



DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



GENDER EQUALITY

Gender Dimension of Trafficking in Human Beings

Introduction

- **Several gender dimensions** of trafficking in human beings
- Presentation draws on Studies for European Commission
 - *Gender Dimension of Trafficking in Human Beings.*
 - Sylvia Walby, Birgit Apitzsch, Jo Armstrong, Susie Balderston, Karolina Follis, Brian Francis, Liz Kelly, Corinne May-Chahal, Awais Rashid, Karen Shire, Jude Towers, Markus Tünte. 2016
 - *Comprehensive Policy Review of Anti-Trafficking Projects funded by the EU.*
 - Walby, Sylvia, Jude Towers, Brian Francis, Karen Shire, Liz Kelly, Birgit Apitzsch, Jo Armstrong, Susie Balderston, Adam Fish, Claire Hardaker, Stuart Kirby, Corinne May-Chahal and Emma Palmer. 2016
 - *Data Collection on trafficking in human beings in the EU.*
 - Francis, Brian, Sylvia Walby, Becky Pattinson, Amy Elliott, Valmira Hoti, Jessica Phoenix, Rachel Verrall, Moira Peelo. 2018
- Reflections on the 2016 recommendations

Gender Dimensions

1. **gender specificity and equal treatment**
2. **gender expertise, gender balance in decision-making and gender mainstreaming**
3. **gendered systems** and the theory of prevention
4. **relationship between selling sex/sex work and trafficking**
5. **gendered policy fields and strategic priorities**

Victim Assistance

- Trafficking is gender specific
 - 75% of victims of all forms of trafficking are women and girls.
 - 96% of victims of trafficking for sexual exploitation are women and girls.
 - 74% of victims of trafficking for labour exploitation are men and boys.
 - 52% of victims of other forms of trafficking (organs, forced criminality) are women and girls.
 - **Different forms of trafficking produce different harms**
 - **Sexual exploitation results in immediate and long term severe, brutal, gynaecological and mental health harms .**
- **provision of specialised services to victims of trafficking needs to be gender specific.**

Gender Specific Services

From harm reduction to prevention:

- Gender specificity enables the provision of equal treatment for the varying needs of women and men.
- Including users of services in governance provides a route for the incorporation of gender expertise into:
 - Generic welfare and justice agencies.
 - Education and training.
 - Public awareness.
 - public policy development.

Recommendations: Victim Assistance

- Ensure **gender-specific provision of specialised services to victims of trafficking** that is proportionate to their needs, which are different according to the form of trafficking to which they have been subjected and hence gender specific.
- Ensure **procurement and funding for services to victims of trafficking prioritises delivery by user-led interventions organised by and with victim-survivors of trafficking and sexual violence**. This will improve gender balance in decision-making, equal treatment of victim-survivors and improve the social conditions of excluded communities in Member States. Provide core, sustainable funding for self-organised groups of trafficked women and ensure they are included at all levels in anti-trafficking policy-making and interventions.
- Ensure **adequate funding for independent NGO**, gender-specific refuges to adequately meet need at all points of the victim pathway in destination countries and to work preventatively in relevant source, transit and destination countries.
- Extend **exit provision and protection for young victims trafficked** for sexual exploitation up to the age of 21 to minimise harms, prevent re-trafficking and secondary victimisation.
- Member States should **extend independent legal provision to victims and witnesses of trafficking for the purposes of sexual exploitation** (and other forms of violence against women) so that they are provided with representation in Court processes.
- **Improve the process of identification of victims of trafficking** by establishing an independent complaints mechanism and right of appeal with regard to the National Referral Mechanism decisions.
- **Recognise the gender-specific longer recovery time from the harms of trafficking for purposes of sexual exploitation** as compared with other forms when Member States set limits on victim support. This is likely to be longer than the minimum standard of the 30 day reflection period in the Council of Europe Convention on action against trafficking in human beings.
- Ensure **access by those trafficked for sexual exploitation (who are disproportionately female) on equal terms with others**, to welfare, social protection, health, criminal justice services and financial services. Ensuring this access for victims of trafficking will require equal access to these services **by all prostitutes/sex workers** in order to ensure that this reaches victims of trafficking for purposes of sexual exploitation.
- Provide **services to assist reintegration into the economy by victims of trafficking and women who wish to exit prostitution**, funded where appropriate by the European Structural Funds under the principle of mainstreaming gender equality into the allocation of funds for social inclusion.
- **Reduce gender inequalities in employment**, so that it is easier for women to exit from situations of trafficking into sustainable livelihoods. This is an additional reason to support the implementation of already existing EU law and policy on equality between women and men in employment as well as its further development.
- **Reduce the gendered gap in regulatory support between those working as non-standard and informal workers including pseudo or bogus self-employment**, (disproportionately women) with those with regular employment contracts (disproportionately men). In the case of self-employment, this involves considering the development of equivalents to the laws on posted workers and temporary agency workers (predominantly men) for the self-employed (predominant in a number of feminized areas such as eldercare, domestic work and prostitution). This involves both better implementing of existing laws (if the self-employment is bogus, this should be addressed) as well as developing laws to fill the gendered regulatory gap in the EU employment directives. This draws on the legal principle of equal treatment of women and men in employment.

