

DISCOURAGING THE DEMAND

that fosters trafficking for the
purpose of sexual exploitation

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**Office of the Special Representative and Co-ordinator
for Combating Trafficking in Human Beings**

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The Organization for Security and Co-operation in Europe (OSCE) is a pan-European security body whose 57 participating States span the geographical area from Vancouver to Vladivostok. Recognized as a regional arrangement under Chapter VIII of the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. Its approach to security is unique in being both comprehensive and co-operative: comprehensive in that it deals with three dimensions of security – the human, the politico-military and the economic/ environmental. It therefore addresses a wide range of security-related concerns, including human rights, arms control, confidence- and security-building measures, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

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Foreword

At its core, trafficking in human beings (THB) is a financially motivated crime. The incentive to commit trafficking stems from the desire of the trafficker to make money. With the global market for the goods and services from trafficking victims generating an estimated \$150 billion each year, the question must be asked: Who is paying for these goods and services?

The answer, as uncomfortable as it may be, is society at large. We, the citizens, residents, businesses, and governments of OSCE participating States, are the consumers who, knowingly or unknowingly, fuel THB within the OSCE region. Our collective purchases of goods and services produced by or extracted from trafficked individuals create the market force that encourages traffickers to exploit women and girls, men and boys.

While demand is a core driver in all forms of THB, nowhere is it more pronounced and direct than in the case of THB for the purpose of sexual exploitation, given the lack of separation between the exploited victim and the end “user”. Users cause acute harm to victims, both by incentivizing trafficking in the first place and through the sex act itself.

The 2020 UNODC Global Trafficking in Persons Report noted that THB for the purpose of sexual exploitation accounts for 50% of all identified victims of trafficking globally. It is also the most prevalent form of THB identified within the OSCE and the most lucrative, generating annual profits of nearly \$100 billion globally.

Yet, despite the scale of the problem, the harm caused to victims, and the clear role of the user as the economic catalyst for the exploitation, the topic of demand is often missing from discussions in international fora on how to improve national responses to THB. Efforts to address and discourage demand related to trafficking for sexual exploitation remain inadequate to meet the size and nature of the challenge.



OSCE/Ghada Hazim

Since its establishment in 2003, the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) has worked to support action amongst OSCE participating States and provided policy guidance on how to prevent and tackle THB.

With this Occasional Paper, *Discouraging the demand that fosters trafficking for the purpose of sexual exploitation*, the OSR/CTHB aims to assist OSCE participating States in their efforts to discourage demand. The paper elaborates on the robust obligations and commitments stemming from international legal and political instruments, outlines the current criminal justice responses to demand, discusses methods of prevention, and offers insight and recommendations on how these measures can be improved to achieve more impact. In doing so, the paper seeks to spur increased attention to the topic of demand, as well as investment by States to proactively confront it.

I hope readers will find this publication helpful in the search for new ways of discouraging the demand that fosters trafficking for the purpose of sexual exploitation. It is only by addressing the root causes of trafficking that we can make sustainable progress toward ending it.

A handwritten signature in blue ink, appearing to read "Valiant Richey".

Valiant Richey

OSCE Special Representative and Co-ordinator
for Combating Trafficking in Human Beings

Acknowledgements

This publication has been prepared by the Office of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings under the lead of Evan Karr, Assistant Officer on Combating Trafficking in Human Beings (OSR/CTHB).

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The OSR/CTHB would also like to extend its appreciation to Trisha Baptie, founder of Exploited Voices now Education and a member of the ODIHR International Survivors of Trafficking Advisory Council, for reviewing this publication and ensuring that the voices, insights and expertise of survivors of trafficking for the purpose of sexual exploitation have been accounted for within it.

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The text of the publication has been diligently edited and proofread by Cynthia Peck-Kubaczek and designed by Milan Novicic.

Valiant Richey

OSCE Special Representative and Co-ordinator
for Combating Trafficking in Human Beings

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Acronyms

1ELU	1 Life	NATO	North Atlantic Treaty Organization
BEST	Businesses Ending Slavery and Trafficking	NGO	non-governmental organization
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	ODIHR	OSCE Office for Democratic Institutions and Human Rights
CoE	Council of Europe	OSCE	Organization for Security and Co-operation in Europe
CSO	civil society organization	OSR/ CTHB	Office of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings
CTHB	combating trafficking in human beings	TIP	trafficking in persons
ECHR	European Court of Human Rights	THB	trafficking in human beings
EU	European Union	UN	United Nations
GDPR	General Data Protection Regulation	USAID	United States Agency for International Development
ICMPD	International Centre for Migration Policy Development	UNODC	United Nations Office on Drugs and Crime
ICT	information and communication technology	UNOHCHR	United Nations Office of the High Commissioner for Human Rights
IGO	intergovernmental organization	UN SR	United Nations Special Rapporteur
ILO	International Labour Organization	VoTs	victims of trafficking in human beings
IOM	International Organization for Migration		

Glossary

of terms used in the paper

Buyer

The term “buyer” refers to a person who exchanges money, goods or services for sex or sex acts with another person.

User

The term “user” refers to an individual who exchanges money, goods or services for sex or a sex act with a trafficking victim, with or without the user’s knowledge that the other individual is a victim of trafficking. This term mirrors language in international legal instruments, as well as many national statutes, which typically refer to the “use of services” from trafficking victims.

Thus, the term “user” within this Occasional Paper is relied on when specifically discussing instances involving a trafficking victim, whereas “buyer” is used to describe persons who pay for sex in general. In this regard, “buyer” is used as an umbrella term that includes “user,” and “user” is a subset of all “buyers.”

Demand

Within the context of this Occasional Paper, “demand” refers to the desire by buyers, including users, to purchase sex and sexual services, both individually and as a collective market force.¹ Buyers, who are overwhelmingly men, thus serve as the creators of the demand that motivates trafficking.²

The critical distinction employed in this paper is that the people who purchase sex, including from trafficking victims, represent demand, whereas traffickers form part of the supply and its distribution. Traffickers do not create the market for prostitution, but rather exploit victims into prostitution as a way of profiting off the demand for paid sex.

The concept of demand articulated within this paper has previously been classified as “immediate demand” by the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and any other child sexual abuse material in a report on the sale and sexual exploitation of children, including child prostitution, child pornography and any other child sexual abuse material.³

Prostitution and Commercial Sex Industry

The term “prostitution” is used when referring to the sale of sex acts for money. This choice was made since prostitution is the only term related to this act that is found in the international instruments referred to in this Occasional Paper. The term “commercial sex industry” is used when referring to the collective market of transactions related to prostitution.

¹ See 30 December 2015, A/HRC/31/58, p. 7. This concept of demand is laid out within the context of child sexual exploitation, but the principles espoused regarding the individuals who serve as the source of demand are applicable to the sexual exploitation of any trafficking victim, whether adult or child.

² While attempts have been made by some projects to define demand more broadly to include the desire of traffickers to identify and recruit more victims, this conceptualization of demand, as well as those which seek to conflate regulating supply as discouraging demand, strains and distorts the meaning of the term. Traffickers seeking vulnerable individuals to exploit is not demand as conceived by the Palermo Protocol; it is simply the desire to traffic. A trafficker’s desire for victims is solely determined by the desire to profit off of demand, making it a secondary—and reactive—force and not the demand that fosters exploitation. See European Commission, Study on high-risk groups for trafficking in human beings, (Luxembourg: European Commission, 2015), pp. 59–61. It is the buyers and users who serve as the direct and immediate creators of demand; other factors merely enable that demand to be fulfilled.

³ See 30 December 2015, A/HRC/31/58, p. 6. The UN Special Rapporteur’s report on the sale and sexual exploitation of children, including child prostitution, child pornography, and any other child sexual abuse material, presented an overview of “demand” as it pertains to child trafficking for the purpose of sexual exploitation. While the context of demand she presents is specific, only representing one component of the demand referred to here, the classification of the buyer as immediate demand remains applicable.

Executive summary

This Occasional Paper highlights the importance of addressing the demand that fosters sexual exploitation, in particular the exploitation of the prostitution of others. It puts a spotlight on the role of demand in encouraging exploitation and causing harm to victims; outlines the scope of the international obligations and commitments of States to discourage demand; analyses the ways in which States have responded to these obligations in their criminal justice and prevention practices; and offers recommendations on how to improve national efforts.

Why Demand

The paper first discusses why States, independent of their international obligations and commitments, should undertake efforts to discourage demand.

First, countering demand serves as a means of undermining the most financially lucrative and common form of THB within OSCE participating States. The crime of trafficking for the purpose of sexual exploitation—and exploitation of prostitution in particular—is motivated by traffickers desire to earn money from men paying for sex with trafficking victims.⁴ Traffickers put trafficking victims into the prostitution marketplace and sex buyers, knowingly or unknowingly, purchase sex with these victims. Thus, while traffickers are a principal compo-

nent of the THB business model, they are a response to a more primary phenomenon: the money paid, overwhelmingly by men, for sexual services⁵ that are frequently provided by trafficking victims.⁶ This means that sex purchasers are the creators of demand that is met by traffickers:⁷ while money is paid to traffickers, it is paid by users of trafficking victims.

Second, addressing demand also serves to counter the multi-faceted harms suffered by trafficking victims: the harm of being trafficked for the purpose of sexual exploitation, the harm of non-consensual sex due to having been trafficked, and the harm of supplementary violence or force used during the prostitution transaction. This harm is also highly gendered, overwhelmingly created by men and disproportionately, though not exclusively, suffered by women and girls who account for 92% of identified victims of trafficking for sexual exploitation.⁸ It also impacts children at high rates and manifests with strong racial and ethnic biases, disproportionately subjecting minority women and girls to sexual and physical violence.⁹ By discouraging demand, these harms can be reduced and vulnerable persons protected.

International Legal Obligations and Commitments

The paper next discusses the international legal obligations and commitments of States to address demand.

4 See European Commission, *Study on high-risk groups for trafficking in human beings* (Luxembourg, European Commission, 2015), p. 7; European Commission, *Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU* (Belgium, European Commission, 2 December 2016), p. 9; European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels, European Commission, 2020); p. 8, pp. 51–52.

5 The term “services” could be interpreted to imply consent or willingness on the part of the victim. However, this Occasional Paper does not intend such an inference and uses this term due to its prevalence in international statutes. Notably, the 2002 Porto Ministerial Council Declaration on Trafficking in Human Beings uses the term “activities”, which might be worthy of consideration for use in future instruments.

6 See Alexis A. Aronowitz and Anneke Koning, “Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation” (*International Review of Penal Law* 85, 2014), p. 676.

7 See *ibid.*, p. 674. The demand produced by clients (referred to as “users” in this Occasional Paper) is seen as being primary demand.

8 See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 36.

9 As noted by the UNOHCHR, the “demand for prostitution (often supplied through trafficking) may reflect discriminatory attitudes and beliefs based on both race and gender”. See UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: UNOHCHR, 2010), p. 101.

All OSCE participating States are politically or legally obligated to discourage the demand that fosters trafficking for the purpose of sexual exploitation, either through their adoption of OSCE decisions or by virtue of being a State party to the Palermo Protocol.

Other international obligations, such as the Council of Europe Convention on Trafficking in Human Beings, reinforce these commitments for many OSCE participating States.

Under the international framework on demand States are required to take measures to “discourage the demand that fosters all forms of exploitation of persons... that leads to trafficking”. In referring to the demand that “fosters exploitation” that “leads to trafficking”, this agreed-upon language establishes a concept of demand that moves beyond only the “demand for trafficking” or the “demand for sexual exploitation,” to address demand that encourages exploitation that in turn leads to trafficking. This creates an obligation to discourage demand that extends beyond the knowing use of trafficking victims to any act that encourages exploitation of the prostitution of others.

Criminal Justice Responses

Next, the paper explores how OSCE participating States have responded to demand, beginning with criminal justice measures. OSCE participating States have developed a variety of criminal justice responses to demand over the years, including criminalizing the knowing use of a victim of trafficking (VoT) or criminalizing the purchase of sexual services generally.

However, adoption and implementation of such measures is limited. Criminal justice measures that expressly target demand¹⁰ could not be identified in 25 OSCE participating States. In States that do have demand-focused criminal justice measures, the policy responses often have significant shortcomings that impede their usefulness. Implementation also suffers from lack of training and expertise, insufficient human and financial resources, limited political will and op-

¹⁰ As outlined below in chapter 3, this is specific to provisions that penalize individuals for knowingly buying sex with adult trafficking victims, buying sex with adult trafficking victims, or buying sex.

erational challenges.¹¹ In short, even in systems where criminalization does exist, “there is limited prosecutorial activity as well as limited knowledge of the scope or importance of the offence.”¹²

Methods of Prevention

Innovative and impactful prevention initiatives have been developed in some OSCE participating States. Adoption and implementation across the OSCE region is, however, limited: prevention initiatives to discourage demand were identified in approximately half (27) of the OSCE participating States.

Awareness-raising campaigns represent the most common method of prevention employed by OSCE participating States. More active and targeted measures of preventing demand, including engaging with users through methods of **disruption or deterrence**, have shown significant promise yet were identified in only a handful of OSCE participating States.

Civil society organizations (CSOs) were responsible for organizing over 55% of the initiatives identified by the OSR/CTHB, often with some government funding. State-led initiatives were less prevalent. Although all OSCE participating States are required to take steps to discourage demand that fosters exploitation, a significant decrease in prevention activities was noted in States with legalized or decriminalized prostitution. Public awareness campaigns were identified in only two States without laws directly criminalizing buyers or users.

Conclusions and Recommendations

Finally, the paper draws conclusions from the preceding sections and offers recommendations for enhancing national action. OSCE participating States have the obligation to enhance their anti-trafficking responses by undertaking efforts to discourage the demand that fosters exploitation that leads to trafficking. This obligation also represents an opportunity given that in most States efforts to address demand have

¹¹ See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.24.

¹² See *ibid.*, paragraph 19.21.

been limited and in 19 OSCE participating States, no measures to discourage demand, legislative or otherwise, were identified. Where demand-oriented initiatives exist, they are often fragmented and sporadic.

First and foremost, in order to protect victims, OSCE participating States are recommended to fully implement their legal obligations and political commitments to discourage demand.

To achieve maximum impact, States are encouraged to incorporate strategies to address demand in their national action plan that provide for consistent implementation of a broad range of measures. Particular attention should be paid to developing holistic approaches that encompass a variety of complementary interventions and that account for the broad concept of demand articulated within the Palermo Protocol—the demand that fosters exploitation which leads to trafficking.

States have broad discretion to decide the specific means of responding to demand but must adopt or strengthen measures to address demand. Criminal justice measures are one possible response and, properly conceived, can be useful

tools to discourage demand. States should evaluate their current legislative measures for their ability to impact the scale and harms of demand that fosters exploitation, as well as to account for the complex realities of the marketplace. An emphasis should be placed on implementation, with additional investment in specialized training for law enforcement, prosecutors and judges.

Prevention initiatives targeting demand are the most promising, untapped resource for participating States to address demand. In particular, States are encouraged to take the lead on prevention initiatives and to move beyond generic awareness campaigns toward more targeted and impactful forms of prevention such as deterrence and disruption initiatives. The online marketplace, which now represents a key medium in purchases of sexual services with VoTs, requires urgent attention from a policy and operational perspective. Wider use of educational initiatives, in particular those targeting youth and adolescents as well as potential perpetrators and bystanders, is also encouraged since such tools offer a pathway toward altering harmful gender norms on a larger scale. Importantly, States are encouraged to implement prevention measures consistently to achieve impact over time.

Introduction

The exchange of money for sex and sexual services with trafficking victims presents a huge economic incentive for the exploitation of victims. The crime of trafficking for the purpose of sexual exploitation—and exploitation of prostitution in particular—is motivated by traffickers' awareness that they will be able to earn money from men paying for sexual services with trafficking victims.¹³

This is an extremely lucrative calculation, since the purchase of sex from trafficking victims occurs millions of times a year; it is estimated that nearly \$100 billion is generated annually by trafficking for the purpose of sexual exploitation.¹⁴

To put the size of this illicit market—and the massive financial incentive it creates—into perspective, the profits generated from trafficking for sexual exploitation each year are nearly double the profit made by Apple Inc. in 2019. It is enough to make trafficking for the purpose of sexual exploitation more profitable than any corporation worldwide.¹⁵

Numerous international instruments require countries to take action to discourage demand as a core strategy to combat trafficking in human beings. The most broadly adopted example—Article 9 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)—requires all parties to the Protocol to take steps to discourage demand. However, in the twenty years since the signing of the Protocol, most States have placed relatively little attention on

¹³ See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 674.

¹⁴ See ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 20 May 2014), p. 13.

¹⁵ See Statista, "The leading companies in the world in 2019, by net income." [website] (Statista). Available at: <https://www.statista.com/statistics/269857/most-profitable-companies-worldwide/> (accessed 4 February 2021).

discouraging the demand that fosters trafficking for the purpose of sexual exploitation.

In light of the fact that no country has defeated trafficking, the numerous harms caused by demand, and the promising results of initiatives against demand in the area of trafficking for the purpose of labour exploitation, robust attention to the demand that fosters trafficking for the purpose of sexual exploitation stands out as a significant, untapped means for achieving lasting impact. This paper reviews international legal obligations and political commitments relating to demand, discusses the policy options that OSCE participating States have to discourage demand, and makes recommendations on how countries can incorporate anti-demand efforts into their anti-trafficking strategies.

Background to the Paper

The foundation for this paper lies in the legal obligations contained in the Palermo Protocol; the 2005 Council of Europe Convention on Trafficking in Human Beings¹⁶; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹⁷; the 1979 Convention on the Elimination of All Forms of Discrimination against Women¹⁸; as well as a number of political commitments made by the OSCE participating States in the OSCE Action Plan to Combat Trafficking in Human Beings, its Addendum

¹⁶ See Council of Europe, *Convention on Action Against Trafficking in Human Beings*, (Warsaw: Council of Europe, 16 May 2005). Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d> (accessed 5 April 2021).

¹⁷ See Council of the European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 2011*, (Brussels: European Union, 5 April 2011). Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX-3A32011L0036> (accessed 5 April 2021).

¹⁸ See United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (New York: United Nations, 18 December 1979). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> (accessed 5 April 2021).

and Ministerial Council Decisions that emphasize the need to discourage the demand that fosters all forms of THB.¹⁹

The impetus for the paper stems from historically limited action by participating States in meeting those obligations and commitments; calls for action at the international and national levels on discouraging demand, particularly as it relates to trafficking for sexual exploitation; and requests for assistance from States in how to meet their obligations and commitments.

For example, in September 2018, at the OSCE/Office of Democratic Institutions and Human Rights (ODIHR) Human Dimension Implementation Meeting in Warsaw, Poland, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) and ODIHR co-hosted an event on the gender dynamics of THB during which several experts called for additional action by States and civil society on countering demand. In March 2019, on the margins of the Committee on the Status of Women at the United Nations (UN) in New York, the OSR/CTHB co-hosted an event with ODIHR, UNODC and Equality Now, a US-based NGO, entitled Preventing the Trafficking of Women and Girls for Sexual Exploitation: Understanding States' Obligations to Address Demand under the Palermo Protocol. The event called attention to the extensive obligations of States to address demand including those contained within the Palermo Protocol and raised the need for additional action by States to address the issue in order to meet Sustainable Development Goals' targets 5.2, 8.7, and 16.2.

During the 2020 Alliance Against Trafficking in Persons Conference hosted by OSR/CTHB, interventions by numerous OSCE participating States also highlighted the need for additional attention on addressing demand, as did presentations by expert panellists, international organizations and civil society, reaffirming the importance of countering demand as a root cause of trafficking. These interventions were reiterated during the side event Addressing Emerging Challenges to Combating Trafficking in Human Beings (THB), Especially of Women and Children, held during the 27th OSCE Ministerial Council on 3 December 2020 and by the OSCE Swedish Chairpersonship during the launch of the ODIHR International Survivors of Trafficking Advisory Council on 25 January 2021.

A recently conducted study on gender sensitive approaches by OSR/CTHB also found that the vast majority of respondents (90%) believe that addressing the demand for forced labour or sexual exploitation was very or extremely important to ending THB.²⁰

In addition to these events and initiatives, in recent years the OSR/CTHB engaged in numerous conversations with national officials and experts in OSCE participating States in the context of official visits, as well as meetings with anti-trafficking focal points across OSCE executive structures and field operations, that highlighted a lack of action on demand as it pertains to trafficking for the purpose of sexual exploitation, limited development of new initiatives to discourage demand, and a desire on the part of States for support in launching such efforts. In addition, States have bilaterally conveyed to the OSR/CTHB their wish to receive guidance on what actions could be taken to counter demand within their respective national contexts.

In response to these events and discussions, the OSR/CTHB launched a research project leading to this Occasional Paper.

Purpose

The primary purpose of this Occasional Paper is to support and enhance the implementation of national responses to demand, in line with international obligations and commitments.

To achieve this, the paper raises awareness of the international obligations and commitments of States to discourage and reduce the demand that fosters exploitation that leads to trafficking for the purpose of sexual exploitation. Additionally, it discusses and analyses the policy options that States have to counter demand, presents examples of measures some States in the OSCE region have taken to address demand, and formulates a series of recommendations for participating States to take action.

This paper should therefore be read as a reference document on addressing demand as a strategy to help end trafficking for the purpose of sexual exploitation, in particular exploitation of the prostitution of others.

¹⁹ The OSCE and its instruments use the terminology "trafficking in human beings", while the United Nations and its instruments uses the terminology "trafficking in persons". For the purposes of this publication, the terms are synonymous.

²⁰ See OSCE, Applying gender-sensitive approaches in combating trafficking in human beings (Vienna: OSCE, May 2021), p. 29.

Scope of the Paper

The paper addresses demand relating to trafficking for the purpose of sexual exploitation, in particular exploitation of the prostitution of others; for several reasons, the paper does not discuss demand relating to other forms of trafficking, for example trafficking for forced labour.

First, there is a clear distinction in the Palermo Protocol between trafficking for the purpose of sexual exploitation and other forms of trafficking.²¹ Second, trafficking for sexual exploitation is the most identified form of trafficking in the OSCE region and requires urgent attention. Third, there are significant differences between demand relating to trafficking for sexual exploitation and other forms of exploitation. For example, in the context of forced labour, the end user is often many degrees separated from the trafficking victim, whereas in the context of sexual exploitation, the end user is in direct and intimate contact with the victim. And finally, the demand that fosters trafficking for the purpose of forced labour—the second most prevalent form of trafficking in the OSCE region—is addressed by other publications that have been produced by OSR/CTHB, in particular the various publications on preventing trafficking in human beings in supply chains.²²

In discussing trafficking for the purpose of sexual exploitation, this paper addresses trafficking for the purpose of exploitation of the prostitution of others; it does not address other forms of sexual exploitation. “Exploitation of the prostitution of others” is the only specific and mandatory example of sexual exploitation identified in the Protocol.²³ It is also the only specific form of THB mentioned in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, which calls on State parties to suppress the “exploitation of prostitution of women”.²⁴

This paper does not seek to express an opinion on the selling of sex (or “prostitution”) per se, or on its legality or illegality; this is a policy decision that the Palermo Protocol leaves to States. Instead, the paper notes that discouraging the demand that fosters all forms of exploitation of persons that lead to trafficking is an affirmative obligation within the

²¹ As set forth in Article 3 of the Palermo Protocol, “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

²² The OSCE OSR/CTHB maintains a portfolio of work being conducted to combat human trafficking for forced labour within supply chains. The publications on this topic, such as the OSCE Model Guidelines and Compendium of Reference Materials, are available at: <https://www.osce.org/cthb/supply-chains>

²³ See UNODC, *Issue Paper The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol* (Vienna: UNODC, 2015), p. 28.

²⁴ See United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (New York: 18 December 1979), Article 6.

Protocol and a commitment made by all OSCE participating States. Thus, this obligation applies irrespective of a State’s policy toward or legal framework governing the selling of sex.

However, the OSR/CTHB does avail itself of this opportunity to remind participating States of the importance of upholding the non-punishment principle and the need to not punish trafficking victims for their involvement in illegal activities which are a direct consequence of their situation as trafficked persons.²⁵ The OSR/CTHB also highlights the need to more broadly uphold the rights of trafficked persons, including access to support services and compensation.

Finally, while the paper cites national examples and references promising practices from OSCE participating States, it does not seek to measure the impact of specific national activities related to discouraging demand. The paper does however recommend that States invest in more study, research and evaluation of demand, and potential responses to it.

Methodology

In early 2020, the OSR/CTHB conducted preliminary research into the extent and scope of the international obligations and commitments related to demand. It identified the relevant international legal instruments, as well as national legislation and statutes within OSCE participating States. During this process, the statutory frameworks of all 57 OSCE participating States were reviewed for laws that can be used to discourage the demand that fosters trafficking for the purpose of sexual exploitation. Following this collection of statutory information, the OSR/CTHB conducted a review of primary legal texts from the OSCE, UN, Council of Europe (CoE), the European Union and selected OSCE participating States, to ascertain what can be considered the international obligations and commitments by States to discourage demand, as well as the different methods available to do so within national legislation. This legal analysis, and the corresponding research conducted by the OSR/CTHB, was then elaborated upon through in-house expertise and peer reviewed by several international experts and academics prior to publication.

Information, including statistical data, was also solicited from national governments, international organizations, and civil society organizations.

The OSR/CTHB collected data from civil society organizations (CSOs) within OSCE participating States and from CTHB focal points at OSCE Field Operations on current or past methods

²⁵ For more information on the non-punishment principle and its enshrinement in international law, see OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, (Vienna: OSCE, 25 June 2013).

used at the national and local level to discourage the demand that fosters trafficking for the purpose of sexual exploitation.

During its identification and collection of measures, the OSR/CTHB sought and received additional submissions on the topic from anti-trafficking practitioners in Bulgaria, Greece, the Netherlands, Serbia and Slovenia, as well as from the CoE and the CSO ECPAT, an organization focused on ending the sexual exploitation of children. It also collected and collated information received during recent country visits by the Special Representative to Austria, Croatia, Finland, Georgia, Ireland and Romania, where the topic of combating the demand that fosters exploitation that leads to trafficking for sexual exploitation was discussed.

In addition to the submissions received from the stakeholders mentioned above, the OSR/CTHB identified activities to discourage the demand that fosters trafficking for the purpose of sexual exploitation through a substantial literature review of existing materials on the topic, including publications and studies from various international stakeholders, organizations and experts, as well as online searches in both English and Russian. The relevant publications consulted are listed in the bibliography below.

The statistics presented in this report on existing demand-focused initiatives are based on an analysis of these materials. The OSR/CTHB does not believe that it has collected every demand initiative within the OSCE region, but it does believe that its research provides an accurate representation of current efforts.

Structure of the Paper

Chapter 1 outlines some of the strategic reasons why participating States should address demand. It explains the centrality of the issue of demand to the problem of THB for sexual exploitation, illustrating its role as the primary root cause of, and motivation for, trafficking.

Chapter 2 presents the long-standing international obligations and commitments that OSCE participating States have to address the demand that fosters trafficking for sexual exploitation, and discusses the extent of these obligations and commitments.

To help participating States to understand how to fulfil these obligations, this paper subsequently examines current methods of addressing demand through criminal justice systems (**Chapter 3**), and prevention measures (**Chapter 4**) employed within the OSCE region to raise awareness, and disrupt and deter demand.

Finally, the paper presents conclusions (**Chapter 5**) and recommendations (**Chapter 6**) for participating States to meet their international obligations and commitments to discourage the demand that fosters trafficking for sexual exploitation.

1



Chapter 1: Why Demand

In addition to the legal obligations and political commitments on discouraging demand that are incumbent upon OSCE participating States and the primary focus of this paper, there are several reasons why the demand that fosters trafficking for the purpose of sexual exploitation should be prioritized by States in their anti-trafficking efforts.

Countering the financial motivations of the most lucrative form of trafficking

As already noted, THB is a financially motivated crime.²⁶ Trafficking for the purpose of sexual exploitation is the dominant form of THB within the OSCE region,²⁷ accounting for the largest number of detected victims throughout the OSCE. It is also the most financially lucrative form of trafficking globally, generating \$99 billion in profit every year, roughly two-thirds of all money made from the many forms of trafficking.²⁸ By way of illustration, at an average of \$100 per transaction,²⁹ this translates to roughly one billion instances of sexual exploitation with trafficking victims each year. In other words,

26 See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 678.

27 See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 35. Trafficking for the purpose of sexual exploitation is the most commonly identified form of trafficking in three of the four regions of the OSCE's participating States.

