

The Fight against Human Trafficking through a Gender Perspective: An Analysis of Policies and Practices in Austria

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List of Acronyms and Abbreviations

CCP	Criminal Code Procedure
EU	European Union
FRA	European Agency for Fundamental Rights
GRETA	Group of Experts on Action against Trafficking in Human Beings
HRBA	Human Rights-Based Approach
NAP	National Action Plan for Combating Human Trafficking
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
THB	Trafficking in Human Beings
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Introduction

Human trafficking is as embedded in our societies and economies as it has ever been. Its scale is growing, and so is its pervasiveness in our lives. Every day thousands of children and adults are exploited; \$150 BLN are paid every year for goods and services produced by or extracted from trafficking victims; our criminal justice interventions are barely scratching the surface of this horrible crime, resulting in widespread impunity for criminals profiting off the exploitation of their fellow humans.¹

This recent statement from the Organization for Security and Co-operation in Europe (OSCE) Secretary General paints a bleak picture of the current state of the fight against human trafficking. Addressing the issue of human trafficking has become an increasing priority of the international community and national governments catalyzed by the adoption in 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.² However, effectively combating human trafficking continues to pose daunting challenges. While human trafficking affect women, men, girls and boys, the most common association made about human trafficking has been of female victims trafficked for the purpose of sexual exploitation.³ What about male victims and other forms of exploitation? What does this focus on women and sexual exploitation imply? These initial questions underline a key dimension of human trafficking, that of gender, which will be the focus of this thesis.

Chapter 1. Contextualizing human trafficking

Addressing human trafficking first requires outlining its broader context, specifically its complexity, how the issue is framed by anti-trafficking actors, and how the crime of human trafficking is internationally defined.

¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *2020-21 Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, 2022), 7.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (adopted 15 November 2000, entered into force 25 December 2003) 2225 UNTS 209 (Palermo Protocol).

³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings* (Vienna, 2021), 20.

1.1 Human trafficking: a complex phenomenon

The issue of human trafficking presents uniquely complex challenges given the scale, scope and nature of the phenomenon. On a geographical level, human trafficking happens throughout the world, affecting all regions and nearly all countries, as illustrated in the Global Reports on Trafficking in Persons issued biennially by the United Nations Office on Drugs and Crime (UNODC) since 2009.⁴ Patterns of trafficking flows around the world also show that human trafficking occurs not only across borders, both between and within regions, but also domestically, which highlights its national, regional and international dimensions.⁵

On a human level, the magnitude of trafficking in persons is commonly estimated in the millions⁶ and these figures are regularly cited to reflect the seriousness and urgency of addressing the issue. These high figures drastically contrast with the total number of detected trafficked persons worldwide that was estimated at 53,800 in the year 2020 by the UNODC, a figure collected from official statistics provided by a total of 141 countries.⁷ The scale of human trafficking has been critically debated in the past two decades, with some scholars questioning the reliability and estimation of official figures and the transparency of used methodologies.⁸ While the debate is not to be resolved here, it nevertheless underlines the difficulty in measuring the scale of human trafficking and accurately knowing how many people are trafficked worldwide. Even if global estimates may need to be considered with some caution, the large discrepancy between these figures and the actual number of detected trafficked persons helps to reveal a significant challenge posed by human trafficking, which is the identification of trafficked persons, a crucial element in the fight against human trafficking.

⁴ The Global Reports on Trafficking in Persons provide data and research findings on current patterns and developments of human trafficking and anti-trafficking responses at the domestic, regional and international levels. See United Nations Office on Drugs and Crime, 'Research on Trafficking in Persons' <<https://www.unodc.org/unodc/en/data-and-analysis/tip.html>> [accessed 22 April 2023].

⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022* (New York, 2023), 42–46.

⁶ For instance, the Global Estimates of Modern Slavery reports that in 2021 about 50 million people are in modern slavery on any day of that year worldwide (28 million in forced labor and 22 million in forced marriage). See International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, 2022), 18.

⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 10–11.

⁸ See for instance Sheldon X. Zhang, 'Beyond the "Natasha" Story – a Review and Critique of Current Research on Sex Trafficking', *Global Crime*, 10/3 (2009), 178–195. Ronald Weitzer, 'New Directions in Research on Human Trafficking', *The ANNALS of the American Academy of Political and Social Science*, 653/1 (2014), 6–24.

The complexity of human trafficking is further reflected in the multiplicity of trafficking forms and trafficking structures. The wide range of forms of trafficking, including sex trafficking, forced labor, forced marriage, organ trafficking, and forced begging⁹, continues to evolve as illustrated by the recent emergence of new forms of exploitation, such as forced criminality and mixed forms of exploitation.¹⁰ Trafficking structures also vary depending on the traffickers' level of organization, and the UNODC differentiates between the more elaborate organized criminal groups, including both "governance type" and "business-like type" groups, and opportunistic traffickers, including "opportunistic associations of traffickers" and "individual traffickers", who operate on a smaller scale.¹¹ Furthermore, a wide range of economic sectors is affected by human trafficking, including the sex industry, domestic work, agriculture, fishing, cleaning services, construction work, catering and hospitality.¹² The hidden characteristic and remoteness of some of these locations, such as private apartments, hotels, isolated rural areas or distant maritime zones, also adds to the difficulty in detecting certain forms of human trafficking.

Finally, human trafficking is recognized as a highly profitable business with annual profits from exploitation commonly estimated around US\$ 150 billion worldwide,¹³ a business that is constantly evolving and adapting to new opportunities, such as the misuse of technology by traffickers.¹⁴

Therefore, this overview highlights the complex, multi-faceted and constantly evolving nature of human trafficking, concerning national and transnational interconnected issues, permeating economies and affecting millions of people who mostly remain unidentified.

1.2 Human trafficking: a multi-framed and human rights issue

The fight against human trafficking involves a multitude of actors at the national, regional and international levels, including governments, governmental entities, international organizations, civil society, non-governmental organizations (NGOs), advocacy groups and

⁹ M.C. Burke and others, 'Introduction to Human Trafficking', in *Human Trafficking, Interdisciplinary Perspectives*, In Mary C. Burke (Ed.), 3rd edn (New York, 2022), 6–8.

¹⁰ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, XI.

¹¹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 6–10.

¹² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 36–37.

¹³ International Labour Organization, *Profits and Poverty: The Economics of Forced Labour* (Geneva, 2014), 13.

¹⁴ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy Responses to Technology-Facilitated Trafficking in Human Beings: Analysis of Current Approaches and Considerations for Moving Forward* (Vienna, 2022), 4.

academia. These actors cover a wide variety of fields and disciplines, such as law, criminal justice, economics, sociology, psychology, health care, and human rights. Albeit non-exhaustive, this list reflects the diversity of lenses, through which human trafficking is addressed. Depending on the focus areas, the issue can be framed in different terms. For law enforcement it would be predominantly considered a criminal issue, while national governments may frame it as a security issue in connection with irregular migration and organized crime.¹⁵ Legal justice systems may primarily view it as a criminal justice issue, while sociological perspectives would explore the interaction of social, economic and cultural factors of human trafficking.¹⁶ These examples illustrate how human trafficking can simultaneously be framed through different lenses and encompass diverse, complex, and often interlinked, issues.

Although human trafficking was first primarily framed through a criminal justice lens, focused on the repression of the crime of trafficking, it is now commonly acknowledged as a human rights issue. It is foremost recognized as a serious violation of the human rights and dignity of trafficked persons, ‘one of the most egregious violations of human rights that the United Nations now confronts,’¹⁷ as stated by Kofi Annan in the Foreword of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto adopted by the United Nations General Assembly in 2000. A number of human rights are particularly relevant to the context of human trafficking, not only during the trafficking process itself, but also as a cause and consequence of trafficking. In the 2010 Commentary to its Recommended Principles and Guidelines on Human Rights and Human Trafficking originally issued in 2002, the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides a list of the most pertinent rights involved in human trafficking, which include:

- The right to life;
- The right to liberty and security;
- The right of access to courts, to equality before the courts and to a fair trial;
- The right not to be submitted to slavery, servitude, forced labour, or bonded labour;

¹⁵ June Kane, ‘Making Money out of Misery: Trafficking for Labor Exploitation’, in *Human Trafficking, Interdisciplinary Perspectives*, In Mary C. Burke (Ed.), 3rd edn (New York, 2022), 54.

¹⁶ Melissa Swauger and others, ‘Sociological Perspective: Underlying Causes’, in *Human Trafficking, Interdisciplinary Perspectives*, In Mary C. Burke (Ed.), 3rd edn (New York, 2022), 117.

¹⁷ United Nations Convention against Transnational Organized Crime and the Protocols Thereto, (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, IV.

- The right not to be subjected to torture, and/or cruel, inhuman or degrading treatment or punishment;
- The right to be free from gender-based violence;
- The right to associate freely;
- The right to freedom of movement;
- The right to the highest attainable standard of physical and mental health;
- The right to just and favourable conditions of work;
- The right to an adequate standard of living;
- The right to social security; and
- The right not to be sold, traded or promised in marriage ¹⁸

This collection of rights, not arranged in thematic clusters, shows the broad scope of possible human rights violations in human trafficking, therefore underlining the importance of framing it as a human rights issue. Not only is it significant given the violations that trafficked persons may experience before and during the trafficking process, such as the right to an adequate standard of living, the right to be free from gender violence, or the right to freedom of movement. It is also significant for the post-trafficking phase, when trafficked persons are entitled to the effective exercise of their human rights, particularly as victims of crime and victims of human rights violations.¹⁹

1.3 Defining human trafficking

Fundamental for the current understanding of human trafficking, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (commonly referred to as the Palermo Protocol) is one of the three Protocols to supplement the United Nations Convention against Transnational Organized Crime, that each address a particular form of organized crime.²⁰ As the main international anti-trafficking instrument adopted in 2000 and entered into force in 2003, the Palermo Protocol states that it aims at preventing and combatting human trafficking, protecting and assisting victims while respecting their human

¹⁸ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (New York, 2010), 52.

¹⁹ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 51–52.

²⁰ The two other Protocols are the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

rights, as well as promoting international cooperation to achieve these goals.²¹ This three-fold purpose highlights the intention behind the Palermo Protocol to, not only address the criminalization of human trafficking within the broader context of transnational organized crime, but also to bring attention to the protection and assistance of victims of trafficking and their rights.

While the Palermo Protocol garnered criticism by human rights advocates for primarily focusing on the criminalization of human trafficking and for its limitations concerning the rights of victims and the lack of monitoring system,²² its most important contribution is the introduction of an internationally accepted definition of human trafficking within a legally binding instrument. By defining the term “trafficking in persons” in international law, the primary intention was to develop standardized concepts related to human trafficking, that could subsequently be used as the legal basis of criminal offenses and translated in domestic legislations.²³ Article 3(a) states that:

“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.²⁴

The definition contains the three central elements of human trafficking, which are the act, the means and the purpose.²⁵ There must be at least one characteristic of each element for a crime to be defined as human trafficking.

1. Act: The first constitutive element refers to the five possible actions carried out by traffickers, namely recruitment, transportation, transfer, harboring, and receipt of persons;

²¹ Palermo Protocol, Article 2.

²² Anne T. Gallagher, ‘Two Cheers for the Trafficking Protocol’, *Anti-Trafficking Review*, 4, 2015, 14.

The limitations and contributions of the Palermo Protocol will be further explored in chapter 7 of this thesis.

²³ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Vienna, 2020), paras. 84, 85.

²⁴ Palermo Protocol, Article 3(a).

²⁵ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, para. 87.

2. Means: The second element refers to the different ways used by traffickers, often simultaneously, to perform their actions. For instance, coercion in the form of threat and violence is often combined with fraud and deception.^{26 27}

3. Purpose: The purpose for the traffickers' actions is clearly identified as the exploitation of another person. The concept of exploitation itself is not defined, but rather illustrated by a list of the minimum forms of exploitation to be considered in the context of human trafficking, namely sexual exploitation (with a specific mention of exploitation of the prostitution of others), forced labor or services, slavery or practices similar to slavery, servitude and the removal of organs. The scope of the term "exploitation" was intentionally broad in the definition, given the difficulty in setting a clear line between what constitute criminal versus non-criminal exploitative practices,²⁸ as well as the multiplicity and constant evolution of forms of exploitation.

Many terms are used to describe human trafficking, including the non-legal but impactful term "modern slavery". While it has no legal basis, it is frequently used as an umbrella term that covers common elements of legal concepts related to human trafficking, which, according to some authors, may pose the risk of reframing and simplifying its complex dimensions at the detriment of trafficked persons.²⁹ Given this multitude of expressions, it is important to identify and contextualize the forms of exploitation included in the Palermo Protocol's definition. With the exception of the removal of organs, these mainly fall under the categories of sexual exploitation and labor exploitation, which are commonly used to describe the forms of exploitation in the present context of human trafficking.³⁰

Sexual exploitation refers to 'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from sexual exploitation of another.'³¹ While the exploitation of prostitution of others falls under the broader category of sexual exploitation, it

²⁶ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, paras. 97, 102.

²⁷ As one of the means, the abuse of a position of vulnerability brings up the concept of vulnerability, which is widely used in today's anti-trafficking debate and will be further explored in this thesis.

²⁸ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, paras. 115–117.

²⁹ See Janie Chuang, 'The Challenges and Perils of Reframing Trafficking as "Modern-Day Slavery"', *Anti-Trafficking Review*, 5, 2015, 146–149.

³⁰ The terms "sexual exploitation" and "labor exploitation" will be mainly used throughout this thesis.

³¹ United Nations, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, Secretary-General's Bulletin ST/SGB/2003/13, 2003.

is worth noting that it was specifically incorporated in the Palermo Protocol's definition of human trafficking to take into account various national legal frameworks on prostitution.³²

While the term "labor exploitation" is per se not legally defined in anti-trafficking instruments, it is generally understood as encompassing, at least, forced labor or services, slavery or practices similar to slavery and servitude, and therefore serves as the umbrella term for a variety of exploitative labor practices used in human trafficking.³³

Forced labor and services refer back to the 1930 International Labour Organization's Forced Labour Convention, which defines 'forced or compulsory labour' as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'³⁴ While this definition was reaffirmed in the Convention's Protocol of 2014, the Protocol also recognizes the evolution over time of the context and forms of forced labor, specifically the global issue of human trafficking for the purpose of forced labor, including sexual exploitation.³⁵ This last point illustrates that, in some instances, sexual exploitation can also constitute forced labor and fall under the broader category of labor exploitation.

While slavery is defined in the 1926 Convention to Suppress the Slave Trade and Slavery, that abolished all forms of slavery,³⁶ international legal instruments do not provide a definition for the terms "practices similar to slavery" and "servitude". However, examples of practices and institutions similar to slavery, including debt bondage and servile marriage, are found in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Debt bondage or bonded labor means that affected persons work for low or no wages for the repayment of debts owed to their exploiters, even though the value of their services surpasses the amount of debts and is not applied towards its liquidation.³⁷ Servitude is commonly understood as the 'egregious exploitation of one person over another that is in the nature of slavery but does not reach the

³² The debate on the different views on prostitution and human trafficking will be explored in chapter 6 of this thesis.

³³ GRETA, *7th General Report on GRETA's Activities*, 2017, para. 75.