Law Enforcement, Justice and EU Agencies

- Including a **gender dimension improves the quality and effectiveness** of law enforcement
- **Gender-specific language, policies and practices improve practice**
- **Applying the principle of equal treatment** throughout
- Varied practice among EU Justice and Home Affairs (JHA) Agencies in **specialised gender curricula (good practice example EASO) or incorporate explicit and detailed gender components into their existing materials**
- Varied **gender balance in decision-making relevant to trafficking.**
- Varied use of external **gender expertise (qua specialised officers or seconded national experts)**
- Shortage of resources for JHA agencies to **appoint gender-trained agency officers**

Recommendations : Law Enforcement

- Law enforcement in the EU should **develop and then mainstream gender expertise** into their activities. Examples are offered that concern the EU's Justice and Home Affairs Agencies.
- **Gender-specific language, policies and practices should replace gender-neutral ones.** While trafficking should be understood as a violation of fundamental rights, the fundamental rights framework must make more room for the recognition of the specificity of women's experience, particularly of sexual exploitation and violence.
- Consistently **apply the principle of equal treatment** in order to combat the discrimination and prejudice against women who work, or are thought to work in the sex industry. Law enforcement officers and border guards should be trained to abandon prejudicial attitudes and to offer women access to support services on an equal basis regardless of the specific nature and circumstances of the work they perform.
- EU Justice and Home Affairs (JHA) Agencies **should either design specialised gender curricula (following the example of EASO) or incorporate explicit and detailed gender components into their existing materials** on trafficking in human beings, according to the specific professional needs of their target groups. This would help promote a set of shared standards and understandings in a complex and sensitive area where many law enforcement officers do not have any alternative opportunity to acquire gender competence. Promoting such knowledge could lead to more-gender sensitive practice and increased numbers of specialist referrals for potential victims of trafficking. Deficiencies in the content and reach of training have been a consistent theme in this research and ameliorating them is a relatively low-cost response to a persistent problem of lack of specialised knowledge and experience in these cases.
- JHA agencies should **develop a sustained programme of improving gender balance in decision-making relevant to trafficking.** Figures on the gender composition of their management boards and staff should be released, followed by discussions with Member States on the benefits of equitable recruitment and promotion in law and border enforcement services. Programmes such as Europol's Female Factor should be rolled out across the most male-dominated JHA agencies on a periodic, rather than one-off basis.
- JHA agencies ought to **import gender expertise (qua specialised officers or seconded national experts) into their everyday operations.** Such internal actors could coordinate gender mainstreaming across the organisation with more ease and familiarity than external experts and facilitate activities such as the development and roll-out of more gender-sensitive training tools. Since agencies are autonomous and diverse, the role of gender expert requires appropriate tailoring. Concurrently, the JHA community should improve collaboration with EIGE, and EIGE should consider including trafficking for sexual exploitation within its work on violence against women.
- The European Commission should bolster resources for the JHA agencies to enable **the appointment of gender-trained agency officers, especially in those Member States faced with increased mixed migratory flows.** Relevant stipulations should be included in a revised version of the EU Agenda for Migration. The new 'Hotspot' approach outlined in the Agenda, should not be limited to quick processing and clearing of backlogs, but include a proportionate anti-trafficking component geared towards the effective referral of potential victims. Gender-trained agency officers, male and female, should be dispatched to support local police, to collaborate with and collect intelligence from staff at reception centres, local employers and migrants themselves. It is in the uncertain circumstances directly following arrival that many vulnerable persons, particularly women, may become exploited prostitutes or victims of trafficking.
- The principle of gender balance in decision-making should be implemented throughout EU- and Member State agencies, strategies and plans concerned with law enforcement, criminal justice and security.

