 the ranking was further down to Tier 3. In 2016, the position was upgraded to Tier 2 watch list, where Thailand remained in 2017. Tier 2 watch list was still a downgraded position, and it is understood that this created pressure, leading to significant reforms, particularly in regulating the fishing sector, by the Thai government. In Georgia, the decline in the number of investigations resulted in a demotion to Tier 2 in 2013, which in turn served as a precursor for action, positively provoking national stakeholders in Georgia to reboot the process in an effort to return to and retain Tier 1. In particular, in order to achieve Tier 1, between 2013 and 2016 the Georgian government increased the anti-trafficking capacity of its law enforcement through funding an unprecedented number of trainings for police, prosecutors, judges, and shelter operators, and through the implementation of a child referral mechanism.

In Algeria, in contrast and as mentioned above (see at 1.2), the TIP Report has been found to have limited, if not detrimental, impact on anti-trafficking efforts. The limited impact is rooted in Algeria's perception of the TIP Report, and the consequent international reputation, as biased: as recently as October 2021, the current Director of the National Council for Human Rights, Sayed Mohammed Bolaal said that the TIP report 'does not have objective criteria' by which to measure Algeria's anti-trafficking progress.<sup>401</sup> These comments suggest that the international pressure that the U.S Department of State aims to impose through its TIP report has little impact in Algeria, because the basis of the report's construction is criticised, and its findings easily glossed over by politicians, who refuse to acknowledge the seriousness of the concerns raised. The adversarial approach to external monitoring, and in particular the TIP Report, is part of Algeria's **concern about foreign interference**. However, and tempering this argument, the country report noted that there are indications that Algeria is still concerned about its international reputation and how its actions are perceived by the international community.

### 1.2.2 The Council of Europe

GRETA's influence is also linked to international reputation and relations. For example, it was noted that countries may be receptive to GRETA's recommendations as part of their aims to secure EU membership<sup>402</sup> – as in the case of Georgia. Indeed, political will and readiness of Georgia to combat trafficking primarily stems from the country's motivation to

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<sup>401</sup> Algerian Public Television Corporation (2021).

<sup>402</sup> Interview with a member of the Council of Europe (25 November 2020).

abide by its international obligations as a part of its Euro-Atlantic aspirations. Hence, the government is particularly cognisant of, *inter alia*, GRETA assessments and recommendations, aware that compliance with standards is heavily interlinked with Georgia's image in the international arena.

While generally GRETA and its recommendation and/or pressure were deemed to be influential in advancing anti-trafficking efforts, in the **United Kingdom** it was noted that monitoring processes do not (anymore) motivate the government to trigger a remedial response. For example, recent concerns about the narrow interpretation of the non-punishment principle enshrined in section 45 of the 2015 Modern Slavery Act have not led to an amendment of the government's approach to the principle, with the government citing risks of abuse of the defence and the system. Similarly, criticism related to children going missing from care and being re-trafficked has not had positive effects on the government's response. More broadly, a number of interviewees suggested that the current government is less driven by the international reputation of the United Kingdom, arguing that this can be readily seen with the introduction of the draft Nationality and Borders Bill, unfazed by the criticism received for non-compliance with, *inter alia*, international refugee law and international anti-trafficking law. While surely the prioritisation of a security lens can be seen as a determinant of the dis-engagement with monitoring bodies (see more in 'Acknowledgment and Framing'), it has also been suggested that the *status* obtained by the United Kingdom as 'global champion' in the fight against trafficking has resulted in the government being less keen on accepting criticism, knowing that – from a comparative perspective – it will still be seen as one of the most committed governments in the anti-trafficking field, and praised for it.

### 1.3 Sanctions and threats of sanctions

54% of survey respondents noted a positive influence of the risk/threat of sanctions by countries and international organisations with 15% noting that the State's efforts were very positively influenced by the same. 12% noted a negative influence with 35% noting a neutral influence.

#### 1.3.1 TIP Report

Integral to the influence of the TIP report is **the threat and fear of losing funding**, if a State is ranked at Tier 3.<sup>403</sup> The TIP Report's direct link to donor funds mobilises political responses. An expert interviewee suggested that they see 'a lot of political will when there is commensurate donor investment', so there are 'shifts where there has been that investment'.<sup>404</sup> In certain Southeast Asian countries, there are positive reactions to the TIP report, through 'really ramping up their efforts, putting more resources into the anti-trafficking efforts and seeking out more training, demanding more convictions or at least more prosecutions from

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<sup>403</sup> Interview with Melita Gruevska Graham (n 351).

<sup>404</sup> Interview with a UN official (n 386).

their criminal justice system'.<sup>405</sup> For example, in the Philippines, 'there was a tremendous effort there to bring their rating up. And they really did work hard to generate more cases, more investigations. And they did. And they were successful'.<sup>406</sup>

Such influence of funding or fear of losing funding may depend on countries' economic situation and their financial dependence on the US.<sup>407</sup> Countries with less developed economies that are reliant on US funding, and may also have diplomatic ties, are more influenced by and reactive to the US TIP Reports. For countries including the **Philippines**, Cambodia, Thailand, and Malaysia, the TIP Report is 'an essential document', which triggers governments to seek advice on how to improve rankings and thus improve anti-trafficking efforts.<sup>408</sup> It has become both a point of 'action and defence and an offense'. The particular influence of the funding implications is further noted in North Macedonia and Albania.<sup>409</sup> However, this is not reflected everywhere; for example, in East Africa, the TIP Report is not found to have much influence<sup>410</sup> and Western European States, which are not reliant on US funding, have little concern for the TIP Report's financial incentive.<sup>411</sup> Similarly, India is highlighted as having autonomy from the US diplomatically and economically, thus reducing the influence of the TIP Report.<sup>412</sup>

When the **Philippines** was placed in the Tier 2 Watch List of the 2009 and 2010 TIP Reports, it triggered acknowledgement on the part of the government of the need to evaluate its anti-trafficking efforts and policies. The threat of falling into Tier 3, with its accompanying financial sanctions, caught the attention of no less than the country's president at the time, as well as legislators in both chambers of Congress.<sup>413</sup> Similarly, in **Armenia**, the TIP Report downgrading to Tier 2 watch list in 2020, and the possibility of sanctions, played a triggering role in intensifying anti-trafficking efforts in the country, taking into account new realities and changing trafficking patterns.

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<sup>405</sup> Interview with an independent consultant (n 387).

<sup>406</sup> *ibid.*

<sup>407</sup> Interviews with the Head of the Modern Slavery Policy Unit (15 May 2020); and Euan Fraser (n 389).

<sup>408</sup> Interview with Peter Williams (n 385).

<sup>409</sup> Interview with Pierre Cazenave (n 384).

<sup>410</sup> Interview with Marika McAdam (n 357).

<sup>411</sup> Interview with Euan Fraser (n 389).

<sup>412</sup> Interview with Peter Williams (n 385).

<sup>413</sup> Benigno S Aquino III, 'Second State of the Nation Address' (Official Gazette of the Republic of the Philippines, 25 July 2011) <<https://www.officialgazette.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011/>> accessed 13 August 2021; 'Philippines: Aquino Prioritizes Trafficking' (*IRIN News*, 7 April 2011); Emmanuel Pacquiao Sr, 'Privilege Speech of Rep. Pacquiao' (2010) 1 Congressional Record - 15th Congress; Pia Cayetano, 'Co-sponsorship Speech of Senator Cayetano (P)' (2011) Session No. 50 Senate Journal - 15th Congress; Lorenzo Tañada III, 'Privilege Speech of Rep. Tañada' (2010) 3 Congressional Record - 15th Congress.

### 1.3.2 Other international organisations

The International Labour Organisation (ILO) supervisory mechanism also interacts with diplomatic relations and international reputations. The fear of a national complaint being analysed at the international level, in front of all the ILO members, prompts countries to implement technical change or request technical assistance to avoid such escalation and reputational damage. Moreover, diplomatic sanctions may occur before or as a result of attendance to the ILO Administrative Tribunal if a country is listed as having problems with forced labour and not taking proper action. These diplomatic sanctions can trigger economic consequences; companies and countries stop buying products due to problems with forced labour.<sup>414</sup> While the literature and expert interviewees have highlighted the role of the ILO supervisory monitoring work, our case studies have not found this particular form of monitoring to be a key determinant of anti-trafficking efforts.

The case study on **Thailand** revealed that the pressure stemming from the European Union (as a trade partner), has shaped, driven, or informed Thailand's anti-trafficking efforts most substantially – coupled with the pressure from the US TIP Report. Thailand is a major fish exporting country to the EU but has a serious problem of human trafficking in the fishing industry. The EU has, therefore, sought to achieve the goal of eradicating forced labour in the Thai fishing industry through a combined tool of diplomacy and business strategy, in the form of a threat of sanction. On the heels of critical reports of human trafficking, forced labour, and violence against fishermen in 2014 and 2015, the EU issued Thailand an initial 'yellow card' in April 2015 for 'not taking sufficient measures in the international fight against illegal fishing' [and] granted Thailand six months to take corrective measures or face a potential ban on fishing exports to the European Union'.<sup>415</sup> Since then, the EU extended the six-months' yellow-card designation for another six months until the first half of 2018. The Thai government opposed these actions, but it ultimately vowed to do better. As seen in this report, reforms and improvements occurred in the fishing industry. Two national interviewees confirmed that there was a direct or tacit threat of sanction from the EU, which acted as a determinant of reforms in the Thai fishing industry to prevent human trafficking.

## 2 CRITIQUES OF EXTERNAL MONITORING: LEGITIMACY, INTERFERENCE, AND POLITICS

In more than one instance in our case studies, external monitoring was addressed through critical lenses. This is particularly true of the approach of certain states (e.g., Algeria and

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<sup>414</sup> Interview with a member of an international organisation (n 355). For example, a complaint concerning state-imposed exploitation of workers in cotton fields was lodged against Uzbekistan. Having been submitted to the supervisory mechanism, they WHO ARE 'THEY'? were put on a monitoring process. The impact of this extended beyond the ILO, with countries and businesses severing relationships with Uzbekistan through boycott campaigns, and economic and diplomatic sanctions.

<sup>415</sup> Pimuk Rakkhanam, 'Thailand Temporarily Eases Restrictions on Some Fishing Boats' (*Benar News*, 22 July 2015).

Thailand) with respect to the TIP Report. This section will offer some reflections on the nature and perception of the TIP Report.

Within the different external monitoring processes, the TIP Report is a unique report and process. Already in the literature, 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>416</sup> In **Algeria**, as mentioned above (see at 1.2.1), the adversarial approach to external monitoring, and in particular the TIP Report, is understood to be a result of **Algeria's concerns about foreign interference**. 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>417</sup> The TIP Report, critics argue, 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>418</sup> Whilst the interviewees highlighted the TIP Report's flaws,<sup>419</sup> they overwhelmingly recognised the TIP Report as having a significant impact on governments' anti-trafficking efforts as it is able to trigger reactive change.<sup>420</sup>

However, **the potential funding and reputational implications may cause changes that are only superficial**. This demonstrates that the TIP Report is found to have **unintended consequences which may hinder improvement**. This is largely a result of the focus on criminal justice and prosecution numbers. The prosecutorial approach is limited in how the data is collected and the transparency thereof. For example, in Cambodia, arrests for trafficking increase just before information is collected for the TIP Report, or charges are recorded as trafficking to bring the numbers up.<sup>421</sup> Similarly, the fear of losing funding and competition with neighbouring States can also have the 'unintended negative consequence' of causing countries to 'prosecute cases that are very marginal or where there is insufficient evidence [...] just to generate numbers at the end of the year to up their ratings'.<sup>422</sup> This creates a tick-box exercise by rushing through processes to demonstrate response to a particular criticism or recommendation, without long-term structural change.<sup>423</sup>

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<sup>416</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>>. See also Amy Foerster, 'Contested Bodies' (2009) 11 *International Feminist Journal of Politics* 151, 161. 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>417</sup> Gallagher (n 356).

<sup>418</sup> *ibid*.

<sup>419</sup> Interviews with an independent consultant (n 387); a UN official (n 386); Rebekah Armstrong (n 352); and Suzanne Hoff (n 363).

<sup>420</sup> Interviews with a UN official (n 386); and Borislav Gerasimov, Communications and Advocacy Coordinator at the Global Alliance Against Traffic in Women (11 November 2020).

<sup>421</sup> Interviews with a UN official (n 386); and Martin Reeve, Regional Advisor at UNODC (10 September 2020).

<sup>422</sup> Interview with an independent consultant (n 387).

<sup>423</sup> Interview with an inter-governmental agent (n 357).

Surface-level changes are further identified with improvements that are **not implemented or sustained. Whilst immediate surface-level change may be triggered, to avoid reputation and financial implications, it fails to create the conditions for long-term investment and structural change.**<sup>424</sup> For example, in the case of **Ethiopia**, the US TIP Report urged the ratification of the Palermo Protocol and whilst this triggered the ratification, due to a fear of a loss of funding, there was little follow-through implementation to criminalise trafficking.<sup>425</sup> Changes which only pay lip-service are arguably also driven by the nature of the TIP Report's findings and recommendations. One of the non-State focus group participants in **Bahrain** argued that international reputation may be a negative determinant, suggesting that that overly optimistic TIP reporting by the US Department of State may impede Bahrain's engagement in serious reform by fostering complacency once Bahrain achieved Tier 1 status.<sup>426</sup>

Moreover, governments may disengage when they disagree with their ranking.<sup>427</sup> Participants noted this occurring when States believe their genuine efforts are not recognised.<sup>428</sup> A real frustration is highlighted amongst governments when it is felt that credit is not given for their efforts. This highlights that the approach of the TIP Report, which focuses on areas to improve rather than on what has been achieved, may negatively impact political will.<sup>429</sup> Moreover, governments disengagement is found when the reports are viewed as a punitive and hegemonic tool of the US.<sup>430</sup> In the **Caribbean**, it is suggested that the TIP Report is out of touch with the realities and intricacies of national infrastructure, and that it is a tool employed by the US to maintain hegemonic power. Whilst the Caribbean countries do respond with changes, thus suggesting that the TIP Report has influence despite the criticisms, such changes are seen as reactive and not of national volition.<sup>431</sup> In **Thailand**, most interviewees confirmed the remarkable influence the TIP reports had exerted. Whilst some interviewees reported that pressure coming from the TIP reports is genuine, others expressed discontent that the reports are politically biased and sometimes ignore the efforts undertaken by Thailand. When the 2021 TIP report was released, the Thai Ministry of Foreign Affairs, in a statement (2 July 2021), 'brushed aside' its downgraded position at Tier 2 watch list, saying that the country was disappointed to see that 'the report does not reflect fairly the significant efforts and concrete progress Thailand has made in combatting human trafficking'.

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<sup>424</sup> Interview with a UN official (n 386).

<sup>425</sup> Interview with Adie Teshome, Academic at La Trobe Law School, Australia (26 May 2020).

<sup>426</sup> Participant 8, non-state actors Focus Group Discussion (28 July 2021).

<sup>427</sup> Interviews with an inter-governmental agent (n 357); and Ruth van Dyke, Visiting fellow at the Centre for Modern Slavery, St Mary's University (27 February 2020).

<sup>428</sup> Interview with Martin Reeve (n 421).

<sup>429</sup> Interview with an inter-governmental agent (n 357).

<sup>430</sup> Interview with Jason Haynes, Deputy Dean (Graduate Studies & Research) at the University of the West Indies, Cave Hill Campus, Barbados (22 January 2021).

<sup>431</sup> *ibid.*

## CONCLUSION

External monitoring processes – both international and regional – have the potential to directly influence anti-trafficking efforts through: 1) constructive dialogue and recommendations, 2) international pressure and consequences for States' reputations, 3) adoption or threat of sanctions, or 4) a combination of the above. Indirectly, reports and evaluations of monitoring mechanisms can be used as advocacy tools by civil society organisations to pressure the State to improve its anti-trafficking efforts. Whilst most governments (amongst our case studies) regularly engage with external monitoring processes and accept recommendations made by international bodies, there is a risk that external monitoring may be perceived as a form of external interference in domestic affairs, for political reasons or for reasons linked to concerns around the fairness and transparency of the monitoring process, which might lead to a government delegitimising or disengaging with monitoring mechanisms.

## 6 CASE LAW

The implementation of, and compliance with, international and regional anti-trafficking frameworks raises the question of what role litigation and case law (whether domestic or international) play in facilitating the implementation of international standards, and in influencing national anti-trafficking responses. Case law – understood broadly including decisions of judicial, quasi-judicial, or specialised non-judicial bodies – has been identified as a key determinant of anti-trafficking efforts across the literature review, the expert interviews, the survey, as well as in the majority of country-specific case studies (where it has been highlighted generally as a positive determinant, with the exception of **Algeria, Chile, and Georgia**).

Courts retain ultimate oversight of the implementation and enforcement of law and policy, and play an important role in holding governments to account. However, it is important to note that a court's decision is only binding in relation to the parties of cases brought before them, although the influence of the case may extend beyond the specific jurisdiction. In this respect, the active role of civil society organisations and trafficked persons' networks, together with lawyers, has been integral to identifying individual cases of illegality, as well as wider systemic failings in order to pursue litigation to enable courts to exercise their powers. Case law, just like other determinants, does not operate in a vacuum; its influence is determined, *inter alia*, by a State's **political situation, namely the rule of law<sup>432</sup> and levels of corruption.<sup>433</sup> Beyond the political situation, the impact of courts can be amplified when **particular judgements**, or even the facts of particular cases, **are used as levers and accountability tools by the media and civil society.<sup>434</sup>****

### 1 INTERNATIONAL CASE LAW

Although literature on the role of jurisprudence may be lacking because of the limited number of cases that have appeared in regional courts – with the notable exception of the European Court of Human Rights (ECtHR)<sup>435</sup> – in the past two decades, regional and international bodies as well as some scholars have highlighted how decisions by international

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<sup>432</sup> Interviews with Thomas Harré, Barrister at LawAid International Chambers (8 April 2020); and the Head of Modern Slavery Policy Unit at Justice and Care and the Centre for Social Justice (15 May 2020).

<sup>433</sup> Interview with the Head of Modern Slavery Policy Unit at Justice and Care and the Centre for Social Justice (n 432).

<sup>434</sup> Courts' influence is augmented when there is a 'hybrid approach which combines civil society, lawyers, media' (such cross-sectoral collaboration is key, as further explored below). This is demonstrated by the cases of fishermen from Indonesia being trafficked to New Zealand on Korean boats where 'fishing companies were bringing these migrant labourers into New Zealand under a very specific provision of the Fisheries Act'. See eg Interview with Thomas Harré (n 432).

<sup>435</sup> Indeed, the ECtHR has been credited for having triggered positive changes through the judgements of, *inter alia*, *Rantsev v Cyprus and Russia* App No 25965/04 (ECtHR, 7 January 2010); *Chowdury and others v Greece* App No 21884/15 (ECtHR, 30 March 2017); *Siliadin v France* App No 73316/01 (ECtHR, 26 October 2005), causing changes in national laws and adoption of action plans. Interview with a member of the Council of Europe (25 November 2020). In the context of the African Commission on Human and Peoples' Rights, the first

courts can be a decisive factor in the implementation of international standards, and in influencing national anti-trafficking responses.<sup>436</sup> Indeed 52% of our survey respondents noted that their country's anti-trafficking efforts were positively influenced by decisions by international courts both at the global and regional level – e.g., ECtHR and Inter-American Court of Human Rights (IACtHR). 42% noted a neutral influence whilst 6% noted a negative influence.