³⁴ International Labour Organization Convention concerning Forced or Compulsory Labour of 1930 (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 (Forced Labour Convention), Article 2.

³⁵ International Labour Organization Protocol of 2014 to the Forced Labour Convention, 1930 (adopted 11 June 2014, entered into force 9 November 2016) 53 ILM 1232, Preamble.

³⁶ Article 1 defines slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' League of Nations, Convention to Suppress the Slave Trade and Slavery (Adopted 25 September 1926, Entered into force 9 March 1927) 60 LNTS 253.

³⁷ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, paras. 135 and 136.

very high threshold of slavery.’³⁸ Within the context of human trafficking, it is increasingly mentioned in reference to domestic servitude³⁹, also referred to as forced labor in domestic work, a form of trafficking for the purpose of labor exploitation.

1.4 Conclusion

This chapter aimed at contextualizing human trafficking in today’s world, emphasizing the complexity and multi-dimensionality of the phenomenon as well as the multiplicity of frames and issues it encompasses. It also highlighted the importance of framing human trafficking as, not only a criminal justice issue, but, more importantly, as a human rights issue, by recognizing the serious violations of human rights experienced by trafficked persons as well as their rights as victims of a crime and human rights violations. Finally, the internationally agreed upon definition of trafficking in persons provided the necessary framework to understand what constitutes the crime of human trafficking, while identifying its associated forms of exploitation helped to clarify some of the legal and non-legal terms used to describe human trafficking and alleviate possible confusion in their interpretation.

Chapter 2. Gender and human trafficking

Gender has been recognized as an important dimension of human trafficking, given the prevalence of gender-related elements in the crime of human trafficking as well as the anti-trafficking debate. This chapter introduces the role of gender by exploring the predominant narrative developed about human trafficking as well as some of its gender-related aspects.

2.1 Human trafficking: a gendered narrative

As highlighted in the previous subchapter, the relatively low number of detected trafficked persons in comparison to the presumed scale of human trafficking raises the question of who is being identified as a victim of trafficking. The figures presented in the UNODC Global Reports on Trafficking in Persons show the evolution of the profile of victims over the past two decades. In 2004, women and girls represented 84 per cent of the total number of detected victims (74 per cent and 10 per cent respectively), while men and boys represented

³⁸ United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, para. 135.

³⁹ The eradication of domestic servitude was cited as a ‘key priority’ of the 2014-2017 mandate of the United Nations Special Rapporteur on contemporary forms of slavery. United Nations Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, Urmila Bhoola, A/HRC/27/53*, 2014, para. 20.

16 per cent (13 per cent and 3 per cent respectively). By 2020, the share of female victims had decreased to 60 per cent (42 per cent for women, but an increase to 18 per cent for girls), while the share of male victims increased to 40 per cent (23 per cent for men and 17 per cent for boys).^{40 41} The figures also show the global trends of the reported forms of exploitation. In 2006, sexual exploitation was the most reported form at 79 per cent of the total detected trafficked persons, while labor exploitation only accounted for 18 per cent of the total. Since then, the share of sexual exploitation has gradually declined, down to 50 per cent in 2018, while the share of labor exploitation reached 38 per cent in that year.^{42 43}

The parallel historical evolutions of the victims' profile and forms of exploitation highlight some significant points. Two decades ago, female victims (women and girls) were predominantly identified as victims of trafficking and remain the most identified group today. Male victims (men and boys) have been increasingly identified as victims of trafficking. Over this period of time, the reported forms of trafficking have changed from a large predominance of sexual exploitation to an increased recognition of labor exploitation.⁴⁴ Besides, it is important to note that only the 2022 UNODC Global Report (its most recent) includes some data, albeit limited, about transgender persons⁴⁵ as reported victims of trafficking. Only twelve countries shared statistics⁴⁶, which highlights the lack of available information on transgender persons and human trafficking.

These last points bring up the issue of the ongoing prevalence of female victims and of trafficking for sexual exploitation, as reflected, not only in reported statistics, but also in the

⁴⁰ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 25.

⁴¹ Girls and boys refer to children according to the meaning of the 1989 Convention on the Rights of the Child: 'a child means every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier.' See United Nations Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 1.

⁴² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020* (New York, 2020), 16.

⁴³ The figures for 2018 were intentionally selected as the figures reported for the year 2020 show a large reduction (24 per cent) in the number of persons trafficked for sexual exploitation compared to the previous year, which may not reflect the reality and need to factor in the impact of the Covid-19 pandemic on the locations where trafficking for sexual exploitation commonly occurs, including the prohibited access to public spaces combined with a possible increase in hidden and less detectable venues. See United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, IV.

⁴⁴ It is important to note that, while the percentages of female and male victims have changed between 2004 and 2020, the actual total number of trafficked persons reported by the UNODC has increased five-fold, from 9,722 in 2004 to 51,580 in 2020. See United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 25.

⁴⁵ In this report, transgender persons include transgender women, girls, men, boys and non-binary persons, terms that will be further explained in chapter 5.

⁴⁶ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 33.

narrative concerning human trafficking. Even though the internationally accepted definition of human trafficking recognizes various forms, including sexual exploitation and labor exploitation, the most common association, still being made nowadays about human trafficking, is that of women in the context of sexual exploitation. This is illustrated by the selective emphasis of academic literature and policy reports on female victims as well as the limited study of trafficking forms other than sexual exploitation.⁴⁷

This raises the question of why the common narrative about human trafficking has overemphasized women trafficked for the purpose of sexual exploitation. Looking back at how trafficking historically emerged as a global issue helps to understand today's ongoing perception. Human trafficking was first framed in connection with the so called "White Slave Traffic", also known as "white slavery", a term that emerged in the 19th century in reference to the recruitment of white women and girls into prostitution by force or fraud.⁴⁸ The issue came to light during the first wave of globalization, which saw a growing increase in technological advances, international trade and migration across borders between 1870 and 1914. It also fueled an increasing demand for women in the sex industry, which was capitalized by traffickers by linking markets of origin and destination.⁴⁹ The white slavery movement, that originated in Victorian England, was based on the moral argument that the morality and virtue of (white) women and girls needed to be protected from the 'great social evil'⁵⁰ of prostitution.⁵¹ While the actual scale of white slavery is debated, the movement expanded to transnational abolition campaigns, which dramatized the 'image of young and innocent white women being coerced into prostitution in foreign lands.'⁵² Subsequently, this led to the adoption of the first international agreements concerning human trafficking, namely the International Agreement for the Suppression of the White Slave Traffic in 1904 and the International Convention for the Suppression of the White Slave Traffic in 1910. As both agreements solely focused on women and girls and forced prostitution, they initiated the narrative of human trafficking as an issue primarily affecting women and girls in the context of sexual exploitation. Therefore, they contributed to the conceptualization of human

⁴⁷ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 19-20.

⁴⁸ Anne Gallagher, *The International Law of Human Trafficking* (New York, 2010), 13.

⁴⁹ Jürgen Nautz and Euridice Marquez, 'The Transnational Illegal Market of Trafficking in Human Beings – Actors and Discourses: A Transatlantic Comparison', *SSRN Electronic Journal*, 2011, 4 <<http://www.ssrn.com/abstract=1832552>> [accessed 19 May 2023].

⁵⁰ Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge, 1999), 32.

⁵¹ Gallagher, *The International Law of Human Trafficking*, 55.

⁵² Gallagher, *The International Law of Human Trafficking*, 55.

trafficking as a gendered phenomenon, focused on one specific gender (women) and one specific form of trafficking (trafficking for the purpose of sexual exploitation).

2.2 Human trafficking: a gendered reality

The common narrative on human trafficking has a significant impact on how the issue is perceived, particularly how the gender dimension of human trafficking is comprehended. Its narrow frame contributes to a misleading simplification of the complex role gender plays in human trafficking. However, the gender dimension of human trafficking is apparent at multiple levels, introduced here and explored further in chapter 6 of this thesis.

The gender dimension is first reflected in gendered forms of trafficking, including on one hand, the predominance of women, girls, and transgender persons in cases of sexual exploitation, and on the other hand, a majority of men in cases of labor exploitation. The 2022 UNODC Global Report shows that women and girls still represent the main victims of trafficking for the purpose of sexual exploitation worldwide, at 64 per cent and 27 per cent of the total detected victims for this form of exploitation. It also shows that men are predominantly trafficked for labor exploitation, accounting for 56 per cent of the total detected victims for this form of exploitation. The information available in the report based on 675 detected transgender adults and 120 transgender children for the time period 2017-2020 reveals that they were mainly trafficked for the purpose of sexual exploitation.⁵³ An emerging form of exploitation, trafficking for the purpose of forced criminality⁵⁴ also shows a strong gender element, as it is primarily detected in boys and men, respectively at 68 per cent and 24 per cent of the total detected victims for this form of exploitation.⁵⁵

It is further reflected in gender-related factors of vulnerability to trafficking, vulnerability being commonly understood as the increased susceptibility of an individual or group to trafficking due to certain ‘inherent, environmental or contextual factors.’⁵⁶ While other factors related to personal history and background may come into play, it is important to

⁵³ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 33-36.

⁵⁴ Criminal activities involved in trafficking for forced criminality include shoplifting, thefts, drug trafficking, and various forms of fraud. See United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 39.

⁵⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 39.

⁵⁶ United Nations Office on Drugs and Crime, *Abuse of a Position of Vulnerability and Other “Means” within the Definition of Trafficking in Persons*, Issue Paper, 2013, 13. It is also important to note that vulnerability to trafficking is not a predetermined condition for all individuals among groups particularly vulnerable to exploitation, as a person’s capacity to respond to risk factors also needs to be taken into consideration.

recognize structural factors associated with gender. Gender-based discrimination and ensuing economic and social inequalities disproportionately affect women and girls and have been recognized as a root cause of trafficking in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁵⁷ ⁵⁸ Also recognized by CEDAW as a form of gender-based discrimination, gender-based violence⁵⁹ disproportionately affect women and girls in the context of human trafficking⁶⁰ as well as those who do not conform to conventional gender norms. Furthermore, gender stereotypes constitute another gender-related factor that affect not only women, but also men. The perpetuation of common male stereotypes, such as the image of the strong, resourceful man who must provide for his family, contributes to increasing the risk of trafficking for men in situations of unemployment. Conventional ideas of masculinity have also damaging consequences on men as they may not allow themselves to appear weak and expose their own case of exploitation.⁶¹

2.3 Conclusion

This chapter introduced the complexity of the gender dimension in human trafficking by contrasting the common narrative, centered on women and sexual exploitation, and the intricate reality of the role played by gender in human trafficking, which concerns women, men and transgender persons and all forms of exploitation.

Chapter 3. Problem statement and research questions

The contrast between the selective gendered narrative about human trafficking and its more nuanced and complex gendered reality raises the question of its impact on trafficked women, men and transgender persons.⁶²

⁵⁷ United Nations, Convention on the Elimination of All Forms of Discrimination against Women (Adopted 18 December 1979, Entered into Force 3 September 1981) 1249 UNTS 13 (CEDAW).

⁵⁸ United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, CEDAW/C/GC/38, 2020, para. 18.

⁵⁹ United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, para. 10.

⁶⁰ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, XII.

⁶¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 24.

⁶² While information about girls and boys was provided in the previous subchapters to contextualize human trafficking, this thesis focuses on adult victims of trafficking to keep the scope of research manageable, as child trafficking would be a separate research topic.

3.1 (In)visibility of trafficked persons: a gender issue

The ongoing common narrative focused on women in the context of sexual exploitation as well as the perpetuation of entrenched gender-based discrimination and gender stereotypes, contribute to a certain group of victims being more visible than other subordinated groups within the anti-trafficking field. Women trafficked for the purpose of sexual exploitation will more likely be the visible and obvious victims of trafficking and fit the profile of the ‘ideal victim’⁶³, which is based on a socially constructed idea of victimhood. In the context of human trafficking, the ‘ideal victim’ is perceived as female, passive, helpless and in need of rescue.⁶⁴ This perception excludes the trafficked persons who do not fit the attributes of the ‘ideal victim’. Accordingly, the list of those who do not fall into this stereotypical category would include men, transgender persons, women who may have willingly engaged in prostitution, as well as victims of all genders of forms of exploitation other than sexual exploitation. Given their non-ideal profiles, they would often be overlooked as victims of trafficking and rendered invisible, albeit to various degrees, within the anti-trafficking field.⁶⁵

Therefore, the dichotomy between who is and who is not perceived as a victim contributes to either increasing or reducing their visibility in the anti-trafficking field and their chances of being identified as victims of trafficking. This brings up a key element of anti-trafficking responses, which is the identification of trafficked persons. Identification is the first essential step in providing protection to trafficked persons, by first identifying them as victims of trafficking, which in turn grants them rights, including access to support and assistance services as well as justice.⁶⁶ However, identification numbers have been ‘embarrassingly low’⁶⁷, as recently stated by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings during the 23rd Conference of the Alliance against Trafficking in Persons. This statement echoes the words of the Special Rapporteur on trafficking in persons, especially women and children, who, in her 2020 report to the United Nations General Assembly, refers to the failure of traditional identification methods as being ‘rooted

⁶³ The notion of the ‘ideal victim’ introduced by Nils Christie in the 1980s will be further developed in chapter 6 of this thesis.

⁶⁴ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 11.

⁶⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 20.

⁶⁶ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 33.

⁶⁷ Valiant Richey, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, ‘Closing Session’, (presented at the 23rd Conference of the Alliance against Trafficking in Persons, Vienna, 2023).

in the fact that it is based on the singling out of those who are perceived as “real” victims deserving of protection.’⁶⁸ In other words, because of various biases, including gender-related biases as shown earlier, these methods do not recognize those who do not fit the idea of what the victim of trafficking is perceived to be. Subsequently, their lack of identification means that they are overlooked as victims and excluded from accessing the rights and protection to which they are entitled as victims of trafficking. Obstacles to identification are also reinforced by a lack of adequate research and knowledge on the different lived experiences and needs of overlooked trafficked persons. This includes research on male victims, despite increased attention in the past decade, and significantly limited research on transgender persons, which means that their experiences as trafficked persons are not sufficiently comprehended.⁶⁹

3.2 Limitations of anti-trafficking responses

The gender dimension of human trafficking has been recognized in the anti-trafficking field, as illustrated by its mention, to varying degrees, in the main anti-trafficking instruments, namely the Palermo Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005 and entered into force in 2008⁷⁰ (thereafter referred as Council of Europe Convention), and 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, (thereafter referred as the EU Directive).⁷¹ ⁷² The acknowledgement of gender is also indirectly reflected in the recognition of different forms of trafficking, which are included in the Palermo Protocol’s internationally accepted definition. However, the challenge posed by the limited identification of all trafficked persons suggests a gap in the consideration of gender in anti-trafficking norms and anti-trafficking responses, not only in the protection of trafficked persons, but also in prevention policies and prosecution

⁶⁸ United Nations General Assembly, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Maria Grazia Giammarinaro, A/75/169*, para. 13.

⁶⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 39.

⁷⁰ Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series No. 197 (Council of Europe Convention), 2005. (Council of Europe Convention)

⁷¹ 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 OJ L101/1 (Directive 2011/36/EU).