Prevention and Demand Reduction

Article 18.1: ***‘to discourage and reduce the **demand** that fosters all forms of exploitation related to trafficking in human beings’***

- What is demand?
 - Is it just end consumers?
 - Does it include intermediaries as beneficiaries?
 - How many parties are there in the construction of ‘demand’?
- How many parties constitute the ‘market’ for sex?
 - Buyers
 - Sellers
 - Third parties that take profits (fees, rents)
- Many forms of regulation for prevention

What is Regulated?

- Selling of sex
- Profit taking by third parties from the selling of sex
- Buying sex

Each of these are separately regulated

**Regulating one does not necessitate the regulation
of the others**

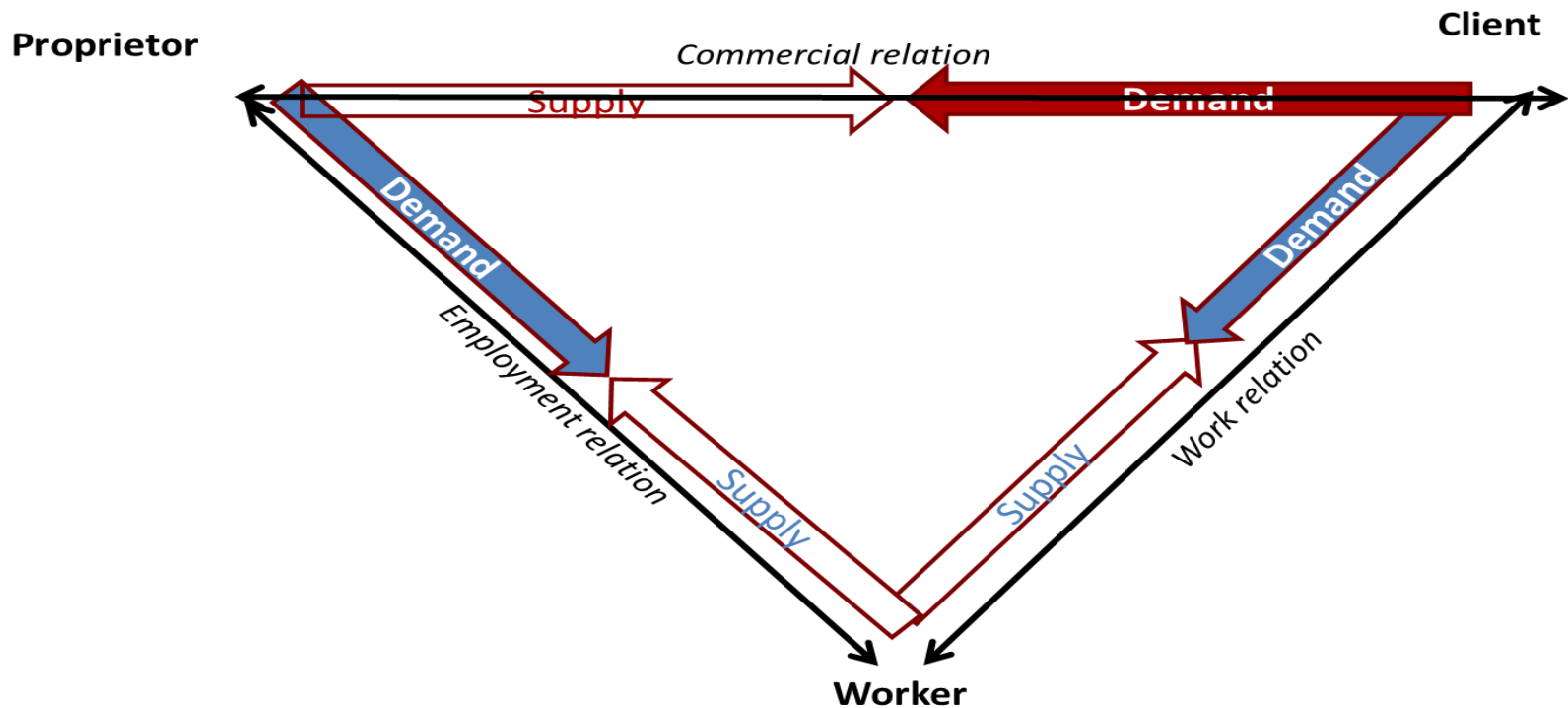
EU Specificity

- **European Union**
 - Near universal **decriminalisation of selling of sex** by individuals in the EU.
 - Innovative **criminalisation of the purchase of sex** by individuals.