Duffy noted that regional courts play a significant role in clarifying and underlining States' positive obligations,<sup>437</sup> and reinforce 'duties to prevent, regulate, investigate, cooperate, criminalize and punish'.<sup>438</sup> She also points to the influence of regional courts on shaping international legal frameworks,<sup>439</sup> highlighting some 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, 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>440</sup>

Both jurisdictions – Brazil and the United Kingdom – were also case studies in this project. In **Brazil**, the landmark IACtHR's decision in the case of *Fazenda Brasil Verde v Brasil* ("Fazenda") was the first instance of the IACtHR deciding on the issue of human trafficking. In its judgment, the IACtHR ordered the introduction of several measures including investigations, the proper definition of the crime of human trafficking,<sup>441</sup> and the adoption of public policies regarding slavery and financial compensation. However, this case study found that, while significant, *Fazenda* cannot be directly or conclusively linked with any subsequent anti-trafficking development in Brazil – in contrast with a previous case, the case of *José Pereira*, which was identified by interviewees as a key determinant of anti-trafficking efforts.<sup>442</sup> For example, key legislative tool Law 13.344/2016 was enacted in the same month of the adoption of the IACtHR's decision and gave the judgment only a 'symbolic weight' – meaning that determinants of the specific legislative process pre-dated *Fazenda*. However,

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trafficking case, *J v Namibia*, is currently pending. In the context of ECOWAS, the case of *Koraou v Niger* was decided in 2008.

<sup>436</sup> See, *inter alia*, Helen Duffy, 'Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution' (2016) 14 *Journal of International Criminal Justice* 375; 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; 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).

<sup>437</sup> Duffy (n 436) 402.

<sup>438</sup> *ibid.*

<sup>439</sup> *ibid.* 401.

<sup>440</sup> *ibid.*

<sup>441</sup> This decision was published the same month as Law 13.344 was adopted. The Court referred to the former definition of trafficking, which only criminalised trafficking for sexual exploitation.

<sup>442</sup> Interviewees BR03 and BR06.

this does not mean that the judgment in *Fazenda* did not have any impact on anti-trafficking efforts. On the contrary, it shows that improvements in anti-trafficking efforts are often a result of the combination of determinants, which may carry different weight but are all equally significant.

In the **United Kingdom**, our research emphasised the key role of the case law of the ECtHR, which has confirmed the scope and extent of positive obligations arising from Article 4 of the European Convention on Human Rights (ECHR), which has shaped domestic jurisprudence,<sup>443</sup> and placed significant direct pressure on the government to develop its domestic law and policy – including through the case of *VCL and AN v UK*, with particular reference to the non-punishment principle.<sup>444</sup> Similarly, the research on **Cyprus** pinpointed the ECtHR decision in *Rantsev v Cyprus and Russia*<sup>445</sup> as a key determinant in the legislative change of the ‘artiste’ visa, which was grossly abused to traffic women into prostitution.<sup>446</sup>

### 1.1 Quasi-judicial and specialised non-judicial bodies

Quasi-judicial human rights bodies, including the United Nations Treaty Bodies (UNTBs), are not yet consistently engaged in human trafficking cases and – in their non-judicial role, do not consistently engage with anti-trafficking concerns during periodic reviews. This was also highlighted by an expert interviewee.<sup>447</sup> Yet, the potential of their impact on the improvement of anti-trafficking efforts should not be ignored. Indeed, quasi-judicial bodies can be viewed as international lawmakers – influencing the interpretation, clarification and refinement of State duties and responsibilities.<sup>448</sup>

Courts and quasi-judicial human rights bodies tend to be reactive in nature, placing the burden of initiating proceedings on individuals whose rights have been violated. In contrast, specialised non-judicial bodies, including United Nations Special Procedures and UNTBs in their reporting function, are, and can be, more proactive. The engagement of the United Nations Special Rapporteur, in country visits and thematic reports as well as through

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<sup>443</sup> *Siliadin v France* (n 435); *CN v United Kingdom* App No 4239/08 (ECtHR, 13 November 2012); *Rantsev v Cyprus and Russia* (n 435); *Chowdury and Others v Greece* (n 435); *VCL and AN v United Kingdom* App Nos 77587/12 and 74603/12 (ECtHR, 16 February 2021).

<sup>444</sup> *VCL and AN* (n 443) was crucial in the recent case of *AAD, AAH, and AAI [2022] EWCA Crim 106*: see Noemi Magugliani, ‘Trafficked Persons on Trial in the United Kingdom: New Court of Appeal Guidance’ (Oxford Human Rights Hub, 8 March 2022).

<sup>445</sup> *Rantsev v Cyprus and Russia* (n 435).

<sup>446</sup> However, our research emphasised that *Rantsev* did not only have positive impacts on anti-trafficking efforts. Indeed, since *Rantsev* the majority of anti-trafficking efforts, as well as external monitoring, has focussed on trafficking for the purpose of sexual exploitation, while other forms of trafficking have been side-lined or ignored. For a broader analysis, see ‘Acknowledgment and Framing’.

<sup>447</sup> Interview with an international expert (7 January 2020).

<sup>448</sup> See e.g., Mara Tignino, ‘Quasi-judicial bodies’ in Catherine Brölmann and Yannick Radi (eds), *Research Handbook on the Theory and Practice of International Lawmaking* (Edward Elgar Publishing 2016); Bertrand G Ramcharan, ‘Law-Making, Judicial and Quasi-Judicial Standards of Protection’ in Bertrand G Ramcharan, *United Nations Protection of Humanity and Its Habitat: A New International Law of Security and Protection* (Brill 2016) 47-53.

letters, has increased sharply in recent years. While responses from Governments to communications of Special Rapporteurs might be circumstantial and be labelled as ‘empty promises’, our research shows that government’s engagement – for which they could be held accountable, at least in terms of international reputation – is a meaningful element in the development of anti-trafficking efforts.<sup>449</sup> The role of specialised non-judicial bodies is analysed in the context of external monitoring (see ‘External Monitoring, State Reputation, and (Threats of) Sanctions’).

## 2 DOMESTIC CASE LAW

Domestic case law can be influenced by international case law, can trigger legislative change, and can oblige legislative compliance with international obligations. Experts have highlighted, *inter alia*, the potential role of judicial reviews in triggering direct change, obliging the enforcement of international or regional legal obligations,<sup>450</sup> and of domestic strategic litigation.<sup>451</sup> More broadly, experts argued, case law is decisive in identifying gaps in national legislation and outlining what needs to be improved in the law.<sup>452</sup>

In **Argentina**, for example, landmark jurisprudence (or ‘*casos testigo*’ in Spanish) drove forward anti-trafficking developments. The country research highlights the influence of the *Marita Verón* case. Verón was trafficked in Argentina for the purpose of sexual exploitation in 2002,<sup>453</sup> when Argentina had not yet criminalised human trafficking. This case shed light on the legislative gap with regard to criminalisation and, in direct response, the government enacted Law 26.364, which officially criminalised human trafficking. In the related legislative debates, a member of Parliament specifically paid tribute to the scale of work accomplished by Verón’s mother, Ms. Trimarco, who, since her daughter was traf-

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<sup>449</sup> See e.g., Jean-Pierre Gauci and Noemi Magugliani, ‘Judicial, quasi-judicial and specialised non-judicial bodies as determinants of anti-trafficking efforts’ (BIICL, 29 October 2021). This finding is consistent with research in other areas including in the context of economic, social and cultural rights – see Christophe Golay, Claire Mahon and Ioana Cismas, ‘The impact of the UN special procedures on the development and implementation of economic, social and cultural rights’ (2011) 15(2) *The International Journal of Human Rights* 299; country-specific mandates – see Mariana Montoya and Marc Limon, ‘History shows that UN country-specific Special Procedures are tools for positive change’ (2021) *OpenGlobalRights*; human rights and development – see Irene Biglino, Christophe Golay and Ivona Truscan, ‘The Contribution of the UN Special Procedures to the Human Rights and Development Dialogue’ (2012) 9(17) *SUR Revista Internacional de Derechos Humanos* 15; and human rights broadly – see Ingrid Nifosi Sutton, *The UN Special Procedures in the Field of Human Rights* (Intersentia 2006).

<sup>450</sup> Interviews with Thomas Harré (n 432); and Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>451</sup> Interviews with an international expert (n 447); a member of an international non-governmental organisation (23 April 2020); and Federica Toscano, Head of Advocacy and Migration at Missing Children Europe (5 March 2020).

<sup>452</sup> Interview with an inter-governmental agent (17 April 2020).

<sup>453</sup> *Iñigo David Gustavo et. al on illegitimate privation of liberty and corruption*, Case No: P23554/2002.

ficked had founded a non-governmental organisation (NGO) to advocate for trafficked persons' recognition and rights.<sup>454</sup> The legacy of Verón was also pivotal in promoting subsequent anti-trafficking law, especially Law 26.842.<sup>455</sup> One interviewee said that Verón 'led to where we are today, as it was able to put in the public agenda a topic that had been pushed forward for more than one year and a half', referring to the amendments in Law 26.364.<sup>456</sup> With regard to protection, it is also crucial to mention the case of *Montoya Pedro et al* [2016] ("*Montoya*").<sup>457</sup> The Federal Oral Tribunal of Tierra del Fuego was the first judicial body in Argentina to award compensation to a trafficked person.<sup>458</sup> In this sense, *Montoya* is a landmark case that marked a commitment to ensuring access to reparations, and can be credited with supporting more comprehensive protection of trafficked persons.

A very similar case is that of the **United Kingdom**, which is a clear example not only of the role of domestic jurisprudence, but also of the interrelation between international and domestic case-law in improving anti-trafficking efforts. Regional legal frameworks, namely the Council of Europe Convention on Action against Trafficking (ECAT) and the Directive 2011/36/EU (EU Directive),<sup>459</sup> combined with the role of lawyers and the courts in enforcing these obligations,<sup>460</sup> influenced the UK to introduce the 2015 Modern Slavery Act – and in particular section 45 of the Act which provides a non-punishment related defence to certain offences, subject to certain conditions. Lawyers and the courts, in applying regional legal frameworks to enforce victim's rights enshrined in ECAT, ultimately compelled government action. The domestic case of *NN and LP v SSHD*<sup>461</sup> resulted in the introduction of a new process and guidance to assess the support needs of survivors beyond the previous NRM exit timescales.<sup>462</sup>

In **Mozambique**, decisions taken by the courts have been found to be a positive way of influencing anti-trafficking efforts, as seeing human traffickers brought in front of the judiciary acts as a motivator for the State and stakeholders. Interviewees considered that the government's slowness in acting on anti-trafficking matters is partially counter-balanced by both pressure from civil society organisations (CSOs) and case-law, both in Mozambique and in neighbouring countries (e.g., South Africa).

In **Thailand**, domestic courts and other criminal justice actors, including lawyers and prosecutors, have a significant role in the shaping, implementing, and enforcing law and policy. However, the courts' influence is limited only to exercising their jurisdiction in cases

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<sup>454</sup> Legislative Debates, Cámara de Diputados/as, 5ta Reunión, 2da Sesión Ordinaria (9 April 2008) 66.

<sup>455</sup> Interviewee AR01; Interviewee AR02; Interviewee AR03; Interviewee AR06; Interviewee AR09; Interviewee AR10; Interviewee AR15; Interviewee AR16.

<sup>456</sup> Interviewee AR01.

<sup>457</sup> *Montoya Pedro et al* [2016] Federal Oral Tribunal of Tierra del Fuego FCR 52019312/2012/T01.

<sup>458</sup> A summary of the case is available at: UNODC, 'Montoya, Pedro Eduardo y otros' (Sherloc, 2016) available at <[https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/arg/2016/montoya\\_pedro\\_eduardo\\_y\\_otros\\_.html?lng=en&tmpl=Sherloc](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/arg/2016/montoya_pedro_eduardo_y_otros_.html?lng=en&tmpl=Sherloc)> accessed 10 October 2021.

<sup>459</sup> Article 26 of ECAT and Recital 14 and Article 8 EU Directive 2011/36/EU.

<sup>460</sup> See for example, *R (L & Ors) v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991.

<sup>461</sup> *R (NN and LP) v Secretary of State for the Home Department* [2019] EWHC 766 (Admin).

<sup>462</sup> Home Office, Recovery Needs Assessment Guidance (2019).

before them, and their independence is also limited in a political environment that is currently not democratic. The *Padang Besar* case (commonly known as the Rohingya case) provides a good example of the role of lawyers and courts in influencing anti-trafficking efforts in Thailand. This case involved trafficking of Rohingya migrants into jungle camps based in southern Thailand, where many were found dead following the discovery of graves in 2015. For the first time in history, very high-profile government officials, including a lieutenant general, were convicted of human trafficking. The Rohingya case triggered amendments to the anti-trafficking law (in 2015 and 2017) and administrative reforms, ensuring criminalisation of complicity of government officials in human trafficking and introducing new or revised definitions of ‘exploitation’ and ‘forced labour’.

The potential of case-law, whether alone or in conjunction with other determinants, to improve anti-trafficking efforts is evident. However, it is highly dependent on factors related to, *inter alia*, the nature of the legal system and the level of awareness and competence of the judiciary.

## 2.1 The nature of the legal system

Official clarifications by higher courts play an important role, especially when binding on lower courts.<sup>463</sup> The analysis conducted by domestic courts, especially 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>464</sup> These clarifications also reinforce international legal obligations and encourage harmonisation and co-operation across different judicial interpretations. However, the impact of litigation depends on whether there is a system of precedent and whether judgements are binding or not.<sup>465</sup>

In the **United Kingdom**, as mentioned above, domestic courts have played a central role in shaping law and policy. Over time, the judiciary has contributed to building a significant body of case-law, which binds Courts called upon to decide new cases, and which serves as guidance for the government in implementing anti-trafficking efforts. The following are non-exhaustive examples of significant case law: *SB (Moldova)*, which established the right to refugee status for former trafficked persons at risk of re-trafficking;<sup>466</sup> *Atamewan v SSHD*,<sup>467</sup> which led to amended guidance ensuring the proper identification of historic victims of trafficking; *L and Others v the Children’s Commissioner*,<sup>468</sup> which resulted in new Crown Prosecution Service (CPS) guidance on the non-punishment of victims provisions in

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<sup>463</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>464</sup> *ibid.*

<sup>465</sup> It is noted, for example, that in Southeast Asia, court decisions are rarely written, published or translated, reducing the influence that precedent setting may have in the region. See Interview with a UN official (17 April 2020).

<sup>466</sup> *SB (PSG - Protection Regulations - Reg 6) Moldova v Secretary of State for the Home Department* CG [2008] UKAIT 00002.

<sup>467</sup> *Atamewan v Secretary of State for the Home Department* [2013] EWHC 2727 (Admin).

<sup>468</sup> *R (L & Ors) v The Children’s Commissioner for England* (n 460).

ECAT and the EU Directive; *Hounga v Allen*,<sup>469</sup> which enabled some employment law rights to be applicable to irregular migrants in so far as the Supreme Court held that the doctrine of illegality arising from the employment of an 'illegal migrant' did not defeat a claim of employment discrimination brought by the same trafficked migrant worker; *Benkharbouche and Janah*,<sup>470</sup> in which the Supreme Court found the application of state immunity to employment claims brought by members of embassy staff in the UK to be incompatible with Article 6 ECHR; *PK (Ghana) v SSHD*,<sup>471</sup> where the court declared the government's policy guidance relating to the grant of discretionary leave for victims of trafficking to be unlawful for failure to give effect to the objectives of Article 14(1)(a) ECAT; and *K and AM v SSHD*,<sup>472</sup> where the court found the reduction of 42% in subsistence rates for victims of trafficking to be unlawful.

In the **Bahamas**, court decisions have also led to improved anti-trafficking efforts, albeit limited to prosecutorial efforts. In 2016, the Privy Council overturned a Supreme Court ruling in which a Jamaican trafficker, Chevanese Sasha Gaye-Hall, was sentenced to 15 years imprisonment on account of engaging in trafficking offenses. The court was of the view that the Attorney General lacked the power to proffer a Voluntary Bill of Indictment under the then applicable Criminal Procedure Code, which did not define indictable offenses to include trafficking in persons. On the basis of this decision – as well as due to the parallel pressure on the part of the US through the TIP report – the Criminal Procedure Code was amended in 2017 to reflect the recommendation issued by the Privy Council in its earlier ruling. Since that time, the State has been able to successfully complete a number of prosecutions.<sup>473</sup>

Case law also influenced prosecutorial efforts in the **Philippines**, where the justice system follows the principle of *stare decisis*, which enjoins adherence by lower courts to doctrinal rules established by the Supreme Court of the Philippines in its final decisions.<sup>474</sup> Even if, admittedly, it was only in 2011, 8 years after the enactment of key anti-trafficking legislation RA 9208, that the first human trafficking case reached the Supreme Court,<sup>475</sup> the Supreme Court has since had various opportunities to discuss anti-trafficking law and educate justice practitioners through their decisions.<sup>476</sup> Meanwhile, new cases filed in lower courts provide crucial data on emerging trends, dictating where government efforts should

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<sup>469</sup> *Hounga v Allen* [2014] UKSC 47.

<sup>470</sup> *Secretary of State for Foreign and Commonwealth Affairs v Benkharbouche and Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah* [2017] UKSC 62.

<sup>471</sup> *R (PK (Ghana)) v Secretary of State for the Home Department* [2018] EWCA Civ 98.

<sup>472</sup> *R (K and AM) v Secretary of State for the Home Department* [2018] EWHC 2951.

<sup>473</sup> Interview with Interviewee No 2, State Official, Nassau, The Bahamas (12 August 2021).

<sup>474</sup> 'G.R. No. 166562, *Ting v Ting*' (31 March 2009) available at <[https://lawphil.net/judjuris/juri2009/mar2009/gr\\_166562\\_2009.html](https://lawphil.net/judjuris/juri2009/mar2009/gr_166562_2009.html)> accessed 28 September 2021.

<sup>475</sup> 'People v Lalli, G.R. No. 195419' (12 October 2011) available at <[https://lawphil.net/judjuris/juri2011/oct2011/gr\\_195419\\_2011.html](https://lawphil.net/judjuris/juri2011/oct2011/gr_195419_2011.html)> accessed 23 August 2021.

<sup>476</sup> 'People v Casio, G.R. No. 211465' (3 December 2014) available at <[https://www.lawphil.net/judjuris/juri2014/dec2014/gr\\_211465\\_2014.html](https://www.lawphil.net/judjuris/juri2014/dec2014/gr_211465_2014.html)> accessed 28 September 2021.

be focused.<sup>477</sup> Interestingly, the Inter-Agency Council Against Trafficking (IACAT) recognises the value of case law in effective data collection and monitoring of trafficking in persons cases, and has recently entered into a Memorandum of Agreement with the Supreme Court, wherein the Supreme Court undertook to furnish the IACAT with copies of decisions in all cases involving RA9208 (as amended by RA 10364).<sup>478</sup> This measure will help ensure that correct facts and figures are relayed to the international bodies monitoring the country's progress – a more detailed analysis on data and research is available in the output 'Data and Research'.