⁷² These three anti-trafficking instruments will be used as the international and regional legal framework in this thesis because of their relevance to Austria, the selected country of study.

procedures.⁷³ The domains of prevention, protection and prosecution are important in the anti-trafficking field, as they form a frequently adopted framework of anti-trafficking responses, also referred to as the three Ps.⁷⁴

From a legal standpoint, once identified as victims of trafficking, trafficked persons are entitled to exercising their rights as victims, including protection and access to justice. Furthermore, all trafficked persons, not only identified victims, but also presumed and potential victims,⁷⁵ are entitled to the respect, protection and fulfillment of their human rights. This was already stated two years after the adoption of the Palermo Protocol by the OHCHR. Its 2002 Recommended Principles on Human Rights and Human Trafficking affirms ‘the primacy of human rights’⁷⁶ in national, regional and international anti-trafficking responses. This means that ‘the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims [and that] States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons’.⁷⁷ Therefore, national governments must have legal and policy frameworks in place that ensure the protection and promotion of the human rights of trafficked persons, which includes the rights afforded to them as victims of trafficking, and applies to all trafficked persons, regardless of gender. However, in light of the gender-related issues introduced earlier, the question of the effective protection and promotion of the human rights of all trafficked persons and their effective access to justice is raised.

3.3 Research objective, relevance and research questions

This thesis argues that the realization of justice for all trafficked persons is a central issue to address in the fight against human trafficking, justice being understood not only in the legal sense as their right to legal redress for the harm and violations committed against them, but more broadly within the frame of social justice and gender justice. Applied to the context of

⁷³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 19.

⁷⁴ The three Ps will also be used as a frame of analysis in this thesis.

⁷⁵ A presumed victim of trafficking refers to a person who has not been formally identified yet or has refused to be formally identified as a trafficked person. A potential victim of trafficking is a person who may become trafficked due to factors of vulnerability.

⁷⁶ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, 1.

⁷⁷ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 1.

human trafficking, the connected concepts of social justice and gender justice imply that the lived experiences of trafficked persons, including presumed and potential victims, regardless of their gender, are recognized and that their human rights are effectively protected and fulfilled to ensure equal and fair access to resources and opportunities and the capacity to build a self-determined life free of discrimination and violence.

Therefore, this thesis aims to address the issue of the realization of social justice for trafficked persons through a gender and human rights perspective, taking Austria as a case study. The main objective is to provide a deeper understanding of the gender dimension of human trafficking and the impact of anti-trafficking responses on the protection and fulfillment of the human rights of trafficked women, men and transgender persons.

This study is of particular relevance as human trafficking remains a pressing and complex issue that severely affects the human rights and dignity of persons. Low identification numbers reflect the limitations of anti-trafficking responses to reach all presumed victims of trafficking. Understanding the full dimension of gender as it relates to human trafficking contributes to developing comprehensive anti-trafficking responses that incorporate all gender aspects and the lived experiences of trafficked persons, including women, men and transgender persons. Human trafficking is, first and foremost, about human beings of all genders, being exploited for profit and deprived of their human rights and dignity. Therefore, it is essential to examine how anti-trafficking responses address the redress of violations and injustices suffered by trafficked persons in their protection and prosecution measures, as well as underlying structural factors that facilitate exploitation in their prevention efforts.

The choice of Austria as a case study is both practical and relevant. Centrally located in Europe, Austria is affected by human trafficking, both as a country of transit and destination and, over the past two decades, has developed comprehensive anti-trafficking responses in coordination with national and international anti-trafficking actors,⁷⁸ including the ratification of the Palermo Protocol in 2005 and the Council of Europe Convention in 2006, and the transposition of the EU Directive into its national legislation.

⁷⁸ Federal Ministry Republic of Austria European and International Affairs, 'Combating Trafficking in Human Beings' <<https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/>> [accessed 26 April 2023].

In light of these objectives, this thesis will be guided by the following research questions:

1. What role does gender play in human trafficking?

2. How do anti-trafficking policies and practices in Austria address the realization of social justice for trafficked women, men and transgender persons?

The following sub-questions will help answer the main research questions:

1. What are the main gender aspects of human trafficking and how do they affect trafficked persons?
2. How are gender and the rights of trafficked persons addressed in the anti-trafficking instruments relevant to Austria and in Austria's anti-trafficking legal and policy framework?
3. What does social justice and gender justice practically mean for trafficked persons?

In order to provide structured and comprehensive answers to the research questions, the thesis is comprised of the following nine chapters. While chapters one to three cover the introduction, contextualization and problematization of the issue, chapter four focuses on the methodological approach used in this research. Chapter five provides the comprehensive theoretical and conceptual framework underpinning this thesis, namely gender relations, social justice, gender justice, a Human Rights-Based Approach (HRBA) and the three Ps, and its relevance to human trafficking. Chapter six examines the gender aspects of human trafficking, focusing on forms of trafficking, structural factors of vulnerability and common narratives and their impact on trafficked women, men and transgender persons. Chapters seven and eight respectively provide an analysis of Austria's anti-trafficking legal and policy framework through a gender and rights lens and an analysis of the practices of its two state-recognized victim protection organizations. These analyses are used to understand how Austria's anti-trafficking legislation, derived policies and practices address gender and the protection and fulfillment of the human rights of trafficked persons, particularly within the frame of social justice. The final chapter builds on the knowledge gained from the previous chapters and offers considerations on elaborating a practical conception of social justice for trafficked persons and applying principles of a HRBA to human trafficking, that integrates a gender perspective, before concluding with a summary of the main insights and future outlook.

Chapter 4. Methodology

This chapter focuses on the research methodology and approach applied for this thesis as well as the research methods of data collection and analysis.

4.1 Research methodology

Qualitative research was selected as the research methodology best suited to answer the research questions of this thesis. Because of the complexity inherent to human trafficking, exploring how gender and the human rights of trafficked persons are addressed required adopting a qualitative approach in order to develop an understanding and analysis of these issues. Furthermore, using a deductive approach⁷⁹, the research process was guided by established theories and concepts on gender, gender relations, social justice, gender justice and human rights as well as relevant literature and documents, that were collected and analyzed with the aim of answering the research questions.

4.2 Research approach

An interdisciplinary approach was used in the collection of the research data, which encompassed multiple perspectives, including sociology, history, law, criminal justice and economics in order to obtain an in-depth and comprehensive understanding of the different gender aspects of human trafficking and their interconnection with social, economic, historical and legal contexts. Also integrated were the perspectives of various anti-trafficking actors, including victim protection organizations, governmental entities, advocacy networks and survivors of trafficking.

As part of the exploratory phase of the research, the author attended two anti-trafficking events in Vienna in the fall of 2022. The first event, held on 30 September 2022, was an International Expert Round Table, entitled “Mind the Gap! Tackling the Lack of Attention on Preventing Human Trafficking and Exploitation”, organized by the Institute for the Danube Region and Central Europe as part of the Regional Implementation Initiative on Preventing & Combating Human Trafficking.⁸⁰ The discussions, focused on the principles related to preventing human trafficking, discouraging demand and the principle of non-discrimination,

⁷⁹ Alan Bryman, *Social Research Methods*, 4th ed (Oxford; New York, 2012), 24.

⁸⁰ THB Regional Implementation Initiative, ‘Think Tank Event: International Expert Round Table – 30 September 2022’ <<https://thbregionalimplementationinitiative.wordpress.com/2022/06/29/think-tank-event-international-expert-round-table-30-september-2022/>> [accessed 25 April 2023].

involved Austrian and European anti-trafficking governmental officials, academics, independent experts, NGOs and international organizations representatives. The second event, held on 13 October 2022, was the annual international conference organized by the Austrian Task Force on Combating Human Trafficking, entitled “No Future for Trafficking”, which focused on new challenges posed by human trafficking and proactive strategies to counter them.⁸¹ The panel discussion and thematic workshops also engaged speakers from international organizations, NGOs, academia and business. Besides providing a picture of the anti-trafficking community in Austria and Europe, the attendance to both events helped to sharpen the research question, by highlighting a limited focus on the gender dimension of human trafficking, as well as the issues of identification of victims of trafficking and effective protection of the rights of trafficked persons. Furthermore, it allowed the author to make connections with representatives of the two subsequently interviewed NGOs, LEFÖ-IBF and MEN VIA, which was instrumental in securing the interviews. Finally, in order to furthering her knowledge, the author attended the 23rd Conference of the Alliance against Trafficking in Persons, organized by the OSCE on 18-19 April 2023 in Vienna, entitled “It’s about People: National Leadership to End Human Trafficking”.⁸² Of particular interest for this thesis, the panel led by survivors of trafficking provided an invaluable insight on the role that survivors currently play and should play in anti-trafficking leadership, by sharing their lived experiences and also their expertise to develop effective anti-trafficking strategies.

4.3 Data collection

Both secondary and primary sources were used to collect the data of this thesis. Secondary data sources included existing literature on the topics of human trafficking, gender, gender justice, social justice, and human rights, as well as documents pertaining to human trafficking and anti-trafficking responses. These were gathered through online academic search and by attending several anti-trafficking conferences held in Vienna, Austria over the past months. The consulted documents were comprised of legal sources, including the Austrian legislation on human trafficking, as well as the international and regional anti-trafficking instruments

⁸¹ Federal Ministry Republic of Austria European and International Affairs, ‘Vienna Conference on Combating Trafficking in Human Beings: „No Future for Trafficking“–13 October 2022’ <<https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/vienna-conference-on-combating-trafficking-in-human-beings-no-future-for-trafficking-13-october-2022/>> [accessed 25 April 2023].

⁸² OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, ‘23rd Conference of the Alliance against Trafficking in Persons’ <<https://www.osce.org/event/alliance23>> [accessed 25 April 2023].

and other relevant international human rights conventions ratified by Austria. Other documents included National Action Plans for Combating Human Trafficking issued by the Austrian Federal government, policy reports, thematic reports, annual reports, evaluation reports, and studies from European Union agencies and international organizations, including United Nations agencies, the Council of Europe and the OSCE, as well as national and European NGOs, including the state-recognized victim protection organizations in Austria, LEFÖ-IBF and MEN VIA, and La Strada International.⁸³ Finally, a cinema film on human trafficking and sexual exploitation in Austria, entitled *Joy* by director Sudابه Mortezaei⁸⁴, was included as an artistic output to supplement the analysis.

Primary data sources consisted of interviews with Austria's victim protection organizations, namely LEFÖ-IBF and MEN VIA, which were held in person in Vienna, on 12 December 2022 and 22 November 2022 respectively. The author intentionally selected these two organizations for their particular relevance to this study. The purpose of these interviews was to supplement the information collected from the review of literature and documents and gain a deeper insight on the work and perspectives of the two NGOs in Austria with the status of state recognized victim protection facility. Their contributions were important, not only because of their active work on the ground with trafficked persons, but also because of their organizational structure along gender lines. LEFÖ-IBF provides support services for trafficked women and girls above the age of 15, while MEN VIA offers support to adult trafficked men.

4.4 Data analysis

The analysis of the secondary sources was done through a systematic review of the collected literature and documents to identify themes relevant to the research questions. The primary sources, comprised of the interviews with LEFÖ-IBF and MEN VIA, were analyzed using qualitative content analysis. In preparation for the interviews, the list of questions to be asked by the author during the semi-structured interviews was submitted in advance to each interviewee, including the research questions as a frame. The data collected from the two interviews was transcribed and analyzed using MAXQDA, a software for data analysis. It allowed to systematically categorize the content of the transcripts and generated categories

⁸³ 'La Strada International is a European NGO platform against human trafficking, that works from a human rights perspective in support of trafficked persons.' La Strada International, 'About Us' <<https://www.lastradainternational.org/about-us-la-strada-international/>> [accessed 29 June 2023].

⁸⁴ *Joy*, dir. Sudابه Mortezaei, Austria, Filmladen (2018)

and sub-codes that guided the author's analysis of the practices of LEFÖ-IBF and MEN VIA.

4.5 Research ethics

In compliance with ethical and data protection requirements, a declaration of consent was provided in advance to each interviewee and was signed in person by each interviewee before the author started the audio recording of the interviews. The possibility of accessing the transcripts of the interviews was also made available, even though the author did not receive such request from either interviewee. The author did not pursue the idea of interviewing victims out of ethical concerns and to avoid possible risks of objectification and misrepresentation during the research process.

4.6 Research experience

One of the main insights gained from my experience during this research process is how it first challenged my own assumptions about gender and human trafficking, particularly about gendered forms of labor exploitation, which I mostly associated with the exploitation of domestic and construction workers in countries with a high record of human rights violations. As my research progressed, the picture became more nuanced and layered with complex issues and ramifications. During the preliminary phase of my research I also wondered why victims were not invited to anti-trafficking conferences. I asked myself whether this was a good practice or a way of speaking on their behalf instead of letting their voices be heard. I learned that the answer to this question is not as straightforward as I thought and that their active participation to anti-trafficking responses can take many forms. I also thought of incorporating an artistic dimension in terms of artistic practices in Austria, but only limited information was available, except for the film *Joy* analyzed in this thesis. It seemed that anti-trafficking actors did not place a strong focus on artistic approaches, a point later confirmed by the LEFÖ-IBF interviewee. While the organization has supported projects, like the film *Joy* by providing insights and participating in post-screening talks, its overall engagement is limited and guided by strict criteria imposed on project partners to accurately represent the complexity of human trafficking.⁸⁵ Finally, while the interviews required much preparation in terms of scheduling and devising the questionnaire, my exchanges with the representatives of LEFÖ-IBF and MEN VIA were very fruitful and instrumental in understanding the scope and importance of the work they perform on the ground and at the policy level.

⁸⁵ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

Chapter 5. Theoretical and conceptual framework

5.1 Introduction

This study is underpinned by a theoretical and conceptual framework, which draws from gender theory, concepts of social and gender justice, the Human Rights-Based Approach (HRBA) and the three anti-trafficking pillars of prevention, protection and prosecution, also known as three Ps. Aimed at gaining a contextual understanding of these concepts, this chapter first addresses gender as a social construction, primarily relying on the social theory of gender relations developed by Australian sociologist, Raewyn Connell, and on her book, *Gender: in World Perspective*⁸⁶ first published in 2002. Connell's theory, which recognizes gender as a wide-ranging and dynamic social structure, is particularly relevant to the understanding of gender relations in the context of human trafficking. This chapter will then address the concepts of social justice and gender justice, as well as their relevance to human trafficking, drawing from the work of two contemporary philosophers, namely John Rawls' theory of justice as fairness and Martha Nussbaum's capability approach, that contribute to the conceptualization of social justice and gender justice. Subsequently, the HRBA will be explored as well as its critical relevance to anti-trafficking responses, followed by the three Ps that form a commonly used and comprehensive framework of anti-trafficking responses. The chapter will conclude on how these different theories and concepts form a critical framework for the purpose of this study.

5.2 Gender as a social construction

This subchapter explores the construction of gender and gender relations based on Connell's social theory. Connell's multi-dimensional model of gender relations and its relevance to human trafficking will be addressed and applied to the issue of sexual exploitation, through the analysis of an artistic output, the 2018 film *Joy* by Austrian-Iranian director Sudabeh Mortezaei,⁸⁷ which portrays a story of sex trafficking primarily set in Austria.

5.2.1 The construction of gender

The term "gender" in English is commonly thought as 'the cultural and psychological difference of women from men, based on a biological division between female and male'.⁸⁸

⁸⁶ Raewyn Connell, *Gender: In World Perspective*, Short Introductions, 4, 4th edition (Medford, 2020).