28 See ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 20 May 2014), p. 13.

29 Studies vary regarding the average cost of a prostitution transaction, with some ranging from as low as \$30 to others over \$200. This figure by the OSR/CTHB takes into account these varied estimates to illustrate the number of transactions necessary to create such large profits. See Demand Abolition, "Who Buys Sex? Understanding and Disruption Illicit Market Demand", [website] (Demand Abolition, March 2019). Available at: <https://www.demandabolition.org/wp-content/uploads/2019/07/Demand-Buyer-Report-July-2019.pdf> (accessed 6 October 2020), p. 4; see also Stef Adriaenssens, Jef Hendrickx, Thomas Machiels and Wim Heylen, *A direct measure of output in prostitution in Belgium*, (Leuven: Catholic University of Leuven, 2015), p. 17., which lists the average price of a window prostitution transaction in Belgium at Euro 66.59; in Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 678, the average price of intercourse in Toronto, Canada was found to be between 80 and 150 Canadian dollars.

transactions for sex with trafficking victims are widespread within the commercial sex industry. Moreover, the upward trend of profits generated from trafficking for sexual exploitation—from \$32 billion in 2005 to \$99 billion in 2014—indicates that efforts to curb the financial incentive of trafficking for sexual exploitation have not yet been successful.³⁰

Given the ease and frequency with which trafficking victims are inserted into the commercial sex marketplace and the general unwillingness or inability of sex purchasers to avoid victims of trafficking,³¹ demand for sexual services is the financial motivation for trafficking for the purpose of sexual exploitation and thus represents its primary root cause.³² While traffickers are a principal component of the THB business model, they are a response to a more primary phenomenon: the money paid, overwhelmingly by men, for services that can be provided by trafficking victims.³³ In the context of trafficking for sexual exploitation, sex purchasers serve as the creators of demand,³⁴ with the result that persons—mostly women and girls, who account for 92% of identified trafficking victims³⁵—are trafficked for the purpose of sexual

30 See ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 20 May 2014), p. 13; and ILO, *A Global Alliance against Forced Labour* (Geneva: ILO, 2005).

31 See Immigrant Council of Ireland, *Comparative Report: Disrupt Demand*, (Dublin: Immigrant Council of Ireland, 2018), p. 19.

32 See European Commission, *Study on high-risk groups for trafficking in human beings* (Luxembourg: European Commission, 2015), p. 7; European Commission, *Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU* (Brussels: European Commission, 2 December 2016), p. 9; European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020): p. 8, pp. 51–52.

33 See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 678.

34 See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 674.

35 See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 36. This data also indicates that there are a substantial number of victims of sexual exploitation who are not female or do not identify as female, a figure that is likely significantly under-counted due to prevailing views of those trafficked for sexual exploitation.

exploitation.³⁶ In other words, while the \$99 billion is paid **to** traffickers, it is paid **by** users.

Since the purchase of sex—which traffickers have learned can be readily met with trafficking victims—represents such a large financial incentive for individuals to engage in trafficking, traffickers will seek to continue their exploitative practices unless the financial juggernaut of demand is reduced. Discouraging demand is therefore central to ending the financial motivations that drive the most identified form of THB within OSCE participating States.³⁷

Countering the harm to trafficking victims

The importance of countering demand is not only crucial to curbing the financial motivations of trafficking, but also to undermining the physical and psychological harms suffered by trafficking victims.

At the most basic level, demand serves as the cause of the harm inflicted by traffickers onto victims, because as the financial motivator for the trafficker, it is what incites trafficking to occur in the first place. Trafficking, by definition,³⁸ involves a coercive means—force, deception, threats, abuse of a position of vulnerability, etc. Thus, buyers, by motivating traffickers to traffic, are responsible for the harm of the trafficking itself.

Moreover, by being in direct and intimate contact with victims,³⁹ which distinguishes trafficking for the purpose of sexual exploitation from other forms of trafficking, the user also serves as a direct source of harm for trafficking victims. This aspect of commercial sexual exploitation has been highlighted by survivors of trafficking.⁴⁰

³⁶ See 7 August 2020, A/75/289, paragraph 13.

³⁷ See Niklas Jakobsson and Andreas Kotsadam, *The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation* (Gothenburg: University of Gothenburg, May 2013); U.S. Agency for International Development, *Tackling the demand that fosters human trafficking: Final Report*, (Washington, D.C.: USAID, August 2011), p. iv.

³⁸ The Palermo Protocol defines trafficking as follows: (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) “Child” shall mean any person under eighteen years of age.

³⁹ See 18 March 2013, A/HRC/23/48, paragraph 17.

⁴⁰ See, e.g., Shandra Woworuntu, “Shandra Woworuntu: My Life as a sex-trafficking victim” [website] (BBC, 30 March 2016). Available at: <https://www.bbc.com/news/magazine-35846207> (accessed 6 October 2020).

The first reason for this is that traffickers override a victim’s will through coercion, force, abuse of power or vulnerability or other means, thereby rendering subsequent “consent” to sex acts meaningless. Indeed, under the Protocol, the “consent” of a victim to exploitation is irrelevant precisely because of the trafficker’s acts and means.⁴¹ **Thus, the user is paying to have sex with a person who, under international law, did not voluntarily enter the transaction.** In this regard, purchasing sex with a trafficking victim for money is tantamount to sex without consent, or rape. In this respect, the purchase of sex with a trafficking victim not only fosters exploitation, it is exploitation.

The second reason users are directly responsible for harm to trafficking victims is that users often supplement non-consensual sex, or rape,⁴² with other acts of violence that are additionally and separately harmful (or fatal) to trafficking victims. The most common perpetrator of violence against women in prostitution is the sex buyer (67% of respondents in prostitution report violence from unfamiliar buyers, 7% of respondents note violence from regular buyers, and 5% from pimps or bosses).⁴³ Moreover, women trafficked for the purpose of exploitation of prostitution have been found to experience even greater violence, including sexual violence.⁴⁴ For example, a 2014 study on violence experienced by sex trafficking victims identified that 95.1% of victims had experienced some form of physical violence, and 81.6% had experienced forced sex.⁴⁵ The higher rates of violence extend to homicide as well: women trafficked into street prostitution are much more likely to be murdered than other women, and even other trafficked persons.⁴⁶

⁴¹ This is set out in Article 3, subparagraph B of the Palermo Protocol. Specifically: “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”.

⁴² In some OSCE participating States, there is a distinction between non-consensual sex (i.e., sexual abuse) and rape, with rape requiring the use of force, intimidation or violence. See “Is non-consensual sex rape? Most European countries say ‘no’” [website] (Euronews.com, 19 July 2018). Available at: <https://www.euronews.com/2018/05/02/is-non-consensual-sex-rape-most-european-countries-say-no-> (accessed 1 December 2020).

⁴³ See Ulla Bjørndahl, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to* (Oslo: Sexual Violence Research Initiative, 2012), p 14.

⁴⁴ See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), pp. 34–36; Stian Oram, Heidi Stöckl, Joanna Busza, Louise Howard and Cathy Zimmerman, “Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems Associated with Human Trafficking: Systematic Review” (*PLOS Medicine* 9/5, 2012). Available at: <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001224> (accessed 5 April 2021).

⁴⁵ Other instances of violence, such as being forced to have unprotected sex, being threatened with a weapon, strangled, beaten or kicked, have also been documented. See Laura Lederer and Christopher Wetzel, “The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities” (*Annals of Health Law* 23, 2014). Available at: <https://www.icmec.org/wp-content/uploads/2015/10/Health-Consequences-of-Sex-Trafficking-and-Implications-for-Identifying-Victims-Lederer.pdf> (accessed 6 October 2020).

⁴⁶ See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), pp. 34–36.

Countering gender- and age-based violence in the context of trafficking for the purpose of sexual exploitation

Trafficking for the purpose of sexual exploitation is also a highly gendered crime, in that the average trafficking victim and user of services typically have distinct gender characteristics. To begin with, persons who are identified as victims of this crime are overwhelmingly women and girls.⁴⁷ According to the European Commission, 95% of registered victims of THB for the purpose of sexual exploitation within the EU are women and girls.⁴⁸ Similarly, as noted above, UNODC data indicate that women and girls represent 92% of identified victims of sex trafficking worldwide.⁴⁹

While all genders can become victims of trafficking (VoTs) for the purpose of sexual exploitation, women and girls are disproportionately represented, and this gender dynamic is inverted when it comes to users of trafficking victims: users are almost exclusively men.⁵⁰ Thus, the use of services from a trafficking victim in the context of trafficking for sexual exploitation is a heavily gendered act of sexual and physical violence predominantly perpetrated by men against women and girls.⁵¹

These gender dynamics are often compounded or exacerbated by intersectional issues such as race (discussed below) and within a variety of contexts, including, for example, conflict related or post-conflict related scenarios, as was reported by the 38th CEDAW General Recommendation:

Trafficking in women and girls is exacerbated during and after conflict and humanitarian emergencies owing to displacement, the breakdown of political, economic and social structures, instability and insufficient governance, including the absence of the rule of law, increased militarism, the availability of small arms, weakening or loosening community and family ties, high incidence of widowhood and the “normalization” of gender-based violence, including conflict-related sexual violence, as an aggravating factor of pre-existing structural gender discrimination against women and girls.⁵²

The passage above highlights a second, related dimension of who is victimized for the purpose of sexual exploitation: children. Numerous studies have documented the sexual exploitation of boys and girls in prostitution; recent reports confirm that the problem is not abating: UNODC's Global Report on Trafficking in Persons 2020 concluded that approximately one-third of all identified victims are children and that the number of child victims has tripled in the last 15 years.⁵³ Moreover, reports have noted that child victims, like adult victims, are exploited into the prostitution marketplace through brothels, sex clubs and red light districts, as well as via online advertisements for sexual services.⁵⁴ In short, the demand that fosters exploitation that leads to trafficking incentivizes the exploitation of both adults and children, who are victimized in the same venues and by the same modus operandi.

Countering demand that fosters trafficking for sexual exploitation can thus help combat gender-based violence and serve an important norm-setting function.

Countering race-based and ethnic discrimination and abuse of trafficking victims

As well as being a highly gendered act, trafficking for the purpose of sexual exploitation has strong racial and ethnic undertones, disproportionately subjecting minority women and girls to sexual and physical violence by men.⁵⁵ For instance, in the United States between 2008 and 2010, the last period for which such data was published, 40% of identified VoTs for the purpose of sexual exploitation were Black compared with

47 See Mary Burke, Barbara Amaya, and Kelly Dillon, "Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications". In: Winterdyk J., Jones J. (eds.) *The Palgrave International Handbook of Human Trafficking*, (Palgrave Macmillan, 2020), p. 464; Mary Honeyball. *Report on Sexual Exploitation and Prostitution and Its Impact on Gender Equality* (Brussels: European Parliament, Committee on Women's Rights and Gender Equality, 2014), p. 15.

48 See European Commission, "Trafficking for sexual exploitation: a gendered crime", [website] (European Commission, 17 October 2018). Available at: https://ec.europa.eu/anti-trafficking/publications/trafficking-for-sexual-exploitation-a-gendered-crime_en (accessed 6 October 2020).

49 See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 36. This data also indicates that there are a substantial number of victims of sexual exploitation who are not female or do not identify as female, a figure that is likely significantly under-counted. The existence of men and boys as victims of trafficking for the purpose of sexual exploitation should not be overlooked, as the UNODC global data indicates that amongst detected male victims of trafficking, 17% of the men and 23% of the boys had been trafficked for sexual exploitation.

50 See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), pp. 34–39, 136; 20 February 2006, E/CN.4/2006/62, paragraph 63: "Buying sex is a particularly gendered act. It is something men do as men." The OSR/CTHB has not identified any data identifying women as a statistically significant segment of users.

51 See Mary Burke, Barbara Amaya and Kelly Dillon, "Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications". In: Winterdyk J., Jones J. (eds.), *The Palgrave International Handbook of Human Trafficking*, (Palgrave Macmillan, 2020), p. 464.

52 See 6 November 2020, CEDAW/C/GC/38, paragraph 34.

53 See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 16, Figure 8 and p. 31.

54 See Europol, *Criminal networks involved in the trafficking and exploitation of underage victims in the European Union* (The Hague: Europol, 18 October 2018), p. 7.

55 As noted by the UNOHCHR, the "demand for prostitution (often supplied through trafficking) may reflect discriminatory attitudes and beliefs based on both race and gender". See UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: UNOHCHR, 2010), p. 101.

13% of the general population, while only 26% of identified victims were White compared with 78.4% of the population.⁵⁶

⁵⁷ While this demonstrates the significant overrepresentation of specific minorities among VoTs, a 2012 study of online sex buyers within the United States found that 85% of buyers are White, highlighting the clear racial disparities between buyers and victims.⁵⁸

This disproportionality has played out at the local level in the United States as well: in one metropolitan county—King County, Washington—between 2011 and 2019, identified child victims of trafficking were 44% Black compared to 6.2% of the population, and 38% White compared to 68.7% of the population. Meanwhile, men arrested for buying or attempting to buy sex from minors were 72% White compared with 68.7% of the population.⁵⁹

Similar disproportionate impacts relating to race and ethnicity have been witnessed in other participating States, where women are often trafficked into prostitution from abroad. For example, data reported to the UNODC by the Danish Centre against Human Trafficking shows that of the 371 victims identified in Denmark from 2014 to 2017, 308 came from countries outside of Europe, including 235 from Nigeria, while no Danish victims were identified.⁶⁰ Although the nationality of victims was not broken down by type of exploitation, 304 of the identified victims were trafficked for the purpose of sexual exploitation.⁶¹ In contrast, 90.7% of the population of Denmark are Danish citizens.⁶²

This racial element demonstrates another aspect of the power dynamics present in the crime, where men exploit specific vulnerable populations, including minorities and migrants. The harm that demand perpetuates amongst vulnerable communities represents another reason for discouraging the behaviour.

An untapped resource in the fight against trafficking

Finally, demand that fosters trafficking for the exploitation of prostitution should be prioritized by States because efforts to end trafficking without addressing demand have been unsuccessful. Although States have made progress in the implementation of measures in the two decades since the Palermo Protocol was adopted, including in raising awareness, criminalizing THB and establishing victim identification assistance protocols, THB has not been defeated or even abated.

As noted above, the estimated annual profits from trafficking for sexual exploitation tripled between 2005 and 2014. The estimated number of victims remains many times greater than the number of identified victims, and the number of identified victims far out-paces the number of prosecuted and convicted traffickers, suggesting that efforts to curb trafficking by prosecuting traffickers alone cannot keep up with the scale of the problem.⁶³

Moreover, prosecution and protection efforts are largely reactive—trafficking must occur (or at least be attempted) before a person can be prosecuted or a victim can be identified. While prosecution and protection are fundamental to the anti-trafficking response, and are core components of the Palermo Protocol's 3 P approach, there also exists a clear need for additional investment in methods of prevention that can reduce the inflow of trafficking victims.⁶⁴ Demand reduction is one such strategy to combat trafficking.⁶⁵

Building on this strategic rationale for States to discourage demand, the next chapter will outline the international legal obligations and political commitments that require States to incorporate the discouragement of demand into their anti-trafficking response.

⁵⁶ U.S. Department of Justice, *Characteristics of Suspected Human Trafficking Incidents, 2008–2010* (Washington, D.C.: U.S. Department of Justice, April 2011), Table 5.

⁵⁷ U.S. Census Bureau, *Summary of Modified Race and Census 2010 Race Distributions for the United States*, (Washington, D.C.: U.S. Census Bureau, 1 April 2010).

⁵⁸ Christine Milrod and Martin A. Monto, *The Hobbyist and the Girlfriend Experience: Behaviors and Preferences of Male Customers of Internet Sexual Service Providers*, (Deviant Behavior, Volume 33, 2012), p. 799. Available at: <http://dx.doi.org/10.1080/01639625.2012.707502> (accessed 26 January 2021).

⁵⁹ Data from King County Prosecuting Attorney's Office.

⁶⁰ See UNODC, *Global Report on Trafficking in Persons 2018 Country Profiles: Western and Southern Europe* (Vienna: UNODC, December 2018), p. 17.

⁶¹ See ibid.

⁶² See Statistics Denmark, "Population 1. January by time and citizenship", [website] (Statistics Denmark). Available at: <https://www.statbank.dk/statbank5a/SelectVarVal/saveselections.asp> (accessed 17 March 2021).

⁶³ See U.S. Department of State, *Trafficking in Persons Report 20th Edition* (Washington, D.C.: U.S. Department of State, June 2020), p. 43. The 2020 Trafficking in Persons report released by the U.S. State Department estimated that despite nearly 25 million people currently trafficked worldwide, in 2019 only 11,841 victims were identified, and only 9,548 traffickers were convicted.

⁶⁴ Indeed, reports have suggested that some criminal justice policies may actually provide cover to traffickers. See Europol, *Trafficking in Human Beings in the EU*, (The Hague: Europol, 2016), p. 12.

⁶⁵ Demand has been raised as an important component of prevention in numerous international texts. See UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: UNOHCHR, 2010), pp.99–100, footnotes 175 and 176.

2



Chapter 2: International Legal and Policy Framework on Demand

By virtue of international legal obligation or political commitment, all OSCE participating States are required to take steps to discourage demand. A number of international instruments from the United Nations (UN), the OSCE, the Council of Europe, and the EU form a robust framework mandating action.

The most comprehensive legal obligation to discourage demand stems from the Palermo Protocol: almost all OSCE participating States are required to take measures to discourage demand based solely on being parties to the Protocol.

As the preeminent international agreement on combating THB, it establishes a benchmark for other international instruments that address trafficking and is legally binding. The Protocol provides the first internationally agreed-upon definition of trafficking in persons, and has a provision requiring the 178 State parties, including 55 of the 57 OSCE participating States, to take steps to discourage demand.⁶⁶

Within the context of the OSCE, the 2003 OSCE Action Plan to Combat Trafficking in Human Beings and its Addenda serve as the foundational documents outlining the OSCE's framework for combating THB.⁶⁷ These documents, adopted by unanimous consensus of the 57 OSCE participating States, outline the core political commitments made by participating States on the topic of trafficking. They also include commitments to discourage demand.

Furthermore, additional European regional instruments and international conventions that address demand apply to large parts of the OSCE region. The 47 participating States that have ratified the Council of Europe Convention on Action against Trafficking in Human Beings (2005) are bound by its terms (hereinafter referred to as the CoE Trafficking Convention).⁶⁸ Likewise, all 27 EU Member States are bound by the Directive of the European Parliament and of the Council (2011/36/EU) on preventing and combating trafficking in human beings and protecting its victims (hereinafter referred to as the EU Anti-Trafficking Directive).⁶⁹ Fifty-five of the 57 OSCE participating States are also Parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obliges State parties to suppress the exploitation of women for prostitution.

⁶⁶ There are currently 178 parties to the Protocol. All OSCE participating States with the exception of Andorra and the Holy See are currently parties to the Protocol. See United Nations, 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, [website] (United Nations Treaty Collection). Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18 (accessed 30 May 2021).

⁶⁷ See OSCE, *Commentary to the OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna: OSCE, December 2015); OSCE, *Ministerial Council Decision No. 2/03 Combating Trafficking in Human Beings*, MC.DEC/2/03 (Maastricht, 2 December 2003); OSCE, *Permanent Council Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna: OSCE, 6 December 2013).

⁶⁸ See Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, C.E.T.S. 197.

⁶⁹ See Council of the European Union, *Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*, 2011 O.J. (L 101).

**Table 1.**

Geographic coverage of international instruments addressing demand

OSCE commitments	Holy See					
OSCE + Palermo Protocol	United States					
OSCE + Palermo Protocol + CEDAW	Belarus	Canada	Kazakhstan	Kyrgyzstan	Mongolia	Tajikistan
	Turkmenistan	Uzbekistan				
OSCE, CoE & CEDAW	Andorra					
OSCE, Palermo, CoE & CEDAW	Albania	Armenia	Azerbaijan	Bosnia and Herzegovina	Georgia	Liechtenstein
	Moldova	Monaco	Montenegro	North Macedonia	Russian Federation	San Marino
	Serbia	Switzerland	Turkey	Ukraine		
OSCE, Palermo, CoE, EU & CEDAW	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic
	Denmark	Estonia	Finland	France	Germany	Greece
	Hungary	Iceland	Ireland	Italy	Latvia	Lithuania
	Luxembourg	Malta	Netherlands	Norway		

As is described below, these instruments collectively form a system of international obligations and commitments that enumerate States' responsibilities to address and counter the demand that fosters exploitation that leads to THB.

Palermo Protocol

To assess the scope of participating States' obligation to address the demand that fosters exploitation that leads to THB under the Protocol, one must first consider what conduct the definition of trafficking covers. In Article 3 of the Protocol, THB is defined as follows:

“ Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

This definition entails that for trafficking to occur, three elements must be present:

1. an act (e.g., recruitment or transportation),
2. accomplished through certain means (e.g., coercion or abuse of a position of vulnerability), and
3. an exploitative purpose (e.g., exploitation of the prostitution of others).

According to the Protocol, a victim's consent to exploitation is irrelevant whenever the three elements of trafficking are met.⁷⁰ Thus, consent, including that acquired under conditions of abuse of power or of a position of vulnerability, would be void if a qualifying act, means and purpose are proven. Where children under age eighteen are recruited, transported, transferred, harboured, or received for the purpose of exploitation, such conduct is regarded as trafficking regardless of whether any of the enumerated means are used.⁷¹

Among the different means of trafficking that are defined by the Protocol, the “abuse of a position of vulnerability” for sexual exploitation deserves particular attention due to its prevalence yet relative subtlety in cases of sexual exploitation. In the legislative history of the Protocol, the interpretive notes (*travaux préparatoires*) state that the abuse of a position of vulnerability refers to “any situation in which the person in-

volved has *no real and acceptable alternative* but to submit to the abuse involved.”⁷²

Sexual exploitation and the prostitution of others

“Exploitation” is not expressly defined in the Protocol, but is illustrated through a list of base-line examples:

“ Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The term “sexual exploitation” is not further defined in the Protocol or in international law at large, however, attempts have been made beyond the Protocol to further clarify the term. For example, the UN in its *Glossary on Sexual Exploitation and Abuse* defines “sexual exploitation” as “any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”⁷³

“The exploitation of the prostitution of others” is the only form of sexual exploitation specifically enumerated in the Protocol. By its reference to “or other forms of sexual exploitation,” Article 3 clarifies that “the exploitation of the prostitution of others” is a form of sexual exploitation (as opposed to forced labour, for example) and is only one example of sexual exploitation.

The term is not further defined in the Protocol. It originates from the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949 (1949 Convention).⁷⁴ Article 1(2) of the 1949 Convention directs State Parties to punish any person who “exploits the prostitution of another person, even with the

⁷⁰ See Council of the European Union, *Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*, 2011 O.J. (L 101), Article 3(b).

⁷¹ See Council of the European Union, *Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*, 2011 O.J. (L 101), Article 3(c) & (d).

⁷² See 3 November 2000, A/55/383/Add.1, paragraph 63 (emphasis added); UN-ODC, *Issue Paper Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons* (Vienna: UNODC, 2012), p. 17.

⁷³ See United Nations, *Glossary on Sexual Exploitation and Abuse*, [website] (United Nations, 24 July 17), p. 6. Available at: https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf (accessed 6 October 2020).

⁷⁴ See United Nations, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (New York: United Nations, 2 December 1949). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/traffcpersons.pdf> (accessed 5 April 2021); 30 OSCE participating States are Parties to the Convention, with 1 signatory (Denmark).

consent of that person".⁷⁵ This phrasing, and its position on the irrelevance of consent to exploitation, was then utilized by the Palermo Protocol. In seeking to elucidate the term further, in its 2015 issue brief on "the concept of 'exploitation' in the trafficking in persons protocol", the United Nations' Office on Drugs and Crime (UNODC), the guardian of the Protocol, stated that "the exploitation of the prostitution of others" is "generally understood as referring to profiting from the prostitution of another person."⁷⁶ The effect, according to UNODC, was to place accountability for the "(usually criminal) conduct in a person other than the prostitute."⁷⁷ In other words, persons selling sex cannot exploit themselves. Thus, the "exploitation of the prostitution of others" amounts to what is sometimes colloquially referred to as "pimping".⁷⁸

According to UNODC's issue brief, the term "forced prostitution" and the notion to subsume sexual exploitation under headings such as forced labour were considered during the drafting of the Protocol and not accepted.⁷⁹ Therefore, it is not necessary that the prostitution be "forced" for it to constitute exploitation, further confirming that third party profiteering is sufficient.

The concept of demand in the Protocol

Turning to the topic of demand, Article 9(5) of the Palermo Protocol mandates that

"States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking" (emphasis added).

⁷⁵ Ibid., Article 1(2).

⁷⁶ The UNODC Legislative Guide for the implementation of the Palermo Protocol also notes that the exploitation of prostitution does not need to be criminalized for it to be a factual basis for a trafficking charge. See UNODC, *Issue Paper The Concept of 'Exploitation in the Trafficking in Persons Protocol* (Vienna: UNODC, 2015), p. 28; see also UNODC, *Legislative Guide to the Protocol for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime* (Vienna: UNODC, 2014), paragraph 33.

⁷⁷ The phrase "exploit the prostitution of another person" first appeared in the 1949 Convention for the Suppression of Traffic in Person and Exploitation of the Prostitution of Others. It was also used in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). See UNODC, *Issue Paper The Concept of 'Exploitation in the Trafficking in Persons Protocol* (Vienna: UNODC, 2015), p. 28.

⁷⁸ Collectively, these definitions clarify that trafficking is not only violent or coercive pimping; it is also violent or coercive recruitment, transport or harbouring for the purpose of pimping. Thus, the Protocol clarifies that the crime is committed by a host of activities well beyond the specific prostitution transaction.

⁷⁹ See UNODC, *Issue Paper The Concept of 'Exploitation in the Trafficking in Persons Protocol* (Vienna: UNODC, 2015), p. 29.

In unpacking this statement, a few distinct elements become apparent. First, by using the term "shall", the Protocol makes explicit the mandatory obligation of States to discourage the demand that fosters trafficking, distinguishing it from other optional provisions. As stated by the UN Special Rapporteur on trafficking in persons, especially women and children in her report released in 2013, "states may be held legally responsible for their failure to take adequate measures to prevent trafficking in persons, including measures to discourage demand."⁸⁰

Second, while Article 9(5) imposes mandatory obligations upon States, the means of compliance are left to their discretion: UNODC's implementation guide from 2004 notes that Article 9(5) "does not specify in detail the exact actions required, leaving States some flexibility to apply the measures that they think are most likely to be effective."⁸¹ The language proposes an expansive approach to discouraging demand, suggesting a non-exhaustive list of interventions, including legislative, educational, social or cultural measures, as well as multilateral cooperation as possible avenues for States to take action. Although these phrases are not further defined or explained, their breadth clearly is intended to give States significant license to discourage demand. Moreover, the obligation does not reside only with States that have not yet taken action; the language specifically directs States to "adopt or strengthen" measures, indicating that States with measures already in place should also take further action.

Third, by specifically highlighting the demand that fosters the exploitation of women and children, Article 9(5) draws attention to gender and age vulnerabilities. By extension, it calls specific attention to the need for States to address trafficking for the purpose of sexual exploitation, since 92% of identified victims of trafficking for the purpose of sexual exploitation are women or girls.⁸²

Fourth, the subsection adopts an expansive view of *what* demand States must seek to address: it refers to the demand that "fosters" exploitation that "leads to trafficking". In other words, the subsection does not target *only* the "demand for trafficking" or the "demand for sexual exploitation", but rather demand that encourages exploitation that in turn leads to trafficking. In this sense, the demand that States must discourage is demand that need only be causally connected to exploitation—in that it "fosters" the exploitation—but does not have to be designed or intended to increase exploita-

⁸⁰ See 18 March 2013, A/HRC/23/48, paragraph 41.

⁸¹ See UNODC, *Legislative Guide to the Protocol for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime* (Vienna: UNODC, 2014), paragraph 74.

⁸² See UNODC, *Global Report on Trafficking in Persons 2020* (Vienna: UNODC, February 2021), p. 36.

tion or trafficking. This is a more expansive view of demand than simply the demand “for” trafficking. In the context of trafficking for the purpose of exploitation of the prostitution of others, for example, this analysis extends the concept of demand to buyers or users whose conduct unintentionally or unknowingly motivates third parties to exploit prostitution.

Not only does the language in Article 9 create an expansive view of demand, but it also establishes demand as a root cause of trafficking: it creates a causal chain or sequence between the demand that *fosters* exploitation which in turn leads to trafficking.⁸³ This causal chain establishes demand as the root cause of trafficking because it incentivizes exploitation (i.e., third party profiteering), and that exploitation in turn incentivizes trafficking.

In the context of trafficking for the purpose of sexual exploitation, this causal chain could manifest in the following illustrative scenario: men seek to pay for sex which encourages pimps to profit off of the sale of sex, and the potential for this profit leads to or inspires trafficking (the coercive or forceful recruitment, transportation and harbouring) of mostly women and girls, who can then be prostituted to the men willing to pay for sex.

In this regard, Article 9(5) illustrates how the existence of demand ultimately encourages the procurement of supply.

Framing these concepts in her 2006 report, the UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, stated that “demand must be understood as that which fosters exploitation, not necessarily as a demand directly for that exploitation.”⁸⁴ She noted that “demand must be understood in relation to exploitation, irrespective of whether that exploitation also constitutes trafficking”.⁸⁵ Nor is it necessary that the demand lead to trafficking: “it is sufficient that the exploitation fostered by the demand leads to trafficking”—i.e., the recruitment, transportation, transfer, harbouring, or receipt of persons to be exploited through prostitution.⁸⁶ Although the Protocol does not explicitly elucidate what demanded services would foster the exploitation of the prostitution of others that leads to trafficking, the demand for sex in exchange for money fits squarely within the Protocol’s reasoning, given the financial motivations that are central to the crime of THB.

⁸³ “Foster” is defined by the Merriam-Webster Dictionary as “to promote the growth or development of”. See Merriam Webster, “Foster”, [website] (Merriam Webster) Available at: https://www.merriam-webster.com/dictionary/foster?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (accessed 5 May 2020).

⁸⁴ See 20 February 2006, E/CN.4/2006/62, paragraph 51b.