A significant exception to this trend of case-law being a significant determinant in the context of common law jurisdictions, or jurisdictions following the *stare decisis* principle, is **Argentina**, as outlined above. While this could be an exception to the general trend, it also shows that case-law can be a significant determinant *regardless* of the nature of the legal system – in other words, regardless of whether a country's legal system is a common or a civil law system. However, the nature of the legal system has been highlighted as a hindrance for case-law to be a determinant in **Bahrain**. The country research highlighted that – as Bahrain follows a civil law system – the courts do not create law in tandem with the legislature, and decisions of higher courts are not binding on the lower courts. The highest court in Bahrain, the Court of Cassation, has discretion to impose its own legal interpretation of concepts, such as 'human trafficking', which are persuasive when referred to in lower courts, but this discretion has not been used in relation to human trafficking.<sup>479</sup> The four court judgements examined for the purpose of the report indeed did not seek to shape or interpret the law beyond Law 01/2008, and instead focused on a discussion of intent and applying the facts of the cases to the legal framework. Case law is therefore not considered to be a determinant of anti-trafficking efforts in Bahrain. Similarly, in **Guyana** case-law was not identified as a determinant: although the judiciary has been conducting several trafficking cases, written case law judgements cannot be accessed and referred to – this is mostly because Magistrates Court rules do not require magistrates to provide written judgements.

## 2.2 The awareness and competence of the judiciary

The understanding and awareness of judges – and arguably all actors involved in the judiciary – of human trafficking and anti-trafficking law, is integral to the influence of case law (see also 'Training and Levels of Expertise').<sup>480</sup> Examples emerge of judges having a lack of awareness and understanding of how international legal instruments ratified by their

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<sup>477</sup> Interview with Reynaline Francisco-Tan (7 July 2021).

<sup>478</sup> Chief Justice Alexander Gesmundo, 'Memorandum Circular No. 07-2021' (Supreme Court of the Philippines 23 July 2021).

<sup>479</sup> Appeal No 397, 414 of 2013; Appeal No 576, 480 of 2014; Appeal No 465, 473 of 2015; Appeal No 13 of 2016.

<sup>480</sup> Interview with a member of an international non-governmental organisation (9 April 2020).

country apply;<sup>481</sup> judges use discretion on sentencing where the maximum sentence is considered to be too harsh;<sup>482</sup> and there is a common lack of understanding around specific provisions such as non-punishment.<sup>483</sup> Moreover, the social and cultural contexts may influence judges in reaching decisions. For example, in **Brazil** it was suggested that judges do not always see 'the gravity of the situation' because of an underlying and embedded 'culture of exploitation'.<sup>484</sup> These socio-cultural contextual factors, alongside the limits to judges' understanding and the difficulties of ensuring victim cooperation in prosecutions, limit the impact of courts and judges.<sup>485</sup> In **Georgia**, the lack of an independent judiciary and the poor quality of judicial decisions was found to be a negative determinant of anti-trafficking efforts. Similarly, to a certain extent, in **Chile** the country research found that case-law has hindered, rather than improved, efforts in prosecution. Prosecutors and police officers interviewed pointed out how lack of proper training and specialized knowledge of judges render complex and sophisticated investigations into acquittals, by demanding standards of proof that were beyond the legal requirements.<sup>486</sup> Abuse of vulnerability and forced labour are problematic concepts that judges and courts have interpreted broadly, demanding excessively high thresholds of proof,<sup>487</sup> leaving no clear orientation to prosecutors and discouraging investigation and prosecution. Cultural stereotypes also affect and interfere with identifying the crime, as certain Latin-American women, the majority of victims of sexual trafficking, are perceived and judged as sexually active or potential prostitutes. Grounded in entrenched gender discrimination, the case law reveals a trend of secondary victimisation, by demanding the testimony of the victim on trial in order to convict.<sup>488</sup>

### 3 CASE LAW AND FORMS OF EXPLOITATION

Another element that has emerged from case studies has been the varying degree(s) to which case law acts as a positive determinant of anti-trafficking efforts in the context of different types of exploitation.

In terms of international case law, it is worth noting that by 2022, the ECtHR has issued judgments on cases relating to trafficking for the purpose of sexual exploitation, trafficking

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<sup>481</sup> Interview with a member of an international organisation (14 April 2020).

<sup>482</sup> Interview with a member of an international non-governmental organisation (n 480).

<sup>483</sup> Interview with Gary Craig, Professor of Social Justice at University of Newcastle upon Tyne, Law School (15 April 2020).

<sup>484</sup> Interview with a member of an international organisation (n 481).

<sup>485</sup> *ibid.*

<sup>486</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with advisory attorney, National Prosecutor's Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

<sup>487</sup> Tania Gajardo Orellana, 'La trata de personas ¿crimen de lesa humanidad? A propósito del caso "paraguayos"' (2015) 64 *Revista Jurídica del Ministerio Público* N° 64 183.

<sup>488</sup> Ministerio Público C/ Amelfi y otros, RIT 287-2012, Sentencia de 13 de diciembre de 2012, Cuarto Tribunal Oral en lo Penal de Santiago; Ministerio Público C/ Kang Min Lee y Jaesung Kim, RIT 291-2015, Sentencia de 22 de enero de 2016, Primer Tribunal de Juicio Oral en lo Penal de Santiago.

for the purpose of forced labour, and trafficking for the purpose of forced criminality. The majority of trafficking cases brought before the Court engaging Article 4 have been cases of trafficking for the purpose of sexual exploitation (*Rantsev v Cyprus and Russia, LE v Greece, SM v Croatia, TI and Ors v Greece*), followed by cases of trafficking for the purpose of forced labour (*Chowdury and Ors v Greece, Zoletić and Ors v Azerbaijan*),<sup>489</sup> and trafficking for the purpose of forced criminality (*VCL and AN v the United Kingdom*). Similarly, the Inter-American Court of Human Rights has so far decided on three cases where trafficking was a core component: *Fazenda Brasil Verde*, on trafficking for the purpose of forced labour, [Ramírez Escobar and Ors v Guatemala](#) on trafficking of children for adoption purposes, *López Soto and Ors v Venezuela* on trafficking for the purpose of sexual exploitation.<sup>490</sup> In **Brazil, Cyprus, and the United Kingdom**, judgments from international courts led to, directly or indirectly, changes – and arguably improvements – in law and policy across exploitation types (in Brazil on trafficking for forced labour, in Cyprus on trafficking for sexual exploitation, and in the United Kingdom both on trafficking generally and on trafficking for the purpose of forced criminality).

At domestic level, several case studies indicated that case law has been more effective to yield anti-trafficking efforts with respect to particular forms of exploitation. In **Argentina**, for example, almost all *casos testigos* are related to trafficking for the purpose of sexual exploitation. The country research highlights how the lack of a *caso testigo* on forced labour was pointed to as a determinant of the (in)visibility of labour exploitation, which in turn impacts upon the adequacy and comprehensiveness of anti-trafficking responses.<sup>491</sup> Similarly, in **Armenia**, not a single prosecution of forced labour of Armenian men in Russia took place in domestic courts, although investigations were initiated but were either dropped or reclassified at a later stage.

In **Chile**, all criminal justice operators interviewed<sup>492</sup> highlighted how the high ‘exploitation threshold’ demanded by judges to investigate a trafficking for forced labour case has been an issue that hinders investigation and prosecution of these crimes, and that in turn hinders the potential for reaching landmark decisions that might lead to improved anti-trafficking efforts. In effect, the first case of trafficking for forced labour – widely publicised in the news, as it concerned a former presidential candidate involved in the trafficking of Paraguayan workers to his agricultural fields – the final judgment was issued after a trial that

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<sup>489</sup> A third case was decided, *J and Ors v Austria* App No 58216/12 (ECtHR, 17 January 2017), but the ECtHR found no violation of Article 4 ECHR.

<sup>490</sup> See Juan Nelson Churqui Aquino, ‘La Corte IDH y el corpus iuris en materia de Trata de Personas’ (30 July 2017), available at <<https://diagonalciep.org/la-corte-idh-y-el-corpus-iuris-en-materia-de-trata-de-personas/>>.

<sup>491</sup> Interviewee AR01. Even though another interviewee disagreed, contesting the non-existence of landmark cases on labour exploitation referring to the burning of the textile workshop of *Luis Viale*: see *Fiscales*, “Incendio en el taller clandestino de Luis Viale: la Fiscalía pidió 13 años de prisión para los dos imputados” (*Fiscales Website*, 2016) available at <<https://www.fiscales.gob.ar/fiscalias/incendio-en-el-taller-clandestino-de-luis-viale-la-fiscalia-pidio-13-anos-de-prision-para-los-dos-imputados/>> accessed 07 November 2021.

<sup>492</sup> Interview with Carolina Suazo (n 486); Interview with advisory attorney, National Prosecutor’s Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

lasted 24 days and ended in acquittal.<sup>493</sup> In addition, the legislative discussion over the terms 'labour exploitation' and 'forced labour' have obscured their meaning. The fact that the latter term was eventually chosen to prevent confusing the criminal act of trafficking with 'mere breaches of labour law' meant the hypothesis of trafficking is generally disregarded unless there is evidence that serious restrictions to freedom of movement are compromised.<sup>494</sup>

It is worth highlighting in this context that trafficking for the purpose of sexual exploitation tends to be prevalent in domestic jurisprudence compared to other forms of human trafficking – including, but not limited to, trafficking for the purpose of forced labour. While literature review, expert interviews, and case studies did not shed light on the reasons for this trend, it is discussed in more detail in our analysis of 'Media framing and media exposure' and of 'Culture, victimhood, and discrimination'. There might also be other reasons linked to the prevalence of trafficking for sexual exploitation before courts and tribunals beyond framing and understanding of victimhood – for example, preliminary research has shown that a significant number of cases of trafficking for the purpose of forced labour are treated as breaches of labour law, rather than trafficking, and that the majority of cases that reach out-of-court settlements are cases of trafficking for the purpose of forced labour, although the quantitative and qualitative data at our disposal are not sufficient to reach a conclusion for the time being. While simple exposure of trafficking cases before courts and tribunals is not sufficient to trigger changes in anti-trafficking efforts, our research has shown that exposure does have the potential for yielding improvements (as has been demonstrated, *inter alia*, in **Argentina** and the **United Kingdom**).

## CONCLUSION

Domestic and regional courts have been instrumental in advancing anti-trafficking efforts in most of the jurisdictions analysed in the context of the project. Yet, most courts suffer from a structural limitation: their influence is limited to exercising their jurisdiction in relation to the cases brought before them. The inter-connection of determinants therefore becomes, once again, crucial in effecting change. In contexts where the media, CSOs, and specialised anti-trafficking institutions are independent and strong, there is a tendency to see more cases being brought before courts and tribunals, and in turn a stronger influence of judicial decisions on anti-trafficking efforts. Where the media, CSOs, and specialised anti-trafficking institutions are weak, corrupt, or non-existent, there is a pattern of fewer cases being brought before judges, which in turn hinders the efficacy of case-law as a determinant. Even when cases are brought before the judiciary, however, case law is not necessarily a positive determinant. Indeed, the nature of the legal system and the level of expertise, as well as the socio-cultural understanding of exploitation, can influence the quality and the impact of case

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<sup>493</sup> Ministerio Público C/Guerra y otro, RIT N°31-2015, Tribunal Oral en lo penal de Santa Cruz, Sentencia definitiva de 8 de junio de 2015 cited in Gajardo (2015).

<sup>494</sup> Interview with Carolina Suazo (n 486); Ministerio Público C/ Linfeng Cheng y Aiyun Zhang (2020).

law on anti-trafficking efforts. Similarly, the framing of trafficking in a specific context can lead to the establishment of significant case law with regard to some forms of exploitation (usually trafficking for the purpose of sexual exploitation), while others are substantially ignored. It is also worth highlighting that, at times, it is not a judicial decision, but rather the simple filing of a case, that can trigger positive developments in the anti-trafficking sphere, especially if the filing is supported by advocacy from CSOs, media exposure, and/or international pressure.

## 7 CIVIL SOCIETY ORGANISATIONS

Civil society organisations (CSOs) are significant actors who exert pressure on governments, both internally and externally. The category of CSOs is defined, for the purpose of this project, widely to include, *inter alia*, non-governmental organisations (NGOs), trade unions, and ‘survivor groups’. However, 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’ – and our case studies reflect this pattern. With the exceptions of **Algeria, Bahrain, and the Republic of Cyprus**, where there are no specialised anti-trafficking CSOs or where CSOs are heavily silenced, our case studies reveal a generally positive impact of CSOs on anti-trafficking efforts. This is in line with the opinion of expert interviewees, who repeatedly selected CSOs as **one of the most influential determinants**<sup>495</sup> and with the findings of the survey whereby 80% of respondents noted a positive influence, with 26% noting a very positive influence. 12% noted a neutral influence whilst 8% noted a negative influence.<sup>496</sup>

The influence of CSOs on anti-trafficking efforts has been found to be twofold: first, they **provide services** on behalf of, or independently of, government;<sup>497</sup> second, they **advocate for change** in national policies and legislation<sup>498</sup> and **hold governments to account**.<sup>499</sup> Our case studies largely confirm the findings of the literature review. It is significant to note, however, that while their advocacy and lobbying work can have a direct impact on improving anti-trafficking efforts, the impact that civil society 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. Democratic states are usually associated with more effective accountability structures and mechanisms, and in democratic political systems

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<sup>495</sup> Interviews with Fiona David, Inaugural Research Chair at Minderoo (8 May 2020); an international expert (5 May 2020); Katharine Bryant, Lead - European Engagement at Minderoo - Walk Free (16 April 2020); an international expert (30 April 2020); a member of PICUM (3 March 2020); Melita Gruevska Graham, Head, Anti-Trafficking Programme at International Centre for Migration Policy Development (ICMPD) (6 May 2020); a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (15 April 2020); Suzanne Hoff, International Coordinator at La Strada International (23 April 2020); the Head of Modern Slavery Policy Unit (15 May 2020); Thomas Harré, Barrister at LawAid International Chambers (8 April 2020); an international expert (9 January 2021); Zoi Sakellidou, Crime Prevention & Criminal Justice Officer at UNODC (5 May 2020); the National Anti-Trafficking Coordinator in the Ministry of the Interior, Republic of Latvia (21 April 2020); and Maria Grazia Giammarinaro, former UN Special Rapporteur on Trafficking in Persons, Especially Women and Children (16 December 2020).

<sup>496</sup> It is worth noting here that the vast majority of respondents identified as being part of, affiliated, linked to non-governmental organisations.

<sup>497</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 H Uhl, ‘Trafficking in Human Beings – A Threat Under Control? Taking Stock Four Years After Major International Efforts Started’ (2005) 16 *Helsinki Monitor* 53.

<sup>498</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’ (2016) 46(1) *Journal of Current Chinese Affairs* 61; Kanics, Reiter and Uhl (n 497).

<sup>499</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.

CSOs tend to be more influential as determinants of anti-trafficking efforts. In other words, the influence of CSOs is amplified where there is **cooperation with decision-makers**, while CSOs' advocacy has limited impact when it does not have a receptive audience (see below at 2).

## 1 SPECIALISED KNOWLEDGE AND SERVICE PROVISION

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, and producing reports informed by lived experiences, NGOs are able to advocate for change and improvement in an evidence-based and informed manner (see below at 2),<sup>500</sup> and can also play a role in setting governmental policy agendas.<sup>501</sup> As regards trade unions, as Marks and Olsen note, whilst their strength is also partially derived from their 'unique knowledge, representational legitimacy and capacity', their influence has only become possible and increasingly prevalent with a conceptualisation of human trafficking from a labour (and human) rights approach.<sup>502</sup> The influence of trade unions is thus dependent on the framing of trafficking within the context of migration and labour laws, which – as analysed in 'Acknowledgment and framing' is still only partially reflected in the international anti-trafficking regime and in most domestic contexts.

Maria Grazia Giammarinaro, the former UN 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>503</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>504</sup> Civil society engagement can be very influential in shaping the type of response, even if the engagement itself is dependent on governmental openness. What needs to be avoided, however, is over-reliance on CSOs, which risks shifting, in the government's perspective,

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<sup>500</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.

<sup>501</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>502</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>503</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>504</sup> *ibid.*

responsibility from the state in the provision of specialised services (as highlighted, e.g., in **Mozambique**). What also needs to be avoided is that service provision is 'used and then ignored for the rest of the decision-making process' in policy formulation.<sup>505</sup> CSOs' contribution should take a central role in informing and influencing government responses.

In their expert capacity, CSOs can participate in policy-making, legislative processes, and judicial cases, providing inputs and feedback about the adoption and application of legislation and policies in practice (**Armenia**), being involved in high-level specialised institutions (**Argentina, Chile**), intervening before domestic and regional courts (**Brazil, United Kingdom**), transferring knowledge and expertise to the state through joint pilot projects (**Chile, the Philippines**), providing training to state authorities (**Chile**) as well as technical and logistical support and evidence-based research (**Chile, the Philippines, Thailand, United Kingdom**). In addition, CSOs input into the review and monitoring mechanisms, such as the Country Reports of the United Nations Special Rapporteur on Trafficking in Persons,<sup>506</sup> the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA),<sup>507</sup> the US State Department Trafficking in Persons (TIP) Report, and the United Nations Convention against Transnational Organized Crime (UNTOC) Review Mechanism, is explicitly encouraged. This is particularly highlighted by obligations under the Council of Europe Anti-Trafficking Convention (ECAT), which encourages cooperation and partnerships with civil society organisations.<sup>508</sup> Moreover, NGOs have the further 'freedom to criticise what is written or later published in their own shadow reports'.<sup>509</sup> This is particularly influential when monitoring bodies amplify and take NGO recommendations forward (see further below at 2).

The impact of cooperation is further reflected in **cooperation across individual civil society organisations**. Cooperation between CSOs nationally and internationally is 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, the Global Alliance Against Traffic in Women (GAATW), and La Strada International in Europe.<sup>510</sup> This also applies to 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>511</sup> Peppered with good practices, the report emphasises human trafficking and forced labour as 'matters that

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<sup>505</sup> Interview with Melita Gruevska Graham (n 495).

<sup>506</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>507</sup> Interview with an independent expert (n 495).

<sup>508</sup> Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) Art 35.

<sup>509</sup> Interview with Suzanne Hoff (n 495).

<sup>510</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 500) 40.

<sup>511</sup> International Trade Union Confederation, 'Never Work Alone: Trade Unions and NGOs Joining Forces to Combat Forced Labour and Trafficking in Europe' (2011).

demand the attention of NGOs as well as trade unions'.<sup>512</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.<sup>513</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.