⁸⁷ *Joy*, dir. Sudabeh Mortezaei

⁸⁸ Connell, *Gender*, 10.

As Connell points out, this notion is based on the contrast between two elements, female and male, viewed as separate and in opposition with each other. It highlights an assumed perception that gender distinction is ‘part of the order of nature’⁸⁹ and is based on either female or male biological traits. Consequently, gender is associated with the biological sex of a person and framed in terms of feminine and masculine attributes and roles, which promotes the conventional belief that different natural characteristics are associated with women and men. Women are commonly perceived as possessing communal qualities, such as being affectionate, kind, interpersonally sensitive, soft-spoken, overall implying a compassionate consideration of others. In contrast, men are associated with agentic qualities, such as rationality, self-confidence, independence and ambition. These stereotypes contribute to the perpetuation of attributed social roles for women and men. Even though the social roles have evolved, partly due to women’s increased participation in the workforce, these common stereotypes still persist today.⁹⁰

However, Connell argues that this notion based on female/male dichotomy and personal traits is problematic, as it fails to comprehend the reality of gender which does not fit into the divisional frame of the female/male binary.⁹¹ It also does not capture the differences that may exist within women as well as within men, and the gendered dimension of issues outside the individual level.⁹² According to her, gender is ‘not an expression of biology, nor a fixed dichotomy in human life and character.’⁹³ Being a woman is not predetermined by nature, but rather a ‘becoming, a condition actively under construction.’⁹⁴ Connell describes it as a dynamic process of self-construction, which often results in uniquely diverse combinations of feminine and masculine traits rather than a strict adherence to stereotypical female/male dichotomy.⁹⁵

Furthermore, body and gender identity are ones of the multiple and interconnected dimensions of gender. On one hand, gender involves a person’s body, the experience of their body and the gendering of bodies by society. Connell argues that, the diversity of human

⁸⁹ Connell, *Gender*, 6.

⁹⁰ Alice H. Eagly and others, ‘Gender Stereotypes Have Changed: A Cross-Temporal Meta-Analysis of U.S. Public Opinion Polls from 1946 to 2018.’, *American Psychologist*, 75/3 (2020), 302.

⁹¹ Connell, *Gender*, 10.

⁹² Connell, *Gender*, 11.

⁹³ Connell, *Gender*, 11.

⁹⁴ Connell, *Gender*, 6.

⁹⁵ Connell, *Gender*, 7.

bodies in the world reflects the historical interconnection of bodily processes and social structures,⁹⁶ in what she refers to as ‘body-reflexive practice, that is, human social conduct in which bodies are both agents and objects.’⁹⁷ The materiality of the body cannot be ignored in the construction of gender, and cultural categories such as women and men are generated by the interaction of the capabilities of the body and its associated practices.⁹⁸ The making and perpetuation of gendered bodies is particularly relevant in the context of human trafficking, underpinned by the exploitation and control of the bodies of trafficked persons. On the other hand, gender identity represents the subjective sense that a person has of their own gender, which can be woman, man, both or neither. It can conform or differ from the gender they were assigned at birth. The idea of identity has evolved and is now more understood as identifying oneself in terms of difference from others,⁹⁹ as reflected in the commonly used acronym LGBTQ+ which stands for lesbian, gay, bisexual, transgender, queer, and other non-straight and non-cisgender identities. In light of the conventional male-female binary highlighted above, the terms of cisgender and transgender are important to note. The gender identity of a cisgender person is aligned with the sex assigned at birth, while that of a transgender person is different from the sex assigned to them at birth.¹⁰⁰ In the context of human trafficking, transgender persons, who are mainly trafficked for the purpose of sexual exploitation, are at a particular risk of experiencing physical violence and harm to their body, due to the far-reaching stigma and discrimination they face.¹⁰¹

5.2.2 Gender relations

Rather than centering gender on binary differences, Connell emphasizes the relevance of relations, by framing gender as ‘the structure of social relations that centres on the reproductive arena, and the set of practices that bring reproductive distinctions between bodies into social processes’.¹⁰² This definition recognizes the existence of a gender order, that Connell describes as ‘the overall gender arrangements of contemporary societies,’¹⁰³ as

⁹⁶ Connell, *Gender*, 47.

⁹⁷ Connell, *Gender*, 47.

⁹⁸ Connell, *Gender*, 48.

⁹⁹ Connell, *Gender*, 96.

¹⁰⁰ GLAAD, ‘Glossary of Terms; Transgender’ <<https://www.glaad.org/reference/trans-terms>> [accessed 3 December 2022].

¹⁰¹ Anne E. Fehrenbacher and others, ‘Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States’, *Journal of Human Trafficking*, 6/2 (2020), 5.

¹⁰² Connell, *Gender*, 12.

¹⁰³ Connell, *Gender*, 5.

well as the multidimensional and changing nature of gender patterns, that vary in time and between societies.

According to Connell, even though gender theorists have offered different interpretations of gender as a social structure, research shows that what underpins gender relations cannot be restricted to only one principle but is rather multi-dimensional.¹⁰⁴ As a tool to better understand the challenges and dynamics of gender relations, Connell offers a model comprised of four interconnected dimensions: power relations, economic relations, emotional relations and symbolic relations.¹⁰⁵ While Connell acknowledges that this model is only one of many approaches to understand gender patterns, it is particularly relevant for the purpose of this study as it helps to frame gender relations in the context of human trafficking in a multi-dimensional manner, not only in terms of power and the gender ideology that facilitates trafficking, but also in terms of economic, emotional and symbolic relations.

Power relations

The power dimension underpins the notion of patriarchy, which is framed in terms of dominance of men and subordination of women and reflected in ‘patriarchal gender orders,’¹⁰⁶ in which men, husbands, fathers, and brothers have authority and control over women, wives, daughters and sisters. Patriarchal values have been embedded at all levels of society, albeit to varying degrees depending on the particular context. The perpetuation of particular feminine and masculine character stereotypes has contributed to legitimize the perceived male superiority.¹⁰⁷ In the 19th century, the idea that women were intellectually inferior to men was the argument used to deny them access to higher education and voting rights.¹⁰⁸ Since then, gender stereotypes and character dichotomy have largely been accepted and internalized despite research demonstrating a different reality.¹⁰⁹ They also contribute to the belief that ‘men are naturally suited to dominance and women are naturally submissive.’¹¹⁰ As a longstanding gender ideology, patriarchy is of significant importance in the context of human trafficking. A study recently conducted by OSCE on the gender

¹⁰⁴ Connell, *Gender*, 75.

¹⁰⁵ Connell, *Gender*, 76.

¹⁰⁶ Connell, *Gender*, 77.

¹⁰⁷ Preeti Rawat, ‘Patriarchal Beliefs, Women’s Empowerment, and General Well-Being’, *Vikalpa: The Journal for Decision Makers*, 39/2 (2014), 43.

¹⁰⁸ Connell, *Gender*, 41.

¹⁰⁹ Connell, *Gender*, 42.

¹¹⁰ Cynthia Fuchs Epstein, ‘Great Divides: The Cultural, Cognitive, and Social Bases of the Global Subordination of Women’, *American Sociological Review*, 72/1 (2007), 7.

dimension of human trafficking shows that patriarchal beliefs largely contribute to the structural exploitation of women by perpetuating gender-based discrimination and inequalities and, subsequently increasing vulnerability factors to trafficking,¹¹¹ which will be explored in the next chapter.

Power relations are also key to the notion of hegemonic masculinity, a concept which was introduced by Connell in the 1980s. Her groundbreaking research on masculinity includes her influential book *Masculinities*¹¹² first published in 1995. According to her, masculinities do not equate to men, but rather refer to their position in the gender order, which implies the existence of multiple masculinities. Hegemonic masculinity refers to ‘the masculinity that occupies the hegemonic position in a given pattern of gender relations, a position always contestable.’¹¹³ It frames relations not only between men and women, but also between groups of men, in terms of dominance and subordination.¹¹⁴ Women as well as groups of men that are outside the dominant norms, may be subordinated and marginalized. The subordination of homosexual men places ‘homosexual masculinities at the bottom of a gender hierarchy among men,’¹¹⁵ while marginalized masculinities are created by gender intersecting with other determinants, such as race and class.¹¹⁶ In the context of human trafficking, non-heterosexual and marginalized masculinities, including transgender persons and migrant male workers, would be examples of subordinated and marginalized groups.

This raises the question of who holds the dominant position in gender relations and profits from preserving inequalities within the gender order. The term, “patriarchal dividend” coined by Connell, provides an answer and helps to connect patriarchy with the notion of hegemonic masculinity. Patriarchal dividend refers to ‘the benefits to men as a group from maintaining an unequal gender order’.¹¹⁷ Benefits not only encompass money but also ‘authority and respect, personal services, control of housing, access to institutional power, emotional support, sexual pleasure, and control over one’s own body.’¹¹⁸ This means that privileges are given to men as a group in the form of greater power, status, control and resources, such as

¹¹¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 25.

¹¹² R. W. Connell, *Masculinities*, 2nd ed (Berkeley, 2005).

¹¹³ Connell, *Masculinities*, 76.

¹¹⁴ Connell, *Masculinities*, 78.

¹¹⁵ Connell, *Masculinities*, 78.

¹¹⁶ Connell, *Masculinities*, 80.

¹¹⁷ Connell, *Gender*, 122.

¹¹⁸ Connell, *Gender*, 144.

revenue and sexual access. However, it does not imply that all men benefit from these privileges in the same way as access will depend on their place in the social order.¹¹⁹ Therefore, both patriarchy and hegemonic masculinity contribute to the perpetuation of unequal gender relations, not only between women and men, but also among men, which results in an unequal or lack of access by the subordinated and marginalized groups to the power, resources and privileges held by the dominant group at the time. The entrenched power structures and ensuing inequalities have a detrimental impact on these groups and increase their vulnerability to exploitation.

Economic relations

The notion of patriarchal dividend is not only linked to the power dimension of gender relations, but also to economic relations. In Connell's model, the economic dimension of gender is reflected in the gendered division of labor, which categorizes occupations along gender lines, as either women's work or men's work, with implications inside and outside of the workplace. Despite differences among various cultures, the gendered division of labor is also characterized by a distinction between paid work and unpaid work. Historically, paid work has been conducted in the economic arena of 'money transactions, employment and the accumulation of capital,'¹²⁰ and 'culturally defined as men's world, (regardless of the presence of women in it)'¹²¹. On the other hand, unpaid work performed in the domestic arena, including household and childcare responsibilities, has been identified as 'women's world (regardless of the presence of men in it).'¹²² This dichotomy contributes to employment sectors labeled as typically female, such as service industry, domestic work, and care work, being among the least valued and least paid. This is pertinent in the context of human trafficking, as women employed in these economic sectors face a higher risk of exploitation. Their precarity, in terms of compensation and working conditions, is a factor contributing to women's vulnerability to trafficking.¹²³

Generally, economic relations are a key dimension of human trafficking as it is, first and foremost, about money, profit and exploitation of people. A 2010 report published by the OSCE office of the Special Representative and Co-ordinator for Combating Trafficking in

¹¹⁹ Connell, *Gender*, 122.

¹²⁰ Connell, *Gender*, 80.

¹²¹ Connell, *Gender*, 80–81.

¹²² Connell, *Gender*, 81.

¹²³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 23.

Human Beings on the business model of human trafficking defines it as both a market and business.¹²⁴ As a market, trafficked persons are considered ‘commodities and are bought, sold, traded and used.’¹²⁵ On the demand side, there is an ongoing global demand for sexual services and inexpensive labor, specifically in low-skilled employment sectors, such as domestic and care work (as shown previously), as well as in other precarious sectors, such as agriculture, construction and hospitality. On the supply side, structural socio-economic factors, including poverty, lack of employment, limited access to education and social exclusion, contribute to vast numbers of people in need and search of available and better economic opportunities, who could be easily exploited by traffickers.¹²⁶ As a business, human trafficking is essentially about producing profits from the exploitation of human beings, and alike licit businesses, ‘traffickers also look at market forces and adapt their methodology according to the environments in which they work and the markets that exist for forced labour.’¹²⁷ The high level of generated profits results from the exploitative nature of trafficking, in the forms of minimal or lack of compensation, unsafe working conditions and long working hours, which makes human trafficking a highly profitable business.¹²⁸

Emotional relations

Connell’s model emphasizes the importance of emotional relations, in the form of emotional attachment, as being a fundamental aspect of gender relations and encompassing a wide spectrum from positive, ambivalent to negative attachments, such as sexism and homophobia.¹²⁹ Connell cites sexuality and the household as exemplary areas of gendered emotional relationships, which can also extend to the professional sphere,¹³⁰ especially in occupations within the care and service industry, such as beauty work (mostly performed by women), and the sex industry. The creation of commercialized emotional relations, in the form of commercialized intimacy between customers and service providers, contributes to the objectification of women’s bodies in economic sectors, that are at high risk of exploitation

¹²⁴ Alexis A. Aronowitz, Gerda Theuermann and Elena Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (Vienna, 2010), 23, 24–25.

¹²⁵ Aronowitz, Theuermann and Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, 23.

¹²⁶ Aronowitz, Theuermann and Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, 23.

¹²⁷ Aronowitz, Theuermann and Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, 25.

¹²⁸ Aronowitz, Theuermann and Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, 25.

¹²⁹ Connell, *Gender*, 82.

¹³⁰ Connell, *Gender*, 82–84.

(developed in chapter 6). Applied to human trafficking, emotional relations between victims and traffickers are complex and multi-faceted, including family bonds (when family members are directly involved in recruiting relatives), romantic attachment (illustrated by the lover-boy method used by traffickers to deceit young women by faking romantic interest and subsequently exploited them)¹³¹ and ‘trauma bonding [which] is a psychological response to abuse, entailing an unhealthy bond between perpetrator and victim.’¹³²

Symbolic relations

The symbolic dimension of gender relations is underpinned by the notion that gender relations, as a social structure, are framed by cultural interpretations and reflect contextualized cultural values and practices.¹³³ Connell cites gender symbolism to describe the ‘system of understandings, implications, overtones and allusions that have accumulated through our cultural history’¹³⁴ that underlies references to “a woman” and “a man”. Gender symbolism can be found in verbal and written language as well as other forms, such as artistic forms, clothing, attitudes.¹³⁵ In other words, gender symbolism reflects the gender patterns within a specific context and culture. They can also perpetuate gender stereotypes and patriarchal values, which play a central role in human trafficking, as previously shown.

5.2.3 Application of Connell’s model of gender relations to human trafficking

The analysis of the film *Joy* through Connell’s four-dimensional model is pertinent for this study as it paints a realistic, albeit fictionalized, picture of a system of sex trafficking in Austria, through the portrayal of a Nigerian woman, who is sexually exploited by a Nigerian Madame along other women. However, it avoids the simplified dramatization of trafficked victims often portrayed as helpless and without agency, and rather provides a realistic understanding of their daily life. In a 2018 interview to Austrian Films, director Sudabeh Mortezaei explains that she conducted extensive research on the topic and worked with women selected through casting in Vienna, who were formerly sexually exploited and willing to play roles informed by their own experiences. Mortezaei gave them room to improvise and personally contribute to scenes, which reinforces the film’s realistic nature and poignant feel.

¹³¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 41–43.