⁸⁵ See *ibid.*, paragraph 51a.

⁸⁶ See *ibid.*, paragraph 51c.

In sum, based upon Articles 3 and 9 of the Protocol, all State parties, including 55 of the OSCE participating States, must undertake some activities that discourage the demand that fosters exploitation that leads to trafficking.

OSCE commitments

The 57 OSCE participating States have developed a number of commitments on addressing demand in line with the Palermo Protocol. Since the Protocol serves as the foundational international agreement on THB, the OSCE has consistently sought to promote both it and its language. For instance, the recent Ministerial Council Decision *Strengthening Efforts to Prevent Trafficking in Human Beings* (MC.DEC/6/17) reiterated the OSCE’s “support for the effective implementation” of the Palermo Protocol “as the international legal framework for combating trafficking in persons.”⁸⁷

Within the body of OSCE commitments, the 2003 OSCE Action Plan to Combat Trafficking in Human Beings (Action Plan) serves as the foundational document outlining the OSCE’s framework for combating THB. Consistent with the Protocol, the Action Plan recommends that participating States

“ adopt [...] or strengthen [...] legislative, educational, social, cultural or other measures, and, where applicable, penal legislation, including through bilateral and multilateral co-operation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking.”⁸⁸

Although the language closely tracks Article 9(5), there are two notable differences. First, the Action Plan adds “and, where applicable, penal legislation” to the list of intervention examples. This language places special attention beyond the generalized language of the Protocol on legislative measures, demonstrating the understanding by participating States of the importance of including a criminal justice response within the framework of discouraging demand.

Second, the language of the Action Plan adds “and” before “that leads to trafficking”, which creates two separate but related impacts of demand:

⁸⁷ See OSCE, *Ministerial Council Decision No. 6/17 Strengthening Efforts to Prevent Trafficking in Human Beings*, MC.DEC/6/17 (Hamburg: OSCE, 8 December 2017), Preamble, paragraph 5.

⁸⁸ See OSCE, *Ministerial Council Decision No. 2/03 Combating Trafficking in Human Beings*, (Maastricht: OSCE, 2 December 2003), Chapter 4, paragraph 3.3.

1. fostering all forms of exploitation, including sexual, and
2. leading to trafficking. This suggests that the Action Plan directs participating States to consider discouraging the demand that fosters all forms of exploitation, irrespective of its relationship to trafficking.

Additionally, the Action Plan recommends that participating States undertake awareness-raising, including “addressing, also through the media, the need to reduce the demand for the activities of persons trafficked for sexual exploitation”.⁸⁹

The *Declaration on Trafficking in Human Beings* adopted in 2002 in Porto recognizes

“ that, in countries of destination, demand for the activities of persons trafficked for the purposes of sexual exploitation is an integral factor in trafficking in human beings.”⁹⁰

Consequently, the Council urged “countries of destination to take measures to effectively address such a demand as a key element in their strategy for effectively preventing and combating THB, and to exercise zero tolerance towards sexual exploitation, slavery and all forms of exploitation of forced labour, irrespective of its nature.”^{91,92}

This language contains several key conclusions: First, that demand is a key element of THB, and second, that demand is a defining characteristic of destination countries, with the implied consequence that it serves as a “pull factor” for victims of trafficking. Thus, destination countries have a particularly heavy responsibility to address demand in order to counter trans-national trafficking in particular.⁹³ And third, the significance of these relationships is so powerful that addressing demand should be a key component of anti-trafficking strategies, particularly in those countries.

Other OSCE Ministerial Council Decisions have affirmed the OSCE participating States’ commitment to discouraging demand, and have refined it in more detail. For example, one year after the adoption of the OSCE Action Plan, Ministerial

⁸⁹ See *ibid.*, Chapter 4, paragraph 4.11.

⁹⁰ See OSCE, *Ministerial Council Declaration on Trafficking in Human Beings*, MC(10).JOUR/2, (Porto: OSCE, 7 December 2002), Annex II.

⁹¹ See *ibid.*

⁹² Under the Protocol’s elucidation of “exploitation”, a “zero tolerance” toward sexual exploitation, “irrespective” of its nature, would imply that profiting from the prostitution of others must not be tolerated. Such a position may be inconsistent with the toleration of third parties to profit from the prostitution of others, such as in brothels, escort services, or other businesses in countries where the sex industry is not illegal.

⁹³ See Niklas Jakobsson and Andreas Kotsadam, *The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation* (Gothenburg: University of Gothenburg, May 2013), p. 7. This profit motive is also geographically oriented: the more profit that can be made in a specific country, the higher the likelihood that a person will be trafficked to that country.

Council Decision 14/4, which created the OSCE *Action Plan for the Promotion of Gender Equality*, tasked OSCE institutions

“ to assist participating States in tackling the lack of opportunities for women, female unemployment, and other gender aspects of trafficking, including the demand side of sexual and other forms of exploitation”.⁹⁴

More recently, in 2017, Ministerial Council Decision 6/17 recalled that the 2003 OSCE Action Plan “stress[es] the importance of comprehensive prevention measures, including measures to address demand.”⁹⁵ Likewise, Ministerial Council Decision 7/17 *Strengthening Efforts to Combat All Forms of Child Trafficking, Including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children* (MC.DEC/7/17), calls on participating States in 2017 “to help eliminate demand that fuels child trafficking and sexual exploitation of children.”⁹⁶

And a year later, 2018 Ministerial Council Decision 6/18 *Strengthening Efforts to Prevent and Combat Child Trafficking, Including of Unaccompanied Minors* (MC.DEC/6/18) made similar recommendations on addressing the demand in the context of child trafficking: participating States were called upon to

“ promote efforts to prevent child trafficking, countering the culture of impunity, and reducing and addressing the demand which fosters all forms of exploitation.”⁹⁷

Although OSCE commitments are not legally binding like the Protocol, these provisions offer important texture and substance to the topic of addressing demand, and cement the unanimous political commitment by OSCE participating States to actively address the demand that fosters exploitation that leads to trafficking for the purpose of sexual exploitation.

⁹⁴ See OSCE, *Ministerial Council Decision No. 14.04 2004 OSCE Action Plan for the Promotion of Gender Equality*, MC.DEC/14/04 (Sofia: OSCE, 7 December 2004), paragraph 44c.

⁹⁵ See OSCE, *Ministerial Council Decision No. 6/17 Strengthening Efforts to Prevent Trafficking in Human Beings*, MC.DEC/6/17 (Hamburg, 8 December 2017), Preamble, paragraph 4.

⁹⁶ See OSCE, *Ministerial Council Decision No. 7/17 Strengthening Efforts to Combat All Forms of Child Trafficking, Including for Sexual Exploitation, As Well As Other Forms Of Sexual Exploitation Of Children*, MC.DEC/7/17 (Hamburg: OSCE, 8 December 2017), paragraph 4.

⁹⁷ See OSCE, *Ministerial Council Decision No. 6/18, Strengthening Efforts to Prevent and Combat Child Trafficking, Including of Unaccompanied Minors*, MC.DEC/6/18 (Milan: OSCE, 7 December 2018), paragraph 12.

Council of Europe Convention on Action against Trafficking in Human Beings

While the Palermo Protocol and the OSCE commitments are the most relevant to the entire OSCE region, in that the first serves as the international foundation for anti-trafficking efforts, and the second applies to all OSCE participating States, the Council of Europe's *Convention on Action against Trafficking in Human Beings* is also an important component of the international framework governing demand in the OSCE region, since it applies to 47 of the OSCE participating States.

Specifically, Article 6 of the 2005 CoE Trafficking Convention provides that

“to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures”.⁹⁸

The wording is almost identical with Article 9(5) of the Palermo Protocol and, for policy-making purposes, has no substantive alterations. Like Article 9(5) of the Protocol, this provision is obligatory for State parties.

Further, Article 19 of the CoE Trafficking Convention contains additional guidance relating specifically to criminal justice measures: it stipulates that Parties to the convention “shall consider” criminalizing the “use of services which are the object of exploitation” that fulfil the elements of trafficking under the Convention, if the user has “knowledge that the person is a victim of trafficking in human beings.” This type of statute—including a knowledge requirement on the part of the user—has been adopted by a number of OSCE participating States within their domestic legislation. However, it addresses—as will be discussed further in Chapter 3—only a narrow slice of the conduct targeted by the Protocol because it explicitly criminalizes only the knowing demand for trafficking. At the same time, although Article 19 suggests a limited scope regarding what should be criminalized, it does represent an important milestone by explicitly recognizing criminalization as a method to discourage demand.

The Explanatory Report to the CoE Convention makes clear that this latter provision on implementing a system of “par-

tial criminalization” is just encouragement for action and not a binding obligation.⁹⁹ However, the Report also stresses that the presence of Article 6 places a “positive obligation on Parties to adopt and reinforce measures for discouraging demand”, including for sexual exploitation.¹⁰⁰ Thus, this approach is identical to that of the Protocol, with emphasis on the positive obligation to discourage demand, while leaving the means to do so to the discretion of the States.

European Union Anti-Trafficking Directive

The European Union (EU) has also raised the issue of demand within both binding and non-binding instruments. For instance, the European Parliament voiced its opinion on the need to incorporate demand in national anti-trafficking strategies, stating in a 2014 non-binding resolution¹⁰¹ that “demand reduction should form part of an integrated strategy against trafficking in the Member States.”¹⁰² Similarly, in 2021, the European Parliament included demand within the EU Strategy for Gender Equality, insisting that measures and strategies to reduce demand be included in the forthcoming EU strategy for the eradication of THB.¹⁰³

Like the OSCE and the CoE, the EU has also largely tracked the Protocol’s language within its binding legal instrument on THB, though with some notable differences. Article 18(1) of the EU Anti-Trafficking Directive (2011/36/EU) stipulates that

“member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.”¹⁰⁴

Here, the language is consistent with the various recommended actions of the Protocol, with an additional reference to “training” as well as setting an objective to “reduce” demand. The latter phrase indicates that States should aim for a measurable impact on demand, rather than merely an intent

99 See Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, C.E.T.S. 197 (Warsaw: CoE, May 16, 2005), paragraph 236.

100 See ibid., paragraph 108.

101 See European Parliament, *Resolution on Sexual Exploitation and Prostitution and its Impact on Gender Equality*, P7_TA(2014)0162 (Brussels: European Parliament, 26 February 2014).

102 See ibid., paragraph 28.

103 See European Parliament, *The EU Strategy for Gender Equality*, P9_TA-PROV(2021)0025 (Brussels: European Parliament, 21 January 2021), paragraph 32.

104 See Council of the European Union, *Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*, 2011 O.J. (L 101), Article 18(1).

98 See Council of Europe, *Convention on Action Against Trafficking in Human Beings*, 2005. Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d> (accessed 5 April 2021).

to “discourage” it, creating a higher standard for measures on demand. The forms of exploitation covered by the Directive are also somewhat different, since the use of “related to” removes the causal linkage that is present within the Palermo Protocol and OSCE commitments, which both use the expression “leads to”.

Furthermore, Article 18(4) of the Directive, like the CoE Convention, compels Member States, in their efforts to prevent and combat trafficking more effectively, to “consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation [as referred to in Article 2,] with the knowledge that the person is a victim” of THB.¹⁰⁵ In its second mandated follow-up report, which was required under Article 20 of the EU Anti-Trafficking Directive, the European Commission reiterates this consideration:

“ Further encouraging those EU Member States, to the extent they have not done so, to criminalise those who knowingly use the services of victims is at the core of the Commission’s priorities for preventing trafficking in human beings”.¹⁰⁶

This additional encouragement to implement a partial criminalization model represents a desire on the part of the EU Commission for States to act against the knowing use of services from trafficking victims via their criminal justice systems. Similar to Article 19 of the CoE Convention, however, the limited focus on the criminalization only of those who knowingly use the services from trafficking victims (i.e., the demand for trafficking) does not fully account for the scope of demand that is conceptualized in Article 18(1) or envisioned by the Palermo Protocol (i.e., the demand that fosters exploitation that leads to trafficking).

Convention on the Elimination of All Forms of Discrimination against Women

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and its *General recommendation No. 38 on trafficking in women and girls in the context of global migration* provide additional guidance pertaining to demand and trafficking for the exploitation of prostitution of women for almost all OSCE participating States.¹⁰⁷

Article 6 of the CEDAW says State Parties

“ shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁰⁸ By referring to “exploitation of prostitution of women”, Article 6 mentions trafficking in terms virtually identical to the Palermo Protocol.

While Article 6 does not mention demand, the *General recommendation No. 38 on trafficking in women and girls in the context of global migration* released in November 2020 makes specific reference to the need to discourage demand, clarifying it as a component of State parties’ obligation to combat discrimination against women and girls.¹⁰⁹ The Recommendation ultimately urges States to “discourage the demand that fosters exploitation of prostitution and leads to human trafficking”,¹¹⁰ language that broadly mirrors Article 9(5) of the Palermo Protocol, and even more closely resembles the OSCE Action Plan through its use of “and” between the concepts of exploitation and trafficking.

Although the Recommendation itself is non-binding on State Parties, by virtue of their ratification of the Convention, 55 OSCE participating States are committed to take all appropriate measures to suppress all forms of trafficking and the exploitation of prostitution of women. The General Recommendation constitutes guidance that discouraging demand is an encouraged measure to accomplish this goal.

¹⁰⁵ Article 2 of the EU Anti-Trafficking Directive provides the following definition for exploitation: “Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”

¹⁰⁶ See European Commission, *Second Report on the Progress Made in the Fight Against Trafficking in Human Beings*, (Luxembourg: European Commission, 2 December 2018), p. 6.

¹⁰⁷ The Convention on the Elimination of All Forms of Discrimination against Women has 189 parties, which include 55 of the 57 OSCE participating States. Only the Holy See and the United States of America are not parties to the convention. The United States is however a signatory.

¹⁰⁸ See United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (New York: United Nations, 18 December 1979), Article 6.

¹⁰⁹ See 6 November 2020, CEDAW/C/GC/38, paragraph 4.

¹¹⁰ See 6 November 2020, CEDAW/C/GC/38, paragraph 61.

Summary Comparison

Collectively, the international instruments summarized above establish a binding norm that States shall take action to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Moreover, this binding norm presents an expansive concept of demand in that States are required to discourage the demand that fosters exploitation that leads to trafficking,¹¹¹ a broader responsibility than merely discouraging the demand for trafficking. By expressly mentioning women and children, the international legal instruments also call upon States to pay particular attention to gender and age dynamics, as well as to trafficking for the purpose of sexual exploitation, since women and girls are disproportionately represented among VoTs for sexual exploitation.

All of the instruments give States broad leeway on how to implement measures that discourage this demand, but encourage the use of legislative, educational, social or cultural means.

However, while these international legal instruments are in alignment in their conceptualization of demand and in creating a positive obligation upon States to discourage the demand that fosters all forms of exploitation that lead to trafficking, their recommended measures do not always fully meet the broad concept of demand that they adopt. For example, both Article 19 of the CoE Convention and Article 18(4) of the EU Anti-Trafficking Directive recommend criminalization that focuses on the knowing demand for trafficking, instead of the demand that fosters the exploitation that leads to trafficking. Such an approach is substantively narrower than the expansive view of demand outlined in the Palermo Protocol and reaffirmed in Article 6 and 18(1) of the CoE Convention and EU Directive, respectively.

Moreover, as will be discussed in later chapters, the narrower recommended measures do not always reflect the reality of trafficking for sexual exploitation, and consequently such measures may not accomplish their intended goals of discouraging demand.

The international instruments also diverge on the standards by which the mandatory activities on demand will be measured. The Palermo Protocol, OSCE Action Plan, CoE Convention and CEDAW General Recommendation 38 all use the term “discourage”, meaning to make less likely to happen,¹¹² indicating an intent but not necessarily a result. Meanwhile, the EU Directive, impacting 27 OSCE participating States,¹¹³ calls for demand “reduction”, thereby aiming for measurable impact on demand.

While these points of divergence serve to create a more nuanced legal framework, the overarching alignment on the obligation to discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking creates a solid basis upon which States can establish and implement national criminal justice and prevention responses. Policy options for States will be discussed in the following chapters.¹¹⁴

¹¹¹ See 20 February 2006, E/CN.4/2006/62, paragraph 51c.

¹¹² See Merriam Webster, “Discourage”, [website] (Merriam Webster) Available at: <https://www.merriam-webster.com/dictionary/discourage> (accessed 05 May 2020).

¹¹³ The OSCE participating States impacted by the EU Directive are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

¹¹⁴ See Chapter 3 for criminal justice measures and Chapter 4 for methods of prevention

3



Chapter 3: Criminal Justice Responses

A common action governments have taken to discourage demand in line with Article 9(5) of the Palermo Protocol has been to adopt legislative measures that criminalize the purchase of sex, whether from trafficking victims or otherwise. Thirty of the 57 OSCE participating States having at least one criminal law pertaining to demand.¹¹⁵

Although Article 9(5) does not require States to criminalize the purchase of sex generally or the use of services of a trafficking victim specifically, it does require States to take action to discourage the demand that fosters all forms of exploitation of persons that leads to trafficking. Criminalization is an obvious policy response for a number of reasons. It sets a clear societal norm that the behaviour is discouraged.¹¹⁶ It creates risk for sex buyers, which further discourages sex buying, including from trafficking victims.¹¹⁷ It holds buyers, including users, accountable for their direct as well as indirect role in causing the harm of trafficking (as discussed in Chapter 1). And it incentivizes law enforcement to closely scrutinize an industry that is rife with exploitation and violence.¹¹⁸

Since Article 9(5) does not set limits or give guidance on the criminalization of demand,¹¹⁹ a broad range of criminalization options have emerged across the OSCE region, stretching from criminalizing only the knowing use of services from trafficking victims to criminalizing all sex buying; the statutes discussed below are organized from the narrowest to the broadest.

Critically, these methods are not mutually exclusive in that more than one can be utilized by States as part of their anti-trafficking response; some countries, in order to target different aspects of the demand market, make use of a combination of statutes, while others employ only one. Some countries use none of the options, which in turn places a heavy burden on them to undertake other measures to fulfil their legal obligations under the Protocol.

The below table lists the countries that have criminalized the purchase of sexual services from trafficking victims, criminalized the buying of sex regardless of the status of the victim, employ both methods of criminalization, or do not criminalize either the buying of sex or the purchase of sexual services from VoTs.¹²⁰

¹¹⁵ The OSCE participating States with a form of criminalization targeting demand are: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Estonia, France, Finland, Germany, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, North Macedonia, Norway, Portugal, Romania, Serbia, Slovenia, Sweden, United Kingdom, United States of America.

¹¹⁶ See Niklas Jakobsson and Andreas Kotsadam, *The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation* (Gothenburg: University of Gothenburg, May 2013), pp. 7–8.

¹¹⁷ See Seo-Young Cho, Axel Dreher and Eric Neumayer, *Does Legalized Prostitution Increase Human Trafficking?* (*World Development* 41, 2013), p. 8.

¹¹⁸ See fn. 45 in chapter 1, above.

¹¹⁹ Legislative or other measures that target those who knowingly use or take advantage of services from trafficking victims is however considered within the scope of Article 9 of the Palermo Protocol. See UNODC, *Legislative Guide to the Protocol for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime* (Vienna: UNODC, 2014), paragraph 74.

¹²⁰ This data has been taken from a combination of sources, including: Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA's Activities*, (Warsaw: Council of Europe, 2020), National reports from GRETA's Second and Third Evaluation Rounds, the Map of Sex Work Law from the Institute of Development Studies, accessible at: <http://spl.ids.ac.uk/sexworklaw>, and where necessary, from examining national criminal codes. The Holy See is not included in the below chart since the OSR/CTHB could not confirm the presence or absence of any legislation governing the use of sexual services from trafficking victims or the purchase of sex from adults by lay citizens, though it acknowledges that the purchase of sex is at odds with Canon law.



Services from VoTs criminalized¹²¹	Albania	Armenia	Bosnia and Herzegovina	Bulgaria
	Croatia	Cyprus*	Estonia	Finland
	Germany	Georgia	Greece	Latvia
	Luxembourg	Malta	Moldova	Montenegro
	North Macedonia	Portugal	Romania	Serbia
	Slovenia	United Kingdom (England and Wales)*		
Buying sex criminalized¹²²	Canada	France	Iceland	Sweden
Services from VoTs and buying sex criminalized	Ireland	Norway	Lithuania**	
	United Kingdom (NI)		United States***	
Neither services from VoTs nor buying sex criminalized¹²³	Andorra	Austria	Azerbaijan	Belarus
	Belgium	Czech Republic	Denmark	Hungary
	Italy	Kazakhstan	Kyrgyzstan	Liechtenstein
	Monaco	Mongolia	Netherlands	Poland
	Russian Federation	San Marino	Slovakia	Spain
	Switzerland	Tajikistan	Turkey	Turkmenistan
	Ukraine	United Kingdom (Scotland)		Uzbekistan

Table 2.¹²⁴

Criminalization within OSCE participating States

* Indicates an OSCE participating State which utilizes a "strict liability" statute.

** Lithuania has established an administrative offence which penalizes buyers of sex. The knowing use of services of a trafficking victim is penalized as a criminal offence.

*** The buying of sex is criminalized at the state or local level, with not all jurisdictions employing the same criminal justice response.

¹²¹ These are States that have specific statutes criminalizing the knowing use of services or sexual services from victims of trafficking. The table also includes States that employ a strict liability statute for the use of sexual services from victims of trafficking.

¹²² These are States that criminalize all purchasing of sex. The OSR/CTHB acknowledges that there are States that criminalize certain aspects of buying, such as public solicitation, often referred to as "curb crawling", but does not consider these limited provisions as a criminalization of purchasing of sex, only the criminalization of certain means or locations.

¹²³ Some participating States listed in this category have statutes that they report can be used to criminalize the user of sexual services from trafficking victims. These statutes, which include criminalizing the employing of an irregularly residing foreigner who is the victim of trafficking, or intentionally profiting from the exploitation of another person, may indeed lead to criminal charges in some circumstances. However, as is discussed below, such statutes do not charge users for the act of buying sexual services or using a trafficking victim, but only for doing so in a context or manner that is prohibited. This means that what they criminalize does not directly influence the demand that fosters trafficking for the purpose of sexual exploitation. Within this group of States, the market for prostitution varies from those that are legal and regulated, to those where the selling of sexual services is illegal. In this group, the OSR/CTHB could not identify any provision criminalizing the purchase of sexual services from an adult.

¹²⁴ The information provided within this table is specific to individuals classified as adults; it does not cover legislation criminalizing the use of services of minors who are victims of trafficking, or the buying of sex from minors in general. The table also does not make mention of indirect statutes that could be used to target demand.

Criminalizing the knowing use of services of a trafficking victim

The most common form of criminalization within the OSCE region is that which criminalizes the “knowing use” of services of a trafficking victim. In some countries this legislation may cover all forms of trafficking, while in others it is limited to specific forms of trafficking, such as the use of services of a victim of trafficking for sexual exploitation.

As is evident from the description, this type of law uses a *mens rea* element to define when the user has committed an offense: it requires that prosecutors prove not only that the person was a victim of trafficking, but also that the user “knew” that the person they bought sexual services from was a trafficking victim. This creates a subjective standard, since it relies on ascertaining the knowledge of the perpetrator at the time the act took place.

A second variation of this type of statute includes an objective element, resulting in a standard that seeks to punish the user if they “knew or reasonably should have known” that they purchased services from a trafficking victim.¹²⁵ In such cases, prosecutors must prove that the accused was apprised of all the facts that would lead a reasonable person to know the person in prostitution was a trafficking victim, even if the prosecutor cannot prove that this particular accused person was aware of this fact. In this regard, the statute is somewhat broader than the pure “knowing use” statute.

The “knowing use” type of law is a clear example of policy action to discourage demand. It recognizes the reality that trafficking victims are indeed present in the prostitution industry and sets a norm that knowing use of their services should be prohibited. By criminalizing sex with a person who has been brought into a financial transaction by illicit means (force, fraud or coercion, for example), it is akin to criminalizing commercial rape.

Examples of this legislation in OSCE participating States:

ARMENIA¹²⁶

Article 132.3. The use of services of a person in the condition of exploitation

1. The use of services of a person in the condition of exploitation, if the person's condition of exploitation is

¹²⁵ This standard is considered by the UNOHCHR to be within the spirit of its Principles and Guidelines on Human Rights and Human Trafficking. See UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: UNOHCHR, 2010), p. 103

¹²⁶ See Criminal Code of the Republic of Armenia, Article 132.3.

obvious to the person using the service, and if the action of the person committing the crime does not comprise the crime elements envisaged by Article 132 or 132.2 of this Code, is punished by a fine in an amount of 100 to 400 times the minimum wage, or by imprisonment for a term of up to 2 years.

2. The same action committed:

- 1) against an obvious minor;
- 2) against a person, who in a state of mental disorder is devoid of the possibility to control her actions or to fully or partially recognize the nature and the meaning thereof;
- 3) against an obviously pregnant woman;
- 4) against two or more persons;

is punished by imprisonment for a term of up to 3 years, with or without deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years.

3. The person, who voluntarily provides information on the victim to the law enforcement authorities of the Republic of Armenia, shall be exempted from criminal liability envisaged under this Article, if that person's factual action does not comprise other elements of crime.

CROATIA¹²⁷

Article 106 paragraph 4

The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever, knowing that a person is a victim of trafficking in persons, uses the services of that person which are the result of one of the forms of exploitation set forth in paragraphs 1 and 2 of this Article.

¹²⁷ See Republic of Croatia, Criminal Code, passed by the Croatian Parliament at its session on 21 October 2011. Available at: https://www.legislationline.org/download/id/7896/file/Croatia_Criminal_Code_2011_en.pdf (accessed 5 April 2021). Paragraphs 1 and 2 of Article 106 are as follows: (1) Whoever, by the use of force or threat, of deception, of fraud, of abduction, of abuse of authority or of a situation of hardship or dependence, or of the giving or receiving of payments or other benefits to achieve the consent of a person having control over another person or by any other means recruits, transports, transfers, harbours or receives a person, or exchanges or transfers control over a person for the purpose of exploiting his or her labour by means of forced labour or services, slavery or a relationship similar thereto, or for the purpose of exploitation for prostitution of the person or of other forms of sexual exploitation, including pornography, or of contracting an illicit or forced marriage, or of taking parts of the person's body or of using the person in armed conflicts or of committing an unlawful act, shall be punished by imprisonment from one to ten years. (2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever recruits, transports, transfers, harbours or receives a child, or exchanges or transfers control over a child for the purpose of exploiting his or her labour by means of forced labour or services, slavery or a relationship similar thereto, or for the purpose of exploitation for prostitution of the child or of other forms of sexual exploitation, including pornography, or of contracting an illicit or forced marriage, or of illegal adoption, or of taking parts of a child's body, or of using the child in armed conflicts.

Analysis

This method of criminal justice response is in line with the general concept of demand as presented by the Palermo Protocol. It is also directly compliant with the CoE Convention, serving as the means of transcribing Article 19 of the CoE Convention into national law. At the time of publication of this paper, 18 OSCE participating States have criminalized the use of any service from a person with the knowledge that that person was a victim of trafficking¹²⁸. Six additional States have criminalized the knowing use of sexual services from a trafficking victim.¹²⁹ Together, these States account for roughly 40% of all OSCE participating States, making this type of statute a relatively widespread criminal justice response within the OSCE region.

However, this type of statute has several policy and practical shortcomings. First, in effect, it criminalizes only the demand for trafficking—i.e., those who know that the person in prostitution is a trafficking victim and still proceed with the transaction. Therefore, it criminalizes only a subset of the broader concept of demand articulated in Article 9(5), which obliges States to discourage the demand that fosters exploitation that leads to trafficking. In this regard, this approach is the least ambitious of criminal justice approaches to demand within the OSCE region.

Second, and related to the first limitation, the “knowing use” statute is difficult to implement because it does not reflect the realities of the intersection between demand and trafficking for sexual exploitation. Research has shown that most sex buyers are aware that the women, men, boys and girls they purchase sex from may be VoTs; for example, 96% of sex purchasers who responded to a survey in Italy indicated that they were aware that VoTs are found in prostitution.¹³⁰

The UN Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and

Children (UN SR) in her report on the human rights aspects of VoTs, especially women and children, was even more direct:

“ there is good reason to believe that many prostitute-users are aware that the women and children they use in prostitution are subjected to the illicit means delineated in the Protocol”.¹³¹

However, despite this generalized knowledge,

“ prostitute-users are typically incapable of distinguishing and/or unmotivated to differentiate between prostituted persons who have been subjected to the illicit means delineated in article 3 (a) of the Protocol and those who have not”

and that even the best-intentioned sex purchasers are probably unable to distinguish between trafficked and non-trafficked persons.¹³² The UN SR notes that this conclusion is supported both by empirical data and surveys of practitioners.¹³³ Identifying victims of trafficking in prostitution is made all the more difficult because traffickers are motivated (and victims coerced) to persuade users that the victim is a willing participant in the transaction.¹³⁴

These factors highlight that there is a disconnect between generally knowing that VoTs are to be found in the prostitution industry (which it seems most sex buyers understand), and the knowledge that a specific individual is in fact a VoT (which sex buyers appear unable or unwilling to recognize). Most users do not expressly seek trafficking victims; they seek to buy sex and in the course of this practice, they end up purchasing sex from trafficking victims.¹³⁵ Reckless disregard

131 See 20 February 2006, E/CN.4/2006/62, paragraph 63 .

132 See ibid., paragraph 63.

133 See 20 February 2006, E/CN.4/2006/62, paragraph 60.

134 See Edward Keegan and Nusha Yonkova, *Stop traffic: Tackling demand for sexual services of trafficked women and girls*, (*Social Work & Social Sciences Review* 18/1, 2018), pp.15–30. Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls*, (Dublin, Immigrant Council of Ireland, 2014), pp. 64–69. Interviews with users in Bulgaria and Lithuania have made clear that buyers are generally unaware of the status of trafficking victims when purchasing sex, and that they do not seek to report instances of suspected exploitation even if they do identify potential cases.