## 2 ADVOCACY AND PUBLIC ENGAGEMENT

CSOs cannot be divorced from the series of tools they use to advocate for change and to hold governments to account. There are a **multitude of different methods** of CSOs' advocacy, for example **public pressure through naming and shaming governments**, and the **confidentiality of private lobbying**.<sup>514</sup> CSOs can be openly and heavily criticising a government, or they can choose to be 'critical friends' to the government,<sup>515</sup> creating trust and avoiding risks of the government withdrawing from engagement.<sup>516</sup> It is generally suggested that CSOs are influential when they build bridges and are constructive, as it facilitates credibility of the organisation.<sup>517</sup> However, there is a difference in domestic and foreign CSOs on this point: foreign CSOs may be able to be more critical and have the space to criticise, whilst domestic CSOs' criticism can push a government away; it is also problematic where they do not have the space to express concerns.<sup>518</sup> Across both, trust allows for local partnerships, local training and capacity building, and local ownership.<sup>519</sup>

International and domestic law standards are an integral tool used by CSOs advocates, to ensure fulfilment of obligations, but also to advocate for further legislative change. For example, Haynes suggests that CSOs can be critically influential in 'wielding tools of human rights law'.<sup>520</sup> Analysing the labour exploitation of migrants, he suggests that CSOs can also work to campaign amongst voters on the need to eliminate exploitation, thereby making anti-trafficking a political priority.<sup>521</sup> In addition, on the international level, shadow reporting to UN bodies allows CSOs to 'highlight issues not raised by their own governments or point out where the government's information may not fully reflect the real

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<sup>512</sup> *ibid.*

<sup>513</sup> See also OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 500) 41.

<sup>514</sup> Interviews with a member of an international non-governmental organisation (23 April 2020); Nick Grono, CEO of The Freedom Fund (20 March 2020); and Tamara Barnett, Director of Operations at the Human Trafficking Foundation (10 April 2020).

<sup>515</sup> Interviews with the Head of Modern Slavery Policy Unit (n 495); and Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>516</sup> Interviews with an inter-governmental agent (17 April 2020); Euan Fraser (n 515); and Tamara Barnett (n 514).

<sup>517</sup> Interviews with an inter-governmental agent (n 516); and Euan Fraser (n 515).

<sup>518</sup> Interview with an inter-governmental agent (n 516).

<sup>519</sup> Interviews with an international expert (7 May 2020); and an international researcher (18 June 2020).

<sup>520</sup> Haynes, 'Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers' (2009) 23(1) *Notre Dame Journal of Law, Ethics & Public Policy* 1, 67.

<sup>521</sup> *ibid.*

situation'.<sup>522</sup> In return, monitoring bodies, their visits and reports are an important tool for CSOs, particularly in advocating for specific amendments and implementation of recommendations.<sup>523</sup> For example, the TIP report is a 'very well used by NGOs also because that's one of their few tools to use towards their governments',<sup>524</sup> and so are the reports of GRETA.<sup>525</sup> Another central theme that emerged was **the use of data for effective civil society impact**<sup>526</sup> and their role in raising governments' awareness of the issue at hand.<sup>527</sup> Data elevates the impact of CSOs' advocacy because it supports recommendations with robust evidence and credible research. In **Chile**, visibility of trafficking was possible due to the research work undertaken by CSOs as early as 2001, which was later used in parliamentary debates leading to the adoption of Bill 3778-18 in 2005. In the **United Kingdom**, too, research produced by CSOs has significant value – not only for engagement with international bodies, but also for institutions such as the Independent Anti-Slavery Commissioner (IASC) and lobbying efforts vis-à-vis the government.

CSOs can play a crucial role in drawing attention to particular cases of trafficking, alongside the media, as seen for example in **Argentina**, where the efforts of CSOs – and in particular feminist organisations – have resulted in greater awareness of the trafficking phenomenon. Similarly, in **Armenia** CSOs have raised concerns about internal trafficking, and more specifically internal trafficking for forced begging, which sparked a discourse among anti-trafficking stakeholders and attracted the government's attention to the phenomenon, which led to the adoption of specific policies on homelessness and begging from 2015 onwards. In **Mozambique**, too, CSOs have been instrumental, together with the media, in raising awareness on trafficking, prompting the government to adopt Act No 6 of 2008, the legal regime applicable to trafficking in persons. Finally, in the **United Kingdom**, CSOs' advocacy was key in the years prior to the adoption of the 2015 Modern Slavery Act in building momentum for the codification of domestic anti-trafficking legislation: empowered by the existence of international standards, CSOs campaigned and lobbied over a significant period of time – however, it cannot be conclusively said that this led to the adoption of the 2015 Modern Slavery Act, as concrete efforts by the government only started when Theresa May prioritised the issue.

Advocacy and lobbying efforts of CSOs can lead to amendments of legislation and policy. In **Armenia**, amendments were introduced in the Criminal Procedural Code following ongoing claims from NGOs working with trafficked persons, with the adoption of a comprehensive 'victim-centred approach'. In addition, in 2019 the Labour Code was

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<sup>522</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 500) 41.

<sup>523</sup> Interviews with an independent expert (n 495); and Peter Williams, Principal Advisor on Modern Slavery at International Justice Mission (23 September 2020).

<sup>524</sup> Interview with Suzanne Hoff (n 495).

<sup>525</sup> *ibid.*

<sup>526</sup> Interviews with Katharine Bryant (n 495); the Head of Modern Slavery Policy Unit (n 495); and Euan Fraser (n 515); Suzanne Hoff (n 495).

<sup>527</sup> Interviews with Katharine Bryant (n 495); and an international expert (n 495).

amended after pressure from CSOs to include routine labour inspections and to expand labour inspectors' mandate. Similarly, in **Brazil** CSOs were crucial in applying pressure to the federal government to sustain the development of anti-trafficking legislation, specifically Law 13.344/2016, and to adopt National Action Plans. In **The Bahamas**, CSOs were instrumental in shifting the government's perspective on identification of trafficked persons, lobbying the Trafficking in Persons Working Group to adopt a broader approach to referrals. In **Chile**, although trafficking for the purpose of forced labour was not the focus of CSOs for many years, it was CSOs that in 2017 channelled the *momentum* driven by the country's adoption of the 2011 Guiding Principles on Business and Human Rights and the 2014 International Labour Organisation (ILO) Protocol, advocating for the need to establish partnerships between relevant anti-trafficking stakeholders in the country to tackle forced labour – which the government eventually did.

In the context of advocacy and engagement, too, **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.** Yet, although political receptiveness is necessary to facilitate civil society influence, **NGOs can also play a role in mobilising political will.**<sup>528</sup> A National Rapporteur suggests that NGOs are able to draw government attention to cases and issues that might otherwise go missed.<sup>529</sup> Within this, civil society can play a role in advocating for anti-trafficking work to become a greater priority for the government. They may also be influential in raising the government's awareness on a particular gap in their policy, and thus mobilise political will on a specific action.<sup>530</sup> It is rare that a government would explicitly oppose working on combatting human trafficking in name; however, they rarely resource and prioritise such efforts in practice. Therefore, 'all advocacy is about is making it a greater (and more effective) priority for the government'.<sup>531</sup>

In addition, whilst CSOs' 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.** CSOs' efforts are themselves often dependent on sufficient funding and hampered the lack thereof. CSOs often rely on funds from different sources, including 'international and national governments, foundations, individual donors and, increasingly, corporations'.<sup>532</sup> Increased funding allows CSOs not only to increase their ability to respond to trafficked persons' needs,<sup>533</sup> but also to dedicate time and efforts to advocacy and lobbying, as well as the production of research and evidence. A caveat,

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<sup>528</sup> Interview with Maria Grazia Giammarinaro (n 495).

<sup>529</sup> Interview with a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (n 495).

<sup>530</sup> Interview with a member of a Ministry of Justice (20 August 2020).

<sup>531</sup> Interview with Nick Grono (n 514).

<sup>532</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>533</sup> Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9 *Criminology & Public Policy* 235, 241.

however, is needed: the reliance on funders may result in CSOs' efforts being shaped by their funders' mandates, and/or in efforts being tied to the duration of specific projects that are not sustained or long-term.<sup>534</sup> Moreover, it has observed that as soon as there is a momentum for a particular type of exploitation, CSOs and international agencies have to work according to 'where the money is'.<sup>535</sup> This is further connected to other determinants such as 'Events and Crises' and 'Covid-19', which have resulted in significant changes in donor priorities.

International funding for CSOs can then be constrained by the domestic political situation and national policies. Hoff, for example, highlights that some governments' policies 'silence human rights defenders' and some 'aim to maintain control over how money is spent in their country'.<sup>536</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 CSOs 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.

### 3 UNFREEDOM AND DISENGAGEMENT OF CIVIL SOCIETY ORGANISATIONS

The influence that civil society groups is highly **dependent on the context, and particularly on the political situation in a given state.**<sup>537</sup> The bureaucracy and architecture of decision-makers can shape how advocacy efforts are responded to.<sup>538</sup> As above, the architecture of the decision-makers and bureaucracy in the government structure can influence change and present a barrier to civil society advocacy; civil society organisations must understand these structures to influence anti-trafficking efforts more directly.<sup>539</sup> In the Caribbean region, it was found that acrimonious relationships between the government and NGOs can hinder this positive working relationship. National governments in the region criticise NGOs for engaging with international governmental organisations and other states, due to the assumption that NGOs then provide information to these external bodies. In turn, national governments distrust NGOs on the assumption that they are not neutral or independent. This creates a crucial impediment to NGO influence in the region.<sup>540</sup>

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<sup>534</sup> Hoff (n 532).

<sup>535</sup> Interviews with a member of an international non-governmental organisation (9 April 2020); and an inter-governmental agent (n 516).

<sup>536</sup> Hoff (n 532).

<sup>537</sup> Interviews with Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020); the Head of Modern Slavery Policy Unit (n 495); and Borislav Gerasimov, Communications and Advocacy Coordinator at the Global Alliance Against Traffic in Women (11 November 2020).

<sup>538</sup> Interview with a member of an international non-governmental organisation (n 514).

<sup>539</sup> *ibid.*

<sup>540</sup> Interview with Jason Haynes, Deputy Dean (Graduate Studies & Research) at the University of the West Indies, Cave Hill Campus, Barbados (22 January 2021).

As mentioned in the introduction, in five case studies – **Algeria, Bahrain, Guyana, the Republic of Cyprus, and Thailand** – CSOs have been found to be unable or unwilling to contribute to the development of anti-trafficking efforts. In **Algeria**, CSOs are very limited in their ability to implement significant change and influence government policy, due to administrations seeking to ‘tame’ Algerian civil society and to co-opt only associations that would support the regime. This approach is also deployed vis-à-vis trade unions, which lack independence and are perceived to be close to the state, with authorities withholding legal status from unions that attempt to act independently outside of the recognised General Union of Algerian Workers (UGTA). In **Bahrain**, similarly, CSOs suffer from strict limitations as speaking out against the government can lead to reprisals – for example, the Bahrain Centre for Human Rights, which operated a Migrant Workers’ Group in the early 2000s, was banned in 2004 after its former President publicly criticised the Prime Minister. When CSOs were approached in the context of the case study, most expressed concerns about participating and refused to engage with the research due to fear of repercussions. A journalist in Bahrain mentioned that CSOs are frustrated, as their voice is ‘not acknowledged or acted upon’ and, despite CSOs’ willingness to participate in policy-making and legislative processes, their suggestions are not taken into account by the government. Albeit to a lesser degree, similar concerns were raised in the report on **Guyana**, where our research highlights that partnerships between the state and CSOs are limited because the way in which the government engages CSOs is tokenistic, rather than meaningful and substantive. In **Thailand**, CSOs have been able to remain an important determinant although the government is making it increasingly difficult for CSOs to be vocal and critical of it. The control of disapprovals vis-à-vis CSOs has been prominent during the Covid-19 pandemic, when CSOs were being outspoken. Finally, in the **Republic of Cyprus** lobbying from CSOs has had a limited effect in influencing anti-trafficking efforts, especially as they are generally disempowered and marginalised. By contrast, in the territory of the **Turkish Republic of Northern Cyprus**, CSOs are much more involved and impactful.<sup>541</sup>

In states with high censorship, CSOs can nonetheless continue to be active in terms of providing front-line support and assistance to trafficked persons. For example, in states such as the UAE or Saudi Arabia – but also in **Bahrain and Thailand**, civil society organisations focus on providing service and protection.<sup>542</sup> However, their advocacy to change or influence the government’s anti-trafficking policies, understanding and allocation of resources is hampered.<sup>543</sup> In these contexts, in addition, CSOs can also play a role in holding governments to account internationally and supporting trafficked persons. In countries such as Cambodia, Indonesia and **Thailand** where international reputation matters, and there is a lack of freedom for media outlets, CSOs ‘can play a really important

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<sup>541</sup> Unfortunately, our research was unable to conclusively identify the reasons of this difference.

<sup>542</sup> Interview with the Head of Modern Slavery Policy Unit (n 495).

<sup>543</sup> Interview with an international expert (n 519).

role in holding governments to account' through alternative avenues such as a 'strong legal civil society where people are taking strategic litigation, acting on behalf of victims'.<sup>544</sup>

More broadly, civil society organisations are to be understood as **one part of a web of actors** which are exposing government failures, raising public awareness and holding governments to account. CSOs can play a role in raising public consciousness on the issue of trafficking,<sup>545</sup> with this influence able to be elevated by using the media, international obligations and international reputation as levers. Participation in international review mechanisms can also help elevate civil society concerns and recommendations.<sup>546</sup>

#### 4 TRADE UNIONS AND SURVIVORS' GROUPS

Despite our case studies not having found trade unions or survivors' group to be key determinants of anti-trafficking efforts, some of our expert interviewees have commented on their potential role in shaping anti-trafficking action. The influence of trade unions, it has been argued, specifically stems from their first-hand knowledge and information to then build models at the grassroots level, and diffuse them in a bottom-up process.<sup>547</sup> Comparing Thailand and Cambodia is particularly illuminative. Whilst in Thailand change often occurs through external triggers of trade sanctions and the European Union's threat of a red card, in Cambodia change has incrementally occurred over the past 10 to 15 years with labour garment workers pushing for their rights concerning work conditions and pay.<sup>548</sup> Moreover, trade unions have a particular role in their participation in international organisations and mechanisms. For example, the ILO complaints system provides an important route for change, and an interviewee highlighted that trade unions have a 'very important role' because of their close contact with workers and persons trafficked for the purpose of forced labour.<sup>549</sup>

Survivor groups' influence also stems from their communication of lived experiences and humanising of the impact of trafficking.<sup>550</sup> Ideally, 'what *should* work well' is stakeholder engagement, 'because how can you form a policy without understanding the issue from a victim's perspective?'.<sup>551</sup> Working with national and international CSOs, survivor groups are able to use research alongside their own experiences for advocacy work.<sup>552</sup> An indicative example emerged in the US from the survivor group called Resilient Voices, which forms part of the Coalition to Abolish Slavery and Trafficking (CAST). Resilient Voices and coordinate a national network, the National Survivor Network, which has survivors from thirty-seven different states in the US. Their impact is derived from their diverse

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<sup>544</sup> Interview with Thomas Harré (n 495).

<sup>545</sup> Interview with a member of a Ministry of Justice (n 530).

<sup>546</sup> Interview with Zoi Sakelliadou (n 495).

<sup>547</sup> Interview with Cathy Zimmerman, Professor at LSHTM (14 February 2020).

<sup>548</sup> *ibid.*

<sup>549</sup> Interview with an international expert (14 April 2020).

<sup>550</sup> Interview with an international expert (7 April 2020).

<sup>551</sup> Interview with Rebekah Armstrong, Director of Business & Human Rights Consultants NZ (16 April 2020).

<sup>552</sup> Interview with Katharine Bryant (n 495).

experiences of trafficking within and into America, and their advocacy that policies must be responding to their needs. For example, in 2013 the US passed the US Survivor Advisory Council which is 'a formal body of eleven survivors who advise federal agencies'; this piece of legislation is unique in that it was 'survivor led and driven from inception'.<sup>553</sup> However, there are few examples of this happening; rather there is a stark lack of survivor networks working in advocacy and campaigning work.<sup>554</sup> This involvement is necessary to avoid a retelling of their stories and an exclusion of their voices.<sup>555</sup>

## CONCLUSION

CSOs have been found in the literature, expert interviews, and case studies to be key determinants of anti-trafficking efforts, exerting pressure on governments, both internally and externally. While CSOs broadly includes, *inter alia*, NGOs, trade unions, and 'survivor groups', the role of trade unions and 'survivor groups' is still marginal compared to that of NGOs. CSOs influence anti-trafficking efforts through their service provision and their collaboration with governments in their expert capacity, as well as through their advocacy and lobbying work – both domestically and in international *fora*. However, the impact that civil society varies widely from country to country, and depends, *inter alia*, on the freedom they enjoy in a particular context, on available funding and its origin, and on the relationship with the government (which also relates to political will).

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<sup>553</sup> Interview with an international expert (n 550).

<sup>554</sup> Interview with Suzanne Hoff (n 495).

<sup>555</sup> Interview with an international expert (n 550).

## 8 ECONOMIC CONDITIONS AND EXTERNAL FUNDING

Despite best intentions and even robust political will, the availability of economic resources in a country is a condition that remains necessary, albeit not sufficient, to commit to and implement anti-trafficking efforts. **Without sufficient economic resources, a State has limited power to improve, enforce, monitor, and evaluate its anti-human trafficking law and policy.**<sup>556</sup> Coupled with the political situation of a country, the economic situation is also a **systemic factor that has serious implications for anti-trafficking efforts,**<sup>557</sup> particularly with regards the **implementation of such efforts due to resourcing and capacity, as well as levels of corruption** (see 'Governance, Politics, and Corruption').<sup>558</sup> 37% of survey respondents noted that the country's economic situation has a negative influence on its anti-trafficking efforts (with 13% noting a very negative influence). 29% noted a neutral influence while 34% noted a positive influence (with 10% noting a very positive influence).

A country's economic condition is an internal, structural determinant that can shape (directly or indirectly) a State's anti-trafficking efforts – and which can be supported, or counter-balanced, by the presence of **external funding**. Specific anti-trafficking funding can be internal (namely government funding and budget allocation for its own anti-trafficking efforts) and external (external donors including other governments, international institutions, and funding bodies who fund States' efforts). While both internal and external funding provisions are inextricably interlinked with political will, policy prioritisation, and political agendas, government and funders' mandates are a reflection of each actor's own priorities and result from their own set of determinants (see also 'Acknowledgment and Framing').

### 1 INTERNAL ECONOMIC CONDITIONS

The **availability of resources** is interconnected with the economic conditions and wealth of a particular State, as well as the broader macro-economic conditions, and it 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. While availability of resources might be an objective condition – as it relates to the financial situation of a country – **resource allocation** (and the lack thereof) is to be understood as a **product of decision-**

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<sup>556</sup> Thomas Jaye, 'The security culture of the ECOWAS: origins, development and the challenge of child trafficking' (2008) 26(2) *Journal of Contemporary African Studies* 151; 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(5) *Journal of Comparative Policy Analysis: Research and Practice* 403.

<sup>557</sup> Interviews with Zoi Sakellidou, Crime Prevention & Criminal Justice Officer at UNODC (5 May 2020); Jason Haynes, Deputy Dean (Graduate Studies & Research) at the University of the West Indies, Cave Hill Campus, Barbados (22 January 2021); and Borislav Gerasimov, Communications and Advocacy Coordinator at the Global Alliance Against Traffic in Women (11 November 2020).