¹³² OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 43.

¹³³ Connell, *Gender*, 84.

¹³⁴ Connell, *Gender*, 84.

¹³⁵ Connell, *Gender*, 85.

Box 1: Analysis of film *Joy* through Connell's four-dimensional model of gender relations

JOY

Director: Sudabeh Mortezaei Year: 2018

Main Cast: Joy Anwulika Alphonsus (Joy), Precious Mariam Sanusi (Precious),
Angela Ekeleme Pius (Madame)

SYNOPSIS

The story centers around Joy, a Nigerian woman who works as a prostitute in the back streets of Vienna in order to pay off the debts owed to her trafficker, a Madame also from Nigeria, and send money back to her family in Nigeria. While Joy is close to reimbursing her debts and regaining her freedom and independence, her Madame orders her to take charge and supervise Precious, a newly recruited teenage girl from Nigeria, who first resists engaging as a street sex worker. Joy has no choice but to ensure Precious becomes obedient and earns the money expected by the Madame, as she would otherwise assume Precious' debts. The multi-layered story follows Joy's journey as a sex worker exploited by the Madame, as a mother to a young daughter, whom she occasionally sees and with whom she hopes to build a newly independent life, and as a migrant woman with illegal status in Austria, who cannot escape sex work once her trafficking experience ends, leading to her eventual deportation back to Nigeria.

ANALYSIS

1. Power relations

Central to human trafficking, the power dimension of gender relations is reflected in the film through unequal power structures, physical and spiritual control, as well as physical violence. Power is exercised by a number of protagonists, from the Madame, her male guards, to the voodoo priest, who possess total control over the women they exploit. Control takes the form of physical surveillance, punishment and sanctions. While Joy enjoys some autonomy due to her seniority with the Madame, her movements are still under surveillance and she is herself responsible to watch for Precious. The women all live in the same apartment provided by the Madame, where she visits them and collects her debts. Therefore, they are maintained in a constant state of physical and financial dependence, as their bodies are controlled, their movements restricted, their papers confiscated, and most of their earnings taken away to pay off debts imposed by the Madame. Besides, powerful control is exercised through the Jujú ritual, depicted in the first scene of the film, which is an oath taken in the country of origin, here Nigeria, by the newly recruited women, binding them to repay their debts and not cooperate with authorities. The instilled fear of the consequences for breaking the oath, including death, sickness

for themselves or their relatives, keeps the women bound to it, and is constantly maintained by traffickers.¹³⁶ Power is also exercised through physical violence that both Joy and Precious experience in the film. The disturbing scene of Precious's rape, ordered by the Madame to punish her initial recalcitrance and ultimately subdue her, highlights violence as an instrument of power and control used by traffickers. In this scene, the camera stays in the front room with Joy, the Madame and the other women, and, alike them, the viewer cannot see but can hear Precious being raped by the Madame's male guards, leaving the viewer with an uneasy feeling of complicity and helplessness. Finally, the gender patterns in the film reveals a reality that is not often portrayed in the context of human trafficking, that of the gender of traffickers. Even though traffickers are thought to be men, women can also be involved in human trafficking. In the film, the Madame, a formerly sexually exploited woman herself, had turned exploiter, and an auction scene also shows other Nigerian Madames buying women. This scenario is based on real cases of sex trafficking from Nigeria to Europe, as illustrated by a 2018 court case narrative provided by Austria for the UNODC 2022 Global report.¹³⁷

2. Economic relations

At the core of the film's narrative, the economic dimension appears in terms of money as the central motivator for both trafficker and exploited women. The Madame generates high profits from the women's earnings as street sex workers, by regularly collecting the majority of it, as repayment of exorbitant levels of debts incurred by travel and living costs solely determined by the Madame.¹³⁸ The women are sanctioned if the amounts given to the Madame are not deemed sufficient. For the exploited women, the main factor for leaving Nigeria and coming to Europe is the ability to earn money and send part of their earnings back to their family. Through telephone calls made to her relatives in Nigeria, Joy is pressured to send increasing amounts of money to support her family. This highlights the limited options available to women, who decide to migrate, mostly through illegal channels, to find better economic opportunities. Traffickers take advantage of their illegal status, as it limits their risk of being reported to the police by the women who fear breaking the Juju ritual and being deported. Joy faces the challenge of having few viable choices, not only during her exploitation by the Madame, but also after regaining her freedom.

¹³⁶ Karin Schiefer, 'Interview: "The Fate of These People Involves Us All."', 2018 <https://www.austrianfilms.com/interview/sudabeh_mortezai/joy_ENG> [accessed 22 May 2023].

¹³⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022: Collection of Court Case Summaries* (New York, 2023), 560.

¹³⁸ In these cases, the average debt ranges between €50,000 and €60,000, which could take years to reimburse. See Schiefer, 'Interview: "The Fate of These People Involves Us All."'

While she plans to become a Madame herself, she stays engaged in prostitution in a local club to earn money. However, as she now represents a threat and eventual competition to her former exploiter, she is reported to the police and deported back to Nigeria. The last scenes of the film show Joy in Benin City, making contact with an intermediary to secure documents to return to Europe, and, therefore, about to enter another cycle of exploitation through debts and the swearing of a new Juju oath.

3. Emotional relations

The film conveys the emotional dimension of gender relations through family relationships as well as the social environment created by the Madame. Joy's emotional guilt towards her family is fueled by her relatives, who pressure and lie to her to send additional money, using false reasons of illness. As stated by the filmmaker in the aforementioned interview, expectations in Nigeria are high for women to become rich and successful in Europe and support relatives back home. A reintegration in society is only imaginable if they return with financial means,¹³⁹ which is not the case of Joy and also explains her desire to return to Europe (also combined by her wish to be reunited with her daughter). Besides, the Madame intentionally abuses emotions towards the women, by claiming to be their protector while exploiting them, which is facilitated by their ongoing state of dependency. Her human way of communication (once referring to the women as her children) creates a false sense of community with limited external interaction. The scene depicting the celebration for Joy's freedom exemplifies this duality as Joy thanks her for her support, while the Madame states that her only goal is for the women's advancement, despite months or years of blatant exploitation.

4. Symbolic relations

The film reveals the symbolic dimension of gender in terms of cultural understandings of what (desirable) women should look like. In the auction scene, during which young women are traded and sold to the local Madames, their bodies are evaluated according to certain criteria of attractiveness and desirability associated with the idea of a woman in a specific culture, and in this sexualized context, the idea of a woman as the object of men's desire. In addition to the body, other elements contribute to conveying this notion, as illustrated by the scenes when Precious' appearance is transformed through clothing revealing her features, a new hair style and make-up, which aims to make her as attractive and desirable for her future male clients.

¹³⁹ Schiefer, 'Interview: "The Fate of These People Involves Us All."'

Conclusion

The analysis of the film *Joy* through Connell's multi-dimensional model of gender relations shows that the four dimensions of power, economic, emotional, and symbolic relations are particularly relevant in this realistic, albeit fictionalized, depiction of human trafficking. While each dimension was addressed separately, it is important to note that they are all interconnected and affect one another.¹⁴⁰ For example, economic and emotional relations are both influenced by and influence power structures in place, while gender symbolism contributes to perpetuating a certain patriarchal gender order and power dynamics.

5.2.4 Conclusion

Drawing from the work of Australian sociologist, Raewyn Connell, and on her book, *Gender: in World Perspective*, this subchapter aimed to gain a better understanding of the concept of gender as a social construction and primarily relied on Connell's theory of gender relations because of its relevance in framing gender relations in the context of human trafficking. The construction of gender was first addressed in terms of a dynamic process of self-construction, which according to Connell, contradicts the commonly perceived female/male dichotomy reflected in long-standing gender stereotypes. Understanding the complexity and multi-dimensionality of gender, beyond underlying assumptions, helps to incorporate an inclusive notion of gender, including women, men and transgender persons, in the human trafficking debate.

Subsequently, in her theory of gender relations, Connell frames gender as a social structure and recognizes the existence of a gender order in the form of evolving gender patterns that vary in time and between societies. Her theory incorporates a four-dimensional model of gender relations, a useful conceptual framework to understand gender relations within the context of human trafficking. Underpinned by patriarchy and the related concept of hegemonic masculinity, the power dimension frames gender relations in terms of dominance and subordination between women and men as well as among men, and unequal power structures, that directly increase the vulnerability of subordinated and marginalized groups to exploitation. Closely linked is the economic dimension of gender relations, which is reflected in the division of labor along gender lines. The lesser value associated with so-called women's work contributes to the precarity of certain professional occupations in the care and

¹⁴⁰ Connell, *Gender*, 86.

service industry, mostly performed by women, and increased risks of exploitation. More generally, economic relations are central to human trafficking, as it primarily concerns money and profit through the exploitation of human beings. Although illegitimate, human trafficking functions as a market and a profitable business with demand and supply mechanisms, in which trafficked persons constitute the traded and sold commodities. Besides, the emotional dimension of gender relations can be found in the private sphere as well as the professional arena. The creation of commercialized emotional relations and intimacy in care-oriented occupations contribute to women's objectification in industries prone to exploitation. The symbolic dimension of gender relations is captured by gender symbolism and cultural understandings of the woman and the men, derived from gender patterns within a specific culture. Gender stereotypes and patriarchal values may be examples of perpetuated cultural meanings affecting trafficked persons and potential victims. Finally, the relevance of Connell's theory of gender relations to human trafficking was shown by applying her four-dimensional model to a fictionalized but realistic story of sex trafficking in Austria through an analysis of the film *Joy* by director Sudابه Mortezaei. Therefore, this sub-chapter provided a theoretical and conceptual framework on gender and gender relations relevant to human trafficking that will inform this study.

5.3 Social justice and gender justice

The concepts of social justice and gender justice form an additional conceptual framework that will be applied in this study and help to provide responses to the second research question of this thesis, which specifically addresses the realization of social justice for trafficked women, men and transgender persons. This sub-chapter will look at what is understood by social justice from a theoretical background, primarily relying on the work of two contemporary American philosophers, namely John Rawls' theory of justice as fairness and Martha Nussbaum's capability approach, that contribute to the conceptualization of social justice. The concept of gender justice will then be addressed as an essential dimension to be integrated into issues of social justice, by looking at various understandings of gender justice and their application to human trafficking. The sub-chapter will end with the relevance of social justice and gender justice to human trafficking. In this sub-chapter, trafficked persons will refer to identified, presumed and potential victims of human trafficking.

5.3.1 Conceptualization of social justice

The entry on social justice from Britannica Online provides an overall understanding of the concept and its application in modern societies. It states that social justice concerns

in contemporary politics, social science, and political philosophy, the fair treatment and equitable status of all individuals and social groups within a state and or society. The term also is used to refer to social, political, and economic institutions, laws, or policies that collectively afford such fairness and equity and is commonly applied to movements that seek fairness, equity, inclusion, self-determination, or other goals for currently or historically oppressed, exploited, or marginalized populations.¹⁴¹

This description highlights the multiple dimensions of social justice, not only as a theoretical concept concerned with fairness and equality, but also as a practical concept applied to the governance of societies and to social movements aiming at promoting certain principles of social justice within a specific social and historical context. Contemporary social justice movements, exemplified for instance by women's rights movements and movements fighting racial discrimination, reflect the increasing scope of social justice as an applied ideal of what a just society should look like, by addressing issues of structural discrimination and inequalities based on intersecting factors, such as race, gender and class.

On its 2023 World Day of Social Justice, the United Nations also emphasized the importance of pursuing social justice, not only on a national, but also international level, because of its essential role in improving the functioning of societies and economies and in the reduction of poverty, inequalities and social tensions.¹⁴²

This section focuses on social justice as a theoretical concept, which emerged in the mid-19th century in the context of the industrial revolution and is itself grounded in the vastly diverse theorization of concepts of justice, fairness and equality, dating back from ancient thinkers to contemporary philosophers.¹⁴³

¹⁴¹ Brian Duignan, 'Social Justice', *Britannica Online*, 2022 <<https://www.britannica.com/topic/social-justice>> [accessed 26 May 2023].

¹⁴² United Nations, 'World Day of Social Justice 20 February. 2023 Theme: Overcoming Barriers and Unleashing Opportunities for Social Justice', 2023 <<https://www.un.org/en/observances/social-justice-day>> [accessed 1 May 2023].

¹⁴³ Tom Campbell and Alejandra Mancilla, eds., *Theories of Justice*, The International Library of Justice (Oxon, New York, 2016), xi.

Among the latter, American philosopher, John Rawls, developed an influential theory of distributive justice, that helps frame the concept of social justice. As one of the various types of theorized justice, distributive justice broadly concerns the distribution of resources and goods within a society based on morally guided principles.¹⁴⁴ In his book, *A Theory of Justice*, first published in 1971, Rawls introduces his idea of a just society governed by the concept of justice as fairness. His concept is based on two principles applied to ‘the basic structure of society and govern the assignment of rights and duties and regulate the distribution of social and economic advantages.’¹⁴⁵ According to the first principle, each individual has ‘an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.’¹⁴⁶ This principle means that all individuals are considered free and equal and enjoy the same fundamental freedoms. The second principle addresses equality, precisely fair equality of opportunity and what is known as the difference principle. According to Rawls, the arrangement of social and economic inequalities is justified only to the extent that these inequalities result from conditions of fair equality of opportunity, and give the greatest benefits to the least advantaged members of society.¹⁴⁷ In other words, while inequalities in a society cannot be avoided, a just society should aim at reducing them by providing equal access to opportunities and improving the condition of the most disadvantaged persons and groups within a society.

Therefore, Rawls’ principles of equal basic liberties for all, fair equality of opportunity and maximization of benefit for the least advantaged, which underpin his concept of justice as fairness, are relevant to social justice, in the sense that they help frame issues concerning the fair and just distribution of resources and benefits to subordinated and marginalized groups.

Expanding on Rawls’ theory of justice as fairness, the capability approach, as first introduced by Indian economist and philosopher, Amartya Sen¹⁴⁸, and further developed by Martha Nussbaum, goes beyond the issue of distribution of resources. It centers on the notion of capabilities, which refers to the real freedoms and opportunities available to individuals, or, in other words, ‘what people are actually able to do and to be’¹⁴⁹ in order to lead fulfilling lives. Nussbaum argues that ‘resources have no value in themselves, apart from their role in

¹⁴⁴ Julian Lamont, ed., *Distributive Justice*, The Library of Essays on Justice (Oxon, New York, 2016), xi.

¹⁴⁵ John Rawls, *A Theory of Justice*, Rev. ed (Cambridge, 1999), 53.

¹⁴⁶ Rawls, *A Theory of Justice*, 266.

¹⁴⁷ Rawls, *A Theory of Justice*, 266.

¹⁴⁸ See Amartya Sen, *Development as Freedom* (Oxford New York, 1999).