See also Rachel Durchslag and Samir Goswami, *Deconstructing The Demand for Prostitution: Preliminary Insights From Interviews With Chicago Men Who Purchase Sex* (Chicago Alliance Against Sexual Exploitation, 2008), pp. 20–23; Andrea Di Nicola and Paolo Ruspini, “Learning from Clients”, in: *Prostitution and Human Trafficking: Focus on Clients*, ed. A. Di Nicola et al. (New York: Springer, 2009), pp. 231–232.

135 See See Alexis A. Aronowitz and Anneke Koning, “Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation” (*International Review of Penal Law* 85, 2014), p. 676; U.S. Agency for International Development, *Tackling the demand that fosters human trafficking: Final Report* (Washington, D.C.: USAID, August 2011), p. 5.

128 See Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA's Activities*, (Warsaw: Council of Europe, 2020), paragraph 122.

129 See ibid., paragraph 122

130 See IOM, *Is Trafficking in Human Beings Demand Driven? A Multi Country Pilot Study* (Geneva: IOM, 2003), p. 23. Methodology for the survey can be found on page 16 of the report. In the case of Italy, 56 men were surveyed, with 9 client and 5 control interviews also undertaken. See also, U.S. Agency for International Development, *Tackling the demand that fosters human trafficking: Final Report* (Washington, D.C.: USAID, August 2011), p. 13

of the status of a victim or conscious “non-responsibility”¹³⁶ on the part of users means that the demand for prostitution by buyers also serves as demand that fosters trafficking for the purpose of sexual exploitation: traffickers know that many users will purchase services from VoTs without question and exploit this non-discerning behaviour of users by trafficking victims into the prostitution marketplace. This dynamic also draws into question the relative value of the “knowing use” statute given that the reckless but unknowing use of victims likely accounts for an even greater share of the market—and thus financial incentive to traffickers—than the knowing use (e.g., those users who specifically seek out trafficking victims such as children).

This dynamic can be further exacerbated by the venue where the transaction is initiated and is particularly acute in the case of online venues like escort or sexual service websites. Given the relative lack of age or consent verification on virtually all such platforms, sex purchasers have no meaningful knowledge about the person with whom they are arranging a transaction, and thus whether the person they are having sex with is a trafficking victim or not. As a result, the risk of using the services of a trafficking victim is high. Nonetheless, sex purchasers flock to such sites due to how they facilitate sex purchasing. The result once again demonstrates the intersection between demand and trafficking. For example, in one high profile case involving a prolific sexual services website in the United States called Backpage.com, hundreds of reported instances of trafficking took place on the website each month, including many involving minors.¹³⁷

It is important to note that the possibility that a user may lack knowledge or ignore indications that a victim is being trafficked should not be interpreted as causing less harm to the trafficking victim. From the victim’s perspective, a user’s lack of knowledge does not mitigate the fact the user is having non-consensual sex¹³⁸ with the victim.

The harm of the individual transaction is also compounded by the scale. The use of trafficking victims—knowing or unknowing—occurs with tremendous frequency. As noted above, estimates put the annual profit from trafficking for sexual ex-

ploitation at \$99 billion,¹³⁹ which, at roughly \$100 per transaction,¹⁴⁰ equates to approximately 1 billion transactions a year involving sex with trafficking victims. The need for effective policies is thus acute.

Third, the “knowing use” standard can be extremely difficult to use in practice.¹⁴¹ Because of the factors at play mentioned above, establishing the “knowledge” of the user at the level required in a criminal justice system can be challenging, particularly since users will simply deny knowledge in court.¹⁴² Moreover, justice practitioners must prove that the person in prostitution is a victim of trafficking, which can also be difficult. These hurdles in proving the crime make it a time consuming and challenging process for law enforcement, a situation that is likely correlated to the low levels of implementing this type of statute.

While approximately two-thirds of the EU (a region of roughly 500 million people) has adopted such legislation, in 2015 and 2016 there were only 18 reported convictions for the knowing use of the services of a trafficking victim. Of these, 14 were in Romania alone.^{143,144} And yet, during the same period there were 20,532 newly identified and presumed VoTs in the EU.¹⁴⁵ These numbers have since increased, with the EU-28 recording 133 convictions of users during the 2017–2018 period. However, these convictions took place in just seven States and 93% of the convictions were in just three States.¹⁴⁶ Approximately 64% of the total, 85, were reported by Lithuania alone.¹⁴⁷ In comparison, and demonstrating the unequal application of the statute, several other countries with populations many times greater recorded zero or one

¹³⁶ See ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 20 May 2014), p. 13.

¹⁴⁰ Studies vary regarding the average cost of a prostitution transaction: see fn. 30, above.

¹⁴¹ See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.18.

¹⁴² See Johanna Niemi and Jussi Aaltonen, *Abuse of a victim of sex trade: Evaluation of the Finnish sex purchase ba*, (Finland: Ministry of Justice, 2014), p. 94.

¹⁴³ See European Commission, *Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU* (Brussels: European Commission, 2 December 2016), p. 7. While the data presented is not disaggregated between the use of sexual services or other services, Romania has confirmed to the OSR/CTHB that their cases only involve the use of sexual services.

¹⁴⁴ See *ibid.*

¹⁴⁵ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 12.

¹⁴⁶ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 243. It is important to note that this data does not differentiate between convictions for the use of sexual services from VoTs or for other services. This means the total reported convictions for the use of sexual services from a trafficking victim is inevitably smaller.

¹⁴⁷ See *ibid.*, p. 243. Estonia, Hungary and Lithuania are the States responsible for 124 of the 133 recorded convictions during this period.

¹³⁶ See Immigrant Council of Ireland, *Comparative Report: Disrupt Demand*, (Dublin: Immigrant Council of Ireland, 2018), p. 18.

¹³⁷ See United States Senate Permanent Subcommittee on Investigations, *Backpage.com’s Knowing Facilitation of Online Sex Trafficking* (Washington D.C.: U.S. Senate, 10 January 2017), p. 39.

¹³⁸ In some OSCE participating States, there is a distinction between non-consensual sex (i.e., sexual abuse) and rape, with rape requiring the use of force, intimidation or violence. See “Is non-consensual sex rape? Most European countries say ‘no’”, [website] (Euronews.com, 19 July 2018). Available at: <https://www.euronews.com/2018/05/02/is-non-consensual-sex-rape-most-european-countries-say-no-> (accessed 1 December 2020).



Graph 1

Prosecutions of users in comparison to identification of victims in the EU-28

suspected cases and no prosecutions or convictions during the same period.¹⁴⁸ Given the low level of reported use within most national systems, it can be surmised that this type of statute has not, thus far, been particularly successful in achieving the goal of holding users accountable.

The chart above compares the number of prosecutions reported for the knowing use of goods and services from VoTs within the EU-28 with the number of identified victims during the same two-year period. (Graph 1)

Fourth, and related to the points above, this statute—if it is adopted in isolation—creates incentives inconsistent with the intent of Article 9(5) to discourage demand. For example, it tacitly endorses the purchase of sex in all cases except the narrow (and, as noted above, relatively rare) circumstance in which users actually know they are engaging in a sexual act with a trafficking victim. Thus, the statute indirectly encourages avoidance of knowledge by users.¹⁴⁹

¹⁴⁸ See *ibid.*, p. 243; see also Eurostat, *Demographic Balance, 2019*, [website] (Eurostat) Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Demographic_balance,_2019_\(thousands\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Demographic_balance,_2019_(thousands).png) (accessed 2 December 2020).

¹⁴⁹ See Andrea Di Nicola and Paolo Ruspini, "Learning from Clients", in *Prostitution and Human Trafficking: Focus on Clients*, ed. A. Di Nicola et al. (New York: Springer, 2009), pp. 231–232. ("Striking is the shared . . . awareness [among johns] of exploitation and the related neutralization techniques. . . . 'If I could differentiate [between forced and voluntary, DZ/RS], it would probably not influence my choice. . . . It is totally wrong of course.' (Dutch Client)") (brackets in original); Martin A. Monto, "Female Prostitution, Customers, and Violence", *Violence Against Women* 160/177 (2004) ("...stating of johns that, 'though they may not acknowledge their part in the system, many are aware that prostitutes are victimized in the course of their activities.'").

As noted by one sex buyer: "Of course I don't ask for the residence permit. It doesn't matter to me if they have it or not. If tomorrow they are kicked out onto the street, bad luck. I have nothing to do with it."¹⁵⁰

If adopted without accompanying statutes targeting other aspects of demand, it also sets a narrow norm: by only criminalizing the knowing use, the statute can be interpreted as tacit permission to purchase sex in all other cases, including those that foster exploitation that lead to trafficking.

Finally, this statute implicitly places the burden on the victim to inform the user that he or she is a victim, rather than on the user to legitimately discern this information, which again runs against the realities of trafficking. First, as noted above, without being informed by either the victim or the trafficker, it is difficult for a user to definitively know that the individual is a trafficking victim. Moreover, users are incentivized to avoid such knowledge. Second, victims may or may not view themselves as victims while being exploited.¹⁵¹

¹⁵⁰ See Andrea Di Nicola and Paolo Ruspini, "Learning from Clients", in *Prostitution and Human Trafficking: Focus on Clients*, ed. A. Di Nicola et al. (New York: Springer, 2009), p. 232.

¹⁵¹ See Laura Simich, Lucia Goyen, and Karen Mallozzi, *Improving Human Trafficking Victim Identification – Validation and Dissemination of a Screening Tool*, (New York: Vera Institute, June 2014), p. 172. Victims of trafficking may struggle to self-identify as a victim during the period of their exploitation due to a lack of understanding of the crime, self-blame, or a sense of shame.

Third, victims are likely to be strongly incentivized to not report their victim status to a user because of concerns about reprisals from their trafficker and potentially from the user, who may or may not sympathize with the victim. Traffickers are similarly highly unlikely to inform users that the individual is a trafficking victim, given that doing so would be self-incriminating.

Criminalization of the use of services as a form of trafficking

An alternative version of the criminalization of the “knowing use” is that which considers the purchase of services from a trafficking victim as a form of trafficking itself. In other words, in such cases the user is charged with THB by virtue of the purchase of sex from a trafficking victim. This method of criminalization implicates the purchaser as part of the trafficking chain due to the fact that the user “receives” the victim and is thereby serving as a sort of accomplice to the trafficking process. The easiest example of this statute in action would be the case of a user receiving (for the purpose of sex) a minor with the knowledge that the individual is a minor, a situation where proof of means is not required.

The benefits of this criminal justice response are primarily in that charging users as traffickers often carries more serious penalties,¹⁵² thereby increasing its deterrence potential as a means of suppressing demand connected directly to trafficking. By considering purchasing services from a trafficking victim as part of the crime of trafficking, States employing this method signal to potential users that purchasing services from a trafficking victim could result in being charged with a far more serious criminal offence than soliciting prostitution. ▶

- ▶ In this sense, the approach creates a heavier disincentive against purchasing sexual services from a trafficking victim. This method also clearly links the user’s actions to the trafficking of the victim, illustrating their culpability and the harmful role that users play in the sex trafficking chain.

The shortcomings of this response lie in the challenges it poses to successful prosecution, with it being unwieldy and thus generally underutilized. By charging users with trafficking offences, a more complicated and severe offence, the resources required for a successful prosecution are increased. As is the case for many of the statutes addressing users of services from trafficking victims, prosecutors must prove that the person is indeed a victim of trafficking, as well as prove that the user knew the person was a trafficking victim, a *mens rea* element that can be very difficult to establish, as has been discussed above.

Criminalizing the use of services of a trafficking victim

The method of criminalizing users discussed above only targets those who knowingly use the services of trafficking victims. Another type of statute criminalizes the use of the services of a trafficking victim regardless of the user’s awareness or knowledge that the person in prostitution is a victim of trafficking. In legal terms, this type of approach is often referred to as “strict liability”.

This approach criminalizes acts based on the objective status of the victim and does not require that the user have prior knowledge of that status before using the victim’s services. Prosecutors are thus only required to prove that the suspect purchased sex from another person, and that that person was a trafficking victim. Currently, two OSCE participating States have adopted this approach for adult victims: Cyprus and the United Kingdom (England and Wales).¹⁵³ As in the case of the “knowing use” statutes, due to the status of the victim the penalties for this offense are often, though not always, greater than the crime of simply purchasing sex.

¹⁵² See U.S. Department of Justice, United States Code 1591 “Sex trafficking of children or by force, fraud or coercion”. Available at: <https://www.law.cornell.edu/uscode/text/18/1591> (accessed 5 April 2021). It is often the case that charging users as traffickers carries a higher penalty than provided by statutes targeting just the use of services from a trafficking victim. This is however not an inherent component of the model.

¹⁵³ This method of criminalization is currently employed in Cyprus, where Article 17(a) of the Anti-trafficking law provides for the prosecution of any user who purchases services from a trafficking victim. Section 53A of the Sexual Offences Act of 2003 for the United Kingdom (limited to England and Wales), criminalizes users who purchase sexual services from people in prostitution who are being exploited via force, coercion or deception.

Examples of this legislation in OSCE participating States:

CYPRUS¹⁵⁴

Article 17 A

Subject to the provisions of this Law, whoever requests or collects or uses labour or any victim services, which are the subject of sexual exploitation, as interpreted in Article 2 of this Law, is guilty of an offense and, in case of conviction, they are subject to imprisonment which does not exceed ten (10) years or a fine not exceeding fifty thousand euros (€ 50,000) or both of these penalties.

It is understood that, in case the victim is a child, a person who convicted of an offense under the provisions of this Article is subject to life imprisonment or a fine that does not exceed one hundred thousand euros (€ 100,000) or both penalties.

UNITED KINGDOM (England and Wales)¹⁵⁵

Section 53A

1. A person (A) commits an offence if—
 - (a) A makes or promises payment for the sexual services of a prostitute (B),
 - (b) a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and
 - (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).
2. The following are irrelevant—
 - (a) where in the world the sexual services are to be provided and whether those services are provided,
 - (b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.
3. C engages in exploitative conduct if—
 - (a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or
 - (b) C practices any form of deception.
4. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

¹⁵⁴ See Republic of Cyprus, Article 17A On Preventing and Combating Trafficking and Exploitation of Persons and Victim Protection (Amending) Law of 2019.

¹⁵⁵ See United Kingdom, Section 53A Sexual Offences Act 2003.

Analysis

One of the primary advantages of such statutes is that they cover the purchase of sex from *all* trafficking victims, regardless of what the user knew.

Moreover, by eliminating the knowledge requirement, the charge is easier for prosecutors to successfully prove, since they must only prove the exchange of money for sex with a trafficking victim.¹⁵⁶

This approach, however, also has some shortcomings. First, such statutes only effectively criminalize the **demand directly connected to trafficking**, as opposed to the demand that fosters exploitation that leads to trafficking. In this regard, it tackles only a subset of demand, smaller than what is envisioned by the language in Article 9(5).

Second, such statutes can be challenging to implement in practice, because they require proof that the person with whom sex was purchased was a victim of trafficking.¹⁵⁷ This element can be difficult to prove if a victim is unable to testify due to fear or trauma, or other reasons, thereby creating the need to prove victim status by indirect or circumstantial evidence. This problem is often exacerbated by the lack of procedures supporting victimless prosecutions.

However, on balance, such statutes can be considered a highly useful tool to discourage demand, since they reflect the reality that most users are unable or unmotivated to determine whether a person is a victim of trafficking.

These statutes target the harmful behaviour of the user regardless of the user's knowledge, and thus they represent a policy response that prioritizes addressing the harm to the victim, rather than the ability to prove the mental state of the user.

The latter merely incentivizes users to forego due diligence and ignore warning signs in order to maintain plausible deniability. In other words, the focus of such statutes is on victim protection and the impact of users, rather than the intent of

¹⁵⁶ Several States have sought to adopt this approach after recognizing the difficulties associated with proving the mens rea requirement. See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim*, (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.20.

¹⁵⁷ See Andrea Matolcsi, "Police Implementation of the Partial Sex Purchase Ban in England and Wales", (*European Journal on Criminal Policy and Research*, 2020). Available at: <https://doi.org/10.1007/s10610-020-09471-2> (accessed 5 April 2021).

users. The burden is placed on the buyer to exercise great caution and due diligence when making purchases, rather than placing the burden on the victim to inform the user of his or her status as a victim (which, in light of the evidence noted above, may or may not deter the user). Given that the purchaser always has a choice whether or not to make a purchase, whereas victims of trafficking by definition do not, this method logically targets the appropriate actor.

Such statutes, by virtue of their more limited required elements, are also more readily scaled up to the size of the problem, since investigators are not only limited to cases where affirmative evidence of knowledge is present.

This approach to criminalizing the use of services from trafficking victims is a positive example of risk management. Here the law seeks to prioritize the protection of trafficking victims by putting the burden of proof on the user. This type of statute also helps to set broader norms regarding risky conduct, rather than limiting the norm to very specific circumstances. In this regard, such statutes—if fully implemented—are likely to substantively contribute to the goals of Article 9(5) of broadly discouraging demand that fosters exploitation that leads to trafficking.

Criminalizing the use of a child victim of trafficking

Some States or local governments have adopted variations of the strict liability “use” approach described above by specifically targeting the use of child victims. For example, Washington State, in the United States, has adopted a statute criminalizing the purchase of sex from a minor, regardless of whether the user knew the person was a minor.¹⁵⁸ The rationale behind this type of statute is centred on the heinous nature of the act and the inability of children to provide consent.

WASHINGTON STATE (USA)

RCW 9.68A.100

1. A person is guilty of commercial sexual abuse of a minor if:
 - (a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
 - (b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
 - (c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.
2. Commercial sexual abuse of a minor is a class B felony punishable under chapter **9A.20** RCW.
3. In addition to any other penalty provided under chapter **9A.20** RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW **9A.88.130** and **9A.88.140**.
4. Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

RCW 9.68A.110(3)

In a prosecution under RCW **9.68A.040**, **9.68A.090**, **9.68A.100**, **9.68A.101**, or **9.68A.102**, it is not a defense that the defendant did not know the alleged victim’s age.¹⁵⁹

¹⁵⁸ See Washington State, Revised Code of Washington (RCW) 9.68A.100 and Washington State, Revised Code of Washington (RCW) 9.68A.110.

¹⁵⁹ The statute continues as follows: “It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver’s license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.”

FRANCE¹⁶⁰

Law no. 2016-444 of April 13, 2016 aiming to strengthen the fight against the prostitution system and to support prostituted persons (1)

Art. 225-12-1 paragraph 2

The act of soliciting, accepting or obtaining relations of a sexual nature from a person who engages in prostitution, including in an occasional way, in exchange for remuneration, the promise of remuneration, the provision of an advantage in kind or the promise of such an advantage is punishable by three years of imprisonment and by a fine of €45,000 when the person is a minor or has a particular vulnerability, apparent or known to the perpetrator, due to an illness, infirmity, disability or state of pregnancy.

Again, the advantage of this approach is that it is easier to prove: the prosecutor must only demonstrate the sex act in exchange for money and that the victim was a minor at the time of the offense. Moreover, such statutes provide for heightened penalties for those individuals who exploit child VoTs, and put additional pressure on users rather than on victims. The deterrent effect from these laws can be significant, since they typically carry higher penalties and set a clear societal norm against the abuse of children.¹⁶¹

Another benefit of this tool is that by using a “strict liability” approach, it becomes the burden of the user to confirm the age of the seller. Forcing users to actively identify age serves as another means of discouraging the use of child victims and protecting children.

The limitation of this approach, however, is that it only applies to children and does not comprehensively address all the demand that fosters exploitation. It should therefore be used in concert with other mechanisms.

Criminalizing all sex buying

A third criminal justice approach to demand utilized in the OSCE region is to criminalize all sex purchasing, regardless of whether person in prostitution is a VoT or whether the user knows the person is, or possibly is, a VoT. This type of statute is the broadest approach to discouraging demand and is used in systems where selling sex is illegal and in systems where selling sex is legal/decriminalized.

Although there are many variations to this type of statute, one common feature in most countries using such statutes is that the purchase of sex—without some aggravating factor such as a child victim or use of force—is typically designated as a low level crime or an administrative offense.

Due to its typically low classification, this type of statute may not adequately reflect the severity of the offense if the user is purchasing sex with a trafficking victim. However, as noted above, a combination of statutes can be used. Some countries criminalize the purchase of sex generally, and also have other statutes criminalizing the use of the services of trafficking victims specifically (either with or without knowledge). The latter is typically designated as a more serious offense.

Examples of such legislation in OSCE participating States

IRELAND¹⁶²

Criminal Law (Sexual Offences) Act 2017

25. The Act of 1993 is amended-

- (a) in subsection (2) of section 1, by the deletion of paragraph (a),
- (b) by the insertion of the following section after section 7:

Payment etc. for sexual activity with prostitute

- 7A. (1) A person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute shall be guilty of an offence and shall be liable on summary conviction—
- (a) in the case of a first offence, to a class E fine, and
 - (b) in the case of a second or subsequent offence, to a class D fine.

¹⁶⁰ See French Republic, Law no. 2016-444 of April 13, 2016 aiming to strengthen the fight against the prostitution system and to support prostituted persons (1), Article 20.

¹⁶¹ See Republic of Cyprus, Law 117(I)/2019, Article 10.

¹⁶² See Republic of Ireland, Criminal Law (Sexual Offences) Act 2017, p. 19.

FRANCE¹⁶³

Law no. 2016-444 of April 13, 2016 aiming to strengthen the fight against the prostitution system and to support prostituted persons (1)

Art. 611-1. – The act of soliciting, accepting or obtaining relations of a sexual nature from a person who engages in prostitution, including in an occasional way, in exchange for remuneration, the promise of remuneration, the provision of an advantage in kind or the promise of such an advantage is punishable by the fine set out for class five contraventions.

Natural or legal persons guilty of the contravention set out in the present article also incur one or more of the complementary penalties mentioned in article 131-16 and in the second paragraph of article 131-17.

II. – Section 2. bis of chapter V, title II, book II of the same code is thus modified:

1. After the word “prostitution”, the end of the title is deleted;
2. Article 225-12-1 is thus written:

Art. 225-12-1. – When the act of soliciting, accepting or obtaining relations of a sexual nature from a person who engages in prostitution, including in an occasional way, in exchange for remuneration, the promise of remuneration, the provision of an advantage in kind or the promise of such an advantage, is committed repeatedly under the conditions set out in the second paragraph of article 132-11, it is punishable by a fine of €3,750.

Analysis

One of the features of this type of statute is that its scope entirely covers the broad directive of Article 9(5) to discourage the demand that fosters exploitation by criminalizing any purchase of sex regardless of the circumstance.¹⁶⁴ In other words, as outlined by the UN Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, the obligation to discourage demand under Article 9(5) can be “effectively met” through the criminalization of all sex purchasers.¹⁶⁵

Such statutes are also typically much easier to use in practice than the statutes above, because they do not require proof that the person in prostitution was a VoT or that the user knew

¹⁶³ See French Republic, Law no. 2016-444 of April 13, 2016 aiming to strengthen the fight against the prostitution system and to support prostituted persons (1), Article 20.

¹⁶⁴ As outlined in chapter 2 above, demand must be understood as: a) that which fosters exploitation, not necessarily as a demand directly for that exploitation; b) in relation to exploitation, irrespective of whether that exploitation also constitutes trafficking; and c) that “it is sufficient that the exploitation fostered by the demand lead to trafficking”—i.e., the recruitment, transportation, transfer, harbouring, or receipt of persons to be exploited through prostitution.

¹⁶⁵ See 20 February 2006, E/CN.4/2006/62 , paragraph 88.

the person in prostitution was a VoT. In France, for instance, 4,810 buyers were arrested between 2016 and 2018 following its adoption of laws criminalizing all sex purchasing.¹⁶⁶ In comparison, there were only 162 prosecutions of knowing users within the EU-28 in the 2017–2018 period.¹⁶⁷ And finally, this type of statute has a robust norm-setting feature, as it clearly demonstrates that a broad range of conduct frequently connected to exploitation and trafficking, i.e., the purchase of sex, is unacceptable.¹⁶⁸ While criminalization does not guarantee that sex purchasing will “cease to exist”, it nonetheless “serves as a clear and effective means of discouraging the activity.”¹⁶⁹

Interestingly, the proffered rationale for this type of statute is typically not compliance with Article 9(5). Some countries have outlawed sex buying for decades based on a variety of criminal justice, community safety, and moral grounds. Others have adopted this type of statute on the grounds that any purchase of sex is a form of exploitation and related to gender-based violence, regardless of the status of any particular person in prostitution.¹⁷⁰ The so-called “Nordic model” is an example of this latter reasoning, basing its criminalization of the purchase of sex on the grounds that there is a strong association between prostitution and childhood sexual abuse, that prostituted women’s childhoods were usually characterized by hardships, and that most sex purchasers are taking advantage of their difficult situation.¹⁷¹ (Notably, because of this analysis, the Nordic Model does not criminalize the *selling* of sex.) Since being first adopted in Sweden in 1999, this model has been adopted in six other OSCE participating States¹⁷² and one OSCE Partner for Co-operation.¹⁷³

While the reasons in some States for criminalizing sex buying may be primarily focused on the nature of the prostitution transaction itself, from the perspective of countering THB for sexual exploitation in the context of Article 9(5), criminalizing all sex purchasing also has a relevant rationale in that

¹⁶⁶ See Inspection Generale des Affaires Sociales, *Evaluation de la loi du 13 avril 2016 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées* (Paris: Inspection Generale de l’Administration, December 2019), p. 49.

¹⁶⁷ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 243.

¹⁶⁸ See Niklas Jakobsson and Andreas Kotsadam, *The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation* (Gothenburg, University of Gothenburg, May 2013), pp. 7–8.

¹⁶⁹ See *ibid.*, paragraph 89.

¹⁷⁰ See Kingdom of Sweden, Proposition [Prop.] 1997/ 98:55 Kvinnofrid [government bill], p. 22.

¹⁷¹ Kingdom of Sweden, Proposition [Prop.] 1997/ 98:55 Kvinnofrid [government bill], 102–04.

¹⁷² Canada, France, Iceland, Ireland, Norway, UK (Northern Ireland) have all implemented this form of criminalization. However Canada has also chosen to maintain its offence of soliciting to sell sex in public, deviating slightly from the Nordic model, which advocates decriminalized selling and criminalized purchasing of sex.

¹⁷³ Israel.

it prohibits all buying that might foster exploitation and, by extension, trafficking for the purpose of profit. Furthermore, because—as has been discussed above—users are unable or unwilling to distinguish between those who are trafficking victims and those who are not, the demand that fosters trafficking and the demand for prostitution cannot be separated.¹⁷⁴ Thus, the analysis of this approach’s proponents is that to effectively discourage the demand that fosters trafficking, a State must discourage all demand for prostitution.

Indirect approaches

Some States seek to utilize other, non-trafficking specific statutes, such as those which criminalize forms of sexual violence, to effectively hold users accountable for crimes against VoTs. These statutes criminalize behaviour or acts that may be present during an encounter between a user and a VoT, such as acts of physical or sexual violence.

These methods target conduct by users in the context of transactions of sex for money (such as rape and physical assault), but in many cases do not target demand as intended within the Palermo Protocol: they simply apply laws already in place to protect the general public to the situation of VoTs and those who harm them. They not expressly take into account the trafficking context.

Such approaches include, for example, statutes that punish sexual intercourse with a person against his/her will, taking advantage of a predicament situation or after having been intimidated,¹⁷⁵ statutes that criminalize the formation of an illegal contractual relationship with a person in prostitution,¹⁷⁶ and measures enhancing regulation of the prostitution industry.¹⁷⁷

Sexual violence statutes

Many of such statutes are rape or sexual violence statutes. They can be used in the context of a trafficking victim who has been forcibly raped by a user. In this regard, the statutes

focus on the overt sexual violence of the incident, independent of any trafficking or commercial aspects of the interaction. Thus, the act is labelled as rape or an equivalent charge, not because it is sex in exchange for money with a trafficking victim, but because it meets the typical elements of rape such as forcible sexual intercourse without consent.

These types of statutes allow perpetrators of violence in the prostitution industry to be held accountable for direct violence against trafficking victims like any other victim, thereby directly confronting one aspect of the myriad harms suffered by victims. However, they have several limitations, including that they do not account for the full spectrum of harm suffered by trafficking victims, do not account for the commercial or market aspects of the victim’s exploitation, and do not counter “demand” as conceived by the Protocol.

As discussed in chapter 1 above, the harm caused to victims is multi-faceted: the harms associated with being trafficked into prostitution, the harm of repeated non-consensual sex occurring while being trafficked, the harm of supplementary violence or force used during the prostitution transaction, and the lasting psychological harms created by those actions.