 - **some Member States** e.g. Sweden **or in certain contexts** e.g. on the street
 - Near universal criminalisation of profit taking from the prostitution of others.
 - Some Member States **partial de-criminalisation of profit-taking** from selling sex.
- **United States of America**
 - not decriminalised the selling of sex.
 - not criminalised the purchase of sex.
 - not decriminalised profit-taking.

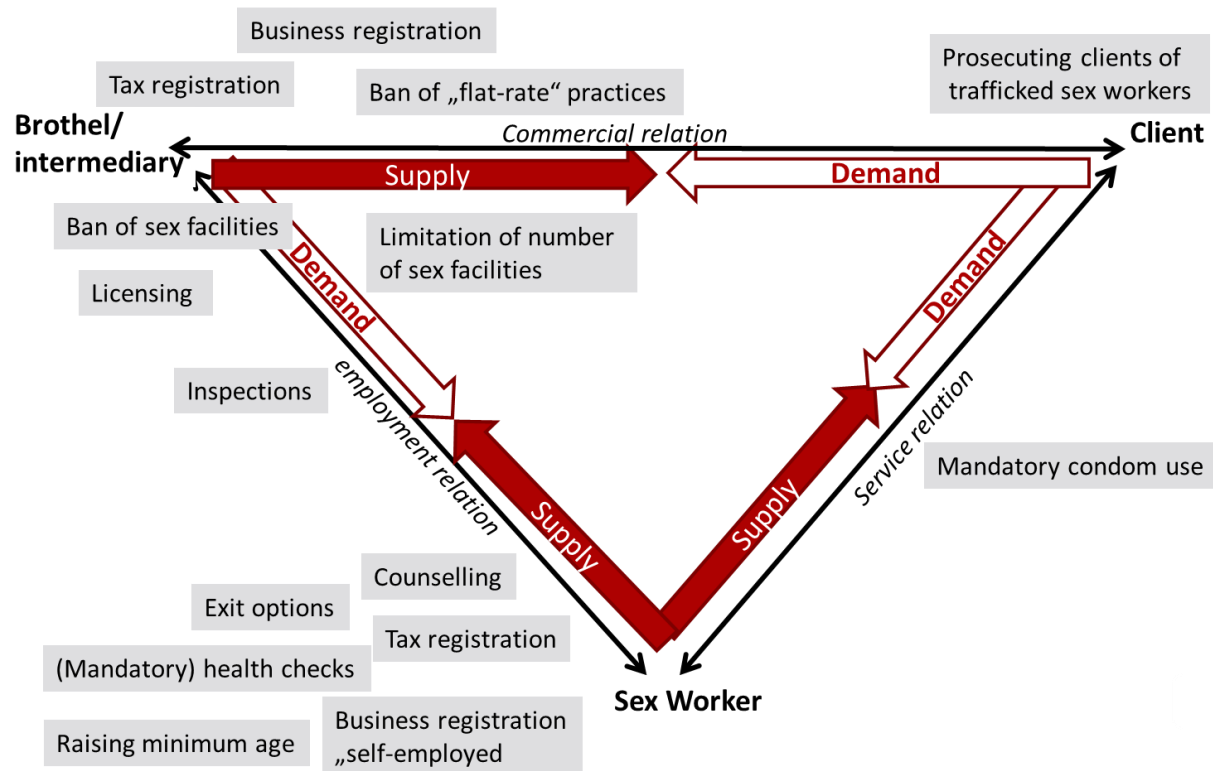
It is not possible to make global generalisations about de/criminalisation

The decriminalisation of selling sex should not be conflated with the criminalisation of profit-taking

Conceptualising Demand



Regulation in context of trafficking for sexual exploitation



Focus of Innovative Policies

Much experimentation and innovation in policy to prevent trafficking:

- Changes in the regulation of prostitution/sex work
- Recent focus on innovation in
 - Netherlands, Germany.
 - Sweden.