¹⁴⁹ Martha C. Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, *Feminist Economics*, 9/2–3 (2003), 33.

promoting human functioning.’¹⁵⁰ Shifting the emphasis from resources to the ways in which individuals are able to use resources contributes to a better understanding of the structural obstacles faced by individuals and groups within a society,¹⁵¹ which substantially raises questions of social justice. Her theory is grounded in the related ideas of human dignity and the equal worth of persons, which contribute ‘to [promoting] their ability to fashion a life in accordance with their own view of what is deepest and most important.’¹⁵²

Nussbaum develops a list of ten ‘Central Human Capabilities’¹⁵³, viewed as general objectives for a just society, which include the following: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; control over one’s environment.¹⁵⁴ As fundamental entitlements of each individual, these capabilities should be prioritized by states. While the list is not fixed in time and may vary depending on specific contexts, Nussbaum stresses the importance of having a list as a way to provide a ‘minimal conception of social justice.’¹⁵⁵ According to her, a society can only be fully just if it adequately guarantees these capabilities to all its members. Therefore, political, social and economic institutions play an essential role in the realization of social justice and in creating the necessary conditions for individuals to develop and exercise their capabilities in order to lead fulfilling lives.

While Rawls’ theory of justice as fairness helps to frame social justice in terms of fair and just distribution of resources and benefits for the least advantaged members and groups within a society, Nussbaum’s capability approach goes beyond and is a useful framework to envision a certain conception of social justice in the context of human trafficking, which also integrates gender justice, to be addressed next.

5.3.2 Gender justice: Gender at the center of social justice

The definition of gender justice by the United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, provides a common understanding of gender justice as

¹⁵⁰ Martha C. Nussbaum, *Sex & Social Justice* (New York, 1999), 34.

¹⁵¹ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 33.

¹⁵² Nussbaum, *Sex & Social Justice*, 5.

¹⁵³ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 40.

¹⁵⁴ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 41-42.

¹⁵⁵ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 40.

ending the inequalities between women and men that are produced and reproduced in the family, the community, the market and the state. It also requires that mainstream institutions – from justice to economic policymaking – are accountable for tackling injustice and discrimination that keep too many women poor and excluded.¹⁵⁶

This definition highlights the structural discrimination that women face in the private and public spheres and frames gender justice in terms of redressing structural inequalities that have long existed between women and men. As discussed in the previous sub-chapter, dominant power structures and patriarchy, exemplified by Connell's notion of patriarchal dividend, contribute to the perpetuation of longstanding discrimination against women, resulting in entrenched inequalities at all levels of society.

This raises the question of the place of gender in social justice. Connell's theory of gender relations provided a multi-dimensional frame to understand gender in terms of power, economic, emotional and symbolic relations. The highlighted hegemonic power relations, gender stereotypes, and socio-economic discrimination and inequalities, are not only issues of social justice. They also concern gender justice, which puts gender at the center of questions of social justice.

The relevance of gender in social justice is illustrated by Nussbaum in her book, *Sex and Social Justice*, published in 1999, which gathers articles written in the previous decade, dealing with feminist liberalism and ethics of gender issues, such as objectification and prostitution (both explored in the next chapter.) She argues that the liberal tradition, based on 'the idea of the equal worth of human beings as such, in virtue of their basic human capacities for choice and reasoning'¹⁵⁷ long excluded the issue of the subordination by sex, which was perceived as natural (as previously shown). In other words, issues related to women's subordinated status and unequal treatment on the grounds of their gender, both in the private and public realms, were not considered matters of justice. Nussbaum's conception of liberal feminism makes a significant contribution to the liberal tradition by including sex to the list of 'morally irrelevant characteristics,'¹⁵⁸ therefore arguing that her theory of justice applies to all human beings, including 'women seen as fully human.'¹⁵⁹ This is in line with the

¹⁵⁶ United Nations Development Fund for Women, *Gender Justice: Key to Achieving the Millenium Development Goals* (New York, 2012), 3.

¹⁵⁷ Nussbaum, *Sex & Social Justice*, 10.

¹⁵⁸ Nussbaum, *Sex & Social Justice*, 10.

¹⁵⁹ Nussbaum, *Sex & Social Justice*, 9.

aforementioned notion of gender justice held by UN Women and echoes a 2015 statement by its Executive Director: ‘Gender equality is a shared vision of social justice and human rights. Women’s rights are human rights and human rights are women’s rights.’¹⁶⁰ Supplementing Connell’s gender theory, Nussbaum’s theory of justice contributes to placing gender at the center of theoretical and practical debates on justice, specifically social justice.

While gender justice is commonly described as the redress of inequalities between women and men, certain recent understandings of gender justice embrace an inclusive notion of gender, as addressed earlier in Connell’s theory on gender, and extends beyond relations between women and men. For instance, the international NGO, Oxfam, views gender justice as the full equality and equity between women and men in all areas of life and society, but also encompasses LGBTQ+ and non-binary people in their fight against gender-based discrimination and violence.¹⁶¹ The NGO Global Fund for Women specialized in funding for local women’s rights organizations, brings an intersectional perspective to their idea of gender justice, by prioritizing the diversity of needs and experiences of all those who suffer the most from discrimination, and by aiming for equity as well as equality.¹⁶² These examples show the inclusion of subordinated as well as marginalized groups in the pursuit of gender justice, which is particularly relevant in the context of human trafficking.

Furthermore, issues of gender justice in the context of human trafficking are specifically reflected in the contrast between its selective gendered narrative, focused on women and sexual exploitation, and its more nuanced and complex gendered reality, as introduced in chapter 2. This contributes to the invisibility of trafficked persons, who do not fit the profile of the ideal victim, which include men, transgender persons, as well as victims of all genders of forms of exploitation other than sexual exploitation. Framing human trafficking in terms of gender justice requires, not only to address the longstanding structural inequalities and discrimination faced by women, but also to integrate the experiences of overlooked trafficked persons because of their gender. Therefore, the conceptualization of gender justice in the

¹⁶⁰ UN Women, ‘Statement by UN Women Executive Director Phumzile Mlambo-Ngcuka at the High-Level Thematic Debate on Advancing Gender Equality and the Empowerment of Women and Girls, 6 March 2015 at UN Headquarters in New York.’, 2015 <<https://www.unwomen.org/en/news/stories/2015/3/pga-ed-speech>> [accessed 1 June 2023].

¹⁶¹ Oxfam International, ‘Gender Justice and Women’s Rights’ <<https://www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights>> [accessed 6 December 2022].

¹⁶² Global Fund for Women, ‘What Is Gender Justice?’ <<https://www.globalfundforwomen.org/what-we-do/gender-justice/>> [accessed 6 December 2022].

context of human trafficking needs to extend beyond women and include all genders affected by trafficking, including men and transgender persons.

5.3.3 Relevance to human trafficking

The previous elaboration on the concepts of social justice and gender justice raises the question of their relevance in addressing human trafficking. This study argues that they are central in understanding human trafficking and developing anti-trafficking responses that place the human rights and dignity of trafficked persons at the center. Framing human trafficking and the fight against it as issues of social justice and gender justice shifts the focus on the root causes of human trafficking and brings to light the structural inequalities, discrimination and power structures that facilitate human trafficking and increase the vulnerability to exploitation of subordinated and marginalized groups.

Therefore, what do social justice and gender justice mean in the context of human trafficking? Pursuing objectives of social justice and gender justice would entail working towards dismantling structural barriers to the fair and equal treatment of women, men and transgender persons in a position of vulnerability to exploitation or already in a situation of exploitation. It would also mean that appropriate conditions, in the form of laws, policies and practices, are put in place and effectively implemented to ensure that all trafficked persons and potential victims, regardless of their gender, have access to the resources and benefits they need in order to live a self-determined and dignified life.

The concepts of justice developed earlier provide a framework of principles, on which a certain conception of social justice for trafficked persons can be built. First, Rawls' theory of justice as fairness, concerning the distribution of resources and benefits within a society, is relevant to the conceptualization of social justice for all trafficked persons. Applying his principles of distributive justice would entail that social and economic opportunities are equally available to trafficked persons, as to other members of society. This could be illustrated by equal access to education, employment, housing, free from discrimination and biases based on gender and other intersecting factors such as race and class.

Building on these principles, Nussbaum's capability approach offers a more comprehensive perspective for social justice and gender justice in the context of human trafficking. Her

notion of human capabilities as “central requirements of a life with dignity”¹⁶³ is of particular interest here, as it refers to the real opportunities that individuals have to lead a fulfilling life. This raises the essential question of what trafficked persons are actually able to do and to be in order to live a meaningful life of their choice. Out of the list of ten capabilities elaborated by Nussbaum, the capabilities of life, bodily health, bodily integrity and affiliation, can also be viewed through a gender lens. Their focus on the ability to enjoy a life of standard duration, good general and reproductive health, safety from violence, and non-discriminatory treatment as a dignified person¹⁶⁴ are pertinent goals for all human beings. However, they are particularly relevant to trafficked persons, given their experience of bodily exploitation, discrimination and gender-based violence, specifically for women and transgender persons. As Nussbaum stated herself, her list is not meant to be exhaustive and fixed in time.¹⁶⁵ The significance of her capability approach lies less in the content of the list, albeit relevant to some extent here, but more in its emphasis on the effective realization of human capabilities.

Furthermore, Nussbaum closely connects her notion of capabilities to the idea of human rights, in the sense that a certain right guaranteed to a person gives them the capability to function in that particular realm. She further states that ‘to the extent that rights are used in defining social justice, we should not grant that the society is just unless the capabilities have been effectively achieved.’¹⁶⁶ In other words, it is not sufficient for a right to exist, it needs to be effectively realized for a society to be just. This last point is particularly relevant in this study, as it relates to the central place of human rights, specifically their respect, protection and fulfillment, in the realization of social justice for trafficked persons.

An application of Nussbaum’s capability approach to the reality of human trafficking is illustrated in the film *Joy*. The main character, Joy, is denied access to resources and opportunities as well as the ability to use them in order to lead a self-determined life, not only before, but also after her trafficking experience. While her lack of economic opportunities in Nigeria led to her sexual exploitation in Austria, her deportation denied her the opportunity to build a life with her daughter in Vienna, and ultimately brought her back to similar conditions of vulnerability to exploitation as before.

¹⁶³ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 40.

¹⁶⁴ Nussbaum, *Sex & Social Justice*, 41-42.

¹⁶⁵ Nussbaum, *Sex & Social Justice*, 41.

¹⁶⁶ Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, 37.

5.3.4 Conclusion

Rawls' theory of justice as fairness and Nussbaum's capability approach provide a valuable conceptual framework of principles of justice that contributes to the conceptualization of social justice and gender justice, relevant in addressing human trafficking and anti-trafficking responses. The capability approach is of particular significance as it focuses, not only on the fair distribution of resources and opportunities in a just society, but also on what individuals are effectively able to achieve with these opportunities in order to lead a fulfilling life. It helps to frame social justice for trafficked persons, not only in terms of resources and opportunities available to them, but also their real ability to use them in order to lead a self-determined life. By conceptually connecting the notion of capabilities to human rights, these issues can further be addressed in terms of respect, protection and fulfilment of the human rights of trafficked persons, essential conditions for them to be able to effectively access and use the resources and opportunities necessary to achieve a life of self-determination.

Besides, integrating a gender dimension within a conception of social justice for trafficked persons is essential, given the central role that gender aspects play in human trafficking. The concept of gender justice applied to human trafficking goes beyond its common understanding of redressing structural inequalities between women and men, by incorporating all trafficked persons affected because of their gender, including women, men and transgender persons. It is important to note that the aim is not to undermine the ongoing impact that human trafficking has on women, particularly as it relates to gender-based discrimination and violence. Nor is it to essentialize the trafficking experiences of men and transgender persons. The goal for adopting a broader concept of gender justice is rather to comprehensively address the complex role gender plays in human trafficking, by avoiding the prioritization of a certain gender or a certain form of exploitation and by giving adequate consideration to trafficked persons of all genders and in all forms of exploitation.

5.4 Human Rights-Based Approach

As introduced in chapter 2, human trafficking is now commonly recognized as a serious violation of the human rights and dignity of trafficked persons. The list of human rights most relevant to human trafficking provided in OHCHR 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking¹⁶⁷ (hereafter referred as OHCHR

¹⁶⁷ See pages 4-5 of this thesis.

Recommended Principles) shows the broad scope of possible human rights violations that trafficked persons may experience before and during the trafficking process. It also stresses the importance of protecting their human rights beyond the trafficking experience.

5.4.1 Concept and gender dimension

The Human Rights-Based Approach (HRBA), that emerged in the 1990s in the area of development, has been increasingly adopted in other fields of practice, such as humanitarian assistance, public health, climate change,¹⁶⁸ and the anti-trafficking field. OHCHR provides a common understanding of a HRBA defined as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’.¹⁶⁹ This definition highlights the importance to fully integrate the promotion and protection of human rights in programs and policies. The HRBA is grounded in a system of rights held by individuals (rights-holders) and corresponding obligations of state and non-state actors (duty-bearers) based on international law. These include all political, civil, economic, social and cultural rights, and the right to development. Besides, the HRBA aims to build the capacity of rights-holders to claim and exercise their rights, while supporting duty-bearers in realizing their obligation to respect, protect and fulfill human rights.¹⁷⁰ The HRBA is based on a series of operational principles, namely Participation, Accountability, Non-discrimination, Empowerment and Legality (also known abbreviated as PANEL),¹⁷¹ that are to be applied to all phases and all areas of policies and programs. Despite the diverse and multidisciplinary applications of a HRBA, the PANEL principles form the foundation, without which a HRBA cannot be effectively implemented.

Furthermore, gender has been recognized as an important dimension of the HRBA, as reflected in the integration of gender mainstreaming, a gender-centered approach that

ensures that policies and interventions maximise the potential of all – women and men, girls and boys, in all their diversity, [and aims at redistributing] power, influence and

¹⁶⁸ Sarah Knuckey and Margaret Satterthwaite, ‘Should Human Rights Practice Be Rights Based?’, in *The Struggle for Human Rights: Essays in Honour of Philip Alston*, ed. by Philip Alston and others, First edition (Oxford, 2021), 370–76.

¹⁶⁹ Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York, Geneva, 2006), 15.

¹⁷⁰ United Nations Sustainable Development Group, *United Nations Sustainable Development Cooperation Framework*, 3 June 2019.

¹⁷¹ European Network of National Human Rights Institutions, ‘Human Rights-Based Approach’ <<https://ennhri.org/about-nhris/human-rights-based-approach/>> [accessed 10 December 2022].

resources in a fair and gender-equal way, tackling inequality, promoting fairness, and creating opportunity.¹⁷²

This description shows that gender mainstreaming aims to incorporate the diverse and equally valid experiences of women and men, as well as their fair access to resources and opportunities, in all policies and programs. Therefore, integrating gender mainstreaming in the HRBA ensures that gender-related issues, such as power structures and structural gender-based inequalities, are adequately addressed and inform policies and programs, which subsequently reinforces the aim of the HRBA to promote and protect human rights.

5.4.2 Human Rights-Based Approach to human trafficking

The application of the HRBA in the anti-trafficking field originated in OHCHR Recommended Principles, in ‘response to a clear need for practical, human rights-based policy guidance,’¹⁷³ which has since been widely adopted by anti-trafficking actors and in the main anti-trafficking instruments. In its Preamble, the Council of Europe Convention refers to ‘the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking,’¹⁷⁴ while in its Recital 7, the EU Directive states that it ‘adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing it.’¹⁷⁵

What does a HRBA mean in the context of human trafficking? Based on the aforementioned definition, it entails that all anti-trafficking responses must prioritize the human rights of trafficked persons and potential victims, seen here as the rights-holders, while corresponding obligations under international law must be identified and fulfilled by the relevant duty-bearers, seen here as States. The primacy of human rights is expressed in OHCHR Recommended Principles, which state:

1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

¹⁷² European Commission, *A Union of Equality: Gender Equality Strategy 2020-2025* (Brussels, 2020), 15.