The “sexual violence” approach to criminalizing violent users, however, only accounts for one type of harm—supplementary force used to rape the victim—and does not account for the other aspects of harm, including being a VoT. In this regard, the pure “sexual violence” statutes simply treat trafficking victims like any other citizen by recognizing that they can be raped. They do not, however, recognize that sex with a non-consenting trafficking victim is also harmful to that victim (and could often be properly characterized as rape), since it was originally procured by illicit means such as force, fraud or coercion. In short, the fact that the victim of sexual violence is also a VoT is left out of the criminal analysis, and implies that VoTs are otherwise accepting and unharmed by their situation.

Moreover, in practice such statutes are rarely applied to VoTs because once money is exchanged, law enforcement’s perception of force, deception, vulnerability, or coercion declines. In other words, rapes or sexual assaults are less likely

¹⁷⁴ See Mary Honeyball, *Report on Sexual Exploitation and Prostitution and Its Impact on Gender Equality* (Brussels: European Parliament, Committee on Women’s Rights and Gender Equality, 2014), p. 7.

¹⁷⁵ For example, some countries charge users with rape, or a lesser forced sexual offence. See OSCE, *Report by the OSCE Acting Co-ordinator for Combating Trafficking in Human Beings following the country visit to Austria 19–23 November 2018 and 14 January 2019* (Vienna: OSCE, 21 August 2020), paragraph 47.

¹⁷⁶ See Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA’s Activities* (Warsaw: Council of Europe, 2020), paragraph 122. Six States criminalize employing an irregularly residing foreigner who is a victim of trafficking (Austria, Denmark, Germany, Latvia, Poland and Portugal); Switzerland criminalizes illegally employing or exploiting foreign workers.

¹⁷⁷ See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), p. 96.

to be viewed as rapes or sexual assaults when they occur in the context of a prostitution transaction.¹⁷⁸

This method of criminal justice response also fails to establish any norm discouraging demand that fosters exploitation that leads to trafficking. In this regard, it fails to protect victims of trafficking as a particularly vulnerable class of individuals. And, without any reference to “trafficking”, its use is unlikely to facilitate access of victims to services they would otherwise be entitled to as trafficking victims.

Irregular employment

Other States report that they seek to discourage demand through criminalizing acts not specific to buying sexual services from trafficking victims, but that could, if used appropriately, encompass the use or receipt of services from them. For example, Switzerland criminalizes “illegally employing or exploiting foreign workers”,¹⁷⁹ while Austria criminalizes “employing an irregularly residing foreigner who is a victim of trafficking”.¹⁸⁰

In theory, such statutes could allow for the prosecution of a user for “employing” a trafficking victim who is a foreign national,¹⁸¹ though they would not apply to instances of domestic THB (in the case of the Swiss statute, the status of an individual as a VoT is not mentioned).

However, there exist numerous legal barriers to the practical implementation of these statutes. For instance, in the case of the Austrian statute, law enforcement must prove that the sex act occurred, that money was exchanged, that this exchange constituted “employment”, that the person in prostitution is both foreign and irregularly (i.e., illegally) residing in Austria, that the person in prostitution is a trafficking victim, and that the “employer” had knowledge that the person in prostitution was a trafficking victim. Thus, this statute is analogous to a

¹⁷⁸ See Centre for Crime and Justice Studies, “We Shouldn’t Have to Put Up With This”: Street Sex Work and Violence” (*Crime and Justice Monitor* 42, Winter 2000/2001). Available at: [https://www.crimeandjustice.org.uk/files/09627250008552877.pdf](https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/09627250008552877.pdf) (accessed 30 October 2020); Sonia Elks, “Sex workers denied justice over rapes, says UK prostitutes’ collective”, [website] (Reuters, 5 November 2019). Available at: <https://www.reuters.com/article/us-britain-women-rape-trfn/sex-workers-denied-justice-over-rapes-says-uk-prostitutes-collective-idUSKBN1XFTQE>, (accessed 30 October 2020); Melissa Ditmore and Catherine Poucalled-Gordon, “Human Rights violations: The acceptance of violence against sex workers in New York” (*Research for Sex Work* 6, December 2003). Available at: <https://sexworkersproject.org/downloads/DitmorePoucalle200312.pdf> (accessed 30 October 2020).

¹⁷⁹ See Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA’s Activities*, (Warsaw: Council of Europe, 2020), paragraph 122.

¹⁸⁰ See ibid., More information see Republic of Austria, Act Governing the Employment of Foreigners, Art. 28c paragraph 2 subparagraph 2. Available at: https://www.legislationonline.org/download/id/7183/file/Austria_Act_Governing_Employment_Foreign_Nationals_1975_am2013_en.pdf (accessed 5 April 2021).

¹⁸¹ See Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA’s Activities*, (Warsaw: Council of Europe, 2020), paragraph 122.

“knowing use” statute that is reserved for foreign VoTs. In such cases, since the law is only applicable to persons who are foreign workers or irregular migrants, it is this status that ultimately receives primary attention, not the use of services from a trafficking victim.

Criminalizing the facilitation of demand

In addition to methods of criminalization targeting the user, some States have also sought to discourage or disrupt demand by criminalizing online platforms (and their operators) that facilitate demand, in particular websites offering sexual services or serving as hosts for communities of buyers and users. Such an approach allows States to meet their obligations under the Palermo Protocol to discourage demand by disrupting the access of buyers and users to the market for prostitution, and punishing third parties for promoting or facilitating such demand.

This method of a criminal justice response has been introduced in recent years in response to the Internet’s increasing facilitation of the prostitution industry. As noted in the OSR/CTHB’s report *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools*,¹⁸² technology, and the Internet in particular, has led to an increase in the size of the market for trafficking for sexual exploitation. It has increased access to the market for traffickers, allowing for the sale of new services (e.g., web streaming) and lowering the barriers between buyers and persons in prostitution, thereby encouraging sex buyers to enter the market.¹⁸³

This situation creates “more personalized choice for buyers, easier access to the market, market transparency, buyer safety and anonymity, and thus increased demand for goods or services provided by trafficking victims.”¹⁸⁴ This in turn has prompted some States to consider such platforms as a primary component of the trafficking chain and enablers of demand.

More on this method of disrupting demand by targeting online platforms can be found on page 62 in chapter 4 below.

¹⁸² The complete report can be accessed here: https://www.osce.org/files/documents/9/6/455206_1.pdf

¹⁸³ See OSCE, *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools* (Vienna: OSCE, 24 June 2020), pp. 12–16.

¹⁸⁴ See ibid., p. 17.

Implementing a criminal justice response against demand

While the adoption of laws criminalizing demand are an important first step for the criminal justice system to impact demand, adopting such laws alone is insufficient: criminal justice systems need resources such as personnel, knowledge, budget and expertise, as well as political will to implement such laws and achieve their desired impact. Given the size and scale of demand, the scope of implementation is perhaps the most important factor in achieving impact.

As noted above when discussing reported statistics on the number of prosecutions and convictions pertaining to the use of services of VoTs, there exists a large degree of difference within OSCE participating States on the level of implementing responses. Various participating States undertaking sometimes dramatically different approaches in how to identify, apprehend and punish buyers and users, even amongst those using the same legal standards. While many participating States have some form of legislation that can be used to tackle demand, and some use a combination of two or more statutes, due to the limited implementation of these statutes, most participating States are not actively identifying, arresting, prosecuting or punishing the creators of demand.

Limited prosecution of users

The current rate of prosecution of users within the OSCE region is low when considering the number of statutes criminalizing users, as well as the scale of trafficking for the purpose of sexual exploitation within the region (e.g., the number of identified victims).

Although data pertaining to the prosecution of users is heavily fragmented and incomplete, the lack of substantive outputs is still readily visible. For example, according to data reported to the European Commission, in 2017 and 2018, there were only 162 prosecutions pertaining to the use of services from VoTs for that two-year period, despite 11,699 victims identified in the EU during the same time frame.¹⁸⁵ This equals one prosecution of a user for every 72 identified victims, despite the fact that the number of users vastly exceeds the number of victims.

This limited implementation of laws targeting the users of the services of trafficking victims extends to States utilizing both “knowing use” and “strict liability” statutes.

Only 9 of the 22 States that criminalize the knowing use of sexual services from a trafficking victim have reported any recent cases of successful prosecution.¹⁸⁶ Four of those, Lithuania, Estonia, Malta and Bulgaria, accounted for 73% of all 162 prosecutions within the EU in the 2017–2018¹⁸⁷ period. Four of the other five reported having three or fewer prosecutions over the same two year period.¹⁸⁸

In the UK, which has a strict liability statute, 66 prosecutions pertaining to buying sexual services from trafficking victims were reported for the period 2010–2019¹⁸⁹, despite the fact that; 1,645 potential VoTs for the purpose of sexual exploitation were submitted to the UK National Referral Mechanism in 2019 alone.¹⁹⁰ Cyprus, which adopted a strict liability law in 2019, recorded three prosecutions for soliciting or patronizing a sex trafficking victim in 2019.¹⁹¹

¹⁸⁶ This data consists of reports from the European Commission and the Council of Europe from 2016, 2019 and 2020. See European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020), p. 58; European Commission, *Data Collection on Trafficking in Human Beings in the EU*, (Brussels: European Commission, 20 October 2020), p. 243; Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA's Activities*, (Warsaw: Council of Europe, 2020), paragraph 123. Seven EU Member States have reported prosecutions pertaining to this statute (Bulgaria, Cyprus, Estonia, Greece, Latvia, Lithuania and Malta), with North Macedonia and Serbia also having case law on this provision.

¹⁸⁷ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 243. Critically, the numbers of prosecutions and convictions presented by the European Commission do not distinguish between the form of exploitation, with it more than likely that a significant share of the prosecutions were for the use of services not involving trafficking for the purpose of sexual exploitation.

¹⁸⁸ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 243; European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020), p. 55.

¹⁸⁹ See Crown Prosecution Service, *Violence Against Women and Girls Report Tenth Edition* (London: Crown Prosecution Service, 2017), p. A40. Available at: https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_1.pdf (accessed 5 April 2021); see also Crown Prosecution Service, *Violence Against Women and Girls Report 2018–19* (London: Crown Prosecution Service, 2019), p. A51. Available at: <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf> (accessed 5 April 2021).

¹⁹⁰ See National Crime Agency, *National Referral Mechanism Statistics – End of Year Summary 2019 second edition data tables*, (London: National Crime Agency, 2 April 2020). Available at: <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019> (accessed 5 April 2021).

¹⁹¹ See U.S. Department of State, *Trafficking in Persons Report 20th Edition* (Washington, D.C.: U.S. Department of State, June 2020), p. 179; see also European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020), p. 55.

¹⁸⁵ See European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Brussels: European Commission, 20 October 2020), p. 12 and p. 243. Critically, these include the use of non-sexual services from trafficking victims. Thus it likely that a large percentage involves services received from victims trafficked for the purpose of labour exploitation.

Overall, these low rates of prosecutions of users illustrate that even though the legal provisions exist to discourage demand, their use within criminal justice systems is limited,¹⁹² with the result that implementation rates do not come close to meeting the size of the problem. In short, when it comes to the use of victims of trafficking for sexual exploitation, a culture of impunity exists within the OSCE region.¹⁹³

Implementation challenges

Several reasons exist for this lack of effective implementation. In addition to the shortcomings posed by legal standards, as covered earlier in this chapter, barriers to effective implementation of criminal justice measures targeting demand relate to limited training of law enforcement; challenges in gathering the necessary evidence to locate, identify and arrest buyers and users; conducting undercover operations; and failure to prioritize efforts to discourage demand. Many of these challenges are particularly visible in attempts to apply “knowing use” statutes, since this legal standard makes it difficult to target users at a scale that would be meaningful.

Limited training and expertise amongst law enforcement

Substantive training for criminal justice practitioners is imperative for the successful application of statutes criminalizing demand. Law enforcement must have the knowledge and expertise to conduct operations and collect the necessary evidence to support prosecutions involving buyers or users (depending on the legislative framework). Given the challenges facing investigators in gathering the necessary evidence, as well as conducting operations in evolving venues, such as online, training should include developing capacities in the use of specialized investigative techniques, such as Internet-based operations or financial probes.

Moreover, investigations of buyers or users may also bring law enforcement into contact with VoTs, or users may be identified as a result of VoTs having been identified. Therefore, law enforcement must also have the knowledge and expertise to be able to identify and support VoTs, including training on victim-centred approaches as well as how to ap-

ply age- and gender-sensitive approaches. Such efforts are further complicated by the fact that, in jurisdictions where sex buying is decriminalized or legalized, if it is not immediately obvious that a person in prostitution is a VoT, buyers and users are not always committing a *prima facie* criminal offence.

Several States across the OSCE region have developed creative and effective methods to address demand through law enforcement operations. Some participating States have also reported that their law enforcement has received relevant training.¹⁹⁴ In general, however, awareness among law enforcement practitioners is still lacking in many cases, which hampers their ability to implement criminal justice measures applicable to buyers or users.

Building evidence: locating buyers and users

A key question surrounding the implementation of current laws targeting buyers and users is where criminal justice actors should aim in order to counter demand. Historically, operations have been conducted on the street, targeting more visible forms of prostitution. However, major parts of the prostitution industry have increasingly moved online, including advertising, communication, payment, and communities (e.g., review boards).¹⁹⁵ This shift has reduced the visibility of buyer and user behaviour and increased the efficiency of interactions between people in prostitution and buyers. This has contributed to the limited implementation of criminal justice measures, since it has become more challenging for law enforcement to identify buyers and users or determine where their activities are taking place. It has also raised jurisdictional issues for law enforcement in terms of determining where a crime has occurred and thus who has the authority to investigate and prosecute, since it has become possible for a buyer to initiate a transaction in one jurisdiction while the trafficker or person in prostitution is in another.

Moreover, based on examples of cases, reports and conversations with national authorities and members of law enforcement, it is clear that when undertaking operations related to THB, law enforcement tends to focus almost exclusively on identifying traffickers. Most law enforcement is not fully exploring options for identifying buyers and users.¹⁹⁶ This is a result of both lack of training and lack of prioritization.

¹⁹² See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.21.

¹⁹³ See European Commission, “EU Anti-Trafficking Day: Commission calls for an end to impunity for human traffickers” [website] (Brussels). Available at: https://ec.europa.eu/home-affairs/news/eu-anti-trafficking-day-commission-calls-end-impunity-human-traffickers_en (accessed 7 January 2021); European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020), p. 51.

¹⁹⁴ See European Commission, *Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (Brussels: European Commission, 2020), p. 84.

¹⁹⁵ See OSCE, *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools* (Vienna: OSCE, 24 June 2020), p. 12.

¹⁹⁶ See, e.g., Andrea Matolcsi, “Police Implementation of the Partial Sex Purchase Ban in England and Wales” (*European Journal on Criminal Policy and Research*, 2020).

However, in the context of trafficking for sexual exploitation, trafficking victims may have interacted online with hundreds of users, which can provide law enforcement with significant opportunity for locating and identifying those individuals.

Thus, each identification of a victim should be viewed by law enforcement as an opportunity to identify users.

Trafficking victims are also often able to help law enforcement identify violent users, and indeed might be more likely and willing to identify such users than to identify their own trafficker. Proactive steps in this regard could help implementation of the “indirect statutes” discussed above.

Conducting undercover operations

Article 20 of the United Nations Convention Against Transnational Organized Crime (Organized Crime Convention) requires State Parties, when able, to make use of special investigative techniques to combat crimes contained within the Convention and its Protocols, including the Palermo Protocol.¹⁹⁷

One of the most common and effective ways of achieving this and implementing laws directed at demand is through undercover or so-called sting operations. These are referred to in the Organized Crime Convention as “controlled delivery”. In one type of sting operation, an undercover law enforcement officer poses as a person in prostitution and arranges a sale of sex for money with a prospective buyer or user, who is then arrested upon completing the deal. There are numerous variations of such operations. For example, an officer may pretend to be prostituting online or on the street, or posing as an adult or a child, to lure and identify buyers or users.

Undercover operations against buyers and users are increasingly common on the Internet, since the Internet has replaced street prostitution as the primary venue for the sale of sex.¹⁹⁸ In such operations, law enforcement posts a fictitious online advertisement for sexual services and then waits for buyers to solicit sex.¹⁹⁹ Similarly, it is possible for law enforcement officers to pose as buyers with the aim of identifying the loca-

tions used for prostitution. These locations can then be monitored to apprehend users.²⁰⁰

One advantage of this type of operation is that real victims do not need to be harmed in order to develop a prosecution case. Moreover, such cases are not dependent on the testimony of a victim, who might not be in a position to participate due to fear or trauma. And finally, such operations can be conducted efficiently and at any time, thereby increasing their scalability to meet the volume of demand.

However, such operations must be carefully designed. First, they must comply with laws prohibiting the “entrapment” of innocent persons. In this regard, within States under the jurisdiction of the European Court of Human Rights (ECHR), an undercover officer may not create a crime, but rather be available to meet the user’s criminal intent.²⁰¹ This legal standard has apparently prompted some hesitancy by law enforcement to engage in undercover operations, particularly in the EU. However, there are countries—including in the EU—which have demonstrated that such operations are indeed possible and effective.²⁰²

Second, undercover operations must be constructed with sufficient realism to catch not only naïve buyers and users, but also savvy ones. Buyers and users who are experienced are more likely to detect an actor or someone impersonating a person in prostitution. Undercover operations should therefore mirror real life as closely as possible, to ensure that buyers and users able to identify circumstances outside the norm can also be apprehended.

Application of financial punishments

Within participating States having one or more measures to criminalize demand, issuing administrative penalties or minor monetary fines to buyers and users is a common criminal justice approach to discourage demand.

Because sex purchasing is often classified as a misdemeanour or a non-arrestable offence, the fines participating States impose on buyers can be relatively modest. For example, in some instances, the fine can be less than 100 Euro for purchasing sex from a potential trafficking victim.²⁰³

197 Although not fully defined by the Organized Crime Convention, special investigative techniques enumerated within the convention are “electronic or other forms of surveillance and undercover operations”. See UNODC, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (New York: United Nations, 15 November 2000), Article 20(1).

198 See OSCE, *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools* (Vienna, OSCE, 24 June 2020), p. 13-14.

199 See Cook County Sheriff Office, “National Sex Buyer Stings Reach 10,000 Arrests”, [website] (Chicago: Cook County, 5 February 2020). Available at: <https://www.cookcountysheriff.org/national-sex-buyer-stings-reach-10000-arrests/> (accessed 29 October 2020).

200 See Kajsa Claude, *Targeting the Sex Buyer. The Swedish Example: Stopping Prostitution and Trafficking Where It All Begins* (Stockholm: The Swedish Institute, 2010), p. 14.

201 In its 2010 ruling Bannikova v. Russia, the European Court of Human Rights developed a criteria for “incitement”, e.g., entrapment. This outlines that activity undertaken by law enforcement should essentially be passive, so it does not “exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed”.

202 Information provided by one EU member state to the OSR/CTHB indicated the use of such measures within national anti-trafficking activities.

203 See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 28.

In circumstances where the possible financial penalties are significant, there can still be challenges in applying the fine uniformly when the amount of the fine is up to the discretion of the authorities. In one participating State, when a group of sex buyers was discovered and broken up in 2016, 100 buyers were arrested but only 65 were fined, and for these the fine was 150 Euro²⁰⁴; the maximum penalty for each buyer was 1500 Euro.²⁰⁵

Consistent imposition of fines on buyers is, from a policy perspective, an opportunity for participating States for several reasons. First, the failure to use legislatively contemplated responses undermines the rule of law and credibility of institutions. Second, the consistent imposition of fines can have value as a deterrent. And third, governments could support policy goals through fine revenue. For example, in the United States, several jurisdictions levy fines on buyers and users and then earmark the fine revenue to support victim services. Thus, the users who are causing the harm to victims are paying to provide needed assistance and services for them.²⁰⁶

Findings

There is a broad diversity in how criminal justice statutes conceptualize demand. However, upon review it is clear that some have more potential for success than others to fully respond to the concept of demand as articulated in the Palermo Protocol, the OSCE Action Plan, the CoE Convention, the EU Directive and CEDAW.

For example, criminalization of the knowing use of services of VoTs, or only criminalizing the purchase of services from child VoTs represent important but narrow responses to the issue of demand: they have the potential to reach some users, but do not protect all victims or fully address the demand that fosters exploitation that leads to trafficking. Thus, to fulfil the guidance of the Protocol, narrowly tailored statutes should be used in concert with other forms of criminalization.

Additionally, when designing their criminal justice response and policy framework, States should take into account the usability of statutes, as well as the scope and scale of demand. Strict liability statutes or those criminalizing all sex purchasing avoid the pitfalls of other statutes and have more potential to be applied at scale.

²⁰⁴ See *ibid.*, p. 23.

²⁰⁵ See Mouvement du Nid, "French National Report", [prepared for Comparative Report: Disrupt Demand], (Paris: Mouvement du Nid), p. 9.

²⁰⁶ See, e.g., Washington State, Revised Code of Washington (RCW) 9.68A.105.

Second, implementation is a profound issue. It is evident that many criminal justice responses to demand face implementation deficiencies due to the structure of the statutes. Some place onerous obstacles in front of law enforcement and prosecutors, such as requiring proof of a buyer's knowledge of receiving services from a VoT, even though this does not reflect the realities of such transactions. Other implementation challenges are due to a variety of system factors, including limited political will, human and financial resources,²⁰⁷ and expertise. The status quo demonstrates that even in systems where criminalization does exist, "there is limited prosecutorial activity as well as limited knowledge of the scope or importance of the offence."²⁰⁸

Implementation, however, should be prioritized because it upholds the rule of law, protects victims, holds users accountable for harm, and establishes important norms regarding the prohibited activity. Unusable or unduly restrictive measures will prevent States from achieving the desired impact, and will result in demand remaining unaddressed.

States have flexibility in deciding how they will strive to discourage demand. They can choose to criminalize demand in some form or not. If States do not criminalize demand, they must take other action to meet their obligations in the Palermo Protocol. Various preventative measures at the disposal of States are discussed in chapter 4 below.

However, failure to criminalize the use of services from a trafficking victim or the purchase of sex generally is not without risk. As well as failing to set a clear norm against the behaviour that fosters exploitation that leads to trafficking, countries that allow the purchase of sex may have greater inflows of trafficking than those that criminalize the purchase of sex.²⁰⁹

Legal frameworks that permit third-party profiteering and procuring of persons for prostitution may also put vulnerable women and girls "in danger of a higher level of violence, while at the same time encouraging prostitution markets—and thus the number of women and under-age females suffering abuse—to grow".²¹⁰

States are therefore urged to consider that not criminalizing demand establishes counter-productive norms that will be harder to counteract through prevention or deterrence measures.

²⁰⁷ See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.24.

²⁰⁸ See *ibid.*, paragraph 19.21.

²⁰⁹ See Seo-Young Cho, Axel Dreher and Eric Neumayer, *Does Legalized Prostitution Increase Human Trafficking?*, (*World Development* 41, 2013), p. 25.

²¹⁰ See European Parliament, *Resolution on Sexual Exploitation and Prostitution and its Impact on Gender Equality*, P7_TA(2014)0162 (Brussels: European parliament, 26 February 2014), paragraph 34.

4



Chapter 4: Prevention Measures

For OSCE participating States to meet their international legal obligations to discourage the demand that fosters trafficking for the purpose of sexual exploitation, there are many methods of addressing or discouraging demand that lie outside the criminal justice system. In this paper, these are collectively referred to as prevention measures, since they broadly seek to impact demand prior to actual transactions.

There are various types of prevention methods, such as programmes, policies, regulations and legislative measures. These include awareness campaigns, educational programmes, codes of conduct or employment policies, research initiatives, and deterrence/disruption activities that passively or actively target buyer and user behaviour. Such efforts can be either specifically geared towards users, and thus focused on the issue of trafficking for the purpose of sexual exploitation, or directed towards discouraging demand in general.²¹¹

Research for this paper identified prevention measures directed at demand in 27 of the 57 OSCE participating States. Implementation of these initiatives was undertaken from 2005 to 2020, though almost all were actively promoted for only a limited period of time (such as one or two months, or up to a year).

The identified prevention initiatives were implemented by the participating States themselves, funded by participating States but implemented by other entities such as CSOs, or entirely supported by civil society or the private sector. Over 50% of the identified initiatives were implemented by civil society, with the share of civil society involvement increasing for certain prevention methods, such as awareness-raising campaigns.

²¹¹ Many of the initiatives directed toward buyers and users are oriented toward informing them about the harms of trafficking based on the theory that users will stop purchasing if they are aware of the harms of trafficking. In light of the evidence discussed above, namely, that users are usually unwilling or unable to identify trafficking victims, as well as research indicating that buyers and users are already aware that trafficking exists in the prostitution marketplace, this type of campaign should be re-evaluated with regard to its effectiveness.

This chapter outlines examples of these activities in the OSCE region and discusses their advantages and challenges in the context of discouraging demand. Four categories are presented: public awareness, education, deterrence, and disruption.

Public awareness-raising campaigns

As noted above, the OSCE Action Plan recommends participating States to undertake awareness-raising, including

“addressing, also through the media, the need to reduce the demand for the activities of persons trafficked for sexual exploitation”.²¹²

Public awareness campaigns to discourage demand have become the most common prevention method employed in the OSCE region. Such campaigns are predominantly run by CSOs,²¹³ though often in concert with, or using the financial support of national or local governments. The public awareness campaigns identified by the OSR/CTHB have been used to target specific groups of users, to influence all potential buyers of sexual services, or to raise awareness in the general public at large. They often run for limited lengths of time due to pre-set amounts of funding. Many of the campaigns have been linked to criminal justice measures in that they have been designed to raise awareness about the adoption or existence of laws criminalizing the purchase of sex, including from trafficking victims.

²¹² See OSCE, *Ministerial Council Decision No. 2/03 Combating Trafficking in Human Beings*, (Maastricht, 2 December 2003), Chapter 4, paragraph 4.11.

²¹³ See Norbert Cyrus and Dita Vogel, *DemandAT Working Paper No. 9: Learning from Demand-Side Campaigns against Trafficking in Human Beings: Evaluation as Knowledge-Generator and Project-Improver* (Vienna: ICMPD, June 2017), p. 12. Here it is noted that awareness campaigns tend to consist of a call for public sector funding and this being met by an CSO, which then organizes and produces the campaign. This finding was corroborated by the research conducted by the OSR/CTHB on the campaigns it identified, which showed that the majority were organized by CSOs.

As will be discussed further below, the messaging used in such campaigns should be carefully considered and evaluated. For example, the research conducted by the OSR/CTHB suggests that many of the campaigns focus on informing sex buyers that trafficking exists in the prostitution industry or is harmful to victims. However, as noted above, sex buyers appear to be largely aware of this and yet disregard this information, drawing into question the effectiveness of this messaging for changing behaviour.

General awareness-raising campaigns

States and CSOs have sought to discourage demand by using a wide range of venues and media to increase understanding of the THB risks associated with the commercial sex industry and prostitution in particular. These campaigns are normally geared toward achieving scale and thus to be seen by as many potential buyers as possible.

Although this form of outreach is the least interactive,²¹⁴ it has become the most used prevention measure to discourage demand within the OSCE region, having been identified in 24 OSCE participating States. CSOs organized over 55% of all awareness campaigns identified by the OSR/CTHB.²¹⁵ The following are illustrative examples from participating States.²¹⁶

Bosnia and Herzegovina

In 2013, the CSO IFS-Emmaus conducted an awareness campaign that targeted users of services from VoTs. The physical advertisements for the campaign included specific mention of the legal consequences of using such services, while the media coverage surrounding the campaign discussed trends related to trafficking for the purpose of sexual exploitation.²¹⁷

Bulgaria

Bulgaria has conducted several public awareness campaigns aimed at potential sex buyers, including a 2007 campaign²¹⁸ and, in 2013, a series of advertisements emphasizing the punishments for individuals purchasing sex from a trafficking

²¹⁴ General awareness campaigns through television, radio, print or online media do not involve direct interaction with buyers. They are thus considered one-sided or stationary methods of communication.

²¹⁵ This is based on current initiatives focused on countering demand as identified by the OSR/CTHB.

²¹⁶ The examples provided below are not meant as an exhaustive list, but to give an indication of what type of activities have been undertaken and where.

²¹⁷ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina: Second Evaluation Round* (Warsaw: Council of Europe, 17 July 2017), paragraph 79.

²¹⁸ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 26.

victim.²¹⁹ Prevention materials targeting buyers of sexual services were developed as part of the joint campaign under the motto “paying for sex with a victim of trafficking is a crime”.²²⁰

Croatia

In 2013, the Government Office for Human Rights and Rights of National Minorities launched a campaign aimed at discouraging men from buying sex by appealing to social norms. The campaign slogan was: “Real men don’t buy women”. The campaign was presented to the general public on one of the main squares in Zagreb on the occasion of the EU Anti-Trafficking Day. The campaign lasted a year and included the dissemination of flyers and posters, as well as the launch of a Facebook page.²²¹

Cyprus

Cyprus launched an awareness raising campaign in 2013 which was broadcast through radio announcements targeting the demand side of prostitution. Organized by the Ministry of the Interior, which produced the campaign in collaboration with the National Machinery of Women’s Rights, the radio advertisements started with VoTs for sexual exploitation describing their traumatic experiences and ended with a message to the users of such services. One radio spot included a victim describing being forced to engage in sexual intercourse with a client, and ended with the message: “Are you a client? STOP!”²²²

Estonia

In 2017, the Estonian Ministry of Justice and Social Affairs in partnership with the CSO Living for Tomorrow and the Estonia Human Rights Centre launched the 1ELU (1Life) campaign on preventing THB. Involving three separate campaigns, the second focused on sexual exploitation and the role of users, advertising the risks of THB for sexual exploitation in major online media outlets and job recruitment centres.²²³

France

The Ministry for Women’s Rights launched a poster campaign in 2016 advertising a new law criminalizing the purchase of

²¹⁹ See *ibid.*, p. 26.