<sup>558</sup> Interview with an independent consultant (7 May 2020).

making (see 'Political Will') and as interlinked with whether and how anti-trafficking is prioritised as a policy issue (see also 'Acknowledgment and Framing').<sup>559</sup>

Determinants that impact, or threaten to impact, a state's economy can have an amplified impact and increase the incentive to act. This is particularly the case for low-income States. The starkest example of this is the impact of the US State Department Trafficking in Persons (TIP) Report and the threat of economic sanctions (see 'External Monitoring, State Reputation, and (Threats of) Sanctions').

## 1.1 Availability of resources

The cost of anti-trafficking efforts can generally be a deterrent to action by governments.<sup>560</sup> Some States have sufficient resources, but lack political will to implement anti-trafficking efforts (e.g., Bahrain),<sup>561</sup> while other States have a commitment and will to combat human trafficking, but lack resources to carry it out (e.g., Armenia and Guyana).<sup>562</sup> In Armenia, the adoption of the first National Action Plan was accompanied by the allocation of State funding, albeit limited, to cover awareness raising activities and the provision of a one-time compensation to trafficked persons (equal to 500 USD per person, to be provided upon completion of an 'assistance and reintegration' process). Where there was insufficient State funding, and in particular for assistance to trafficked persons, international donors supported and supplemented the government contribution through external funding (see below at 2).

Some States have either 'no resources nor political will', or 'both resources and political will'. In Mozambique, trafficking is not a priority in terms of allocation of resources – which are already scarce. In addition, international donors cut direct support to Mozambique's state budget in 2016 after the discovery of 'hidden debts' incurred by the government between 2013 and 2014, a decision which contributed to the economic crisis and to an increase in the number of people living in poverty. On the opposite end of the spectrum, The Bahamas has been able, because of its relatively strong economic position, to make budgetary allowances for a broad range anti-trafficking efforts. But even in a context such as that of The Bahamas, availability of resources is not a certainty. Interviewees mentioned that in the aftermath of Hurricane Dorian in 2019, government spending on anti-trafficking efforts was reduced: in 2019, the government gave \$69,509 to non-governmental organisations (NGOs) that offered services to trafficked persons, compared to \$240,000 in 2018 (see 'Events and Crises').

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<sup>559</sup> Interview with Katharine Bryant, Lead - European Engagement at Minderoo - Walk Free (16 April 2020).

<sup>560</sup> Interview with Euan Fraser, Public and Corporate Affairs Manager at International Justice Mission UK (16 April 2020).

<sup>561</sup> Interview with Katharine Bryant (n 559).

<sup>562</sup> Interview with an inter-governmental agent (17 April 2020).

## 1.2 Allocation of resources

Allocation of resources is an outcome of other determinants (e.g., political will), as well as a determinant of other efforts in and of itself. Indeed, the lack of allocation of (commensurate) resources hinders efforts from being implemented.<sup>563</sup> This is often seen with the national action plans – for example, national action plans which do not mention budgets (as in **Austria**), create an obstacle for ministries as they are expected to find resources to implement the plans.<sup>564</sup> This can lead to low-cost measures such as meetings and working papers,<sup>565</sup> or a reliance on NGOs to provide victim support (for example in **Bulgaria**).<sup>566</sup> The lack of commensurate budget and resourcing sheds light on the gap between rhetorical commitment and sustained resourcing for implementation.

Allocation of resources is inextricably linked with the **prioritisation of anti-trafficking efforts** – whether trafficking is prioritised on the political agenda, and whether all aspects of anti-trafficking are equally prioritised. In **Chile**, for example, the government’s focus on prosecution has led to the prioritisation of funding towards law enforcement, with the result of funding towards prevention and protection activities being curtailed (see also at the end of this section). In **Mozambique**, trafficking as a whole is not prioritised due to government having to face ‘countless adversities’ that negatively impact on its anti-trafficking efforts – including economic crisis, climate change, and security considerations. Given these realities, the government is unable to allocate resources under the state annual budget for anti-trafficking efforts. In **Armenia**, in contrast, State budgetary allocations for assistance to trafficked persons consistently increased every year, and regardless of Covid-19 and the conflict in Nagorno-Karabakh anti-trafficking remained a priority for the government. Resource allocation can help differentiate between formalistic and substantive anti-trafficking commitments and political will.

Resource allocation may also be shaped by the government’s **understanding and the available data on human trafficking** (see also ‘Data and Research’). Indeed, for an adequate level of resources to be allocated, the scale of the phenomenon must be known.<sup>567</sup> However, collecting data on trafficking is not straightforward: as a hidden phenomenon, there may be an underestimate of the scale and how widespread trafficking it is, resulting

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<sup>563</sup> Interviews with a member of Myria (Federal Migration Centre, Independent national rapporteur on trafficking) (4 March 2020); an international expert (5 May 2020); Ruth van Dyke, Visiting fellow, Centre for Modern Slavery, St Mary’s University (27 February 2020); and an international expert (30 April 2020).

<sup>564</sup> Interview with an international expert (n 563).

<sup>565</sup> *ibid.*

<sup>566</sup> Interview with Suzanne Hoff, International Coordinator at La Strada International (23 April 2020).

<sup>567</sup> Interview with the Head of Modern Slavery Policy Unit (15 May 2020).

in a lack of resources – in turn, without sufficient resources there is a lack of capacity to improve data collection<sup>568</sup> and to be proactive in anti-trafficking work.<sup>569</sup>

Generally speaking, the impact of insufficient resources on anti-trafficking efforts has been particularly noted in literature with regards to **protection and prevention**.<sup>570</sup> It has been found to be easier to implement prosecution measures in comparison to protection provisions because they require less additional resources<sup>571</sup> and may be easier to justify. An expert interviewee further suggested that because ‘the entire system [is] skewed toward prosecution, the resources that are going to be assessed are the resources given to police and prosecution and law enforcement responses to trafficking’.<sup>572</sup> Comparatively, it was suggested that protection is also under-funded because some states (over) rely on NGOs to offer services that the State should offer whilst using funding secured from elsewhere.<sup>573</sup> These patterns were confirmed in **Chile**, where the government has prioritised allocation for efforts on prosecution to the detriment of prevention and protection of trafficked persons. Pressures to obtain certain numbers with regards to prosecution can influence resource allocation. Especially in countries with weak criminal justice systems that are pressured by, *inter alia*, external monitoring bodies to achieve an increase in convictions, governments can focus resources on generating prosecution numbers and, given how cost-intensive trafficking cases are, little resources will be left for other anti-trafficking efforts.<sup>574</sup>

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<sup>568</sup> Benjamin Harkins, ‘Constraints to a Robust Evidence Base for Anti-Trafficking Interventions’ (2017) 8 Anti-Trafficking Review 80; Anne T Gallagher and Rebecca Surtees, ‘Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who Decides—and How?’ (2012) 10 Anti-Trafficking Review; 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; Charmaine Patricia Jelbert, ‘Sex Trafficking and State Intervention: Conflicts and Contradictions during the 2012 London Olympics’ (PhD Thesis, University of Cambridge 2016) available at <<https://www.repository.cam.ac.uk/handle/1810/271625>> accessed 21 March 2021.

<sup>569</sup> Interviews with the Head of Modern Slavery Policy Unit (n 567); an international expert (n 563); and a member of PICUM (3 March 2020).

<sup>570</sup> Fiona David, ‘Building the infrastructure of anti-trafficking: Information, funding, responses’ (2010) 9(2) Criminology & Public Policy 235; 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; 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; 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); Alicia L Jurek and William R King, ‘Structural Responses to Gendered Social Problems: Police Agency Adaptations to Human Trafficking’ (2020) 23 Police Quarterly 25.

<sup>571</sup> Interview with Jason Haynes (n 557).

<sup>572</sup> Interview with an international expert (7 January 2020).

<sup>573</sup> Interviews with a member of an international organisation (14 April 2020); and an international expert (18 June 2020).

<sup>574</sup> Interview with an independent consultant (n 558).

### 1.3 Economic reliance on exploitative industries and the role of the private sector

States' anti-trafficking efforts are affected by whether their **national economy is dependent on, or benefits from, exploitation** (whether directly or indirectly).<sup>575</sup> The consumer-oriented markets and dependence on cheap labour present an economic and structural systemic barrier to anti-trafficking work:<sup>576</sup> it may impact on the way in which governments define and frame trafficking – e.g., adopting a narrow definition of labour trafficking allows a narrow number of cases to be identified and prosecuted, thus preventing the economy from being negatively impacted.<sup>577</sup> Even if trafficking is defined in line with international standards, the reliance on such labour may influence anti-trafficking efforts. States often have little economic incentive to address trafficking, unless there are clear economic benefits to be obtained from its eradication (or risks to be avoided, e.g., sanctions) – and especially where anti-trafficking efforts risk 'upsetting' the private sector.<sup>578</sup> Indeed, 'to rid the world of [exploitation] costs a lot of money, not just to protect the people you are pulling out of it, but the workforce that you are making more expensive by making it a non-exploited workforce'.<sup>579</sup> Economic based considerations are not exclusive to trafficking for labour exploitation but rather, as Bien-Aimé outlines, can also apply to the sex industry (e.g., the 'benefits' a country receives from sex tourism).<sup>580</sup>

In the **Republic of Cyprus**, economic reliance on exploitative industries and cheap labour hinders anti-trafficking efforts. Our research found that it is often only because of the presence of vulnerable domestic workers in the country that Cypriot women are able to work full time, and that the construction sector, to which many political elites have ties, would also not have been booming had it not been for vulnerable migrant workers, who provide cheap labour. In the **Turkish Republic of Northern Cyprus (TRNC)**, the economy has come to rely (in part due to the impacts of non-recognition) on money from illicit activities – which reduces the political willingness to fight human trafficking effectively. Both sexual and labour exploitation contribute to an economy that, apart from Turkey, is financially cut off from the rest of the world and in which 'grey' money is disproportionately influential.

With specific reference to companies and the private sector, in **Argentina** legal entities who participate/facilitate trafficking and/or exploitation are not currently prosecuted in a consistent and systematic manner. This gap in punishment was linked to existing state corruption, along with underlying economic concerns and political interests. A similar situation was highlighted in **Bahrain**, where there have been no convictions to date against

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<sup>575</sup> Interviews with an independent consultant (n 558); and a member of an international non-governmental organisation (23 April 2020).

<sup>576</sup> Interview with Ruth van Dyke (n 563).

<sup>577</sup> Interview with an independent consultant (n 558).

<sup>578</sup> Interview with an international expert (n 563).

<sup>579</sup> Interview with Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020).

<sup>580</sup> Interview with an international expert (6 January 2020).

'corporate persons' for trafficking, as acting against business entities perceived to be of high economic importance is politically sensitive.

Although not necessarily exploitative, economic over-reliance on migrant workers can influence anti-trafficking efforts. In **Bahrain**, the over-reliance on migrant workers coupled with fear of backlash from countries of origin could constitute a positive determinant of anti-trafficking efforts. In 2015, Bangladesh temporarily banned its citizens from working in Bahrain, citing the continual violation of its citizens' rights in the country.<sup>581</sup> The ban was reinstated in 2018 for the same reason. At the time, the Bangladeshi Embassy reported that it received at least 50 complaints each day by its citizens of late payment or non-payment of wages. The Bangladeshi Government was adamant that it would only lift the ban once an agreement was reached with the Bahraini Government which would protect the interests of Bangladeshi workers.<sup>582</sup> Similarly, Ethiopians were prohibited by their government from seeking work in Gulf Cooperation Council (GCC) countries between 2013 and 2018,<sup>583</sup> while Indonesia did the same in 2015.<sup>584</sup> However, the effectiveness of bans was challenged by a local activist, who expressed that worker bans imposed by source countries were ineffective in stopping the flow of migration to Bahrain, as they could easily be circumvented.

It is also worth highlighting that States might rely on exploitative industries *abroad*, and that such reliance may hinder (or neutralise) anti-trafficking efforts. This is the case in the **Philippines**, where the economy is reliant on foreign exchange remittances from overseas Filipino workers, which amount to roughly 9% of the country's gross domestic product. Labour migration has been part of Philippine history, especially in the last half century, which has seen increased and sustained outward human mobility. The Philippines' government denies promoting 'overseas employment as a means to sustain economic growth and achieve national development', but labour export prioritisation is evident in the establishment of numerous overseas employment and workers institutions, agencies, and policies. While not directly hindering the State's anti-trafficking efforts, labour 'export' and economic priorities could be said to counteract these efforts.

## 2 EXTERNAL FUNDING

External funding, from international donors, other States or regional bodies, can also influence national anti-trafficking efforts. **International funding for governments is found to have**

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<sup>581</sup> 'Bangladesh bans its nationals from working in Bahrain' (*Prothomalo*, 4 March 2017) available at <<https://en.prothomalo.com/bangladesh/Bangladesh-bans-its-nationals-from-working-in>> accessed 21 August 2021.

<sup>582</sup> *ibid.*

<sup>583</sup> Walk Free, 'Ethiopia's new migration policy: a positive step but continued scrutiny needed' (14 July 2019) <<https://www.walkfree.org/news/2019/ethiopias-new-migration-policy-a-positive-step-but-continued-scrutiny-needed/>> accessed 11 September 2021.

<sup>584</sup> Asia Times staff, 'Indonesians defy government ban to work in Bahrain' (*Asia Times*, 27 August 2018) available at <<https://asiatimes.com/2018/08/indonesians-defy-government-ban-to-work-in-bahrain/>> accessed 11 September 2021.

**significant influence.** From our survey respondents, 64% noted a positive influence of the 'availability of external funding for anti-trafficking efforts', with 30% noting a very positive influence. 11% noted a negative influence, whilst 24% noted a neutral influence. This is linked to the negative influence of the cost of anti-trafficking efforts whereby 45% of respondents noted a negative influence of the same. **The Bahamas** has benefited from international aid in the form of support for capacity building for stakeholders actively working in the anti-trafficking field. This funding support has come principally from the US government, and has led to, *inter alia*, the adoption of Standard Operating Procedures for the identification of trafficked persons. In **Brazil**, interviewees largely noted how external funding was crucial into the development of anti-trafficking efforts. One interviewee in particular mentioned a shift beginning in 2010, where there was 'funding, a lot of funding' – in particular from the EU and the US State Department. This external funding in turn led the federal government itself to fund anti-trafficking networks at the State level, especially in the period between 2010-2016 (a period in which Brazil was most active in its anti-trafficking efforts). In **Chile**, NGOs funded by – and at times in partnership with – international organisations developed several projects to determine the nature and scope of trafficking in the country, which were then used as the basis of the bill on trafficking introduced in 2005. International organisations further promoted State action by partnering with public institutions and funding preventive initiatives. In the **Philippines**, international aid supported government efforts to increase trafficking in persons convictions. Since 2014, the Australian Government Department of Foreign Affairs and Trade has partnered with and supported the Supreme Court of the Philippines, in working to combat human trafficking in the region through training and capacity building of police officers, prosecutors, judges, and social workers. This, coupled with external funding, has led to an increase in convictions in the past 5 years. In various EU Member States, EU funding has supported significant anti-trafficking efforts implemented by both governments and civil society organisations.

It is also worth noting that many States adapt their anti-trafficking efforts in line with donor priorities to receive funding, and many organisations undergo a similar process to survive.<sup>585</sup> Indeed, **donor interests can shape the recipient government's policies and efforts.** Donor interests create trends and can influence the prioritisation of particular policy responses, what type of trafficking is focused on or the type of response that is engaged.<sup>586</sup> In **Chile**, most of the external funding has been directed to trafficking for sexual exploitation, while trafficking for forced labour has only recently been addressed as a matter of international funding. Donor interests are not always aligned with countries' needs: for example, in **Brazil** external funding focused almost exclusively on international trafficking, even if internal trafficking is also widespread. In addition, there is often a willingness to fund efforts

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<sup>585</sup> Amy Foerster, 'Contested Bodies' (2009) 11(2) *International Feminist Journal of Politics* 151.

<sup>586</sup> Interviews with a member of an international non-governmental organisation (9 April 2020); Pierre Cazenave, Europe Programme Manager - Children and Youth in Migration at Terre des Hommes (27 February 2020); and Zoi Sakellidou (n 557).

and projects that have quantifiable outputs and results.<sup>587</sup> This focus on measurable outcomes can however hinder the quality of efforts, thus impeding meaningful change.<sup>588</sup> This is also linked to the way in which funded programmes are monitored and evaluated.

Governments as donors themselves are influenced by their own political agenda in how they provide funding.<sup>589</sup> For example, funding from the United Kingdom's now Foreign, Commonwealth & Development Office (FCDO) 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>590</sup> The United Kingdom'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 United Kingdom (Albania, Nigeria, Vietnam), rather than countries that have high numbers of trafficking overall. Similarly, funding for anti-trafficking efforts from the EU is used for migration control measures, such as preventing boats from departing across the Mediterranean.

The **threat and fear of losing funding streams**, as associated with the US TIP Report and economic sanctions, can trigger change. However, what is important to note, is that whilst funding and loss thereof can trigger change, the change is not necessarily sustained. Rather, governments may formulate responses to obtain funding or to avoid loss of funding.<sup>591</sup> Another point raised in case studies was the impact of a **decline in external funding**, usually associated with the achievement of better ranking in the TIP Report. This was the case, for example, in **Armenia**, where donor funding declined following the achievement of Tier 1. However, this resulted in progress being significantly slowed down due to lack of resources – and taking into consideration the changing nature over time of trafficking in persons, the need for new knowledge and capacity building efforts, as well as the need to make appropriate revisions in legislation and policies increased over the time.

External funding is likely to better withstand changes in domestic political contexts. If domestic priorities change, and priority is shifted away from anti-trafficking, having secured external funding may push governments (or other implementors) to continue implementing the measure or initiative as this is a requirement of the funding agreement. Conversely, when

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<sup>587</sup> Interview with Marika McAdam (n 579).

<sup>588</sup> Interview with Martin Reeve, Regional Advisor at UNODC (10 September 2020).

<sup>589</sup> Interview with an inter-governmental agent (n 562).

<sup>590</sup> For example, see Nellie Peyton, "I Am Not for Sale" Say Nigerian Women in Anti-Trafficking Campaign' (Reuters, 15 April 2019) available at <<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 Stubbley, 'Nigerian Women Warned Not to Come to Britain in Government Campaign' *The Independent* (15 April 2019) available at <<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) available at <<https://icai.independent.gov.uk/html-report/tackling-modern-slavery-through-the-aid-programme/>> accessed 5 January 2021.

<sup>591</sup> Interview with the Head of Modern Slavery Policy Unit (n 567).

a particular initiative is working well, changing donors' priorities may result in that (or similar) initiative(s) not continuing to receive support due to the changes in the donors' priorities. Donors' priorities are also heavily impacted by crises and ongoing situations, as reflected by the Covid-19 pandemic, which saw funding being re-allocated to projects and measures to address the impacts of Covid-19 on anti-trafficking efforts, including some that was removed from other ongoing anti-trafficking priorities.

## CONCLUSION

The availability of resources is a necessary condition for States to commit to and implement anti-trafficking efforts. Availability of internal resources, however, is not *per se* a determinant of anti-trafficking efforts – indeed, available resources could be allocated to other areas of law and policy. It is when availability of resources intersects with, *inter alia*, political will and results in resource allocation to anti-trafficking efforts that the link between resources and efforts is established. Resource allocation is to be understood therefore beyond availability of resources, and as a product of decision-making and as interlinked with whether and how anti-trafficking is prioritised as a policy issue.