Tendency to suggest a polarisation into a focus on buyers or sellers

- But what about the third parties?

Reducing Demand for Sexual Exploitation

There are two main approaches which could be taken:

- **Narrow focus: sellers and buyers**
 - Regulate/de-regulation sellers of sex.
 - Regulate/non-regulation buyers of sex.
- **Wider focus: include third parties that derive profit (rents, fees) and intermediaries**
 - This is the regulation of the '*exploitation of the prostitution of others*' (traditional focus e.g. UK).
 - Pimps, brothel owners, 'escort' agencies

De-criminalisation but with Increased Regulation Simultaneously

Netherlands and Germany Case Studies

- Partial decriminalisation of some profit taking
- Intensified non-criminal regulation of profit taking
- Increased criminalisation of specific aspects of sex work e.g. banning street prostitution

→ Some displacement to less well regulated sites (private houses and other cities) but **sex work is not 'normalised'** e.g. benefits not refused to those who exit or those who refuse to sell sex

This model is not simple 'decriminalisation'

Criminalising Purchase of Sex

Swedish Case Study

Article 18.4 invites Member States 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 an offence referred to in Article 2.’*

- **The purchase of sex is criminalised in Sweden:** this criminalisation is situated in the context of **strong gender equality policies** and **more equal gender regime** (i.e. a specific societal context)
 - Some empirical evidence of a fall in street prostitution.
 - Some empirical evidence that men are less likely to report purchasing sex (to surveys).
- European Parliament has recommended the criminalisation of the purchase of sex

Recommendations: Demand Reduction

- Wherever there are legal sanctions to regulate prostitution, **the presumption should be that the burden of compliance and of sanctions should be borne first by those that take profits** (or rents or fees) from prostitution and second by those that purchase sex, avoiding wherever practical placing sanctions for non-compliance on the sellers of sex. This is to complete the ongoing shift in sanctions for non-compliance with the regulation of prostitution away from the sellers of sex towards those that profit from prostitution and those that use prostitutes; in particular to complete the process of de-criminalising the sale of sex.
- **De-criminalise the sale of sex.** This is necessary to assist the victims of trafficking and other forms of the exploitation of the prostitution of others, in order to reach of victims to provide them with assistance and to facilitate the prosecution of traffickers and other criminal exploiters. While EU Member States have largely de-criminalised the sale of sex there are two types of exceptions to which this recommendation applies: those few countries where the selling of sex is still a criminal offence, such as Croatia; and the legal instruments used to ban prostitution in specific locations (zones, places, or times) in countries that have otherwise de-criminalised the sale of sex.
- **Establish the following as criminal offences.**
- Any taking of profit/rent/fees by third parties in sites of prostitution that are not registered/licensed (in some countries this means all third party profits and this recommendation is little more than consolidation of existing legal practice. In countries with a sector of legal profit-taking, this means all sites outside the legal sector and adds to the sanctions available to secure compliance with existing law, consolidating the practice of applying sanctions to profit-takers rather than prostitutes).
- The **purchase of sex from a coerced or trafficked person.** This recommendation addresses the specific request for adequate proposals in Article 23.2 of the Directive. It concerns the implementation of EU law that criminalises those that aid and abet trafficking as specified in Article 3 of the EU Directive. Due consideration in the implementation of law in the court-room should be paid to possible mitigations: where the buyer is ignorant of the fact that the person has been trafficked; and to the situation where the perpetrator may not be ignorant but recklessly disregards evidence that the person has been trafficked. This consideration would allow for appropriate levels of national interpretation of this law and for its tailored application to individual cases through court-based interpretation of these concepts.
- The **purchase of sex from those under 21 not only under 18.** This recommendation is made on the grounds that those under 21 are excessively vulnerable to illegal exploitation. It is based on lessons from the Netherlands and Germany, where this is either already in law or actively under discussion to become law.
- The **purchase of sex in those zones and locations where prostitution/sex work is legally banned under administrative, licensing, zoning or other types of law (thus shifting the burden of sanctions to secure compliance with legally instituted bans on prostitution away from the seller towards the buyer;** drawing on information from the Netherlands and Germany that the seller was sometimes still subject to sanctions in contradiction to the stated principle of the decriminalisation of the selling of sex)
- The **purchase of sex in unregistered/unlicensed sites of prostitution/sex work in those countries that permit some legally registered/licensed sites of prostitution** (countries with prostitution sectors of legal profit-taking have so far failed in their objective to move all prostitution into the legal sector despite deployment of many forms of licensing, zoning and other administrative law. This recommendation adds to the sanctions to support the regulatory mechanisms to achieve this goal)
- The **purchase of sex in streets (on the grounds that it cannot be sufficiently monitored and regulated to prevent excessive exploitation and trafficking);** drawing on lessons from the Netherlands and Germany, in addition to other Member States)
- **Licensing/registration**
- Ensure that schemes for licensing/registering prostitution, in those countries that license third party profit/rent taking, are national rather than local in scope in order to reduce displacement to other localities within the country (lessons from the Netherlands and Germany)
- Member States **should consider criminalising the purchase of sex.** Although the quantitative evidence base is insufficiently developed to offer definitive conclusions (including on the issue of displacement), surveys, studies and expert judgement of key actors suggests that criminalising the purchase of sex, in some or all circumstances decreases the legitimacy and likelihood of men paying for sex, with probable implications for the reduction in trafficking for purposes of sexual exploitation. This is especially so in those circumstances (such as the street) most open to scrutiny. Article 23.2 of the Directive states: The Commission shall, by 16 April 2016, submit a report 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, accompanied if necessary by adequate proposals.