²²⁰ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Second Evaluation Round* (Warsaw: Council of Europe, 28 January 2016), paragraph 112.

²²¹ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia: Second Evaluation Round* (Warsaw: Council of Europe, 4 February 2016), paragraph 76.

²²² See Josei Christodoulou, “National Report Cyprus”, [prepared for Comparative Report: Disrupt Demand], (Nicosia: Mediterranean Institute of Gender Studies, July 2017), p. 32.

²²³ See European Commission, “Together against Trafficking in Human Beings – Estonia”, [website] (European Commission). Available at: https://ec.europa.eu/anti-trafficking/member-states/estonia_en (accessed 8 December 2020).

sex in France. During the 2016 UEFA (Union of European Football Associations) European Championship, 100,000 posters were displayed in the cities hosting the event, and a video was shown prior to games at the Stade de France national stadium and on public screens.²²⁴

In 2016, immediately after the same law was passed, the Mouvement du Nid, a French CSO, also launched a campaign. Called “Les Bourreaux” (The Tortmentors), it also involved public posters and the production of a 50-second-long video. The video could be seen online and the poster campaign was active in cities across France, including Metz, Brest, Lille and Nice.²²⁵



© Mouvement du Nid - AfficheBourreaux

Lithuania

In 2005, two Lithuanian NGOs ran a billboard campaign entitled “It’s a shame to buy a woman!” in 13 cities and towns throughout the country. The initiative highlighted the impact

²²⁴ See Mouvement du Nid, “French National Report”, [prepared for Comparative Report: Disrupt Demand], (Paris: Mouvement du Nid), p. 26.

²²⁵ See ibid., p. 37.

of prostitution on human trafficking within the country and aimed to challenge the perception of buyers.²²⁶

Iceland

The CSO Stígamót operates awareness raising campaigns on the links between THB and prostitution.²²⁷ As part of its efforts, it has published a brochure for men seeking to educate them about the sexual violence involved in prostitution.²²⁸

Ireland

Entities within Ireland are particularly active in the development of awareness campaigns targeting demand. The Irish CSO Ruhama developed the “We Don’t Buy It” campaign, which is delivered through multiple means (outdoor advertising, radio, public relations, online and social media) to reach the largest audience possible. The slogan was featured on buses and telephone boxes, along with “Ad Mobiles”. According to an evaluation of the campaign, 9% of the general public was aware of the campaign, with 2.5 million impressions on social media generated during the four-week campaign.²²⁹

Romania

In 2017, the Romanian National Agency Against Trafficking in Human Beings ran an online campaign calling for a reduction of trafficking of persons for the purpose of sexual exploitation under the motto: “Do you choose to cherish or to crush? Do not pay for sex!”²³⁰ Undertaken in partnership with the Ecumenical Association of Churches in Romania (AIDRom), the campaign specifically sought to raise awareness of THB amongst male users of social networks.²³¹

²²⁶ See European Union Agency for Fundamental Rights, *Thematic Study on Child Trafficking Lithuania*, (Luxembourg: European Union Agency for Fundamental Rights, 10 August 2012), p. 15.; Immigrant Council of Ireland, *Comparative Report: Disrupt Demand*, (Dublin: Immigrant Council of Ireland, 2018), p. 20.

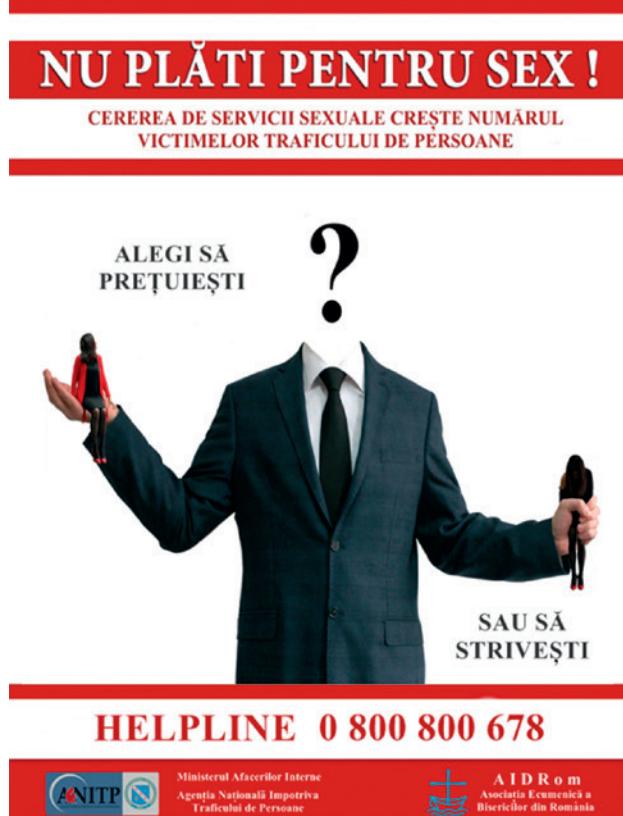
²²⁷ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Second Evaluation Round* (Warsaw: Council of Europe, 15 March 2019), paragraph 81.

²²⁸ See Stígamót, “For Men”, [website] (Stígamót). Available at: <https://www.stigamot.is/is/fraedsluefni/fyrir-karla> (accessed 2 November 2020).

²²⁹ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round* (Warsaw: Council of Europe, 20 September 2017), paragraph 92.

²³⁰ See European Commission, “Together against Trafficking in Human Beings – Romania” [website] (Brussels). Available at: https://ec.europa.eu/anti-trafficking/member-states/romania_en (accessed 2 November 2020).

²³¹ See European Crime Prevention Network, “Romania” [website]. Available at: <https://eucpn.org/sites/default/files/document/files/Romania.pdf> (accessed 2 November 2020), p. 7.



© ANTIP Campaign - Romania

The No Project, a US-based CSO that strives to eliminate the demand that fosters trafficking, also ran an awareness campaign in Romania in 2014, with a series of art events held in major cities geared at educating and motivating young people as a means of reducing demand.²³²

Spain

The Spanish CSO Association for the Prevention, Reintegration and Care of Prostituted Women (APRAMP) produced a documentary film to highlight the dangers of trafficking in prostitution. With the title "New Girls 24 Hours", the film includes interviews with survivors of sex trafficking, as well as footage from street prostitution. By bringing trafficking for sexual exploitation to the screen, the documentary seeks to educate all viewers, including those who may be buyers, about the dangers in the commercial sex industry.²³³

²³² See European Commission, *Study on prevention initiative on trafficking in human beings: Final report*, (Luxembourg: European Commission, 20 October 2015), p. 136.

²³³ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Second Evaluation Round* (Warsaw: Council of Europe, 20 June 2018), paragraph 113. A trailer for the video can be accessed at: <https://vimeo.com/123761910>

The Spanish government has also taken an active role in awareness-raising. The Government Delegation for Gender-based Violence launched a campaign in 2017 highlighting the connection between prostitution and trafficking for sexual exploitation, as well as a Twitter hashtag to discourage buying.²³⁴ In 2020, the Spanish National Police, to observe the International Day against Sexual Exploitation and Trafficking of Women and Children, launched a campaign highlighting the prevalence of trafficking victims in prostitution and the role of demand in fostering that exploitation.²³⁵ Using the line "sin clients no hay trata" (without clients there is no trafficking), the campaign drew the attention of buyers to the situation of women in prostitution in Spain, where 80% are trafficked by criminal organizations.²³⁶

Sweden

In 2016, the County Administrative Board of Stockholm launched the "You Decide" campaign, including a film, which sought to highlight the link between the purchase of sexual services and THB.²³⁷ Swedish authorities reported to the CoE that the campaign reached more "than 1.6 million people through social media and news publications".²³⁸

"For Fair Sex" is an advocacy and awareness campaign in Sweden that seeks to encourage the development of more demand-side initiatives, calling attention to users while also attempting to influence decision-makers about the lack of movement on targeting demand.²³⁹

United Kingdom

In 2014, the "End Demand Campaign" was launched in the United Kingdom, serving as a public advocacy campaign for the institution of the full criminalization of buying sex within the United Kingdom. The UK organization Crime-Stoppers has also previously run, albeit briefly,²⁴⁰ advertisements warning buyers about prostitution, using the motto: "walk in a

²³⁴ See Council of Europe, *Report submitted by Spain pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Baseline Report) (Warsaw: Council of Europe, 19 February 2019), pp. 21, 29.

²³⁵ See Policía Nacional, "More than 80% of prostituted women in Spain are forced", [website] (Twitter, 23 September 2020). Available at: [https://twitter.com/policia/status/1308668924817338368?ref_src=twsrc%5Etfw%7Ctwtcamp%5Etwetembed%7Ctwterm%5E1308668924817338368%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Felpais.com%2Fsociedad%2F2020-09-29%2Fel-gobierno-reformara-el-codigo-penal-para-castigar-a-los-duenos-de-los-locales-en-los-que-se-ejera-la-prostucion.html](https://twitter.com/policia/status/1308668924817338368?ref_src=twsrc%5Etfw%7Ctwtcamp%5Etwetembed%7Ctwterm%5E1308668924817338368%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Felpais.com%2Fsociedad%2F2020-09-29%2Fel-gobierno-reformara-el-codigo-penal-para-castigar-a-los-duenos-de-los-locales-en-los-que-se-ejera-la-prostolucion.html) (accessed 5 November 2020).

²³⁶ See ibid.,

²³⁷ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Second Evaluation Round* (Warsaw: Council of Europe, 8 June 2018), paragraph 61.

²³⁸ See ibid., paragraph 61.

²³⁹ See European Commission, *Study on prevention initiative on trafficking in human beings: Final report* (Luxembourg: European Commission, 20 October 2015), p. 56.

²⁴⁰ See Johanna Niemi and Jussi Aaltonen, *Abuse of a victim of sex trade: Evaluation of the Finnish sex purchase ban* (Finland: Ministry of Justice, 2014) p. 58.

punter [customer], walk out a rapist”²⁴¹ (later changed to “... walk out a criminal”). The campaign coincided with the introduction of the strict liability offence in England and Wales.

Sector-specific Awareness Campaigns

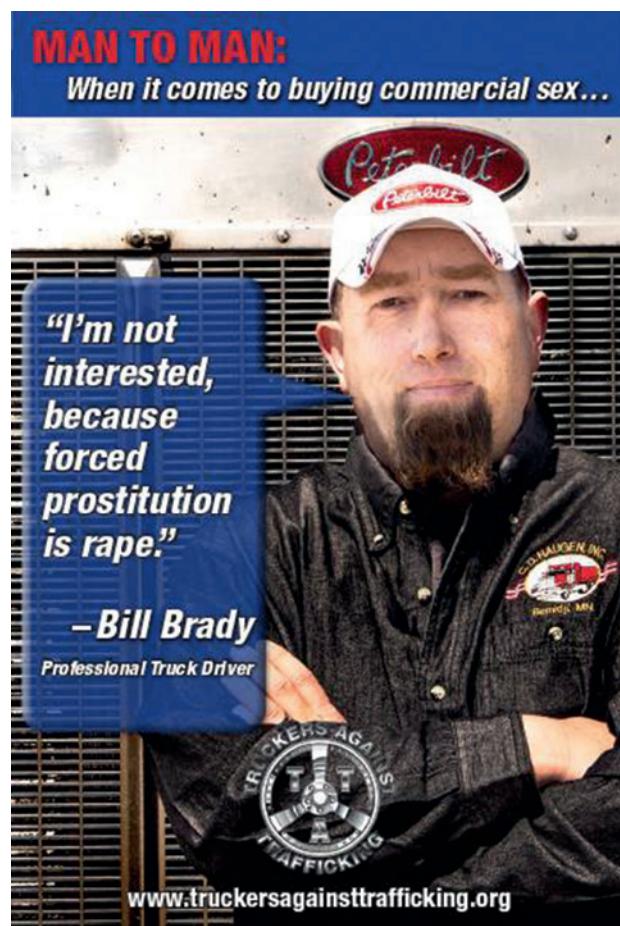
Some awareness campaigns aim to impact specific groups contributing to the creation of demand, particularly those perceived to be significantly contributing to demand within a particular country, or are located in a high-risk sector for THB. By directly communicating with their target audience, the objective of such campaigns is to increase the impact on a specific form of demand.

Campaigns of this type in various parts of the OSCE region have been pointedly directed at the transportation and tourism industries.

TRANSPORTATION

In Georgia, a campaign targeted members of the transportation industry, in particular truck drivers who frequent border regions between Georgia and Turkey, seeking to educate drivers about the risks associated with THB and thereby reduce their demand for prostitution.²⁴² Civil society organizations in Georgia have also sought to target users in the Adjara and Imereti regions with a leaflet campaign highlighting the criminal liability of using services from trafficking victims.²⁴³

In the United States, the organization Truckers Against Trafficking has organized the similar “Man to Man” campaign, which uses male voices to communicate to potential buyers about the crime of sex trafficking. The campaign seeks to reduce the demand generated by male truck drivers for prostitution and thus reduce trafficking for the purpose of sexual exploitation.²⁴⁴



© Truckers Against Trafficking - USA

²⁴¹ See Alexis A. Aronowitz and Anneke Koning, “Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation” (*International Review of Penal Law* 85, 2014), p. 685.

²⁴² This campaign was discussed during the visit of the Acting OSCE Co-ordinator to Georgia in 2019.

²⁴³ See OSCE, *Report by the OSCE Acting Co-ordinator for Combating Trafficking in Human Beings following the country visit to Georgia 17–19 June 2019* (Vienna: OSCE, 6 May 2020), paragraph 51.

²⁴⁴ See Truckers Against Trafficking, “Man to Man Campaign” [website] (Truckers Against Trafficking). Available at: <https://truckersagainsttrafficking.org/man-to-man-campaign/> (accessed 5 November 2020).

TOURISM

In Italy, the “Stop Sexual Tourism” campaign was introduced in 2018 that sought to diminish the purchasing of sex by Italian tourists through advertising at 57 airports throughout the country.²⁴⁵ The campaign was a direct response to the high number of sex tourists travelling from Italy.²⁴⁶ This campaign demonstrated a targeted approach to awareness-raising.



© Stop Sexual Tourism - Italy

Awareness campaigns have been launched as part of major sporting events drawing large crowds of spectators. A website maintained by Switzerland and released initially for the EURO 2008 football tournament explains to sex buyers how to recognize signs that an individual has been trafficked and that they should react and report the situation.²⁴⁷ The website utilizes information gathered earlier by a Berlin-based CSO, which runs a similar page directed at buyers in Germany.²⁴⁸

Efforts in Slovenia have also targeted the transportation and tourism sectors. In 2015 the CSO Drogart organized the campaign “Prostitution is not always a matter of choice. It is often forced.” It was designed to raise awareness of THB for the purpose of sexual exploitation among both customers and staff in the tourism and transportation sectors. The ultimate goal of the campaign was to enable staff and customers to recognize cases of “forced prostitution” and to discourage individuals from purchasing sex in those cases. Making use of

²⁴⁵ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy: Second Evaluation Round* (Warsaw: Council of Europe, 25 January 2019), paragraph 131.

²⁴⁶ See Josephine Mckenna, “Italy tops international sex tourism list”, [website] (*The Telegraph*, 6 June 2013). Available at: <https://www.telegraph.co.uk/news/worldnews/europe/italy/10103632/Italy-tops-international-sex-tourism-list.html> (accessed 5 November 2020).

²⁴⁷ See FIZ, “Prostitution without compulsion and violence” [website] (FIZ). Available at: <http://www.verantwortlicherfreier.ch/en/impressum.html> (accessed 5 November 2020).

²⁴⁸ See Ban Ying Koordinations- und Beratungsstelle gegen Menschenhandel, “Prostitution without compulsion and violence” [website] (Ban Ying Koordinations- und Beratungsstelle gegen Menschenhandel). Available at: <https://www.ban-ying.de/verantwortlicherfreier/en/impressum.html> (accessed 5 November 2020).

an educational website, billboards in major urban areas, online advertisements, and posters and other promotional material in bars, hotels and taxi cabs, the month-long campaign sought to be visible to all buyers making use of the tourism, hospitality and transportation sectors.²⁴⁹

Education

Public campaigns are not the only means of discouraging demand by awareness-raising. Educational measures to address the demand that fosters trafficking for the purpose of sexual exploitation are specifically identified in Article 9(5) of the Palermo Protocol, the OSCE Action Plan, and the CoE Convention.

Education initiatives identified in the research for this paper tend to take the form of classroom instruction and programmes, and generally target three audiences: young people, current buyers and users, and employees who might come into contact with buyers and users.

YOUTH EDUCATION

Research indicates that the majority of users have their first experience of buying sex when younger than 25.²⁵⁰ However, programs that focus on men as potential perpetrators and bystanders of gender-based violence have demonstrated positive outcomes in attitudes, beliefs and behaviours.²⁵¹ Thus education that targets adolescents has a significant potential to deter future demand. Education programmes targeting youth and incorporating a gender perspective are also called for by the CoE Convention.²⁵²

Unfortunately, while many OSCE participating States do support programmes for educating and raising awareness of young people about the dangers associated within THB,²⁵³ the research conducted for this paper indicates that relatively little education is done with the aim of showing how THB is linked to demand, or of preventing young people from be-

²⁴⁹ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Second Evaluation Round* (Warsaw: Council of Europe, 15 February 2018), paragraph 79.

²⁵⁰ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls*, (Dublin: Immigrant Council of Ireland, 2014), p. 50.

²⁵¹ See Claire Crooks, Peter Jaffe, Caely Dunlop, Amanda Kerry and Deinera Exner-Cortens, “Preventing Gender-Based Violence Among Adolescents and Young Adults: Lessons From 25 Year of Program Development and Evaluation” (*Violence Against Women* 25, 2019) p. 38

²⁵² See Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, C.E.T.S. 197 (Warsaw: Council of Europe, 16 May 2005), paragraph 110.

²⁵³ Examples of this type of education in practice are school programmes that discuss the risks associated with THB, covering both its demand and its supply through the recruitment of vulnerable victims. These are general education initiatives and do not target demand specifically. Annual initiatives to reach school children, such as found in Greece, fit this profile.

coming users. However, some examples of this form of education do exist within the OSCE region.

Herzwerk, an Austrian anti-trafficking CSO that primarily supports victims, includes discussions of demand in their presentations to students.²⁵⁴ Similarly, the US-based CSO Seattle Against Slavery operates a four-part anti-trafficking education programme for high school students that includes discussion of demand as a root cause of trafficking.²⁵⁵

Recognizing the importance of educating boys about the importance of healthy masculinity, Greece has offered comprehensive training for both teachers and students on sexuality. The aim is to reduce the demand that fosters trafficking for the purpose of sexual exploitation by changing the attitudes of young men.²⁵⁶

BUYER AND USER EDUCATION

In Sweden and Norway, education of buyers is being undertaken through a project called KAST (Köpare av Sexuella Tjänster, in English “Buyers of Sexual Services”), which aims to use education to reduce the practice of purchasing sex.



© KAST - Norway

²⁵⁴ See Herzwerk, “Who we are”, [website] (Herzwerk Wien). Available at: <https://www.herzwerk-wien.at/who-we-are/> (accessed 5 November 2020). When speaking to students bout THB, the NGO Herzwerk in Austria discusses the role of men in creating demand, namely, “no demand – no supply”.

²⁵⁵ See Seattle Against Slavery, “Trainings”, [website] (Seattle Against Slavery). Available at: <https://www.seattleagainstslavery.org/trainings/> (accessed 5 November 2020).

²⁵⁶ See 7 August 2020, A/75/289, paragraph 41.

However in both countries, attending KAST classes is voluntary. This limits the project’s impact on buyers, since many buyers may be reticent to participate.²⁵⁷ While the project in Norway, run by a national CSO, has received public funding and offers information to hundreds of buyers, it may be missing a key audience, namely intransigent buyers reluctant to change their behaviour.²⁵⁸

In the United States, education of buyers is undertaken through various programmes (colloquially referred to as “john schools”). Examples include the First Offender Prostitution Program in San Francisco, or Stopping Sexual Exploitation in Seattle.²⁵⁹ Some of these programmes are similar to the buyer education tools in Norway and Sweden in that they are optional, with men arrested for buying sex given the choice between being prosecuted or paying a fee and attending the class.²⁶⁰ Others are court-mandated as part of a sentence following prosecution.

A similar programme has been incorporated into the French Criminal Code. Persons charged with purchasing sex can be ordered to attend a course discouraging the purchase of sexual services as an additional measure to help prevent repeat offenders.²⁶¹

TRAINING ADJACENT INDUSTRIES

Demand has also been addressed through awareness-raising for individuals working in private industries who might come into contact with users and sellers. They may then be more likely to report suspected cases of THB for sexual exploitation to law enforcement.

In Sweden, for example, the Scandic hotel chain has introduced training on THB and prostitution for all staff who engage directly with customers. In line with the country’s

²⁵⁷ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: Second Evaluation Round* (Warsaw: Council of Europe, 8 June 2018), paragraph 65.; See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), p. 127.

²⁵⁸ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: Second Evaluation Round*, (Warsaw: Council of Europe, 8 June 2018), paragraph 65. More details about the project in Norway can be found at the following website: <https://reform.no/prosjekter/kast-gratis-samtaletjeneste-kjoper-sex/> (accessed 6 April 2021).

²⁵⁹ See Seattle Against Slavery, “Register for Stopping Sexual Exploitation”, [website] (Seattle Against Slavery). Available at: <https://www.seattleagainstslavery.org/stopping-sexual-exploitation-registration/> (accessed 5 November 2020).

²⁶⁰ See Alexis A. Aronowitz and Anneke Koning, “Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation” (*International Review of Penal Law* 85, 2014), p. 686.

²⁶¹ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France: Second Evaluation Round*, (Warsaw: Council of Europe, 6 July 2017), paragraph 109.

criminalization of buyers, such training ensures better co-operation with the police in suspected instances of sex purchasing.²⁶² In the United States, the CSO Business Ending Slavery and Trafficking (BEST) has trained staff at over 140 hotels in identifying potential THB victims and users.²⁶³ Both initiatives are examples of private businesses and CSOs proactively educating staff about THB risks, including the role of buyers and users.

As demonstrated by these examples, and similar to the public awareness-raising campaigns discussed above, education initiatives as a whole seem to rely heavily on non-state institutions such as CSOs and the private sector. Collectively, non-state institutions run 64% of the education initiatives that were identified by the OSR/CTHB.²⁶⁴

Deterrence initiatives

Prevention of trafficking for the purpose of sexual exploitation is also being attempted through deterrence mechanisms that seek to actively dissuade users from engaging in the activity. These efforts, which exist separately from—albeit often complementary to—national criminal justice systems, can involve the threat of legal action, but often rely on other overt levers of influence over buyers and users. These can include consequences to their employment status, public reputation, or freedom of movement. Broadly, to deter buyers and users, such methods seek to create barriers to the purchase of sex or a social cost for it.

Codes of conduct

An increasingly common form of deterrence related to the demand that fosters trafficking for sexual exploitation is the use of Codes of Conduct by employers to prohibit their employees from purchasing sex, whether from trafficking victims or otherwise. These provisions are quite diverse and may apply both inside and outside the workplace, during on or off work time, and regardless of the legality of prostitution. The rationale behind such codes can also be quite diverse, including concerns about the public reputation of the organization, fear of legal action against the organization, or concerns about impact or harm to vulnerable populations.

PUBLIC SECTOR

International organizations such as the UN, NATO and the OSCE have included measures on combating THB into their own Codes of Conduct. In the case of the UN, NATO and the OSCE, these codes forbid the purchase of sex by staff. The UN has instituted a zero tolerance policy towards sexual exploitation, and prohibits staff from purchasing sex, seeking to purchase sex, or engaging in exploitative behaviours, including in jurisdictions where purchasing sex is legal or decriminalized.²⁶⁵ NATO has enacted a similar policy to prevent sexual exploitation, which prohibits the exchange of money, goods or services for sex. The NATO policy also includes a requirement for personnel to be trained in preventing sexual exploitation by their respective national authorities.²⁶⁶

Likewise, the OSCE has included language into its Code of Conduct to raise awareness about the risks associated with THB and prohibit the involvement of OSCE officials with “any person who could reasonably be suspected of engaging in the trafficking in human beings.”²⁶⁷ The OSCE also supports this policy by training for incoming and existing staff on the provisions.

Some OSCE participating States have similarly adopted this approach for their national civil employees; for example, Norway prohibits all of its civil servants from engaging in the use of prostituted persons during official travel.²⁶⁸ Some OSCE participating States have also adopted policies pertaining to military personnel, a group that has often been identified as contributing to the demand that fosters trafficking for the purpose of sexual exploitation. Military personnel from the United States and Norway are forbidden from purchasing sex, as are service personnel working under the flag of the UN.

Such provisions are particularly important since military personnel and staff of international organizations are often posted in conflict and post-conflict related settings where, as noted in chapter 1 above, the gender dynamics and vulnerability factors impacting THB for the purpose of sexual exploitation and other forms of gender-based violence are often exacerbated.

²⁶² See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Second Evaluation Round*, (Warsaw: Council of Europe, 8 June 2018), paragraph 93.

²⁶³ See Businesses Ending Slavery and Trafficking (BEST Alliance), “Hotel Employee Training” [website] (BEST Alliance). Available at: <https://www.bestalliance.org/for-hospitality-industry.html> (accessed 5 November 2020).

²⁶⁴ Based on an analysis of current demand-focused initiatives identified by the OSR/CTHB.

²⁶⁵ See 9 October 2003, ST/SGB/2003/13, Section 3.

²⁶⁶ See NATO, *The NATO Policy on Preventing and Responding to Sexual Exploitation and Abuse* (Brussels: NATO, 30 January 2020).

²⁶⁷ See OSCE, *Code of Conduct for OSCE staff/mission members* (Vienna: OSCE, March 2002), Section 4.

²⁶⁸ See 20 February 2006, E/CN.4/2006/62, paragraph 102.

PRIVATE SECTOR AND CIVIL SOCIETY ORGANIZATIONS

Employee codes of conduct that deter the purchase of sex acts, not only in the workplace and during work time, but also outside the workplace, have also been adopted by companies in the private sector, notably in the technology industry. This has been in response to documented behaviour of their employees.²⁶⁹

Amazon's Code of Conduct, for instance, forbids "any employee or Contingent Worker to engage in any sex buying activities of any kind in Amazon's workplace or in any work-related setting outside of the workplace, such as during business trips, business meetings or business-related social events." This also includes the use of company resources outside of a work context, such as telephones, email, and vehicles.²⁷⁰ Boeing similarly forbids its employees from engaging in any form of THB or using the services of THB victims, including in personal time and even in jurisdictions where the activity is not criminalized.²⁷¹ Its Code of Basic Working Conditions and Human Rights also forbids any form of child labour.²⁷²

This method of deterrence has also been applied to individuals working outside the direct employment of companies. Oracle, for instance, has extended the ban on purchasing sex to include members of its supply chain, forbidding subcontractors, vendors and suppliers from engaging in any form of THB as well as purchasing sex.²⁷³

Civil society organizations have also introduced provisions in their own codes of conduct to prohibit the participation of their employees in practices that could be deemed exploitative or to foster exploitation. The International Committee of the Red Cross, for example, has banned its employees from purchasing sexual services since 2006,²⁷⁴ while the Danish

Refugee Council also bans its employees from engaging in sexual exploitation or soliciting prostitution.²⁷⁵

The enforcement, and ultimate impact, of these policies is not usually measured and therefore difficult to assess. However, anecdotal examples of enforcement demonstrate that standards are being upheld and that violation of those standards brings significant scrutiny to an organization. Moreover, the increasing inclusion of THB-related provisions in workplace codes of conduct fulfils a norm-setting function in the private sector and serves as a deterrent for buyers that is outside the criminal justice system.

Revealing buyer or user identities

Other approach is the public or private naming of individuals caught purchasing sex.²⁷⁶ This approach has been used, for example, by municipalities in Ireland, Canada and the United States, where men arrested for soliciting sex, either from a person in prostitution or an undercover agent posing as a person selling sex, have seen their identities published in print and broadcast media, outing them as buyers of sex to their families and the wider community.²⁷⁷

This method of deterrence has been reported by its proponents to make a marked difference on the number of individuals seeking to purchase sex,²⁷⁸ demonstrating its potential as a method of deterrence. In some participating States, user identities are published in a "Sex Offender Registry", whereby individuals who have been arrested for purchasing sex with minors are forced to register as a sex offender. The registry indicates where they live and, in some cases, notifies the local community of their presence. It has been argued that the use of such tools, in countries such as the United States, has a deterrent effect on users.²⁷⁹ In some cases, such sex offender registries include all buyers, regardless of the status of the person in prostitution.

²⁶⁹ See Burleigh, Nina, "Tech Bros Bought Sex Trafficking Victims by Using Amazon and Microsoft Work Emails", [website] (Newsweek, 21 December 2017). Available at: <https://www.newsweek.com/metoo-microsoft-amazon-trafficking-prostitution-sex-silicon-valley-755611> (accessed 5 November 2020).