While some States might have sufficient internal resources to allocate (and the will to allocate them to anti-trafficking efforts), others may lack internal resources and need (or prefer) to resort to external funding to implement anti-trafficking efforts. International funding for governments has been found to have significant influence and it has substantively contributed to anti-trafficking efforts in countries that did not have sufficient resources to invest in anti-trafficking action. However, there may be differences between donors or funders' priorities and the needs of particular States, which may result in States adapting their anti-trafficking efforts to (and project being funded based on) donors and funders' interests, rather than 'internal' priority areas. In addition, over-reliance on external funding and the 'projectisation' of anti-trafficking efforts, however, can be detrimental in the long term – and especially if economic assistance is not accompanied by capacity building, and if it does not contribute to trigger political will.

## 9 TRAINING AND LEVEL OF EXPERTISE

High levels of expertise among state and non-state authorities engaged in anti-trafficking are found to be positive determinant of anti-trafficking efforts. Trained government officials and law enforcement staff are associated with a higher degree of understanding of (the impacts of) policies aimed at countering trafficking and assisting trafficked persons.<sup>592</sup> In addition, increased law enforcement training and capacity-building seems to increase the probability that specialised trafficking units would be created within police departments, leading in turn to improved anti-trafficking efforts (see 'Specialised Anti-Trafficking Institutions').<sup>593</sup> On the other hand, low levels of expertise are found to be negative determinants of anti-trafficking efforts. Yet, training and level of expertise do not only have an impact on anti-trafficking efforts in an independent way, but also in combination with other key determinants, such as funding, media, and civil society organisations' (CSOs) involvement. Through their grassroots work and targeted expertise, civil society organisations are found to have a significant impact as well, sharing their knowledge by organising training activities which in turn may result in/inform changes to policies and practice (see 'Civil Society Organisations'). Similarly, international non-governmental organisations (NGOs) may also influence through capacity building initiatives for both governments as well as local civil society partners to aid their advocacy, and law enforcement bodies.<sup>594</sup>

Evidence of how well-trained personnel can better deal with trafficking is provided in some country reports. In **Cyprus**, the Police Anti-Trafficking Unit is generally considered to be successful in investigating complaints, something attributed to the adoption of international standards (including the involvement of clinical psychologists in criminal cases as witnesses and the development of a coordinated and standardised method of identifying trafficked persons and assessing their vulnerability) as well as to the increase in expertise on how to approach and handle cases (see also 'Specialised Anti-Trafficking Institutions'). A similar growth in expertise has also been observed in the Multidisciplinary Co-ordinating Group, which, over the years, has drafted National Action Plans in an increasingly detailed manner, which has in turn positively influenced more recent anti-trafficking efforts.<sup>595</sup> In **Armenia**, extensive capacity-building measures were undertaken as a result of the acknowledgment that officials involved in cases of trafficking for the purpose of forced labour lacked sufficient specialized knowledge and capacity on interviewing trafficked persons, especially children, which in some cases prevents collecting sufficient evidence to build a prosecutable

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<sup>592</sup> Interview with Jason Haynes, Deputy Dean (Graduate Studies & Research) at the University of the West Indies, Cave Hill Campus, Barbados (22 January 2021).

<sup>593</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.

<sup>594</sup> Interviews with Nick Grono, CEO of The Freedom Fund (20 March 2020); and Katharine Bryant, Lead – European Engagement at Minderoo – Walk Free (16 April 2020).

<sup>595</sup> Nasia Hadjigeorgiou, Demetra Loizou, Fezile Osum, and Andrea Manoli, 'Determinants of Anti-Trafficking Efforts: Cyprus' (BIICL, 2022).

case.<sup>596</sup> As part of these capacity-building efforts, a manual for local police was published dealing specifically with monitoring risky businesses and interviewing vulnerable communities. According to the opinion of the local experts, the availability of the manual positively contributed to the increased capacity of non-specialised police officers to proactively pursue investigations rather than rely on trafficked persons to self-identify.

To be effective, training and capacity building must be **sustained**<sup>597</sup> and continually on offer to new staff, to prevent the benefits of such training from being lost with staff turnover.<sup>598</sup> Evidence has been provided by **Armenia** in 2018, when a shift in urgent priorities and insufficient resources to allocate in anti-trafficking efforts coincided with shortage of specialists on the front line and changes in the Government.<sup>599</sup> However, the anti-trafficking staff turnover within State authorities negatively affected the sustainability of anti-trafficking responses due to the lack of knowledge or professional capacity of new persons and lost institutional memory.<sup>600</sup> Indeed, new people needed time to build knowledge and capacity on the issue and motivation to get involved in the anti-trafficking response.<sup>601</sup> In addition to being sustained, training must also be of high **quality**: indeed, it is not sufficient that training is delivered, it must be targeted, comprehensive, and inclusive if improved anti-trafficking efforts are to be achieved.

An insufficient level of training and capacity building can have serious consequences on anti-trafficking efforts. For instance, in **Algeria** the authorities' lack of expertise on trafficked persons' identification, combined with an inadequate domestic legal framework on child trafficking, leads to the over-conflation of child begging and human trafficking (see also 'Acknowledgment and Framing').<sup>602</sup> Similar issues have been recorded in **Chile**, where the absence of adequate training and failure to recognise trafficking for forced labour is a current ongoing problem, particularly with judges that operate outside the Metropolitan region.<sup>603</sup> Moreover, insufficient training on the identification process of trafficked persons may leave police and other officers to **rely on crime and security frames pervading the media**, using such misperceptions and artificial narratives as interpretative tools to understand human trafficking.<sup>604</sup>

An inadequate level of training often involves a lack of (or limited) **gender perspective** among state officials. Traditional gender attitudes and the tendency to perceive men as less

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<sup>596</sup> Viktoria Avakova, 'Determinants of Anti-Trafficking Efforts: Armenia' (BIICL, 2022).

<sup>597</sup> Interview with Martin Reeve, Regional Advisor at UNODC (10 September 2020).

<sup>598</sup> Interview with Jason Haynes, University of the West Indies, Cave Hill Campus, Barbados, Deputy Dean (Graduate Studies & Research) (22 January 2021).

<sup>599</sup> 'Determinants of Anti-Trafficking Efforts: Armenia' (n 596).

<sup>600</sup> *ibid.*

<sup>601</sup> *ibid.*

<sup>602</sup> Ali Adenwala, Massinissa Benlakehal, and Mina Chiang, 'Determinants of Anti-Trafficking Efforts: Algeria' (BIICL, 2022).

<sup>603</sup> Carolina Rudnick, 'Determinants of Anti-Trafficking Efforts: Chile' (BIICL, 2022).

<sup>604</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(5) *Journal of Interpersonal Violence* 1108, 1115–6.

vulnerable to being victimised in trafficking situations lead to underestimating the impact of trauma in cases of trafficking for forced labour (see also 'Culture, Victimhood, and Discrimination'). Strong feelings of shame and fear experienced by trafficked persons more broadly can undermine the quality and credibility of their statements during the investigation and in court proceedings. In this regard, positive steps have been taken in **Armenia**. In order to promote specific sensitisation of public officials involved in criminal proceedings on trafficking for forced labour, a special course on vulnerabilities of trafficked persons was launched for investigators at the Armenian Justice Academy.<sup>605</sup>

The level of expertise of key personnel – law enforcement, frontline workers, public authorities – is a significant indicator of how efficient anti-trafficking policies are. The literature review, interviews, and case analysis reveal that, insufficient training can impair states' efforts in combating trafficking and approaching trafficked persons and fostering capacity building activities can be extremely beneficial. However, our research also reveals that this determinant directly depends on other primary factors influencing States' anti-trafficking efforts, first and foremost the allocation of adequate resources and the involvement of external bodies (i.e., international organisations, NGOs, CSOs). Therefore, if these variables are not present – or are engaged at an insufficient level – training cannot be properly organised and delivered, losing its power to influence anti-trafficking policies.

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<sup>605</sup> 'Determinants of Anti-Trafficking Efforts: Armenia' (n 596).

## 10 EVENTS AND CRISES

Crises and events, such as conflicts, natural disasters, major human trafficking incidents or sporting events, can lead governments to adopt or improve anti-trafficking efforts. Together with other factors, such as media attention and civil society pressure, single and isolated events can also have significant impact on changing a government's anti-trafficking response. However, according to the findings of the research, it is often the case that such crises are likely to hinder anti-trafficking efforts.

Research has shown over time that during and in the aftermath of **emergency situations**, such as conflicts and natural disasters, individuals are at greater risk of being trafficked.<sup>606</sup> In addition, research has also shown that climate change is correlated with increased risk of individuals being subjected to human trafficking and exploitation.<sup>607</sup> While the link between emergency situations and risks of trafficking has been established, little exists in the literature as to the impact of emergency situations on a State's anti-trafficking response. Depending on the crisis that a government is confronted with, emergency situations may trigger anti-trafficking efforts and action. However, more often emergency situations present an obstacle that can negatively impact anti-trafficking efforts. Situations of crisis (such as conflict or natural disasters) were considered to have a negative influence on anti-trafficking efforts by 31% of respondents whilst 30% noted them as having a positive influence. 39% noted them as neutral. The number of responses to the question was 170 out of the 196 respondents to the survey overall. Our research found, indeed, that **conflicts and natural disasters are likely to hinder States' efforts**. Conflicts and natural disasters generate 'protection gaps',<sup>608</sup> which are heightened by the diversion of political attention and funding that may have been allocated to anti-trafficking towards the emergency situation (see also 'Covid-19').

This is observed in cases of natural disasters, where resources are minimised, and political will to act on non-emergency issues is superseded. This was the case in **the Bahamas** in 2019, in the aftermath of Hurricane Dorian – one of the worst experienced for any natural disaster in the country. As a result of the hurricane, government spending on

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<sup>606</sup> Randall KQ Ackee et al, *Migration and Culture: Frontiers of Economics and Globalization*, vol 8 (Emerald Group Publishing 2010); Cooper A 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* (2018).

<sup>607</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>608</sup> Cooper A Drury and Richard S Olson, 'Disasters and Political Unrest: An Empirical Investigation' (1998) 6(3) *Journal of Contingencies and Crisis Management* 153; 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)>.

combatting trafficking was reduced to less than a third compared to the previous year. As anti-trafficking efforts 'are not necessarily understood as immediately life-saving in an emergency situation',<sup>609</sup> **governments tend not to prioritise anti-trafficking efforts as an issue requiring an immediate response** in an emergency context. This was demonstrated in the case of **Chile**, which in 2010 experienced an earthquake and tsunami, causing severe damage. This resulted in the government's de-prioritisation of the anti-trafficking bill's legislative discussion, as governments' efforts focused on the rebuilding of the country.<sup>610</sup> Despite most of the literature outlines the negative impact of conflicts and natural disasters on anti-trafficking efforts, some contribution departs from this widely shared stance, suggesting that a State's ability to comply with Palermo Protocol responsibilities may actually increase in the aftermath of natural disasters,<sup>611</sup> due to the centralisation of responses and power and the securitisation prompted by the emergency situation. However, such an analysis is based on the premise that securitisation is the most effective approaches to counter trafficking, a contention that is challenged, including in the literature.<sup>612</sup> The shocks on anti-trafficking efforts (including resourcing), and how they are distributed across different priorities within anti-trafficking efforts is also dependant on a series of other determinants.

The lack of resources and capacity in times of emergencies<sup>613</sup> is interlinked with States' governance and political situation, and emergency situations often lead to a **breakdown in the rule of law**.<sup>614</sup> Fragile prosecution systems prevent governments from fulfilling their criminalisation obligations under the Palermo Protocol.<sup>615</sup> Impunity has been observed in **Libya**, for example, where the trafficking of persons went undetected and unpunished.<sup>616</sup> Further, in times of conflict, there are instances where not only does the government shift priorities, but so do external funders and donors. For example, with outbreak of the Syrian War, the Lebanese government's support to the International Centre for Migration Policy Development's (ICMPD) work was severely disrupted.<sup>617</sup> The potential re-prioritisation of anti-trafficking efforts in the aftermath of emergency situations requires advocacy efforts

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<sup>609</sup> 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' (2015) IOM Geneva 3.

<sup>610</sup> Carolina Rudnick, 'Determinants of Anti-Trafficking Efforts: Chile' (BIICL, 2022).

<sup>611</sup> Seo-Young Cho, Axel Dreher, and Eric Neumayer, 'The Spread of Anti-Trafficking Policies: Evidence from a New Index' (2011) CESifo Working Papers; Zack Bowersox, 'Natural Disasters and Human Trafficking: Do Disasters Affect State Anti-Trafficking Performance?' (2018) 56(1) International Migration 196.

<sup>612</sup> Bowersox (n 611).

<sup>613</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); Tillinac et al (n 609); Marika McAdam, 'Countering Trafficking in Persons in Conflict Situations' (2018) UNODC Thematic Paper.

<sup>614</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (n 606).

<sup>615</sup> McAdam (n 613) 58.

<sup>616</sup> Tillinac et al (n 609) 14.

<sup>617</sup> Interview with Melita Gruevska Graham, Head, Anti-Trafficking Programme at International Centre for Migration Policy Development (ICMPD) (6 May 2020).

from civil society and individuals in governments.<sup>618</sup> Economic arguments can potentially incentivise governments to re-prioritise protection against trafficking, as reducing vulnerabilities to trafficking and exploitation can be essential to an economic sustainable growth.<sup>619</sup> **International organisations play an essential role in shaping government responses to trafficking in emergency situations** by strengthening State preparedness, capacity-building and resourcing<sup>620</sup> and in some cases by stepping in to offer particular services (e.g. identification and protection). In order to prevent a rise in human trafficking in States affected by conflicts, the literature outlines that international organisations (IOs) can help strengthen the level of compliance of anti-trafficking domestic legislation with international standards during peacetime, advocating for revision if necessary. 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 United Nations Security Council (UNSC) Resolution 1888 in Central African Republic, Côte D'Ivoire, Democratic Republic of Congo, Guinea, Iraq, Nigeria and South Sudan.<sup>621</sup> Similar legal advocacy and technical assistance has been provided to governments in Asia by Liberty Asia (now called Liberty Shared),<sup>622</sup> amongst many others.

Emergency situations are not the only major events impacting on anti-trafficking efforts. In the last decade in particular, attention has been placed on sporting events and their role as potential triggers of anti-trafficking efforts has been explored. **Sporting events have been found to have the potential to expose human trafficking taking place and increase demand**, and thus pressure governments to adopt anti-trafficking efforts. One off events was noted as having a positive influence by 40% of survey respondents, whilst 37% said they were of a neutral influence. 23% noted them as having a negative influence.

According to expert interviews and literature, the most popular sporting events, including the FIFA World Cup or the Olympics, have influenced governments' anti-trafficking responses.<sup>623</sup> Exposure of trafficking and exploitation impacts on public opinion and interacts with international pressure, which often leads to media and civil society organisations (CSOs) pressure. This in turn can trigger political will from governments to minimise the damaged international reputation. For example, prior to the FIFA World Cup in 2006 Germany ratified the Palermo Protocol,<sup>624</sup> demonstrating the influence of international attention to the link between sporting events and human trafficking. The

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<sup>618</sup> Interview with Cristina Huddleston, Director of European Operations, Justice and Care (8 March 2020).

<sup>619</sup> Interview with Peter Williams, Principal Advisor, Modern Slavery, International Justice Mission (23 September 2020).

<sup>620</sup> McAdam (n 613) 49.

<sup>621</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>622</sup> McAdam (n 613) 61.

<sup>623</sup> Interview with Cathy Zimmerman, Professor at LSHTM (14 February 2020). See also Jean-Pierre Gauci and Idel Hanley, 'Determinants of Anti-Trafficking Efforts: Literature Review' (BIICL, 2022).

<sup>624</sup> Katherine L Morrow, 'Soccer, Sex, and Slavery: Human Trafficking in the World Cup' (2008) 17 *Tulane Journal of International and Comparative Law* 243.

preparation for the 2010 World Cup, held in the South Africa, led to an increase of Mozambican migrant workers traveling to South Africa. In such context, the United Nations Office on Drugs and Crime (UNODC) initiated a regional project to strengthen the legal framework and protection against trafficking and exploitation, in which **Mozambique** was a participant.<sup>625</sup> Finally, the upcoming 2022 World Cup in **Qatar** has raised substantive debates around risks of trafficking and exploitation, with particular reference to migrant workers and the *kafala* system.<sup>626</sup> However, and despite international pressure, the economic reliance on cheap labour hinders political will to amend the sponsorship system and counter trafficking and exploitation, while the economic situation in migrant workers' countries of origin may give the host government significant leverage over the migrant workers, and thus further contribute to the lack of political will to provide adequate protection. Nonetheless, since the Qatari government won the bid to host the World Cup, a series of initiatives have been launched by government to address welfare abuses, living conditions and the shortcomings of the already existing *kafala* system.<sup>627</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>628</sup>

A further example of the potential of sporting events to trigger anti-trafficking efforts are the **Olympics**. **Brazil** hosted, between 2014 and 2016, both the World Cup and the Olympics. Although these events could not be conclusively linked to anti-trafficking law and policy at the time, Brazil made significant efforts to counter **corruption**, which indirectly improved anti-trafficking efforts.<sup>629</sup> Further, Brazil took proactive steps to legislate on welfare rights for migrant and domestic workers, in an effort to improve its international reputation, as well as the US State Department Trafficking in Persons (TIP) ranking.<sup>630</sup> However, the impact that sporting events have is not necessarily a lasting and sustained one, as demonstrated by the London 2012 Olympics. Although the **London 2012 Olympics** triggered an increased government response to human trafficking, it lacked sustainable long-term efforts beyond 2012. For example, very little government funding was awarded to the Human Trafficking Network to carry out its prevention activities, and the funding

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<sup>625</sup> Alfredo Libombo F Thomas, 'Determinants of Anti-Trafficking Efforts: Mozambique' (BIICL, 2022).

<sup>626</sup> Interview with a member of an international organisation (14 April 2020).

<sup>627</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://iprib.org/journals/index.php/IJS/article/view/1129>> accessed 7 November 2020.

<sup>628</sup> Amanda Garrett, 'The End of Kafala? Evaluating Recent Migrant Labor Reforms in Qatar' (2020) 21 Georgetown Journal of International Affairs 201.