Building the Knowledge base

- Remaining challenges include:
 - Mechanisms for the standardisation of data.
 - Comparable data across time and Member States.
 - Estimating the hidden population of trafficking victims and traffickers.

Recommendations: Measuring Trafficking

- **Maintain and enhance the Eurostat programme of statistics on trafficking in human beings, including its gendered dimensions.**
- Member States **should collect and provide data on victims and traffickers using the definition of trafficking in the Directive.** These statistics should always be disaggregated by gender, by whether a minor, and by form of trafficking. In order to assist the collection of standardised data on identified and presumed victims, a template should be developed for use by Member States, since these data are not yet routinely and consistently provided by Member States.
- Implement more effectively the development of position of **the National Rapporteur responsible for the collection and aggregation of this data from relevant administrative bodies and its communication to the EU.**
- Include **trafficking in human beings and its gender dimension within the frameworks for the measurement of violence against women and gender equality,** including those under development by other Commission agencies, such as EIGE.
- More effectively disseminate and implement **the conclusions and recommendations of EU funded projects that develop measurement methodologies.** The mechanism for sharing and implementing 'lessons learned' from funded initiatives should be more fully developed.
- **Develop and fund a programme of research to develop methodologies to estimate the changing scale and nature of trafficking, which is sensitive to the gender dimensions.** This should include concern for both registered and non-registered victims and the development of the theory and techniques necessary to produce estimates of the total population of trafficked victims (registered and non-registered) from collected data; and should complement work by UNODC and ILO.
- Develop **and fund research into what works to prevent trafficking in human beings that pays appropriate attention to its gender dimension.** This should include the relationship between trafficking in human beings, prostitution and the exploitation of the prostitution of others in the context of unresolved debates concerning the way reducing demand may reduce trafficking.
- Develop **and fund cross-EU28 data collection and research on prostitution which is equivalent to that produced by Eurostat for trafficking in human beings,** in order to be able to analyse the relationship between prostitution and trafficking. This should include large-scale surveys and studies to provide data that is comparable over time and cross-nationally.
- Identify **a position in each EU28 Member State to hold responsibility to ensure data protection requirements in relation to trafficking and prostitution are met,** but do not become a barrier to data collection and analysis.

Conclusions

- **‘Prevention’** of trafficking involves a ***theory of change*** ‘ which requires understanding of the interconnections between institutions.
- **Assisting victims** of trafficking increases their ***capacity*** for resilience, as witnesses in ***prosecution***, for ***educating*** public and policy makers.
- Improving **law enforcement** reduces ***impunity***.
- **Reducing demand** for the services of victims trafficking requires the ***regulation of profit-taking*** as well as of end consumers.
- **Data** (especially comparative quantitative) and research are needed to ***untangle the social processes generating trafficking***.
- **Gender is central to many aspects of trafficking in human beings, especially for sexual exploitation**, hence application of EU gender equality principles to EU Strategies from Security to Economic Growth is necessary to prevent trafficking

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