²⁷⁰ See ibid.

²⁷¹ See Boeing, "Ethical Business Conduct Guidelines", [website] (Boeing, 2020). Available at: https://www.boeing.com/resources/boeingdotcom/principles/ethics_and_compliance/pdf/ethical_business_conduct_guidelines.pdf (accessed 6 November 2020), p. 20.

²⁷² See Boeing, "Code of Basic Working Conditions and Human Rights", [website] (Boeing). Available at: <http://www.boeing.com/principles/human-rights.page> (accessed 6 November 2020).

²⁷³ See Oracle, "Policy against Trafficking in Persons and Slavery", [website] (Oracle, 12 August 2020). Available at: <http://www.oracle.com/us/corporate/human-trafficking-policy-2967692.pdf> (accessed 6 November 2020).

²⁷⁴ See BBC, "Red Cross reveals 21 staff paid for sexual services", [website] (BBC, 24 February 2018). Available at: <https://www.bbc.com/news/world-europe-43180606> (accessed 6 November 2020).

²⁷⁵ See Danish Refugee Council, "Danish Refugee Council – Code of Conduct", [website] (Danish Refugee Council). Available at: https://drc.ngo/media/fofkymx4/code_of_conduct_eng.pdf (accessed 6 November 2020), p. 5.

²⁷⁶ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 10 and 70.

²⁷⁷ See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 685; see also Barry Duggan, "Men caught in prostitution sting by undercover gardai enter guilty pleas" (*The Independent*, 7 December 2011). Available at: <https://www.independent.ie/irish-news/courts/men-caught-in-prostitution-sting-by-under-cover-gardai-enter-guilty-pleas-26799519.html> (accessed 6 April 2021).

²⁷⁸ See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 685.

²⁷⁹ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 70.

All such initiatives should be carefully considered. Public shaming can have significant impact on innocent family members, including children. Additionally, such approaches are also not necessarily conducive to behaviour change on the part of the offender. Shaming “the person” rather than “the practice” of sex buying or use of trafficking victims has the potential of becoming divisive and counter-productive. Moreover, with the regulations in place in parts of the OSCE region, such as the EU’s General Data Protection Regulation (GDPR), this method of deterrence may not be a tool available to every participating State.

Restricting access to areas known to involve prostitution

Buyers and users can also be deterred from purchasing sex if access to areas where it is commonly sold are restricted. In Dortmund, Germany, where prostitution is legal, access to the traditional epicentre of street prostitution was limited through public action making the area a pedestrian zone accessible only to local residents and those employed nearby. This enabled law enforcement to perform identity checks and issue fines to individuals in the area who did not have a reason for being there. This restriction of access to the area where prostitution was most prevalent reduced the number of buyers frequenting the area, and thus had the effect of a deterrent.²⁸⁰

In other participating States, such as the United States, some local jurisdictions have imposed geographic restrictions on persons previously convicted of purchasing sex, prohibiting them from entering areas known for high rates of prostitution in an attempt to deter recidivism.

Based on information shared with the OSR/CTHB, many organizations have also imposed restrictions on virtual venues for prostitution, for example prohibiting employee access (at least during work hours and on work computers) to websites offering sexual services. These policies are typically part of the Code of Conduct related to computer use and a violation can be the basis for employment-related action.

Targeted anti-THB deterrence messages

A more sophisticated means of deterring buyers has been to display advertisements against the purchase of sex and the

²⁸⁰ See European Commission, *Study on the gender dimension of trafficking in human beings: Final Report* (Luxembourg: European Commission, 21 March 2016), p. 101.

risks associated with THB on major Internet sites, social media portals, and other sites that directly advertise sexual services. A variation on targeted public awareness campaigns, these efforts are characterized as deterrence initiatives because they directly target buyers and users at the point in time when they are attempting to make a purchase.

In the United States, for example, CSO Seattle Against Slavery has used targeted ad placements on search engines such as Google and Bing which display anti-trafficking advertisements to individuals who search for terms associated with purchasing sex.²⁸¹ When clicked on, these advertisements re-direct potential buyers to a website that presents the harms associated with purchasing sex and its legal consequences within the jurisdiction, as well as access to the buyer education class.²⁸² A similar approach was used in Denmark, where, in 2014, an anti-THB campaign seeking to communicate with active buyers prior to their purchase was advertised on websites hosting sexual content.²⁸³

This method of disruption leverages the scale of existing technology platforms to directly reach a large number of buyers. Moreover, a major advantage of such online methods is that they can very accurately reach buyers at the moment they are attempting to engage in the behaviour whose deterrence is being targeted. This is different from a billboard or a TV advertisement, which may be seen primarily by non-buyers.

Another value of such approaches is that they allow, where privacy laws permit, robust data collection, analysis and measurement. For example, online campaigns can provide information about when buyers and users search for prostitution, what terms they use in their searches, which advertisements are the most successful at deterring their activity, and how many potential buyers are diverted from sex buying to social services. This capacity allows continued improvement in deterrence campaigns and better assessment of impact.

²⁸¹ See Seattle Against Slavery, “Technology”, [website] (Seattle Against Slavery). Available at: <https://www.seattleagainstslavery.org/technology/> (accessed 5 November 2020); see also Taylor Mirfendereski, “Seattle non-profit takes on sex buyers with technology”, [website] (King5.com, 23 October 2017). Available at: <https://www.king5.com/article/news/investigations/selling-girls/seattle-nonprofit-takes-on-sex-buyers-with-technology/448966756> (accessed 6 November 2020).

²⁸² See Taylor Mirfendereski, “Seattle non-profit takes on sex buyers with technology”, [website] (King5.com, 23 October 2017). Available at: <https://www.king5.com/article/news/investigations/selling-girls/seattle-nonprofit-takes-on-sex-buyers-with-technology/448966756> (accessed 6 November 2020).

²⁸³ See Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark: Second Evaluation Round* (Warsaw: Council of Europe, 10 June 2016), paragraph 47. This was organized by the Danish Centre Against Human Trafficking (CMM).

Disruption

Another set of tools for addressing the demand that fosters trafficking for the purpose of sexual exploitation are those that seek to disrupt buyers and users directly by making the purchase of sex more difficult or intervening in efforts to communicate with a person in prostitution. Disruption efforts are often combined with an awareness component, whereby the disruption is followed by a message discouraging future conduct. However, as will be discussed further below, the messaging often used in such campaigns may not be effective for changing behaviour.

Technology-based tools are particularly relevant in the area of disruption. As discussed in a recent OSR/CTHB publication “Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools”, sexual services from trafficking victims are now commonly advertised throughout the OSCE region on digital platforms, particularly the Internet.²⁸⁴ Traffickers take advantage of the popularity of online platforms, as well as the lack of consent and age verification mechanisms, to advertise sexual services from VoTs. As has been noted by EUROPOL, “the online advertisement of sexual services is an increasing phenomenon relating to THB for sexual exploitation, with children being advertised as adults”.²⁸⁵ For buyers, this means that when using search engines or sexual service websites to locate advertisements and communicate with sellerspeople in prostitution, there is a high likelihoodrisk that they are setting up transactions involving VoTs.²⁸⁶

While these platforms provide buyers with a degree of anonymity and easy access to a broad market, they also give anti-trafficking efforts potential access to, and understanding of, how buyers and users communicate with people in prostitution. This opens up opportunities for that communication to be disrupted.

Fictitious persons

One of the most common methods to disrupt potential prostitution transactions is to use fictitious people in prostitution. To disrupt active buyers, CSOs and law enforcement agencies have posted fake advertisements in order to communicate with buyers attempting to purchase sex.²⁸⁷ In France, this was done

through the creation of a website by the advertising agency McCann and the CSO Mouvement du Nid that hosted fake advertisements and connected callers to advocates against prostitution instead of people in prostitution. The advocates then told the potential buyer that the women asked for is dead due to an act of sexual assault by a pimp or another buyer, thereby seeking to discourage the buyer from purchasing.²⁸⁸

A similar method was used in Sweden, where the CSO Talita partnered with the advertising agency Åkestam Holst to create a fake call service. When this service is called, potential buyers hear recorded stories from trafficking victims.²⁸⁹ And in the Netherlands, fake online information has been used by law enforcement to combat the demand specifically for child sexual exploitation through the creation of fictitious online profiles of minors. This is used to identify and prosecute individuals who collect and then groom children online.²⁹⁰

Co-operation between CSOs within the OSCE area has also led to the development of disruption campaigns against buyers that function across borders. In 2017, the Samilia Foundation in Belgium, in partnership with the Irish CSO Ruhamma, Foundation Scelles in France, o Ninho in Portugal, Acsis in Romania and The Animus Association in Bulgaria, launched the “A Penny For Your Thoughts” initiative. The campaign used fictitious advertisements for sexual services featuring a provocative image and a phone number, which when called, told the prospective buyer that the person in prostitution was a victim of trafficking.

In Ireland, the advertisement was also placed online. By using this false advertisement, the campaign was able to connect with current or potential buyers and gauge the impact that a victim’s story of trafficking had on them.

Notably, in the case of Ireland, over two-thirds of the men who called the advertised number proceeded to ask about the sexual services on offer, despite being aware of the person’s status as a trafficking victim.²⁹¹

²⁸⁴ See OSCE, *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools* (Vienna: OSCE, 24 June 2020), pp. 13–14.

²⁸⁵ See Europol, *Criminal networks involved in the trafficking and exploitation of underage victims in the European Union* (The Hague: Europol, 18 October 2018), p. 7.

²⁸⁶ See OSCE, *Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools* (Vienna: OSCE, 24 June 2020), pp. 11–17.

²⁸⁷ Similar methods have been used on the street, whereby a police officer poses as a person in prostitution and waits for a buyer to solicit sex. This is described above.

²⁸⁸ See Mouvement du Nid, “French National Report”, [prepared for Comparative Report: Disrupt Demand], (Paris: Mouvement du Nid), p. 37.

²⁸⁹ See Maya Oppenheim, “Men interested in paying for sex duped into listening to harrowing true stories about trafficking”, (*The Independent*, 26 November 2020). Available at: <https://www.independent.co.uk/news/world/europe/sex-line-prostitution-trafficking-sweden-b1762466.html> (accessed 9 December 2020).

²⁹⁰ See Government of the Netherlands, “New law to help fight computer crime”, [website] (Government of the Netherlands). Available at: <https://www.government.nl/latest/news/2019/02/28/new-law-to-help-fight-computer-crime> (accessed 19 February 2020).

²⁹¹ See Fiona Ellis, “Irish charity for sex trade victims launches new video campaign and exposes buyers’ views and motivations in their own words”, [website] (*The Sun*, 18 January 2018). Available at: <https://www.thesun.ie/news/2064848/irish-charity-for-sex-trade-victims-launches-new-video-campaign-and-exposes-buyers-views-and-motivations-in-their-own-words/> (accessed 6 November 2020); see Ruhamma, “A Penny For Your Thoughts”, [website] (Ruhamma, 1 September 2017). Available at: <https://www.ruhamma.ie/campaigns/a-penny-for-your-thoughts/> (accessed 6 November 2020).

Thus, while this method clearly disrupts specific attempts at purchasing sex, the reactions shown by prospective users challenges the common assumption of many public awareness campaigns that buyers and users will be deterred in the future if they are simply informed about the harms of prostitution and trafficking. In fact, the Irish study suggests that different messaging may be necessary to change behaviour.

In the United States, volunteers from Microsoft and Seattle Against Slavery collaborated to create a digital disruption method: a chatbot that poses as a victim of trafficking (the chatbot can also pose as a person in prostitution) and converses with the potential user until a deal is reached. Then the chatbot informs the user that the person in prostitution is not real, that the user should stop his behaviour, and gives various warnings depending on the requests made by the user.²⁹²

There are numerous advantages to these technology-based tools. First, they have the capacity to scale up to the size of the market, potentially conversing with dozens or hundreds of potential buyers at the same time. For example, law enforcement in the United States was able to engage with 1,627 buyers using the chatbot during a recent nationwide three-day operation.²⁹³ Second, such tools are cost-efficient, being relatively inexpensive to develop and deploy. And third, the use of such digital tools to communicate with buyers and disrupt attempted transactions also informs research on demand by collecting data about who is purchasing, when and how, what they are looking for, and the scale of demand in particular regions.²⁹⁴

Most importantly, the use of chatbots has shown considerable success in actually disrupting demand. Data from child-safe.ai, which also uses decoy advertisements and a chatbot to disrupt demand, showed a 58% decline in the number of respondents to its ads from February 2018 to March 2019, despite doubling their postings in the same time period.²⁹⁵ Likewise, during the two-year period from 2016 to 2018,

292 See Tom Simonite, "Microsoft Chatbot Trolls Shoppers for Online Sex", [website] (Wired, 7 August 2017). Available at: <https://www.wired.com/story/microsoft-chatbot-trolls-shoppers-for-online-sex/> (accessed 6 November 2020).

293 See Cook County Sheriff Office, "National Sex Buyer Stings Reach 10,000 Arrests", [website] (Chicago: Cook County, 5 February 2020). Available at: <https://www.cookcountysheriff.org/national-sex-buyer-stings-reach-10000-arrests/> (accessed 29 October 2020).

294 See Seattle Against Slavery, "Technology", [website] (Seattle Against Slavery). Available at: <https://www.seattleagainstslavery.org/technology/> (accessed 5 November 2020).

295 See Rob Spectre, *Beyond Backpage: Buying and Selling Sex In The United States One Year Later* (New York: childsafe.ai, 2019), p. 7. This decline in the response rate has been attributed to many factors: increased enforcement and deterrence targeting buyers; a fragmented online distribution layer in the wake of April 2018 (seizure of Backpage, passage of SESTA/FOSTA, TER suspending operations in the United States); an increase in spam and scam advertising on remaining sites; crackdowns on payment processing on these sites, and restrictions on the use of credit and debit cards; and an increase in prices for prostitution driving some buyers out of the market. Given the frequent changing of the advertisements, the ability of users to spot fake advertisements was not considered to be a significant factor in the decreased response rate.

the chatbot deployed by Seattle Against Slavery had roughly 19,000 conversations with 15,000 people; those who received deterrence messages from the bot were 30% less likely to click on one of the ads again.²⁹⁶

Addressing platforms and content that connect buyers and users with people in prostitution

Websites offering escort and sexual services have increasingly been an efficient and effective venue for traffickers to insert their victims into the prostitution marketplace. The websites typically do not engage in effective screening, age verification, consent verification or content moderation, to the benefit of traffickers. The platforms also make the purchase of sex much easier and safer for sex buyers, resulting in an increased scale of demand. Moreover, as was noted above, these buyers are unable or unwilling to determine if the person they are having sex with is a trafficking victim. Thus, the intersection of indiscriminate demand and easy access for traffickers accelerates risks of exploitation of trafficking victims.

While the above-mentioned tools and methods seek to disrupt individual transactions, other initiatives seek to disrupt demand at the market level, primarily through the disruption or removal of these online platforms that enable and facilitate the purchase of sex. For example, legislation has been adopted in France, Israel and the United States to help encourage the removal of content online that serves as a conduit between buyers and persons in prostitution.

In France, the 2016 law banning the purchase of sex "created an obligation upon Internet service providers to promptly inform the competent public authorities of any content that violates the Act in respect of pimping, and to make public the means and measures they devote to combating such illegal activities."²⁹⁷ The implementation of this statute disrupts the purchase of sex in the context of the exploitation of prostitution of others: by prohibiting or removing content related to pimping, authorities disrupt the ability of demand to connect with—and thereby financially support pimps or traffickers.

In Israel, legislation was passed in 2017 that allows the country to restrict access to foreign hosted websites that facilitate THB and prostitution, as well seize and remove domestically

296 See Hannah Devlin, "Trafficking industry hit as 'sex worker' chatbots fool thousands", [website] (The Guardian, 13 February 2020). Available at: <https://www.theguardian.com/society/2020/feb/13/sex-worker-chatbots-fool-thousands-to-hit-trafficking-industry> (accessed 6 November 2020).

297 See Mouvement du Nid, "French National Report", [prepared for Comparative Report: Disrupt Demand], (Paris: Mouvement du Nid), p. 5.

hosted websites that do so.²⁹⁸ Unlike in France, the burden is on the government, not Internet service providers, to identify and apply for restrictions of particular online material. Although it alters the burden of proof, the net effect is the same since it suppresses the online marketplace where buyers and users can access prostitution.

Similarly, the passage of the Stop Enabling Sex Traffickers Act/Allow States and Victims to Fight Online Sex Trafficking Act (SESTA/FOSTA) in the United States in 2018 sought to disrupt the online marketplace by increasing the liability of websites that host content related to prostitution.²⁹⁹ Signed into law in April 2018, SESTA/FOSTA clarified that the immunity enjoyed by online platforms for content posted by third parties on their sites does not apply to content related to prostitution or trafficking. This provision allowed websites to be charged with facilitating prostitution if they hosted advertisements selling sex. In instances where advertisements involve VoTs, SESTA/FOSTA also allows online platforms to be charged with violations of national anti-sex trafficking legislation, provided they had knowledge the individual involved was a victim of trafficking.³⁰⁰

The SESTA/FOSTA statute had an unprecedented impact on the online market for prostitution, since numerous websites that had been hosting tens of thousands of ads ostensibly offering prostitution ended operations in the days surrounding the passage of the law and its enactment by executive signing.³⁰¹ Other websites, such as Craigslist, removed sections of their platforms that could be connected to prostitution or trafficking.³⁰² While the primary legislative intent behind the statute was to dismantle platforms where trafficking and sexual exploitation was occurring, a closely related impact was to disrupt well-established venues relied on by sex buyers and users to purchase sex. The statute reduced the overall online marketplace for the buying and selling of sexual services and limited the ease with which buyers could connect with people in prostitution. This discouraged demand by

²⁹⁸ See Library of Congress, "Israel: Law Authorizes Court to Restrict Access to Internet Sites in Order to Prevent Criminal Activity", [website] (Library of Congress, 10 October 2017). Available at: <https://www.loc.gov/law/foreign-news/article/israel-law-authorizes-court-to-restrict-access-to-internet-sites-in-order-to-prevent-criminal-activity/> (accessed 24 March 2021).

²⁹⁹ See Tom Jackman, "House passes anti-online sex trafficking bill, allows targeting of websites like Backpage.com" [website] (Washington Post, 28 February 2018). Available at: <https://www.washingtonpost.com/news/true-crime/wp/2018/02/27/house-passes-anti-online-sex-trafficking-bill-allows-targeting-of-websites-like-backpage-com/> (accessed 6 November 2020).

³⁰⁰ See *ibid.*

³⁰¹ See Rob Spectre, *Beyond Backpage: Buying and Selling Sex In The United States One Year Later* (New York: childsafe.ai, 2019), p. 12.

³⁰² See Aja Romano, "A new law intended to curb sex trafficking threatens the future of the internet as we know it", [website] (Vox, 2 July 2018). Available at: <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom> (accessed 6 November 2020).

making it more difficult for buyers and users to contact people in prostitution.³⁰³

Beyond the removal of platforms, taking criminal action against platforms used by traffickers to advertise and connect with users or those frequented by buyers and users to cultivate demand has also been a means of disrupting the market and increasing barriers between buyers and people in prostitution.

The most prominent example of criminal action being taken against such platforms is the removal of Backpage.com, which was the largest means of arranging the purchase of sex online in the United States prior to its closure.

Backpage.com earned an estimated \$150 million a year in advertising revenue and in the month before its closure posted 133,000 advertisements for prostitution.³⁰⁴

In April 2018, just prior to the passage of SESTA/FOSTA, the U.S. Government seized both the website and its affiliates, stopping all traffic to the site. This led to an unprecedented drop in online traffic related to prostitution, since buyers were no longer able to rely on the market-leading venue for purchasing sex.³⁰⁵ The CEO of the site was also charged with facilitating prostitution.³⁰⁶ While the motivation behind the takedown was extensive allegations of trafficking on the website (the corporate entity Backpage.com eventually pleaded guilty to human trafficking) and complicity of the website operators, the ancillary disruptive impact on demand was significant.³⁰⁷

³⁰³ See Rob Spectre, *Beyond Backpage: Buying and Selling Sex In The United States One Year Later* (New York: childsafe.ai, 2019), p. 8. Research by childsafe.ai has indicated that users have purchased less after the removal of Backpage.com and the implementation of SESTA/FOSTA, due to the increased difficulty of contacting people in prostitution online.

³⁰⁴ See *ibid.*, pp. 7–8, 14.; Tarinelli, Ryan, "Online sex ads rebound, months after shutdown of Backpage", [website] (Associated Press, 29 November 2018). Available at: <https://federalnewsnetwork.com/business-news/2018/11/online-sex-ads-rebound-months-after-shutdown-of-backpage/> (accessed 24 March 2021).

³⁰⁵ See Rob Spectre, *Beyond Backpage: Buying and Selling Sex In The United States One Year Later* (New York: childsafe.ai, 2019), p. 5. An analysis undertaken by childsafe.ai indicates that one year after the removal of Backpage.com, the websites that have replaced it draw only 5%–8% of the visitors received by Backpage.com during 2016.

³⁰⁶ See Adi Robertson, "Backpage CEO cuts plea deal and agrees to help keep the site offline" [website] (The Verge). Available at: <https://www.theverge.com/2018/4/13/17234268/backpage-ceo-carl-ferrer-justice-department-guilty-plea> (accessed 8 December 2020).

³⁰⁷ See Rob Spectre, *Beyond Backpage: Buying and Selling Sex In The United States One Year Later* (New York: childsafe.ai, 2019), p. 5.

Buyer-led platforms have also been targeted in this fashion. Prior to the removal of Backpage.com, in 2017, local authorities in the United States confiscated a buyer-led platform that promoted people in prostitution to other buyers and cultivated demand. Known as “The Review Board”, this website helped facilitate demand within the wider region by hosting reviews of people in prostitution and encouraging other buyers to purchase their services. In effect, this broadly fuelled the prostitution industry.³⁰⁸ By shutting down the site and charging its operators with promoting prostitution, local authorities disrupted the efficiency of the prostitution market and made it harder for buyers to connect with people in prostitution.

Holistic Responses

Some jurisdictions in the OSCE region have determined that a multi-sectoral response is useful to address the complex characteristics of demand—its criminal and cultural aspects, its scale and historical persistence, etc. Approaching the problem from multiple societal entry points—for example, by involving public-private-civil society actors or incorporating actions across criminal-education-public health-business sectors—allows for broader and more impactful outcomes.

One of the few holistic, multi-sectoral approaches in the OSCE region identified by OSR/CTHB is the Ending Exploitation Collaborative (EEC) in Washington State, United States of America. The EEC’s mission is to address trafficking and commercial sexual exploitation through a coordinated community response to demand and sex buying in particular.

The activities of the EEC are coordinated through a multi-sector working group that includes survivors, prosecutors, law enforcement, direct service providers, academics, and non-profit organizations and other anti-trafficking stakeholders. **Sectors targeted by the EEC are shown in Graph 2.**

Actions within sectors focus on policy development, capacity building and concrete initiatives:

Education

- High school programs that confront gender-based violence, address demand, and promote healthy relationships
- Awareness raising events on college campuses related to sexual exploitation and demand fostered by male college students
- Educational course for buyers or potential buyers (mandatory for convicted buyers) that promotes healthy masculinities and counter gender-based violence and sexual exploitation

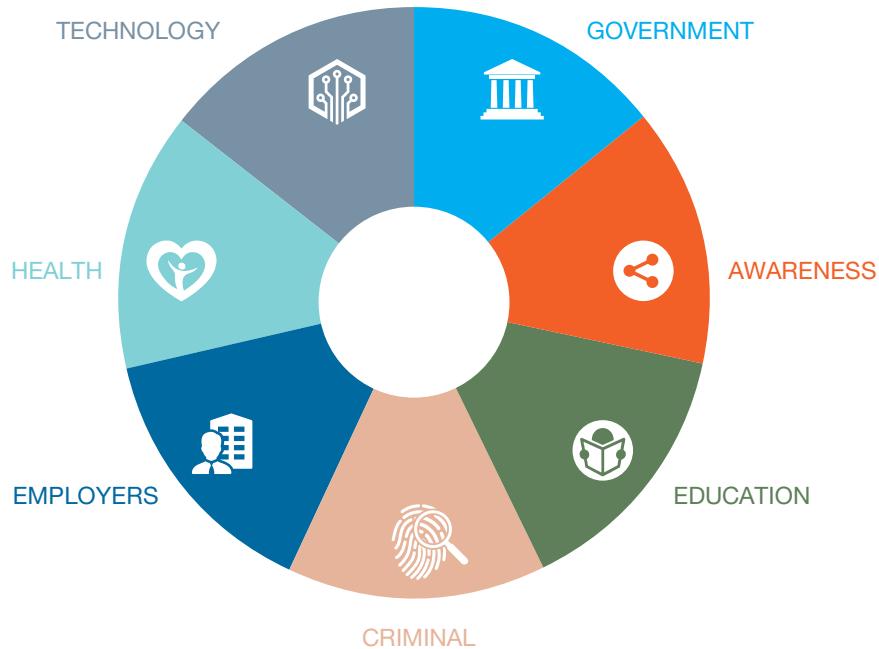
Technology

- Using partnerships between government, civil society and the private sector to develop and deploy technology-based interventions to demand such as chatbots to disrupt commercial sex transactions, reaching buyers through ads, and educating the general public on demand through social media

Businesses/Employers

- Support adoption of employer codes of conduct designed to discourage demand
- Conduct employee training on the connection between demand and commercial sexual exploitation
- Promoting risk assessments within businesses and adoption of company policies that can deter demand such as by prohibiting access to sexual service websites

³⁰⁸ See Lynn Thompson, “Busted How police brought down a tech-savvy prostitution network in Bellevue”, [website] (*The Seattle Times*, 26 July 2017). Available at: <https://projects.seattletimes.com/2017/eastside-prostitution-bust/> (accessed 6 November 2020).



Graph 2

Health

- Raising awareness in the medical and public health communities on the harms of sex buying
- Offering access to the Stopping Sexual Exploitation class for buyers who visit public health clinics for sexually transmitted disease testing

Government

- Legislation and policies that hold sex buyers accountable for harm, including awareness campaigns, adoption of employment codes of conduct, and criminalization
- Incorporate demand into regional anti-trafficking strategies

Criminal Justice

- Enhance policy framework: Washington State has variety of criminal statutes for different aspects of demand: all

sex buying is criminalized (p. 34) and purchasing sex from a minor is separately criminalized (p. 41). A user could also be charged under the State or federal trafficking statute (p. 39).

- Consistent and diverse operations: A wide variety of under-cover operations is regularly deployed and, as discussed on p. 64, a buyer-led website was also prosecuted in an effort to disrupt the marketplace.
- Focus on implementation to increase arrests and prosecutions of sex buyers and users of trafficking victims through technical assistance and advocacy.

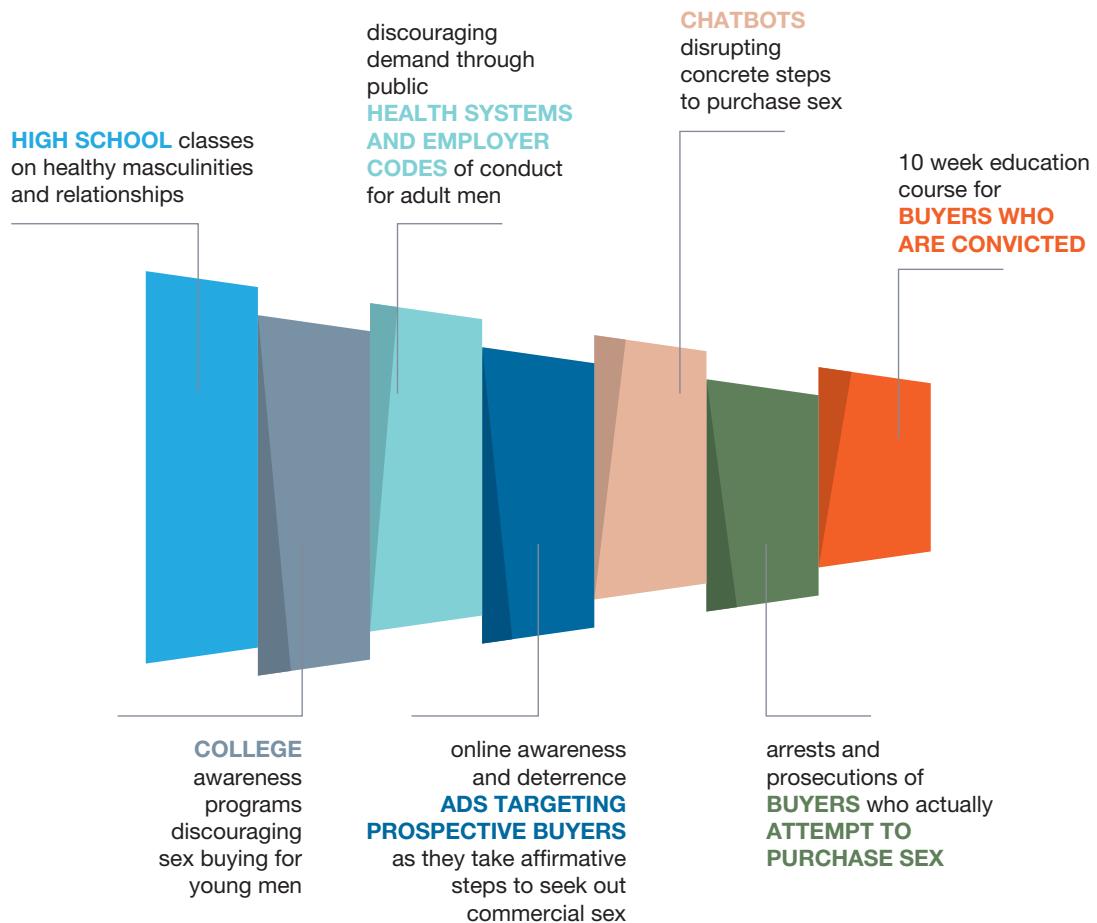
General public and Media

- Develop campaigns to increase awareness of the harms created by sex buying
- Public opinion articles that confront demand and promote efforts to discourage it

Together, the strategies for each sector cover a spectrum of interventions from broad-based prevention to targeted prevention to criminalization, with each intervention becoming increasingly focused: high school classes on healthy masculinities and relationships – college awareness programmes discouraging sex buying for young men – discouraging demand through public health systems and employer codes of conduct for adult men – online awareness and deterrence ads targeting prospective buyers as they take affirmative steps to seek out commercial sex – chatbots disrupting concrete steps to purchase sex – arrests and prosecutions of buyers

who actually attempt to purchase sex – and a 10 week education course for buyers who are convicted, **Graph 3**. Under this approach, diverse and broad-based prevention initiatives are prioritized and criminalization is the final measure of accountability.

