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Supplementary Briefing on Human Trafficking

1 Introduction

This research paper has been produced in response to a question following a previous presentation on human trafficking. During that earlier presentation, a question was asked as to whether there is evidence that stringent legislation reduces incidences of trafficking. There is little literature on this; therefore it is not possible to confirm whether stringent legislation reduces the incidence of human trafficking or not. Some literature from the United States indicates that the reduction in the number of trafficked people in the US could be due to the legislation or possibly reflects the unreliability of statistics. Evidence from the US also suggests that low numbers of prosecutions could undermine harsh sentences. There are contested views on the success of the prohibition of paying for sexual services in Sweden. Some of the literature suggests that to tackle the problem of trafficking a holistic approach is required.

2 Does stringent legislation reduce occurrence in human trafficking?

There is insufficient literature on the subject to confirm whether or not stringent legislation reduces incidences of human trafficking. One commentator offers the following general observations:

“...One generally accepted point is that an offender’s perception of the likelihood of punishment serves as a tangible deterrent. If an offender perceives a sufficiently real possibility that he will be arrested and convicted of a crime (and the punishment is sufficiently severe), he is less likely to commit that crime.”¹

Consideration was given in the United States as to whether the law on trafficking deters crime. The Victims of Trafficking and Violence and Protection Act of 2000 (TVPA) established a coordinated transnational effort to protect trafficked victims. The Act contained stringent penalties on a par with other serious crimes such as rape punishable with a sentence of twenty years to life. A report in 2007 on the impact of the legislation suggested that the TVPA had resulted in small but important increases in arrest and convictions of traffickers both in the United States and in some countries abroad. The report indicated that between 20,000 and 50,000 people were trafficked into the United States,² however more recently the number of victims trafficked into the United States every year was given as 17,500. The report concluded that the smaller number of trafficked victims in the United States could be due to the positive impact of the TVPA to deter the crime or “simply due to the unreliability of statistics in this very secretive and shameful international business of buying and selling human cargo.”³ Other research indicates that despite harsher penalties in the United States, the chance of being prosecuted is still quite low, undermining the deterrent value of the harsher sentences.⁴

There has been some discussion on the Swedish decision to prohibit paying for sexual services and the impact of this on trafficking. There has been debate around the success of the model in Sweden. An evaluation on the ban in 2010 submitted to the Swedish Parliament looked into the effects the prohibition had on the prevalence of prostitution and human trafficking for the purposes of sexual exploitation.⁵ The evaluation highlighted a number of positive outcomes including:⁶

- Street prostitution in Sweden has been halved and this reduction may be considered to be a direct result of the criminalisation of sex purchases;
- The prevalence of street prostitution before the ban was the same in Norway, Denmark and Sweden, subsequently however, the prevalence in Denmark and Norway increased dramatically;
- The ban has not led to street prostitution in Sweden shifting to the internet;

¹ Siddharth Kara “Designing More Effective Laws Against Human Trafficking” *Northwestern Journal of International Human Rights*, Vol 9, Number 2 (Spring 2011), 130

² SW Tiefenbrun “Updating the Domestic and International Impact of the US Victims of Trafficking Protection Act 2000: Does Law Deter Crime?” *38 Case Western Reserve Journal of International Law* 249 (2007), 11.

³ SW Tiefenbrun “Updating the Domestic and International Impact of the US Victims of Trafficking Protection Act 2000: Does Law Deter Crime?” *38 Case Western Reserve Journal of International Law* 249 (2007), 23.

⁴ Chacon, Jennifer “Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking” (2006) *74 Fordham Law Review* 2977

⁵ <http://www.sweden.gov.se/content/1/c6/14/92/31/96b1e019.pdf>

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- The ban on the purchase for the payment of sexual services has acted as a barrier to human traffickers and procurers considering establishing themselves in Sweden;
- In three surveys conducted since the ban was introduced, more than 70% took a positive view of the ban.

However there are contested views as to whether the ban has been as successful as the above report suggested. One commentator calls the legislation “a failed experiment in social engineering;” the commentator suggests that close examination of government reports and other research reveals that Sweden’s claims of success are not supported by reliable evidence.⁷ Other literature comments that critics argue that more than two thirds of prostitutes have simply begun working indoors at home, in a brothel, in a club or as escorts.⁸ One academic commentator in Northern Ireland suggests that evidence from Sweden is patchy at best and all that the prohibition seems to have done is displace prostitution to Norway and Denmark and made it more invisible via the internet.⁹

3 Beyond Criminal Justice Responses?

Research indicates that whilst stringent criminal justice responses can deter traffickers, a more holistic approach is required. For example, a commentator on the US model highlights that much work reflects the emphasis on prosecution, however in the long-term prevention is likely to be a much more effective way to avert the exploitation of vulnerable women, men, boys and girls than “seeking to identify and extract victims from their clandestine circumstances once their trafficking experience is underway”.¹⁰ There has been criticism of the model in Spain (although it should be noted this was written prior the publication of the EU Directive): it was argued that although Spain had punitive measures, there was no evidence of their effectiveness and that the Spanish model had not been supported by any policies to support and integrate the victims of trafficking.¹¹ More generally, a human rights academic suggests that, while trafficking of victims is undoubtedly a criminal justice issue, a more holistic human rights based approach to trafficking is required which also focuses on protection.¹² A more holistic approach would involve the establishment of independent national human rights commissions with the appointment of a National Rapporteur on Trafficking within these commissions. Other suggestions include the involvement of NGOs in educating the

⁷ A Jordan “The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering” Center for Human Rights & Humanitarian Law, Issue Paper 4, April 2012

⁸ W Shinkle “Preventing Human Trafficking: An Evaluation of Current Efforts” Institute for the Study of International Migration. Walsh School of Foreign Service, Georgetown University.

⁹ Belfast Telegraph “Police have enough powers on sex trade” Tuesday 11 September, 2012.

¹⁰ W Shinkle “Preventing Human Trafficking: An Evaluation of Current Efforts” Institute for the Study of International Migration. Walsh School of Foreign Service, Georgetown University.

¹¹ FJ de Leon “Spanish Legislation against trafficking in human beings: punitive measures and poor victims assistance” *Crime, Law and Social Change* (2010) 54: 381-409

¹² T Obokata (2006) “Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach”, *International Studies in Human Rights*, Martins Nijhoff Publisher, 173-176

public about trafficking. In promoting a holistic human rights framework, the inclusion of potential victims is essential in order to address the root causes of trafficking.¹³

¹³ T Obokata (2006) "Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach", *International Studies in Human Rights*, Martins Nijhoff Publishers 173-176