<sup>629</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>630</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.

stopped entirely after the Olympics, which suggests that one-off events may not determine sustainable improvement.<sup>631</sup>

In addition to emergency situations and major sporting events, **specific (and high-profile) cases of human trafficking can become influential in shaping a State's anti-trafficking efforts.** This is particularly true when there is extensive media reporting on the incident, which in turn may lead to significant CSOs advocacy and international pressure. Media coverage and advocacy causes public outrage and puts pressure on legislators and policy-makers.<sup>632</sup> A central example of this is the case of exploitation of Thai workers on fishing vessels.<sup>633</sup> Media exposure of a few gravest forms of exploitation of these types acted as a notable determinant for some policy and institutional changes in the anti- trafficking regime. These incidents, often coupled with further measures also triggered by this information, have led to amendments to the legislation, installation of measures against corruption, and institutional innovations such as policy-level high-powered committees, new courts, and dedicated investigation agency.<sup>634</sup> Another example is the 2004 Morecambe Bay tragedy in the **United Kingdom**, in which at least 23 trafficked Chinese nationals who were picking cockles for a gangmaster, died. This tragedy prompted the establishment of the then Gangmaster and Licencing Authority (now the GLAA),<sup>635</sup> a specialised agency which was allocated a notable degree of responsibility in countering trafficking for the purpose of forced labour. Wide media coverage of an isolated event was also key in **Armenia**, where the detection and prosecution of a case of trafficking for the purpose of organ removal between 2011 and 2012 sparked not only a debate on the (until then) hidden form of exploitation, but also a public protest directed at the government. To meet the public demand for effective responses, as well as following the Council of Europe's Group of Experts on Action against Trafficking in Human Beings' (GRETA) recommendation in its Second Evaluation Round report (see also 'External Monitoring Mechanisms'), Armenia signed the Council of Europe Convention against Trafficking in Human Organs on 24 January 2018.<sup>636</sup>

Crises and emergencies, sporting events, and isolated incidents represent both an obstacle and an opportunity for States in their anti-trafficking efforts. Whilst conflicts and natural disasters increase exposure to trafficking, political authorities – often overburdened or even disempowered – usually respond to incumbent emergencies without including anti-trafficking among the main priorities to tackle. The involvement of external stakeholders (i.e. IOs, NGOs and CSOs) can be beneficial to advocate States' and promote the prioritisation

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<sup>631</sup> Charmaine P Jelbert, 'Sex trafficking and state intervention: Conflicts and contradictions during the 2012 London Olympics' (PhD Thesis, University of Cambridge, 2016).

<sup>632</sup> Interviews with a member of International Centre for Missing & Exploited Children (15 April 2020); and Tamara Barnett, Director of Operations at Human Trafficking Foundation (10 April 2020).

<sup>633</sup> Interviews with Katharine Bryant, Lead of European Engagement at Minderoo - Walk Free (16 April 2020); and Cathy Zimmerman (n 623).

<sup>634</sup> Ridwanul Hoque, 'Determinants of Anti-Trafficking Efforts: Thailand' (BIICL, 2022).

<sup>635</sup> Maria Moodie, 'Determinants of Anti-Trafficking Efforts: United Kingdom' (BIICL, 2022).

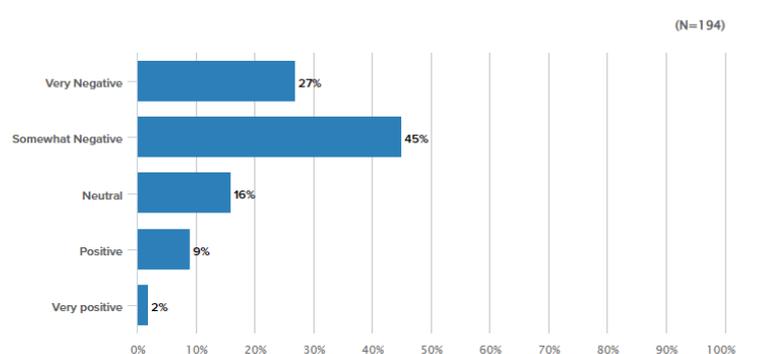
<sup>636</sup> Viktoria Avakova, 'Determinants of Anti-Trafficking Efforts: Armenia' (BIICL, 2022).

of measures to prevent trafficking, enforce anti-trafficking legislation even in contexts of distress and protect vulnerable populations. In one-off events, such as sporting events, or major human trafficking incidents, we see that there can pressure governments to accelerate anti-trafficking efforts. This is particularly the case when intertwined with other factors, such as media exposure and CSO pressure. Single and isolated events that influence government anti-trafficking efforts may have a temporally limited, thus the anti-trafficking efforts will be present for so long as the event is in the spotlight.

## 11 COVID-19

Situations of emergency and crisis, such as the Covid-19 pandemic, may be determinants of anti-trafficking efforts (see 'Events and Crises'):<sup>637</sup> they may reduce (or trigger) political will,<sup>638</sup> present obstacles (or opportunities) for anti-trafficking action,<sup>639</sup> de-prioritise (or elevate) human trafficking on the political agenda,<sup>640</sup> and result in the diversion (or allocation) of resources from (or to) anti-trafficking efforts.<sup>641</sup> The dualism of these propositions reflects the findings from our case studies and our global survey, which found Covid-19 to be able to be both a negative and a positive determinant of anti-trafficking efforts: while in most contexts the pandemic has hindered anti-trafficking efforts, in others it has enabled (some) of them – particularly in the context of prevention.

Overall, has the impact of COVID-19 on anti-trafficking efforts in your country been:



*Determinants of Anti-trafficking Efforts Survey (2022)*

### 1 NEW VULNERABILITIES AND OLD DETERMINANTS

Since the beginning of the pandemic, experts raised concerns that a crisis of such magnitude could exacerbate individuals' existing vulnerabilities<sup>642</sup> and potentially hinder anti-trafficking efforts. Concerns were raised about, *inter alia*, 'new' vulnerabilities in the online space (and the inadequate expertise, experience, and resources of states to respond to online exploitation),<sup>643</sup> vulnerabilities linked to internal and international restrictions on movement, and heightened economic vulnerabilities due to loss of income. Alongside these concerns,

<sup>637</sup> Because of the specific nature and scale of the Covid-19 pandemic, it will be examined separately from other events and crises.

<sup>638</sup> Interviews with a UN official (17 April 2020); a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (15 April 2020); and Marika McAdam, Independent International Law and Policy Advisor/Consultant (8 April 2020).

<sup>639</sup> Interview with Marika McAdam (n 638).

<sup>640</sup> Interview with Cristina Huddleston, Director of European Operations at Justice and Care (18 March 2020).

<sup>641</sup> Interview with Peter Williams, Principal Advisor, Modern Slavery at International Justice Mission (23 September 2020).

<sup>642</sup> Idel Hanley, Jean-Pierre Gauci, and Iris Anastasiadou, 'Human Trafficking and COVID-19: What Next?' (BIICL, 8/10/2020) available at <[https://www.biicl.org/documents/121\\_blog\\_draft\\_human\\_trafficking\\_and\\_covid-19\\_forbiiclwebsite.pdf](https://www.biicl.org/documents/121_blog_draft_human_trafficking_and_covid-19_forbiiclwebsite.pdf)>.

<sup>643</sup> Maria Moodie, 'Determinants of Anti-Trafficking Efforts: United Kingdom' (BIICL 2022).

there was a partial optimism that the pandemic could present an opportunity to raise awareness of particular issues, such as exploitation in the informal sector or lack of access to health care,<sup>644</sup> and that it could reveal that *all* groups, including marginalised groups, ought to be protected in the best interest of society as a whole.<sup>645</sup>

Since early 2020, unprecedented measures were adopted to halt the spread of Covid-19, including enforced quarantine, curfews and lockdowns, limitations on economic activities, and travel restrictions. Globally, there was a pattern of higher presence of law enforcement at borders and on the streets, which those supporting a securitisation approach to trafficking believed could deter traffickers from operating.<sup>646</sup> Yet, while a securitisation approach posits that stricter border control and law enforcement measures contribute to a decrease in human trafficking, the closure of borders in the Covid-19 pandemic contexts led to an increased reliance on smugglers and unsafe routes, and, as a result to heightened vulnerabilities to trafficking and exploitation.<sup>647</sup> Beyond border control, and in a more 'internal' sphere, confinement measures and the inability in some countries (e.g., **Cyprus**) for law enforcement to access private households led to an overall increase in vulnerability to exploitation and abuse (including, *inter alia*, exploitative domestic work and forced labour).

While restrictions on movement and border closures alone negatively impacted the *modus operandi* of traffickers, the switch of service provision, referral mechanisms, and the administration of justice to virtual environments, the diversion of funds towards Covid-19 responses, and the lack of expertise of many governments in addressing online exploitation significantly hampered anti-trafficking efforts. In **Chile**, the pandemic has worsened the status of trafficking in the public agenda, further eclipsed by a focus on smuggling of migrants that in the context of mixed flows impedes detecting of trafficked persons. In **Armenia**, the State removed trafficking from its agenda for some time and directed all its efforts to fight Covid-19 (as well as to minimise the consequences of the war in Nagorno-Karabakh).

Covid-19 has been, in and of itself, a determinant of anti-trafficking efforts. However, because determinants are inter-connected, other determinants continued to play a key role in shaping anti-trafficking efforts – political will, economic conditions, the media,

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<sup>644</sup> Interviews with Katharine Bryant, Lead - European Engagement at Minderoo - Walk Free (16 April 2020); and Kristina Touzenis, Head of International Migration Law at IOM (15 April 2020).

<sup>645</sup> Interview with a member of an international non-governmental organisation (9 April 2020); and a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (n 638).

<sup>646</sup> This holds true in certain circumstances, e.g., in **The Bahamas**, where closed international borders and restrictions resulted in trafficking in persons coming to a virtual standstill. In two case studies – **The Bahamas** and **Guyana**, interviewees argued that there was effectively a reduction in the scale of human trafficking – especially for the purpose of sexual exploitation, as the pandemic 'somewhat crippl[ed] the entertainment and service industries.'

<sup>647</sup> For example in **Brazil**: see UNODC, Ministry of Justice and Public Security, 'Relatório Nacional sobre Tráfico de Pessoas: Dados 2017 a 2020' (2021) 18. Interviewees BR04, BR08. See also: Defensoria Pública da União, Comitê Pacaraima, '1º Informe Defensorial: Relatório de monitoramento dos direitos humanos de pessoas migrantes e refugiadas em RR' [2021]; in **Chile**: see Carolina Rudnick, 'Determinants of Anti-Trafficking Efforts: Chile' (BIICL 2022).

partnerships, and civil society organisations (CSOs) in particular. Significantly, the pandemic significantly affected international monitoring work, as monitoring mechanisms such as the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) and the UN Special Procedures were prevented from carrying out country visits, which are essential for their mandates. In some instances, Covid-19 has been used as a ‘shield or excuse for lack of enough actions or for inaction vis-à-vis combatting human trafficking’,<sup>648</sup> while in others one or more of the above determinants – political will, economic conditions, the media, partnerships, and CSOs – were able to counter-balance, albeit not fully, the consequences of Covid-19 on anti-trafficking efforts. In **Bahrain**, for example, the government recognised and anticipated the increased vulnerability of workers during the pandemic, and displayed strong political will increasing anti-trafficking efforts ‘almost immediately’.<sup>649</sup> Indeed, during the pandemic the government established specialised counter-trafficking bodies such as the Trafficking in Persons Prosecutor’s Office, Trafficking in Persons Chamber of the Criminal Courts (CTP), a human trafficking hotline (CID anti-trafficking hotline), as well the Office for the Protection of Victims and Witnesses (OPVW), in order to protect trafficked persons and witnesses who provide information that may put them at risk.

## 2 THE IMPACT OF COVID-19 ON PROSECUTION, PROTECTION, PREVENTION AND PARTNERSHIP

Most case study countries reported a reduction of resources across the 4Ps – and even in those countries that did not shift resources away from anti-trafficking there were significant disruptions to the implementation of anti-trafficking efforts. Yet, certain States were able to (partly) absorb negative shocks caused by the health crises through, *inter alia*, political will, CSOs, and partnerships, to maintain anti-trafficking efforts and to adapt those efforts to the evolving context.

### 2.1 Prosecution

Prosecution was negatively affected by court delays due to the move to virtual administration of justice (at least in the short term), by the limited ability of law enforcement to conduct investigation due to movement restrictions, and by the rise of ‘new’ forms of exploitation (specifically online exploitation) that were not covered by existing legislation and/or on which states had not yet developed significant expertise.

#### 2.1.1 Online court proceedings

The move to online trials had a negative effect overall, although the extent of such negative effect was partly mitigated in countries that had access to the required technology to conduct

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<sup>648</sup> Ridwanul Hoque, ‘Determinants of Anti-Trafficking Efforts: Thailand’ (BIICL, 2022).

<sup>649</sup> Interviewee 1208 (12 August 2021).

online proceedings. In **Georgia**, prosecution of trafficking cases was negatively affected by delays in court online proceedings. Delays were also registered in **Chile**, where unstable network connection and lack of expertise, and in the **Philippines**, where the lack of proper procedural guidelines on how to interview witnesses remotely significantly hampered prosecutorial efforts.<sup>650</sup> Restrictions further forced prosecutors handling trafficking cases to pass them on to their local counterparts who are not adequately trained and resourced to be able to prosecute human trafficking cases.<sup>651</sup> In several jurisdictions, including **Cyprus**, due to the restricted operation of the courts, only urgent cases were heard. In **Armenia** respondents mentioned delays in investigations and suspended courts as an issue connected with the pandemic. Witnesses were not participating in court hearings due to quarantine. Yet, this problem with the courts was solved quite fast, with electronic online mechanisms being integrated to enable a smooth court hearing process without delays. Experts also noted that it is early to judge how this situation impacted the court system's effectiveness – for instance, in 2019, courts did not have any convictions, while in 2020, there were four convictions related to trafficking. In **Thailand**, criminal justice actors quickly developed a skillset that allowed them to use online means, such as the recording of testimonies, to prosecute cases of trafficking – which several interviewees suggested should remain a possibility in the future. Yet, as the Thai Government's 2020 Country Report on the Anti-Human trafficking Efforts suggests, the Covid-19 situation 'resulted in lower prosecution statistics across the board compared to 2019: number of human trafficking cases decreased from 288 cases to 131 cases, number of offenders decreased from 555 persons to 179 persons, and number of victims decreased from 1,821 persons to 229 persons.'<sup>652</sup>

### *2.1.2 Ability of law enforcement to conduct investigations*

Anti-trafficking operations were generally slowed down by the curtailment of law enforcement personnel, social distancing measures and the concentration of efforts in covid-related policing. For example, in **Argentina**, security forces were charged with enforcing quarantine restrictions, which, consequently, decreased resources available to detect cases of human trafficking<sup>653</sup> so that there were investigative difficulties, including limits on initiating raids or similar police interventions.<sup>654</sup> Despite these challenges, the pandemic led to policy updates from the Ibero-American Network of Prosecutors Specialized in Trafficking in Persons and Smuggling of Migrants (REDTRAM): prosecutors published a series of documents updated to meet pandemic standards and regulations: the Contingency Plan due to the COVID-19 Pandemic;<sup>655</sup> the Joint Declaration with the Network of Specialized

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<sup>650</sup> Interview with Lilian Doris Alejo (12 July 2021).

<sup>651</sup> *ibid.*

<sup>652</sup> 'Determinants of Anti-Trafficking Efforts: Thailand' (n 648).

<sup>653</sup> Interviewees AR03; and AR14.

<sup>654</sup> Interviewees AR02; AR03; and AR11.

<sup>655</sup> "Plan de Contingencia por Covid-19" (Asociación Ibero Americana de Ministerios Públicos, 2020) available at <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/plan-de-contingencia-por-covid-19-redisenio-plan-trabajo-2020-de-la-redtram>> accessed 10 October 2021.

Prosecutors of Corruption;<sup>656</sup> the REDTRAM Declaration on the Problems and Challenges during the COVID-19 Pandemic;<sup>657</sup> and the REDTRAM Declaration on Mixed Migratory Flows.<sup>658</sup>

Interestingly, the pandemic in some cases had a positive impact on arrests, since some police operations were facilitated because it was easier to track some forms of human trafficking crimes. In the **Philippines** for example, confinement facilitated several police surveillance operations since people were mandated to stay at home.<sup>659</sup> In **Brazil**, border closures had an unintended positive development in discovering criminal organisations, as their operations became more visible.<sup>660</sup>

### 2.1.3 Ability to address 'new' forms of exploitation

Like in many other countries, the extreme and widespread economic vulnerability created the conditions in the **Philippines** for the surge in online sexual exploitation of children (OSEC).<sup>661</sup> This form of trafficking – although it shall be noted that not all OSEC is trafficking – has been deemed to be harder to prevent because it is largely a family-based crime that happens in the confines of the home,<sup>662</sup> and law enforcement is not (yet) equipped to counter it and prosecute it effectively and systematically. With reports of a 300-fold increase in cases of OSEC,<sup>663</sup> the government was prompted to focus its efforts on addressing this specific type of exploitation. The scale of the increase of OSEC led to congressional inquiries.<sup>664</sup> These inquiries gave rise to recommendations for amendments to the existing legal framework because previous iterations of the existing law did not contemplate the new modes of sexual trafficking such as live-streaming.<sup>665</sup> At present, there are bills pending in

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<sup>656</sup> “Declaración Conjunta REDTRAM-Red Fiscales contra la Corrupción de 30 Julio de 2020” (Asociación Ibero Americana de Ministerios Públicos, 2020) available at <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/declaracion-conjunta-redtram-red-fiscales-contra-la-corrupcion-de-30-julio-de-2020>> accessed 10 October 2021.

<sup>657</sup> “Declaración de REDTRAM sobre Problemas y Desafíos Durante la Pandemia por COVID-19” (Asociación Ibero Americana de Ministerios Públicos, 2020) available at <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/declaracion-de-redtram-sobre-problemas-y-desafios-durante-la-pandemia-por-covid-19>> accessed 10 October 2021.

<sup>658</sup> “Declaración de la REDTRAM sobre Flujos Migratorios Mixtos, Versión en Inglés” (Asociación Ibero Americana de Ministerios Públicos, 2020) available at <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/declaracion-de-la-redtram-sobre-flujos-migratorios-mixtos-version-en-ingles>> accessed 10 October 2021.

<sup>659</sup> Interview with Maria Sheila Portento (6 August 2021).

<sup>660</sup> Interviewee BR01.

<sup>661</sup> Interview with Francis de Guzman (16 July 2021).

<sup>662</sup> Interview with Nicholas Felix Ty (7 July 2021). See also ‘Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry and Civil Society | International Justice Mission’ (IJM USA, 21 May 2020) available at <<https://www.ijm.org/vawc/blog/osec-study>> accessed 15 July 2021.

<sup>663</sup> Interview with Reynaline Francisco-Tan (7 July 2021).

<sup>664</sup> Samson Inocencio Jr., ‘Unsafe in Lockdown: Double Threats to Children During COVID-19 Crisis’ (IJM USA, 19 June 2020) available at <<https://www.ijm.org/vawc/blog/unsafe-in-lockdown-double-threats-to-children-during-covid-19-crisis>> accessed 21 August 2021. See also interview with Nicholas Felix Ty (n 662).

<sup>665</sup> Interview with Nicholas Felix Ty (n 662).

Congress to amend both the anti-trafficking law, as well as the anti-child pornography law. The Online Safety Bill in the **United Kingdom** is also currently pending.<sup>666</sup> The bill aims at further protecting children from online abuse and includes amendments that require online platforms to take action to prevent the creation or production of child sexual exploitation and abuse material, including livestreamed abuse.