¹⁷³ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 4.

¹⁷⁴ Council of Europe Convention, Preamble.

¹⁷⁵ Directive 2011/36/EU, Recital 7.

3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.¹⁷⁶

While Principle 1 affirms the centrality of human rights in all areas of anti-trafficking responses, namely prevention, protection and prosecution, Principle 2 holds up the state's responsibility to take actions in these areas, according to the standard of due diligence.¹⁷⁷

Building on Principle 1, Principle 3 recognizes that anti-trafficking measures cannot interfere with established rights, particularly for groups more likely to have their rights threatened by these measures.¹⁷⁸ The Council of Europe Convention also stresses the importance to use a HRBA combined with gender mainstreaming in developing and implementing prevention and protection policies and programs, including compensation and legal redress for victims.¹⁷⁹

5.4.3 Conclusion

This sub-chapter provided an understanding of the HRBA as a conceptual framework, that is particularly relevant in addressing human trafficking, including its gender dimension, and develop policies and programs, aimed at protecting and promoting the human rights of trafficked persons and potential victims. As its foundation, the operational principles of Participation, Accountability, Non-discrimination, Empowerment and Legality are instrumental in the effective implementation of a HRBA.

5.5 The three Ps: Anti-trafficking pillars of Prevention, Protection and Prosecution

The pillars of Prevention, Protection and Prosecution represent a comprehensive framework to address human trafficking and elaborate anti-trafficking responses, which has been largely adopted by anti-trafficking actors and in anti-trafficking instruments. The Palermo Protocol, the Council of Europe Convention and the EU Directive refer to these three areas of intervention in their objectives and scope of application.¹⁸⁰ The three Ps are also frequently used to structure documents pertaining to human trafficking and anti-trafficking efforts, such

¹⁷⁶ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 1.

¹⁷⁷ 'Under the standard of "due diligence", 'the State is not held responsible for the acts of others, but it is held responsible for its own failure to prevent, investigate, prosecute or compensate for the commission of the act.' See Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 77.

¹⁷⁸ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 83–84.

¹⁷⁹ Council of Europe Convention, Articles 5(3), 15, 17.

¹⁸⁰ See Article 4 of the Palermo Protocol, Article 1 of the Council of Europe Convention, Recital 7 of the Directive 2011/36/EU.

as reports by international organizations, NGOs, and national action plans. The ongoing predominance of the three Ps framework reflects the importance of adopting a comprehensive approach to human trafficking, that include all possible domains of intervention.

What do prevention, protection and prosecution mean in the context of human trafficking? Prevention refers to anti-trafficking efforts aimed at preventing human trafficking to happen in the first place. Prevention measures may include addressing the demand that encourages exploitation and structural factors that increase vulnerability to trafficking, such as poverty, discrimination and gender-based violence,¹⁸¹ ‘by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes.’¹⁸² The pillar of protection relates to anti-trafficking efforts aimed at providing protection and assistance to trafficked persons, including victim identification and victim support services to assist with their social, psychological and physical recovery.¹⁸³ The pillar of prosecution refers to the states’ obligation to investigate and prosecute human trafficking offenses and provide victims with access to legal remedies and reparation for the wrongs they suffered, including compensation.¹⁸⁴ In this thesis, the pillar of prosecution will therefore refer to the prosecution of traffickers as well as the access to justice and remedies for victims.

5.6 Conclusion

This chapter aimed at providing a comprehensive and critical theoretical and conceptual framework that conceptually grounds and guides this thesis. As the main perspective of this thesis, it was important to first address the concept of gender as a social construction. Connell’s theory of gender relations, based on a four-dimensional model, is particularly relevant in understanding gender relations in the context of human trafficking. The highlighted concepts related to the power, economic, emotional and symbolic dimensions of gender, which included hegemonic masculinity, patriarchal dividend, gendered division of labor, profit-driven exploitation, commercialized intimacy and gender symbolism, all pertain to human trafficking. They are also related to issues of social justice and gender justice, in terms of structural inequalities and discrimination, not only between women and men, but

¹⁸¹ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 8–9.

¹⁸² Council of Europe Convention, Article 5(2).

¹⁸³ Council of Europe Convention, Articles 10, 12.

¹⁸⁴ Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 223.

also among men, which social and gender justice aim to dismantle. Therefore, these concepts not only helped to comprehensively frame gender aspects of human trafficking, but also linked gender relations with social justice and gender justice, central concepts of this thesis. Supplementing Connell’s theory, Rawls’ theory of justice as fairness and Nussbaum’s capability approach contribute to the conceptualization of social justice for trafficked persons in terms of fair distribution of resources and opportunities in a just society, and their ability to use these resources and opportunities to lead a fulfilling life. It also integrates a broad concept of gender justice that includes the experiences of all trafficked persons, including those overlooked because of their gender.

The additional framework provided by the HRBA is fundamental in the realization of social justice for trafficked persons as it prioritizes the promotion and protection of their human rights in all anti-trafficking policies and programs. By having their human rights effectively respected, protected and fulfilled, trafficked persons and potential victims have the capability to use the resources and opportunities they need to achieve a self-determined life. Goals of gender justice can also be pursued by integrating gender mainstreaming to a HRBA to human trafficking. To effectively promote and protect the human rights of trafficked persons and potential victims, the HRBA should be applied to all three pillars of prevention, protection and prosecution, which covers the main areas of intervention of anti-trafficking responses. The figure below visually illustrates the interaction of the various frameworks presented in this chapter with gender at its core.

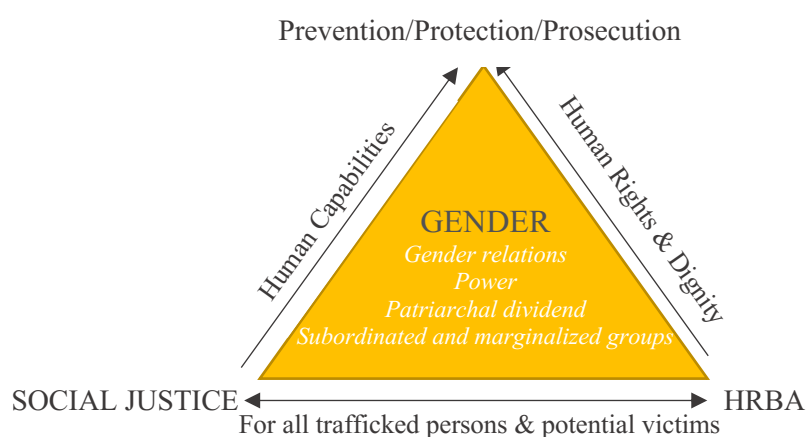


Figure 1: Interconnection of conceptual frameworks (author’s figure)

Chapter 6. The gender dimension of human trafficking: Gender as an inherent factor

6.1. Introduction

Aimed at gaining a comprehensive understanding of the role of gender in human trafficking, this chapter builds on the knowledge gained from Connell's theory of gender relations and address the interplay between gender and human trafficking by exploring its main gender aspects and the ways in which they impact trafficked women, men and transgender persons as well as potential victims. It will successively explore the relation between gender and forms of trafficking, the gender-related structural factors that increase vulnerability to trafficking and common gender-related narratives. Introduced in chapter 2, these gender aspects contribute to framing human trafficking as both a gendered reality and gendered narrative.

6.2 Gendered forms of trafficking

Forms of trafficking represent an element of human trafficking with a marked gendered dimension, as illustrated by the two common categories of trafficking for the purpose of sexual exploitation and labor exploitation.

6.2.1 Gender in sexual and labor exploitation

The 2022 UNODC Global Report shows that women represent the main victims of trafficking for the purpose of sexual exploitation worldwide, at 64 per cent of the total detected victims for this form of exploitation. The information available on transgender persons, albeit limited, also shows that they are mainly trafficked for the purpose of sexual exploitation.¹⁸⁵ A similar pattern exists in Austria, where in 2021 sexual exploitation represented the main form of exploitation affecting female presumed and identified victims at 65 per cent of the total.¹⁸⁶ Another form of exploitation overwhelmingly affecting women is trafficking for the purpose of forced marriage, which can take various forms depending on the regions¹⁸⁷ and affects 2 per cent of female trafficked victims in Austria.¹⁸⁸ This underlines the predominance of women and transgender persons in cases of sexual exploitation, as well as female victims in situations of forced marriages, therefore making sexual exploitation and forced marriages highly gendered forms of exploitation. Another gendered aspect related to

¹⁸⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 33-34.

¹⁸⁶ LEFÖ-IBF, *Tätigkeitsbericht 2021* (Vienna, 2022), 11.

¹⁸⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 39.

¹⁸⁸ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 11.

sexual exploitation is illustrated by the demand side of sexual services, primarily comprised of male sex buyers, who purchase sexual services with or without the knowledge that the sex worker is a victim of trafficking.¹⁸⁹

On the other hand, the 2022 UNODC Global report reveals that men are mainly trafficked for labor exploitation, accounting for 56 per cent of the total detected victims for this form of exploitation.¹⁹⁰ A similar pattern is also found in Austria, where in 2021 labor exploitation constituted the primary form of exploitation affecting male victims, at over 60% of the total.¹⁹¹ Trafficking for the purpose of forced criminality represents another form of exploitation with a majority of male victims, globally at 68 per cent of the total detected victims for this form of exploitation.¹⁹² In Austria, forced criminality as well as forced begging are cited as forms of exploitation, respectively affecting 21 per cent and 8 per cent of the total male presumed and identified victims,¹⁹³ while they are not specifically mentioned as forms of exploitation for women.

However, it is important to note that these overall patterns do not mean that women are not victims of labor exploitation and that men are not sexually exploited. Female victims represent 32 per cent of the total detected trafficked persons in labor exploitation,¹⁹⁴ while male victims account for 9 per cent of the total detected trafficked persons in sexual exploitation.¹⁹⁵ Data available on transgender persons show that 4 per cent of them were trafficked for labor exploitation and 6 per cent for mixed forms of exploitation.¹⁹⁶ Referring to the combination of two or more forms of exploitation, typically labor and sexual exploitation, mixed forms of exploitation affect an increasingly number of victims worldwide.¹⁹⁷ This underlines that both sexual and labor exploitation affect women, men and transgender persons, albeit to different degrees.

¹⁸⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Discouraging the Demand That Fosters Trafficking for the Purpose of Sexual Exploitation* (Vienna, 2021), 9.

¹⁹⁰ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 36.

¹⁹¹ MEN VIA, *Leistungsbericht 2021* (Vienna; obtained through MEN VIA Representative), 24.

¹⁹² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 39.

¹⁹³ MEN VIA, *Leistungsbericht 2021*, 24.

¹⁹⁴ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 36.

¹⁹⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 33.

¹⁹⁶ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 34.

¹⁹⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 37.

6.2.2. Gendered manifestations of labor exploitation

As addressed in chapter 2, human trafficking has been historically conceptualized as a gendered phenomenon, most commonly associated with women and sexual exploitation. This narrative still persists nowadays, and sexual exploitation remains the most reported forms of exploitation. However, labor exploitation has been increasingly recognized, as reflected in the growing share of reported cases of labor exploitation worldwide, reaching 38 per cent in 2022.¹⁹⁸ Larger in scope than sexual exploitation, labor exploitation involves ‘a variety of different methods of exploitation, victim profiles and economic sectors.’¹⁹⁹ Therefore, its gender dimension cannot be fully understood without exploring its various manifestations and their effect on trafficked women and men.

Gender plays an inherent role in labor exploitation, in the sense that the gender of persons exploited for labor is linked to the employment sectors in which they are exploited. The 2020 UNODC Global Report cites domestic work, construction work, agriculture, catering, fishing, street trading, garment and mining, as economic sectors where labor exploitation has been detected, while cautioning that the list is not meant to be an all-encompassing representation of the types of labor exploitation.²⁰⁰ Trafficking patterns in domestic work and construction work illustrate the gendered dimension of certain types of labor exploitation. Domestic work, defined as ‘work performed in or for a household or households,’²⁰¹ is predominantly performed by women, which means that they represent the majority of trafficking victims in domestic servitude, a form of trafficking present in all regions of the world.²⁰² Transnational domestic work stands out from other workforce sectors due to factors that make it particularly vulnerable to exploitation. Given its intimate nature, the private household as the place of employment blurs the boundaries of professional relations between employer and employee as well as between paid and unpaid responsibilities. The unique level of informality and isolation creates a space where power can be exercised over the worker who may be financially and logistically dependent on the employer.²⁰³ In addition, acute levels of sexual, physical and psychological violence perpetrated by household members are characteristics of

¹⁹⁸ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, XV.

¹⁹⁹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 95.

²⁰⁰ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 96.

²⁰¹ International Labor Organization Convention Concerning Decent Work for Domestic Workers (Adopted 16 June 2011, Entered into force 5 September 2013), No. 189 (Domestic Workers Convention), Article 1.

²⁰² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 98.

²⁰³ Alexandra Ricard-Guay, *Trafficking in Domestic Work: Looking at Demand-Side*, DemandAT Working Paper No. 5, 2016, 9–10.

domestic servitude, which also relates to instances of gender-based violence that will be addressed in the next subchapter.²⁰⁴ Construction work represents another highly gendered workforce sector as it employs a vast majority of men. This means that men are the predominant victims of trafficking in this industry, mainly exploited in groups. Dangerous working conditions resulting in a high level of fatalities, as well as the prevalence of subcontracting practices, make construction industry particularly prone to labor exploitation.²⁰⁵ Construction ranks first in some European Union countries, including Austria, as the economic sector where migrant workers are severely exploited.²⁰⁶

6.2.3 Conclusion

This subchapter provided a deeper understanding of the relation between gender and forms of trafficking. Trafficking for the purpose of sexual exploitation appears as a highly gendered form of exploitation, predominantly affecting women and transgender persons. Trafficking for the purpose of labor exploitation also presents a strong gender dimension structured along employment sectors. Furthermore, the characterization of forms of trafficking along gender lines reflect larger gender patterns in society, particularly the gendered division of labor that tend to contain women and men into different employment sectors, occupations and hierarchical levels of work.

6.3 Gender-related vulnerability factors

Another element of human trafficking with a marked gendered dimension concerns potential victims of trafficking and is reflected in the notion of vulnerability, understood as the increased susceptibility of an individual or group to trafficking due to certain ‘inherent, environmental or contextual factors,’²⁰⁷ specifically factors of vulnerability related to the gender of that individual or group. Factors contributing to a person’s vulnerability to trafficking may be different depending on their personal experience, and individual factors, such as prior exposure to sexual violence, homelessness, family rejection, or substance addiction, play a role in increasing the potential for being exploited.²⁰⁸ However, this section

²⁰⁴ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 100.

²⁰⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 104.

²⁰⁶ European Union Agency for Fundamental Rights, ed., *Severe Labour Exploitation: Workers Moving within or into the European Union, States’ Obligations and Victims’ Rights*, Justice (Vienna, 2015), 48.

²⁰⁷ United Nations Office on Drugs and Crime, *Abuse of a Position of Vulnerability and Other “Means” within the Definition of Trafficking in Persons*, Issue Paper, 2013, 13.