To achieve maximum impact, actions within the various sectors complement each other and are used in concert. For example, following a law enforcement operation targeting buyers, online advertising will be launched targeting buyers with news stories of the operation to discourage further sex buying.



Graph 3

Findings

OSCE participating States have pioneered and utilized a wide variety of prevention measures to discourage or address demand.

However, although there are a wide range of options used within the OSCE region, the application of these approaches has been limited. Such initiatives were identified in less than half (27) of the OSCE participating States.

The analysis of the identified awareness campaigns has shown that such efforts are concentrated in participating States employing some form of direct means of criminalizing users of sexual services from trafficking victims, either through “knowing use” statutes or other means.

Of the 28 awareness campaigns identified by this paper, 24 took place in States that criminalize some aspect of demand. In only two States, Italy and Spain, were campaigns identified where there are no laws criminalizing users of services from trafficking victims. Overall, the OSR/CTHB found no criminal justice or prevention initiatives in 19 participating States.

Of the initiatives identified and presented in this paper, most were undertaken by civil society, were launched for a limited period of time, and were limited in their jurisdictional reach. Very few have been assessed for impact, and rarely have they been harmonized across regions.

While a relatively large number of States have, at one time or another, conducted passive awareness-raising campaigns, only a few States have actively invested in targeted methods of disruption or deterrence.³⁰⁹ Yet, such methods seem to have significantly more promise for short-term impact on demand, since they actively seek to engage with buyers and change their behaviour.

The frequent reliance on a single method of prevention (usually implemented infrequently) in most States suggests the lack of a comprehensive strategy to include demand-oriented prevention initiatives in national anti-trafficking responses. The limited State investment in demand-focused prevention methods is also seen in the outsized role CSOs play in national responses to demand. CSOs are responsible for organizing

over 55% of awareness-raising initiatives identified in the research undertaken for this paper.

This Occasional Paper notes in particular the limited attention currently paid to educating young people, especially young men, about the role of demand in fostering trafficking for the purpose of sexual exploitation. In light of the increased attention in recent years to educating boys and young men about consent in sexual relationships, healthy relationships, and the harm involved in sexual harassment and assault, incorporating elements attentive to the risks inherent to prostitution and trafficking seems warranted and should be an area that is emphasized more.

Efforts at prevention are also more likely to yield results if they are paired with a strong and effective criminal justice response, since they serve complementary functions in discouraging demand. For instance, awareness campaigns highlighting existing criminal statutes and the risks those statutes present to buyers can serve to buttress the implementation of the statute by law enforcement and its compliance amongst the general public.

Finally, the research conducted for this paper indicates that little attention is currently being given to measuring demand, or the reach and impact of prevention initiatives. With a few notable exceptions—for example, initiatives in Ireland, Sweden and the United States that have attempted to measure reach and impact—many prevention efforts seem regularly to gravitate to similar approaches and messaging without assessment of outcomes. On the other hand, where assessment has been done—such as in the case of Childsafe.ai measuring online demand, or the assessing of physical presence restrictions in Dortmund, Germany—tangible impact on demand has been noted. This supports the strategic value of addressing demand. Efforts designed to measure the effectiveness of initiatives countering demand should therefore be incorporated into future undertakings.

³⁰⁹ OSR/CTHB identified five participating States (the United States, Norway, Ireland, France and Germany) that have engaged in some form of disruption or deterrence strategies.

5



Chapter 5: Conclusions

The OSCE region has seen tremendous progress and harmonization on criminalizing THB as well as establishing victim protection and assistance systems.

The analysis presented in this paper, however, demonstrates that the collective response to discouraging the demand that fosters trafficking for the purpose of sexual exploitation is much less developed and uniform.

This finding is particularly relevant in light of the failure of the global community to eradicate—or abate—trafficking for sexual exploitation using traditional approaches. As outlined in chapter 1, incorporating responses to demand into national anti-trafficking strategies represents an untapped opportunity to undermine the financial incentives for THB, foster greater gender equality, combat the exploitation of women and girls, and men and boys, particularly those most at risk such as racial and ethnic minorities and children, and protect victims from suffering violence and harm.

This chapter contains the primary conclusions that can be taken from the preceding analysis of international legal obligations and political commitments, as well as current efforts by OSCE participating States to discourage the demand that fosters trafficking for the purpose of sexual exploitation. In short, these conclusions highlight the challenges and opportunities involved in efforts to address the demand that fosters trafficking for the purpose of sexual exploitation, as well as the shortcomings or limitations in current methods of discouraging that demand.

International legal obligations and commitments oblige all OSCE participating States to take steps to discourage demand

As parties to the Palermo Protocol, 55 of the 57 OSCE participating States have a legal obligation to enact measures that discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking. Additionally, all OSCE participating States have made the same political commitment by agreeing to the 2003 OSCE Action Plan and its Addenda as well as subsequent Ministerial Council Decisions. These commitments—along with the obligations incumbent upon many OSCE participating States to discourage or reduce demand as contained in the CoE Convention, the EU Anti-Trafficking Directive and the CEDAW Convention—collectively establish a binding norm that States must take action to discourage the demand that fosters trafficking for the purpose of sexual exploitation, in particular trafficking for the purpose of the exploitation of the prostitution of others.

The international legal framework sets out an expansive view of demand and its connection to trafficking in human beings

The international obligations and commitments outlined in chapter 2 represent an expansive view of the demand that States must address, with the burden being on States to discourage the demand that *fosters* exploitation that *leads to trafficking*. This commitment exists regardless of the position taken by States regarding the legalization of prostitution, and expands the scope of discouraging demand beyond the demand *for* trafficking—or even the demand for sexual exploitation—to demand that even unintentionally or unknowingly motivates third parties to exploit prostitution.

The scale of trafficking for the purpose of sexual exploitation requires a response commensurate to the size of the problem

Like combating THB, countering the demand that fosters exploitation that leads to trafficking is a major challenge. Trafficking for sexual exploitation alone generates nearly \$100 billion a year, much of it paid by men for sex with trafficking victims. This translates into hundreds of millions of transactions a year. Moreover, trafficking for the exploitation of the prostitution of others rests in an even larger prostitution marketplace.

This demonstrates the crucial need to develop strategies that can scale up to meet the size of demand and engage with large segments of society. This includes, in particular, targeted and broad-based interventions that, *inter alia*, address cultural norms that serve to fuel the demand that fosters exploitation that leads to trafficking. Criminal justice measures can support efforts to hold users accountable and can more broadly establish important societal norms against specific conduct. However, to meet the scale of the problem, still broader prevention efforts are needed.

Criminal justice responses are lacking, fragmented or not strategic

As discussed in chapter 3, criminal justice measures are a key option for States to address demand. However, the criminal justice means of countering demand, and in particular users of services from trafficking victims, differ markedly within the OSCE region. The OSR/CTHB was unable to identify criminal statutes that expressly target demand in 24 OSCE participating States. For those States that do have a relevant statute, no single method of criminalization is in widespread use. The most common form of combating demand within criminal justice systems is currently the criminalization of the “knowing use” of services from trafficking victims, based on Article 19 of the CoE Convention and Article 18(4) of the EU Directive.³¹⁰ Yet even this method is only used by roughly 30% of the OSCE participating States, and it has significant shortcomings. Instead, a plurality of systems are being relied upon, which creates a lack of uniformity in how buyers and users are addressed, ranging from the criminalization of all

sex buying to no criminalization of any sex buying, and various combinations of statutes that fall between the two.³¹¹

A commonality between the responses is that most do not capture the full scope of demand as foreseen in Article 9(5) of the Palermo Protocol (demand that fosters exploitation that leads to trafficking) and suffer from challenges in implementation. The result is that the strategic value of criminal justice measures—creating risk for demand that fosters exploitation, holding accountable those who cause harm, preventing harm from being done to victims, norm-setting in society, etc.—is not optimally achieved.

Limited enforcement has led to impunity

Limited enforcement of criminal laws targeting buyers and users within the OSCE region has led to widespread impunity, including within jurisdictions where the purchase of sex is criminalized.³¹²

As described in chapter 3 above, relying on statutes with onerous standards of proof, such as the “knowing use” of services from a trafficking victim, is a significant contributor to the low levels of implementation. However, the lack of prioritization, resources, training and expertise also contribute significantly to the implementation gap. Moreover, the punishment for such offences are also often relatively minor, which further contributes to a lack of prioritization by law enforcement and a lesser deterrent effect on potential sex buyers.

Taken together, sex purchasers are keenly aware that they are unlikely to face any serious repercussions—even in the unlikely event they are caught purchasing sex—and thus remain undeterred from purchasing sex, thereby fostering greater demand that in turn fosters exploitation.

³¹⁰ See Council of Europe, *Group of Experts on Action Against Trafficking in Human Beings 9th General Report on GRETA's Activities* (Warsaw: Council of Europe, 2020), paragraph 122. According to data from the CoE, 17 parties to the CoE Convention have criminalized the use of services from a trafficking victim.

³¹¹ The Netherlands has criminalized intentionally profiting from the exploitation of another person, and is currently considering a Private Member’s Bill to criminalize the knowing use of sexual services from a victim of human trafficking. At time of publication of this paper, the Bill had not yet been enacted. Article 273f, paragraph 1, subparagraph 6, of the Dutch Criminal Code states that any person who intentionally profits from the exploitation of another person shall be guilty of trafficking in human beings. It is unclear, however, if this Article has been used to target users.

³¹² See Siobhán Mullally, *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings: Article 19 Criminalisation of the use of services of a victim* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, 2020), paragraph 19.21.

When the lack of risk of arrest or conviction is coupled with sex buyers' documented unwillingness or inability to identify trafficking victims when buying sex, the likelihood increases that trafficking victims will be exploited on a large scale.

Minimal attention to demand in States where no buying is criminalized

As chapter 4 of this paper has demonstrated, prevention initiatives addressing demand remain limited in scale and duration. They are also concentrated in countries where buying sex is illegal or the use of services from trafficking victims is criminalized. Despite the fact that all countries are required to take measures to discourage demand under Article 9(5) of the Palermo Protocol, few efforts—even in the area of prevention—were identified in countries where buying sex is legal or decriminalized. Without criminal justice or prevention measures in these States, users have impunity and the safety and rights of victims are compromised.

Majority of work is being done by civil society

Although the obligation under the Palermo Protocol's Article 9(5) to discourage demand rests with States, the analysis of prevention methods outlined in chapter 3 demonstrates that a majority of efforts currently being deployed to target demand within the OSCE region are being undertaken by CSOs.³¹³ Indeed, over 55% of the awareness-raising campaigns identified in the research for this paper have been organized by non-profit entities. While national and local authorities often work together with these groups or provide funding for their work, the absence of government-led programmes to target demand is a missed opportunity in terms of norm-setting. It also signals a lack of interest in targeting demand as a component of a holistic anti-trafficking response. Moreover, without significant support, civil society organizations often lack the resources and reach to undertake sustainable programmes.

States have been conservative in their implementation of responses to meet Article 9 (5) of the Palermo Protocol.

By and large, OSCE participating States have been conservative in their implementation of Article 9(5) and passive in seeking to discourage demand. No efforts to discourage demand were identified in roughly one-third of the OSCE participating States. In States that have taken action on demand, many over-rely on criminal justice responses and lack complementary prevention initiatives. Moreover, in those States with criminal justice measures, many do not account for the scope of demand as envisioned in the Palermo Protocol (i.e., the demand that fosters trafficking for the purpose of sexual exploitation) and instead focus on efforts that discourage only the demand for trafficking.

This conservative approach is also reflected in the methods being used for prevention, with States making limited use of innovative technology-based means of deterrence and disruption. General awareness-raising campaigns remain the most common tool used and there are low levels of implementing proactive methods of prevention. These trends limit the impact of the responses to demand currently in place within the OSCE region.

³¹³ Based on the analysis of current demand-focused initiatives identified by the OSR/CTHB.

6



Chapter 6:

Recommendations

Counteracting the demand that fosters trafficking for the purpose of sexual exploitation plays a crucial role in preventing THB for sexual exploitation by undermining the financial incentive for traffickers to exploit other human beings, in particular women and children.

Discouraging demand can help combat gender-based violence, racial inequality, and protect trafficking victims from multiple layers of harm. It is also required by international law or political commitment (or both) for all OSCE participating States.

The following recommendations are therefore offered to help OSCE participating States fulfil their legal obligations under Article 9(5) of the Palermo Protocol and their commitments in 2003 OSCE Action Plan to Combat Trafficking in Human Beings to discourage demand and further prioritize discouraging demand as a means of prevention within a holistic anti-trafficking response.

Fully implement existing legal instruments and political commitments

OSCE participating States should fully implement their existing legal obligations and political commitments to discourage the demand that fosters trafficking for the purpose of sexual exploitation. The efficacy of the current international legal framework governing demand is limited by sporadic and narrowly constructed responses, as well as a lack of robust implementation. States should recommit to fully implement their legal obligations under the Palermo Protocol to discourage the demand that fosters trafficking for the purpose of sexual exploitation by adopting or strengthening legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation.

This should include implementing measures that meet the expansive view of demand advocated for within the Protocol, so that the response is not only to discourage the demand for trafficking or the demand for exploitation, but the demand which fosters exploitation that in turn leads to trafficking.

Incorporate demand into national anti-trafficking strategies

Given the role of demand as a primary root cause of trafficking, particularly of women and girls, the prominent place of demand in a number of international instruments and political commitments, and the function of demand in fuelling the market for the services of trafficking victims, consideration of demand should be fully integrated into national efforts to combat THB, including prevention. While some participating States have introduced measures to incorporate demand into existing national strategies and action plans,³¹⁴ further efforts should be undertaken to counter demand when crafting national action plans, including strategic planning as well as adequate funding and resources for efforts to address and discourage demand. Strategies should also take into account the gender dynamics of demand, and include encouraging partnerships between national authorities, CSOs, victim/survivor organizations and the private sector to take advantage of their individual expertise and proficiencies. It should also be ensured that input from victims and survivors is incorporated into efforts to discourage demand.

Develop a holistic approach

Consistent with the discussion and recommendations above, efforts by States to discourage demand should aim at being holistic by utilizing multiple measures and tools in a co-ordinated response. To successfully combat demand, the na-

³¹⁴ As an example of this in practice, in the United States, Section 9 of the Abolish Human Trafficking Act of 2017 (P.L. 115-392), The Justice for Victims of Trafficking Act of 2015, was amended by adding a requirement for the Attorney General to develop a “national strategy to prevent human trafficking and reduce demand for human trafficking victims.”

tional strategies adopted by States should seek to include responses addressing the various sides of the phenomena, so that all factors contributing to demand can be addressed. At a minimum, States should seek to implement complementary measures across multiple sectors, as for example, pairing criminal justice measures with education initiatives for young men and boys and with targeted deterrence initiatives such as employer codes of conduct. Moreover, much more attention should be given to “upstream” prevention programming and targeted preventative interventions, such as deterrence and disruption, with criminal justice measures as the final measure of accountability.

Adopt more effective criminal justice measures

As demonstrated in chapter 3, a plethora of criminal justice responses to demand exist in the OSCE region, ranging from the criminalization of users of services from trafficking victims, to the criminalization of sex buying, to all buying being legal. Most of these approaches have significant shortcomings, either because their approach is too narrow, they carry onerous—and consequently unworkable—proof standards, or they are insufficiently implemented. Attention to both the legal framework and its implementation are thus needed.

While methods of criminalization remain the prerogative of the participating States, the criminalization of the use of services of a trafficked person is a minimum threshold that should be achieved. Instruments binding approximately three-quarters of the OSCE participating States call on those States to consider adoption of such statutes; doing so sets an important norm against the use of trafficking victims and the harm that such use causes.

At the same time, failure to criminalize even “knowing use” fosters impunity and renders the overall fight against THB less credible and less effective.³¹⁵ It sets the counter-productive social norm that buying sex from trafficking victims is permitted. And it ignores the myriad harms suffered by trafficking victims, sending the message to victims that the harm they suffered at the hands of users was acceptable.

While a “knowing use” statute would be the most basic method of criminalizing the use of services of trafficking victim, the analysis and findings of this paper suggest that statutes with a more flexible and workable standard should be con-

sidered instead—namely either a “known or should have known” (substantive and objective standard) or a “strict liability” standard. Moreover, a combination of statutes is more likely to achieve the goals of reaching the scale of demand and recognizing the elevated harm caused by the specific use of trafficking victims.

OSCE participating States are encouraged to re-evaluate their current criminal justice responses to demand and adjust their legal framework with the following factors in mind:

- The scope of demand articulated by international instruments is expansive; it includes “the demand that fosters exploitation that leads to trafficking”;
- The scale of demand is huge, with the purchase of sex from trafficking victims occurring hundreds of millions of times a year and fuelling nearly \$100 billion in annual profits;
- The realities of the market are challenging: users do not usually try specifically to buy the services of trafficking victims, yet they are unable and/or unmotivated to identify trafficking victims, thus creating an undiscriminating market where tens of thousands of trafficking victims are exploited;
- Users are directly and indirectly responsible for all of the harm suffered by VoTs, and this harm is multi-faceted: the harm of being trafficked for the purpose of sexual exploitation, the harm of non-consensual sex due to having been trafficked, and the harm of supplementary violence or force used during the prostitution transaction. The harm is also highly gendered, overwhelmingly created by men and predominantly, though not exclusively, suffered by women and girls, and disproportionately suffered by racial and ethnic minorities. Thus, policy responses should reflect the seriousness and gravity of the problem, not only its scale;
- There can be significant obstacles when implementing knowledge-based statutes, and these must be addressed when utilizing that approach through more flexible statutes or a combination of statutes;
- Criminal laws have an important norm-setting function in society. Thus States should consider the norm they wish to establish when developing their policy response, particularly regarding the protection of vulnerable persons. Very different messages about the existence of harm, and where culpability for harm resides, are sent to societies between policies that use non-restrictive means and those that use very restrictive means;
- The deterrent effect of criminal statutes can be multi-faceted and geared towards certain segments of demand.

³¹⁵ See European Commission, *Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU* (Brussels: European Commission, 2 December 2016), p. 10.

Laws that criminalize the use of child VoTs can be used together with those that criminalize all sex buying, or using the services of any trafficking victim, in order to tailor the scope, nature and penalty of a criminal statute to the perpetrator and type of harm committed.

Implement criminal justice measures

Even the best statutes can only have an impact if they are implemented. While a major barrier to implementation is the “usability” of a statute, there are other reasons for poor implementation, including the lack of political will, resources, or training and expertise.

First, participating States should set the tone for a robust response to demand by demonstrating political will to address users, since it is users who are harming trafficking victims daily. This can include public advocacy to address demand, adopting necessary statutes, prioritizing anti-demand efforts in strategic planning, and committing sufficient resources.

Second, criminal justice actors, stakeholders on preventions initiatives, and decision-makers should follow political will with attention and resources on the ground, including the personnel and tools necessary for conducting operations.

Third, to aid in the effective implementation of criminal justice measures, additional resources should be devoted to training law enforcement, prosecutors and judges on how to properly apply legislation criminalizing demand and on the importance of targeting users. Lack of training and knowledge about both THB and demand across the OSCE region contributes to the limited implementation of existing criminal justice measures.

Law enforcement should also be trained and experienced in where trafficking for sexual exploitation is occurring in their jurisdiction and how to conduct operations in those diverse venues. For example, if the primary venue for trafficking for sexual exploitation is apartment brothels, then surveillance techniques, undercover work and other advanced operational tools might be used. On the other hand, if Internet-facilitated prostitution is the norm in a particular jurisdiction, then investigators may need cyber training and financial investigation experience to gain the skills required to track actions online, obtain online records from companies, and preserve digital evidence.

In addition, special investigative techniques used to target trafficking organizations can be leveraged to identify users of services from trafficking victims, whether in the form of sting operations or tracking financial flows from users to trafficking organizations. To further advance successful investigations

and prosecution of users, participating States should consider training in special investigative techniques for pursuing users.

Training for law enforcement on how to identify and engage with VoTs should also be provided, taking into account the gendered nature of the crime. The prevalence of VOTs in the commercial sex industry, as well as other vulnerabilities or exploitative circumstances in the industry even where trafficking is absent, supports the conclusion that law enforcement should carefully evaluate each interaction for the possibility that they are speaking to a VoT or an exploited person. Moreover, while current efforts tend to focus on identifying traffickers, survivors and VoTs can provide advice on how to identify users for law enforcement, such as their patterns of behaviour, where purchasing takes place and under what conditions. VoTs may also be more willing to identify harmful or violent users than their traffickers, particularly in jurisdictions where they do not fear criminal prosecution. Law enforcement should therefore be properly educated on how to communicate with and identify VoTs, as well as how to utilize their knowledge as a means of more proactively finding users.

Governments should take a lead role in prevention initiatives related to demand

As shown in chapter 4, most efforts in the OSCE region seeking to discourage demand, outside of criminal justice responses, are currently being undertaken by CSOs.

Although government agencies sometimes provide financial support, relying on CSOs to plan, organize and deliver campaigns, education programmes, and disruption and deterrence efforts, limits their reach, scale, resourcing, effectiveness and ability to make a sustained impact. National authorities should take more direct ownership of efforts seeking to discourage demand, and give particular attention to the gender dynamics of the issue. By doing so, governments can better advance the dissemination of efforts to combat demand, as well as create a stronger social norm against the purchase of sex from trafficking victims.

More campaigns and education programmes to target youth and potential future users should be undertaken

Evidence suggests that more education initiatives should be catered to youth and adolescents, since sex purchasing often starts in early adulthood and becomes more entrenched over

time.³¹⁶ Such work should primarily target teenage boys³¹⁷ in order to account for the highly gendered nature of the demand that fosters exploitation that leads to trafficking for the purpose of sexual exploitation. As a means of preventing future demand, OSCE participating States should therefore continue to develop awareness-raising campaigns targeted at young men, adjusting both the message and means of delivery to fit their profile, and also invest in additional education programmes.

Invest in innovation and prioritize the use of online methods of disruption and deterrence

OSCE participating States as well as CSOs and private companies interested in tackling demand should invest further resources into developing new methods of identifying, connecting with, and discouraging users of services from trafficking victims, with the aim of encouraging the proliferation of more demand-centric initiatives in the OSCE region.

In the context of prevention, the OSR/CTHB noted in its research a heavy reliance by anti-trafficking actors on general awareness-raising campaigns to discourage demand; limited attention has been given to developing new methods of discouraging demand. As noted in chapter 5, methods of disruption and deterrence remain widely underutilized in the OSCE region, particularly in the area of combating demand online, despite evidence of the impact of such methods. With the increasing use of the Internet to facilitate the purchase of sexual services from victims of THB, participating States should significantly increase and enhance their efforts to develop strategies and tools for deterring and disrupting the sale and purchase of sex from trafficking victims in the online marketplace. Tools such as chatbots are cost-effective to deploy, and relatively easy to scale, making them an efficient means of targeting users directly. Similarly, efforts to limit the number of forums available to users to arrange the purchase of sex from THB victims—e.g. through regulatory action or criminalization—should be continued and expanded, since such actions serve as effective means of curbing the efficiency of the marketplace.

Moreover, many methods of deterrence and disruption can be used regardless of the criminal justice response to demand. This allows every State to meet their obligation to discourage demand, as well as reinforce norms away from purchasing services from victims of THB.

Encourage additional efforts to educate key industry sectors

Education initiatives traditionally organized by the private sector, such as those described in chapter 4 in the hotel industry, should be encouraged and supported by national authorities. The aim should be national associations and private businesses adopting a standard approach in sectors where contact with users and victims of THB is likely, such as hotels, hospitality and transportation. THB for sexual exploitation does not occur in a vacuum, and routinely involves the use of private facilities. Additional awareness-raising campaigns may prompt such parties to report information on potential victims of THB,³¹⁸ while publicized education initiatives within these sectors may also deter users from seeking the services of potential victims.

Engage with survivors of THB when crafting demand-side initiatives

National authorities should actively engage with survivor communities when developing and implementing initiatives that seek to discourage demand. Survivors are ideally placed to provide guidance and expertise to both law enforcement and policy makers on how to best reach out to current victims and offer them access to exit assistance. Similarly, survivors can provide knowledge and expertise about what tools or initiatives might be deployed to discourage demand in a way that does not harm or create negative repercussions for those in prostitution.

³¹⁶ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 8.

³¹⁷ See IOM, *Is Trafficking in Human Beings Demand Driven? A Multi Country Pilot Study* (Geneva: IOM, 2003), p. 9.

³¹⁸ See Alexis A. Aronowitz and Anneke Koning, "Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation" (*International Review of Penal Law* 85, 2014), p. 685.

Provide additional services to VoTs and fund exit strategies

While demand-side activities often focus on the role of the user, providing support to VoTs and at risk individuals involved in prostitution cannot be overlooked. Support services for individuals trafficked into prostitution, such as access to housing, health care, counselling and new employment opportunities, need to be properly funded to help prevent situations of individuals becoming re-trafficked and assist VoTs in overcoming the harm they experienced while being trafficked.

Similarly, as highlighted by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings in his recommendations on the impact of COVID-19 on vulnerable communities, access to exit strategies for individuals involved in prostitution, in particular at-risk groups, should also be provided, irrespective of their trafficking status: “inclusive programmes ensuring support can be a powerful tool to break the cycle of exploitation and strengthen exit pathways, giving a real alternative to those in need.”³¹⁹

Improve cross border collaboration

Measures to discourage demand should involve cross-border cooperation and coordination at both the regional and global level.³²⁰ THB remains a multi-national phenomenon. Demand contributes to that by serving as a pull factor for victims to be exploited by being moved from one jurisdiction to another. Buyers and users also move between jurisdictions to increase their access to prostitution markets. Moreover, the increase of technology-facilitated exploitation has further complicated this situation by allowing for commercialized sexual exploitation across borders without any party physically crossing a border. OSCE participating States should strengthen their cross-border collaboration, particularly in instances of sex tourism or the purchase of sexual services via the Internet, in order to identify potential users in one jurisdiction who are committing crimes in another.

Additional research into the impact of current initiatives on users and demand

Already contemplated in the national legislation of some OSCE participating States³²¹ and undertaken in the past by some CSOs,³²² participating States are encouraged to conduct research on the demand that fosters trafficking for the purpose of sexual exploitation, as well as the means by which it can be effectively discouraged. For efforts to discourage demand to be effective, it is important that participating States properly understand the scale of demand, the motivations and actions of users, the realities of the market, the prevalence of THB for sexual exploitation within different markets, the nature of harm caused by buyers and users, and the impact of existing measures on demand within some participating States.

States should therefore seek to measure and assess the effectiveness of measures designed to address demand as a component of their future activities related to discouraging demand. This recommendation is reinforced by Guideline 7.1 of the UNOHCHR recommended Principles and Guidelines on Human Rights and Human Trafficking, which calls on states to “analyse the factors that generate demand for exploitative commercial sexual services”.³²³

³¹⁹ See OSCE, *OSCE Special Representative for Combating Trafficking in Human Beings offers recommendations on short-term responses to COVID-19*, (Vienna: OSCE, 30 April 2020). Available at: <https://www.osce.org/cthb/451186> (accessed 7 April 2021).

³²⁰ See Immigrant Council of Ireland, *Stop Traffick! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin: Immigrant Council of Ireland, 2014), p. 9.

³²¹ The OSR/CTHB has identified examples in legislation from Scotland, Ireland, and the United States. To review examples of reports produced from these statutes, see United Kingdom Home Office, *Tackling the Demand for Prostitution: A Review* (London, Home Office, November 2008), p. 3.; Margaret Malloch, Laura Robertson and Emma Forbes, *Evidence Assessment of the Impacts of the Criminalisation of the Purchase of Sex: A Review* (Edinburgh: Scottish Centre for Crime and Justice Research, February 2017), p. 3.

³²² See Liz Dunphy, “One in 15 men admit to purchasing sex, survey finds”, [website] (The Irish Examiner, 4 March 2020). Available at: <https://www.irishexaminer.com/news/ard-30985594.html> (accessed 6 November 2020).

³²³ UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: UNOHCHR, 2010), p. 98.

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