During the pandemic, sexual exploitation in **Georgia** largely moved online, causing an increase in the complexity of investigations.<sup>667</sup> A need for national stakeholders to enhance their capacity in order to efficiently address this new challenge was highlighted in the report and, while such adjustments take time, reactions should be timely and effective. The need for additional legislation and policy action to assist Georgia to effectively address technology-facilitated human trafficking was accentuated in the 2020 report of the Organisation for Security and Co-operation in Europe's Special Representative and Coordinator for Combatting Trafficking in Human Beings,<sup>668</sup> which notes that various interlocutors acknowledged the presence of Information and Communications Technology (ICT) facilitated exploitation and the current lack of efforts to address it.<sup>669</sup>

## 2.2 Protection

### 2.2.1 Identification

During the pandemic, identification of trafficked persons became more problematic. Indeed, there was a decline observed in identification and provision of assistance due to the closure of safe migration routes, the shift of priorities (and resources) in enforcing public health measures, and the social distancing measures put in place – which effectively forced service providers to work from home or to alternate in physical locations. Restrictions caused reduced visibility of most trafficked persons, and particularly of persons trafficked for domestic servitude and trafficked persons travelling through unsafe migration routes. The number of identified trafficked persons decreased across multiple jurisdictions, including **Chile** – where official statistics show no cases of trafficking for sexual exploitation, which CSOs consider to be the result of a failure in detection, **Argentina** – where the closure of schools was reported as creating a significant barrier, because schools are a central site for the identification and detection of trafficking in persons,<sup>670</sup> and the **United Kingdom** – where the previous trend of annual growth of referrals came to an end.<sup>671</sup> The National Referral Mechanism (NRM) in the United Kingdom notably remained fully operational throughout

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<sup>666</sup> See Online Safety Bill, available at <<https://bills.parliament.uk/bills/3137>> accessed 3 May 2022.

<sup>667</sup> Interview GE1.

<sup>668</sup> Report by the OSCE Special Representative and Co-coordinator for Combatting Trafficking in Human Beings following the country visit to Georgia (2020) 2, available at <<https://www.osce.org/cthb/451561>>;

<sup>669</sup> *ibid* 6, 13.

<sup>670</sup> Interviewee AR03; Interviewee AR06. This was also identified as a concern in **Mozambique**.

<sup>671</sup> For a more detailed analysis see the Modern Slavery and Human Rights Policy and Evidence Centre Policy Brief "Impact of Covid-19 on identification of potential victims of modern slavery in the UK in 2020" (March 2021).

Covid-19, which placed it amongst only 14% of countries globally who maintained a fully operational NRM and 49% of countries who maintained a partially operational NRM.<sup>672</sup> The concerns regarding the severe delays in decision making within the NRM persist, however this issue is long-standing and pre-dated Covid.<sup>673</sup>

In **Brazil**, cuts to service provision increased difficulties in identification. In addition, labour inspections were interrupted and while the number of identified trafficked persons remained stable, experts are worried that this was the result of an actual rise in the number of overall cases (detected and undetected).<sup>674</sup> On-sight visits to monitor cases of labour exploitation were minimised in several other countries, including the **United Kingdom**, where there was a shift from on-site visits to phone inspections due to the staff not being classed as 'key workers'. A study focussing on risks of exploitation for migrant workers also revealed delays in the Gangmasters and Labour Abuse Authority (GLAA) responding to reported suspicions of modern slavery, and the detrimental impacts of the lack of government guidance in relation to appropriate responses to abuses in businesses' supply chains.<sup>675</sup> In **Armenia**, by contrast, Covid-19 related legislation had a positive impact on the work of the Health and Labour Inspection Body, as it gave it the authority to identify trafficked persons or persons at risk of being trafficked. In spite of mounting difficulties, **Argentina** has attempted to adapt its anti-trafficking efforts to the pandemic context, with local authorities adopting and implementing protocols with socially distanced and public health compliant guidance on how to identify and refer trafficked persons.<sup>676</sup>

### 2.2.2 Service provision

With respect to service provision, in **Brazil** a budget cut limited the available assistance and ended the network of services for trafficked persons,<sup>677</sup> jeopardising the livelihoods of both beneficiaries and service staff.<sup>678</sup> In the **Philippines**, there was decreased protection afforded to trafficked persons and support processes were temporarily suspended.<sup>679</sup> Non-governmental organisations (NGOs) shifted their work online, impacting negatively on personal relations: lockdowns, mask requirements, and social distancing measures are detrimental in community work where sincerity and trustworthiness are the currency to

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<sup>672</sup> OSCE / UN Women, Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic (30 July 2020) 22, available at <<https://www.osce.org/odihr/human-trafficking-COVID-19-report>>.

<sup>673</sup> NRM data for Q2 2021 show that the average number of days between a reasonable and conclusive grounds decision is currently 435 median and 535 mean days.

<sup>674</sup> Interviewee BR05.

<sup>675</sup> Nottingham Rights Lab, 'Understanding risks of exploitation for vulnerable migrant workers in the UK during Covid-19' (July 2021) 22, 34 and 37 – and summarised by Modern Slavery and Human Rights Policy and Evidence Centre Report on Impact of Covid-19 on Romanian and Bulgarian agricultural workers in Britain (July 2021).

<sup>676</sup> Interviewee AR02.

<sup>677</sup> Interviewee BR10.

<sup>678</sup> Interviewee BR05.

<sup>679</sup> Interview with Reynaline Francisco-Tan (n 663).

relationship-building.<sup>680</sup> On a positive side, the Inter-Agency Council Against Trafficking (IACAT) redirected some of the 'freed' budget previously allocated to travel towards other projects,<sup>681</sup> and in December 2020 it opened its first *Tahanan ng Inyong Pag-Asa* (TIP) Centre, a shelter and one-stop centre for trafficked persons.<sup>682</sup> Also on a positive note, an interviewee from a support organisation in the **United Kingdom** provided a poignant example of the Scottish government's positive efforts: in response to concerns of survivors facing barriers in accessing vital support, the Scottish government approved core funding for an NGO, TARA, to provide a smartphone and 12 months of unlimited data to trafficked persons.

In **Argentina**, the 'Rescue Programme' adapted its services to continue delivering support and assistance throughout the pandemic.<sup>683</sup> In addition, the state prioritised the vaccination of members of anti-trafficking initiatives,<sup>684</sup> officially recognising them as essential workers.<sup>685</sup> Furthermore, the State made genuine efforts to escalate its work and ensure adequate protection for trafficked persons along with punishment of traffickers.<sup>686</sup> Positive efforts were also undertaken in **Bahrain**, where the government created Business Continuity Plans to 'guarantee all protective services were available' to workers, enabling the continuation of grievance procedures labour lawsuits, and dispute resolution.<sup>687</sup> The government also announced a 9-month amnesty for migrant workers to regularise their residency status in the country without any fee,<sup>688</sup> and launched a donation campaign called *Feena Khair* (There is Good in Us) where \$15m (£10.83m) of proceeds was allocated to supporting the most vulnerable migrants impacted by the pandemic.<sup>689</sup> While developments have been welcomed by CSOs, interviewees argued that they were not as effective as they hoped for in slowing down the deterioration of the situation on the ground in 2020 and 2021,<sup>690</sup> and Migrant Rights reported that 'many businesses continued to [...] reduce pay by 50% [...] or stopped paying their employees altogether'.<sup>691</sup> Migrant workers were also excluded from policies which subsidised the salaries of private sector workers between

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<sup>680</sup> Interview with Aldwin Joseph Empaces (14 July 2021).

<sup>681</sup> Interview with Francis de Guzman (n 661).

<sup>682</sup> *Tahanan ng Inyong Pag-Asa* literally translates to Home of Your Hope.

<sup>683</sup> "Más de 200 Víctimas de Trata Fueron Rescatadas Durante la Cuarentena" (*Ministry of Justice and Human Rights*, 30 July 2020) <<https://www.argentina.gob.ar/noticias/mas-de-200-victimas-de-trata-fueron-rescatadas-durante-la-cuarentena>> accessed 10 October 2021.

<sup>684</sup> Interviewee AR02.

<sup>685</sup> Interviewee AR14.

<sup>686</sup> Interviewee AR03.

<sup>687</sup> LMRA (Written answers, 12 October 2021).

<sup>688</sup> LMRA, 'LMRA launches a grace period for violating workers' (3 April 2021), <<http://blog.lmra.bh/ar/2020/04/03/العمل-تطلق-فترة-سماح-للم-هيئة-تنظيم-سوق-#more-9952>> accessed 13 August 2021.

<sup>689</sup> *ibid.*

<sup>690</sup> Interviewee 1109 (Virtual, 11 September 2021).

<sup>691</sup> Migrant Rights (July 2020).

March and August 2021.<sup>692</sup> These critiques highlight the always present tension between adoption of laws and policies, on the one hand, and implementation on the other, and between formalistic and substantive political will (see 'Political Will'), not to mention the prioritisation of specific policy agendas over others.

## 2.3 Prevention

Awareness campaigns, training, and provision of information – alongside specific policies to reduce vulnerabilities related to the pandemic – have been impacted by Covid-19. Compared to prosecution and protection, in the context of prevention the negative effects of the pandemic appear to have been more limited.

Specifically in relation to awareness, the **Thailand** report underlined how the pandemic has also had a positive impact on advocacy, since counter-trafficking groups have been able to emphasise the vulnerabilities that needed attention and have increased their campaigns and advocacy for accelerated and positive actions for protection of trafficked persons. This seems to suggest that some hopes international experts had at the beginning of the pandemic, namely that Covid-19 could have been an 'eye-opener'<sup>693</sup> on certain vulnerabilities, were met – at least in certain contexts. In the **United Kingdom**, there has been significant advancement in data in certain jurisdictions. For example, £10m in public funding awarded to the Modern Slavery and Human Rights Policy and Evidence Centre in 2019 has been beneficial in enabling 11 different research projects to analyse the impact of Covid-19 on modern slavery both domestically and internationally,<sup>694</sup> demonstrating the government's political will to invest in research and data.

The pandemic also had another unintended positive effect in the field of prevention, as the digital transformation and the use of virtual gatherings have allowed the dissemination of knowledge and provision of training without physical barriers, something previously restricted by budget and 'reach' constraints. In **Chile** and in the **Philippines**, seminars were held online and reached a wider audience, exceeding original target numbers and metrics.<sup>695</sup> Similarly, in **The Bahamas** interviewees observed that prevention activities, and in particular public awareness and training-related activities, increased as a result of the pandemic as these activities could now be held online – and considerable interest was seen from State agencies, the NGO community, and the public.<sup>696</sup> In **Algeria**, while the government cancelled most workshops for officials, it held eight virtual training sessions for the judiciary, labour inspectors, and law enforcement in collaboration with the

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<sup>692</sup> 'Government to support Bahrainis' salaries in 12 sectors' (Bahrain News Agency, 22 June 2021), <<https://www.bna.bh/en/GovernmenttosupportBahrainissalariesin12sectors.aspx?cms=q8FmFJgiscL2fwlzON1%2BDn1tdiloDD36HYDywJTHJ8w%3D>> accessed 20 September 2021.

<sup>693</sup> Interview with a National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (n 638).

<sup>694</sup> Modern Slavery and Human Rights Policy and Evidence Centre, 'Impact of Covid-19 research projects', available at <<https://modernslaverypec.org/research-areas/covid-19>>.

<sup>695</sup> Interview with Francis de Guzman (n 661).

<sup>696</sup> Jason Haynes, 'Determinants of Anti-Trafficking Efforts: The Bahamas' (BIICL, 2022).

United Nations Office on Drugs and Crime (UNODC) and the International Organisation for Migration (IOM).<sup>697</sup> In **Brazil**, the pandemic facilitated efforts to train healthcare professionals to identify trafficked persons,<sup>698</sup> while in the **United Kingdom** training and awareness raising sessions were organised specifically in the food and agricultural sector.<sup>699</sup>

There have nonetheless been contexts in which the move to online training has not been as successful: in **Cyprus**, for example, police anti-trafficking training was run ineffectively, since most staff were transferred to lockdown policing.<sup>700</sup> And in **Armenia**, our research found that prevention was negatively affected: online training sessions were deemed to be ineffective, as it took more time to organise discussions and to reach operative decisions. In **Georgia**, prevention was hampered by the inability to directly communicate with groups at risk and by restrictions to proactive monitoring and awareness raising by labour inspector and mobile groups.

## 2.4 Partnerships

The case study on **Argentina** revealed that the pandemic reinforced the need for, and ensured the actual cooperation between, different federal institutions and provinces.<sup>701</sup> Partnerships were strengthened, rather than hampered, by the pandemic. Two interviewees highlighted that the pandemic reinforced the need for, and ensured actual cooperation between, different federal institutions and provinces.<sup>702</sup> Meetings organised by the Federal Council continued to be held, despite ongoing restrictions and a growing crisis, demonstrating the overall commitment to anti-trafficking efforts and the State's political will.<sup>703</sup>

At the international level, partnerships were also strengthened. In the **Philippines**, local and international partners were affected by Covid-19, but they seemed to be more dynamic in their response, moving online and adjusting programmes accordingly.<sup>704</sup> While the government was not equipped to shift operations online and many government employees did not have the means to work from home, law enforcement and other State anti-trafficking stakeholders relied heavily on aid and funding from partners, providing work necessities such as personal protective equipment to laptops and other work-from-home technological

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<sup>697</sup> United States Department of State, '2021 Trafficking in Persons Report' (2021) 82. See Ali Adenwala, Massinissa Benlakehal, and Mina Chiang, 'Determinants of Anti-Trafficking Efforts: Algeria' (BIICL, 2022).

<sup>698</sup> Interviewee BR02.

<sup>699</sup> 'Determinants of Anti-Trafficking Efforts: United Kingdom' (n 643).

<sup>700</sup> Nasia Hadjigeorgiou, Demetra Loizou, Fezile Osum, and Andrea Manoli, 'Determinants of Anti-Trafficking Efforts: Cyprus' (BIICL, 2022).

<sup>701</sup> Interviewees AR07; and AR13.

<sup>702</sup> *ibid.*

<sup>703</sup> Interviewee AR13. See also "Se Realizó la Tercera Reunión Ordinaria del Comité Ejecutivo" (*Government of Argentina*, 30 June 2020) available at <<https://www.argentina.gob.ar/noticias/se-realizo-la-tercera-reunion-ordinaria-del-comite-ejecutivo>> accessed 10 October 2021.

<sup>704</sup> Interview with Reynaline Francisco-Tan (n 663).

hardware.<sup>705</sup> In **Algeria**, the government has been reliant on international organisations to protect trafficked persons – and more broadly all ‘vulnerable’ persons – since the start of the pandemic.<sup>706</sup> For example, at the Algerian government’s request, the IOM established a one-time cash grant for vulnerable migrants who lost their income due to the pandemic.<sup>707</sup> The increased collaboration coinciding with the pandemic could be seen as a positive outcome, suggesting that the government is aware of its limitations and its need for external assistance, and is willing to partner with international organisations to improve its anti-trafficking efforts.

As in the case of prevention, some of the case studies revealed a different scenario in relation to the impact of Covid-19 on partnerships – both internally and internationally. In **Armenia**, with the main focus diverted to the pandemic, the majority of interviewed experts noted that restrictions on peoples’ gatherings played a negative role: all meetings were online, including international ones, which had limitations such as time differences and connection problems. Overall, virtual meetings were mentioned as not being as effective. In addition, the Inter-Agency Working Group (IAWG) was not working efficiently, since there have only been a handful of online meetings organised since the beginning of the pandemic. International cooperation and partnerships also came to standstill in **Cyprus**, where the cooperation between the Republic of Cyprus and Turkish Republic of Northern Cyprus (TRNC) on human trafficking was almost completely halted, following the closing of the checkpoints on the Green Line.<sup>708</sup>

## CONCLUSION

Situations of emergency and crisis such as the Covid-19 pandemic present both challenges and opportunities for law and public policy. The pandemic has been found to be both a negative and a positive determinant of anti-trafficking efforts: while in most contexts it has hindered efforts – especially with respect to protection, in others it has enabled them – especially with respect to prevention. Covid-19 has been used in many instances as a ‘shield or excuse for lack of enough actions or for inaction vis-à-vis combatting human trafficking’.<sup>709</sup> Covid-19 has also undoubtedly been, in and of itself, a determinant of anti-trafficking efforts. Most case study countries reported a reduction of resources across the 4Ps (prosecution, protection, prevention, and partnership) – and even in those countries that did not shift resources away from anti-trafficking there were significant disruptions to the implementation of anti-trafficking efforts. Yet, because determinants are inter-connected, other determinants continued to play a key role in shaping anti-trafficking efforts – including political will, economic conditions, the media, partnerships, and CSOs. Indeed, certain states were able

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<sup>705</sup> Interviews with Lilian Doris Alejo (n 650); Maria Sheila Portento (n 659); Antonette Bucasas-Mangrobang (21 July 2021); Reynaline Francisco-Tan (n 663).

<sup>706</sup> Chloe Teevan, ‘Algeria: Reforming Migration and Asylum systems in a time of Crisis’ (2020) ECDPM 6.

<sup>707</sup> *ibid* 7.

<sup>708</sup> ‘Determinants of Anti-Trafficking Efforts: Cyprus’ (n 700).

<sup>709</sup> ‘Determinants of Anti-Trafficking Efforts: Thailand’ (n 642).

to (partly) absorb negative shocks to their anti-trafficking efforts caused by the pandemic through one or more of the above determinants, and to adapt efforts to the evolving context.

## CONCLUSION

As outlined in the introduction, this report has highlighted that there is no single solution to pushing governments towards improved anti-trafficking efforts. The most promising efforts are likely to emerge when a smart mix of levers are used, at different levels, by different actors, at different times, and in different ways. Efforts must understand and be led by the local context, with international efforts being significantly influential – but more so when they too are informed by the local context and are part of a process of engagement and ‘buy in’ by governments. Given the role that such a breadth of actors can have in influencing positive change, investing in understanding of the issues at stake remains critically important.

Determinants can influence anti-trafficking efforts and they can influence one another, leading to outcomes that might themselves become determinants at different stages of a State’s anti-trafficking strategy. Determinants may vary, in relevance and role, depending on the phase of the anti-trafficking response in question. Different determinants may impact the acknowledgment of trafficking as a policy concern, whilst others will primarily influence anti-trafficking efforts’ implementation. Some will impact primarily on preventive efforts, whilst others will have a more direct influence on prosecution, protection, or partnership. Given the nature of trafficking, cutting across such a broad range of areas, levers for change will likely emerge not only from explicitly trafficking-focused measures but also from broader measures, whether linked to the protection of children, to education, to rule of law, to media freedom, or to greater representation and participation in policy making processes (to mention just a few examples).

Determinants are inter-connected, inter-dependant and non-linear. Some will be positive, others neutral, and others even negative. They can be specific, contextual, or tangential. Some are active whilst others are passive, some direct whilst others indirect. Determinants can be personal, institutional, or cultural. They are context specific, not only with regards to whether they are influential or not, but also on how they are understood and used, as well as the manner in which they exert their influence.

Different people will understand determinants differently, depending on the context and their experience. However, thinking through the various factors can support the anti-trafficking movement in exerting pressure and influence anti-trafficking efforts (and actors) in the most effective way. We hope that this report has provided one further tool in that belt for anti-trafficking stakeholders (whether they see themselves as such or not) to move things forward to ensuring that trafficking is prevented and addressed, traffickers are punished, and trafficked persons are protected.