²⁰⁸ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 19.

will focus on structural vulnerability factors, specifically gender-based discrimination stemming from patriarchal power structures, gender-based violence and commercialized intimacy, and also address the particular vulnerability to exploitation of migrant workers.²⁰⁹

6.3.1 Patriarchal power structures

Women have long suffered from structural discrimination because of their gender, resulting in entrenched inequalities and lower socio-economic status.²¹⁰ As shown in the previous chapter on the power dimension of gender relations, patriarchy is particularly instrumental in perpetuating gender-based discrimination and inequalities, which increases vulnerabilities of women to exploitation and trafficking. While patriarchal structures overwhelmingly affect women, it is important to note that, in the context of human trafficking, patriarchal notions and gender stereotypes also play a role in increasing men's vulnerability to trafficking. For instance, men can feel compelled to take insecure and risky jobs that may lead to exploitation, based on the conventional role of the man as the family and income provider.²¹¹ Another example, within the context of migration, illustrates this point. The gendered perception that young men and boys are stronger and more resourceful fuels the belief that they are physically and psychologically capable to endure risky conditions and travel on their own, which places them at risk of exploitation.²¹²

Besides, Connell's notion of 'patriarchal dividend' is of particular relevance in the context of human trafficking for two reasons. First, the different privileges derived from it, such as power, control, resources, revenue and sexual access, may also characterize elements of human trafficking, in terms of control and power exercised over trafficked persons as well as revenue generated from them. Secondly, it points to the fact that not all men benefit from patriarchal power structures, as these exclude all masculinities that lay outside hegemonic masculinity. The discrimination and ensuing challenges faced by non-heterosexual and marginalized masculinities, which include transgender persons and male migrant workers, increases their vulnerability to sexual and labor exploitation.

²⁰⁹ The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. See United Nations General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Adopted 18 December 1990, Entered into Force 1 July 2003) A/RES/45/158.

²¹⁰ Connell, *Gender*, 2–5.

²¹¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 25.

²¹² ECPAT International, *Summary Paper on Sexual Exploitation of Children in Prostitution* (Bangkok, 2020), 8.

6.3.2 Gender-based violence

The perpetuation of gender inequalities and patriarchal power structures have significant repercussions, particularly as it comes to gender-based violence experienced by women as well as men who do not conform to hegemonic norms. Power and violence are inextricably linked as violence is one of the forms of visible power that may be exercised on individuals, along with hidden power and invisible power, that according to Green contribute to perpetuating the power status quo.²¹³ ²¹⁴ Gender-based violence is understood as ‘violence directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately.’²¹⁵ It can take different forms, including physical (such as murders, beatings, mutilations), sexual (such as sexual acts, assaults, rape), and psychological (such as threats, coercion). Even though it is experienced by both women and men, gender-based violence is commonly framed as violence against women. Statistics from the European Commission show that, in the European Union, one third of women aged over fifteen have been subjected to physical violence at least once, five per cent were raped, and 43 per cent were subjected to psychological violence by a domestic partner.²¹⁶

Human trafficking has specifically been recognized by the European Union as a form of gender-based violence, along with ‘violence in close relationships, sexual violence (including rape, sexual assault and harassment), slavery, and different forms of harmful practices, such as forced marriages.’²¹⁷ CEDAW also recognizes trafficking and exploitation of prostitution in women as ‘a phenomenon rooted in structural, sex-based discrimination, constituting gender-based violence.’²¹⁸ Gender-based violence is not only apparent as a structural factor of vulnerability to trafficking, but also as an element of trafficking itself, experienced by both women and men, albeit to varying degrees. The 2022 UNODC Global Report shows that, while female and male victims experience explicit physical violence as well as threats and

²¹³ Duncan Green, *How Change Happens*, First edition (Oxford, 2016), 29–31.

²¹⁴ It is worth noting that not all forms of power are exercised through violence, and power can be used for change see ‘Four powers’ model in Green, *How Change Happens*, 33.

²¹⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L135/57, 2011 (Directive 2012/29/EU), para. 17.

²¹⁶ European Commission, ‘What Is Gender-Based Violence?’ <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en> [accessed 9 December 2022].

²¹⁷ Directive 2012/29/EU, Article 17.

²¹⁸ United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, para. 20.

psychological violence from traffickers, the rates of physical or extreme violence are three times higher for women than men.²¹⁹ This underlines the disproportionate impact of gender-based violence suffered by women.

Besides women, LGBTQ+ people have increasingly been the target of different forms of violence and discrimination, either apparent or hidden, exercised by individuals or at the structural level of society.²²⁰ A 2015 OHCHR report on violence and discrimination based on sexual orientation and gender identity shows that LGBTQ+ around the world are exposed to ‘continuing, pervasive, violent abuse, harassment and discrimination.’²²¹ A 2020 report from the European Union Agency for Fundamental Rights (FRA) on the issue of equality for LGBTQ+ shows similar ongoing patterns of harassment, violence, and daily discrimination, which vary per country.²²² Driven by homophobia and transphobia, violence is aimed at punishing individuals that do not conform to the gender norms prevalent in their society.²²³ The fact that not many countries issue reports on homophobic violence (and even less on transphobic violence) explains the lack of comprehensive data on this issue. However, studies from NGOs, like the Trans Murder Monitoring project, show a high level of homicidal violence among transgender people around the world.²²⁴ Transgender people are particularly vulnerable to human trafficking as they face a higher combination of ‘interpersonal and structural vulnerabilities commonly associated with trafficking, including family rejection, physical and sexual violence, homelessness, incarceration, and employment discrimination.’²²⁵ Studies, mostly conducted in the United States, show that transgender people experience multiple forms of discrimination, including in areas of education, housing, employment and health care, that have a significantly negative impact on their lives.²²⁶

²¹⁹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, XII.

²²⁰ Emily M. Lund, Claire Burgess and Andy J. Johnson, eds., *Violence against LGBTQ+ Persons: Research, Practice, and Advocacy* (Cham, 2021), 1.

²²¹ Office of the United Nations High Commissioner for Human Rights, *Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity*, 2015, 20.

²²² European Union Agency for Fundamental Rights, *A Long Way to Go for LGBTI Equality* (Luxembourg, 2020), 3.

²²³ Office of the United Nations High Commissioner for Human Rights, *Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity*, 7–8.

²²⁴ TGEU, ‘Violence and Hate Speech’ <<https://tgeu.org/issues/violence-hate-speech/>> [accessed 10 December 2022].

²²⁵ Fehrenbacher and others, ‘Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States’, 182.

²²⁶ Jaime M. Grant and others, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force (Washington, 2011), 8.

Therefore, structural discrimination in the form of gender-based violence disproportionately affect women and persons of non-conforming genders, including transgender persons, which contributes to increasing their vulnerability to exploitation and trafficking.

6.3.3 Commercialization of intimacy

Commercialized intimacy represents another structural factor of vulnerability to exploitation. Huebner defines commercialized intimacy as the process of making bodies or body parts into a product, which imply the dehumanization of the person and objectification of their body.²²⁷ In the global market, intimacy has increasingly been sold as a commodity in the forms of emotional, care and service work, which includes sex work, domestic work and beauty work.²²⁸ What these sectors of activity have in common is the fulfilment of human needs and the illusion of intimacy created by the performance of these services mostly by women. They provide the satisfaction of physical and emotional needs, comfort and relaxation for the buyer.²²⁹ Furthermore, the commercialization of intimacy is made possible through the objectification of the body of the person performing the services, which disproportionately impact women.

This brings up the question of what is implied by objectification and treating a person as an object. Nussbaum provides an answer by proposing a comprehensive, albeit not exhaustive, list of ideas associated with the treatment of a human being as an object.

1. *Instrumentality*: The objectifier treats the object as a tool of his or her purposes.
2. *Denial of autonomy*: The objectifier treats the object as lacking in autonomy and self-determination.
3. *Inertness*: The objectifier treats the object as lacking in agency, and perhaps also in activity.
4. *Fungibility*: The objectifier treats the object as interchangeable (a) with other objects of the same type, and/or (b) with objects of other types.
5. *Violability*: The objectifier treats the object as lacking in boundary-integrity, as something that it is permissible to break up, smash, break into.
6. *Ownership*: The objectifier treats the object as something that is owned by another, can be bought or sold, etc.
7. *Denial of subjectivity*: The objectifier treats the object as something whose experience and feelings (if any) need not be taken into account.²³⁰

²²⁷ Lisa C. Huebner, 'Fear, Fraud, and Frank Complexities', in *Human Trafficking, Interdisciplinary Perspectives*, In Mary C. Burke (Ed.), 3rd edn (2022), 147.

²²⁸ Huebner, 'Fear, Fraud, and Frank Complexities', 148.

²²⁹ Huebner, 'Fear, Fraud, and Frank Complexities', 148.

²³⁰ Martha C. Nussbaum, 'Objectification', *Philosophy & Public Affairs*, 24/4 (1995), 257.

Some of these elements are helpful in framing examples of how women's bodies have historically been objectified and how it is reflected in the exploitation of bodies in human trafficking. In this context, the notion of instrumentality may address the use of women's bodies as tools marketed as objects of consumption by men aimed at fulfilling their needs, which is apparent in advertised pornography and prostitution.²³¹ Women's bodies are considered interchangeable as products of consumption as suggested by the notion of fungibility. Besides, denial of autonomy and inertness may refer to the Western cartesian dichotomy between mind and body, that associates women with body and emotions, rather than the rational mind.²³² This echoes the longstanding perceived feminine attributes addressed in the previous chapter. The selling and purchasing of intimacy as a product illustrate the objectification of women's bodies in economic sectors, that are among the most prone to exploitation.

In human trafficking the body is of particular relevance as it is through its exploitation that trafficking occurs, albeit in different ways depending on the forms of exploitation. Bodies of trafficked persons can be controlled through limiting freedom of movement or exercising physical supervision. They can be marked as property through the use of tattoos. The exploitation of bodies can also be viewed along gender lines and their reflection in the gendered forms of trafficking as seen previously. Sexual exploitation, predominantly affecting women, exemplifies the form of trafficking in which, not only work, but also the body is exchanged.²³³ The body is not only used to perform the work, but it is the body itself that is the object of exploitation through sexual work, as is also the case for the forced removal of organs that directly impacts a person's body. In labor exploitation bodies are used differently in the sense that they are used to carry out the work without being the specific object of exploitation. However, women and men trafficked for the purpose of labor exploitation may still suffer physical consequences on their bodies.

6.3.4 Vulnerability of migrant workers

Migrant workers represent a large share of reported victims of trafficking in most regions of the world.²³⁴ Both female and male migrant workers are particularly vulnerable to labor

²³¹ Connell, *Gender*, 8.

²³² Shaista Malik, 'Women's Objectification by Consumer Culture', *International Journal of Gender and Women's Studies*, 2/4 (2014), 88.

²³³ Huebner, 'Fear, Fraud, and Frank Complexities', 148.

²³⁴ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 10.

exploitation, and face structural discrimination in employment, such as unfair or misleading recruitment practices and unequal access to labor rights.²³⁵ In the context of the European Union, FRA identifies risk factors that ‘put workers who have moved within or into the EU at risk of severe labour exploitation in the country where they work,’²³⁶ which include personal and structural factors related to the country’s legal and institutional framework, the workers’ personal situations, workplaces and those created by employers.²³⁷ The difficulty for third-country nationals²³⁸ in accessing regular employment, due to restrictive legislations, limits their choice and pushes them to accept precarious jobs in sectors prone to exploitative practices. Undocumented migrants are particularly vulnerable to exploitation and targeted by traffickers, who take advantage of their illegal status and use their fear of being reported to law enforcement to maintain their exploitation.²³⁹

Domestic work provides an illustration of a highly gendered form of exploitation that specifically impact migrant women. The demand for migrant domestic workers, employed by private households to take care of their reproductive work, has increased in the past thirty years in Europe.²⁴⁰ Women represent the majority of migrant domestic workers and are specifically hired to carry out low paid and low skilled jobs. The feminization of labor in the context of migration is particularly relevant here. It refers to an increasing number of women, rather than men, who migrate on their own to seek employment opportunities in economic sectors in high demand and perceived as women’s work, namely care and domestic services.²⁴¹ As stated by CEDAW monitoring body, these sectors ‘do not offer decent and safe working conditions, because they are either part of the unregulated informal economy or, where regulated, they provide fewer protections than sectors meeting national standards,’²⁴² which makes migrant women particularly vulnerable to labor exploitation. As temporary migrant workers, seasonal workers in areas prone to labor exploitation, such as agriculture and tourism, are also at a significant risk for exploitation, which is facilitated by restrictive

²³⁵ United Nations Global Compact, Business & Human Rights Navigator, ‘Migrant Workers’ <<https://bhr-navigator.unglobalcompact.org/issues/migrant-workers/>> [accessed 5 June 2023].

²³⁶ European Union Agency for Fundamental Rights, *Severe Labour Exploitation*, 13.

²³⁷ European Union Agency for Fundamental Rights, *Severe Labour Exploitation*, 14.

²³⁸ In the European Union context, a third-country national refers to a person who is not a citizen of one of the European Union member states or of one of the countries associated with the European Union.

²³⁹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 10.

²⁴⁰ Ricard-Guay, *Trafficking in Domestic Work: Looking at Demand-Side*, 4.

²⁴¹ Huebner, ‘Fear, Fraud, and Frank Complexities’, 150.

²⁴² United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, para. 28.

employment structures, as illustrated by their inability to work for multiple employers.²⁴³

6.3.5 Conclusion

This subchapter addressed structural factors of vulnerability to trafficking, specifically gender-based discrimination, in the forms of patriarchal power structures, gender-based violence and commercialized intimacy, and highlighted the particular vulnerability of migrant workers to exploitation. While gender-based violence disproportionately affect women and transgender persons, patriarchal power structures and the perpetuation of gender stereotypes have detrimental consequences, not only on women and non-conforming genders, but also on men. Commercialized intimacy highlights the ongoing objectification of women's bodies in economic sectors, that are among the most prone to exploitation and trafficking. These gender-related factors underline the central role that gender can play in increasing the susceptibility of certain groups to exploitation and trafficking.

6.4 Gender-related human trafficking narratives

The final gender aspects covered in this chapter pertain to the longstanding narrative of human trafficking focused on women and sexual exploitation. Addressed in chapter 2, this gendered narrative contributes to the construction of narratives about the ideal victim of trafficking, gender related binaries, opposing victim and perpetrator, the rescued and rescuer, victim and criminal, as well as the perceived relationship between victim and trafficker.

6.4.1 The ideal victim of human trafficking

Introduced in chapter 3, the theory of the ideal victim developed by Nils Christie in his book, *The Ideal Victim* published in 1986, is helpful in understanding the stereotypical image of a crime victim and how it is applied to human trafficking. According to him, the ideal victim is 'a person or a category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim.'²⁴⁴ This notion is not related to a person's self-perception of being a victim but is rather constructed by society along certain characteristics that the ideal victim should possess. These characteristics include the victim's weakness, the respectability of their activities, the appropriateness of the place where the victim was at the time of the crime, the absence of any kind of relationship between the

²⁴³ European Union Agency for Fundamental Rights, *Severe Labour Exploitation*, 30.

²⁴⁴ Nils Christie, 'The Ideal Victim', in *Revisiting the 'Ideal Victim': Developments in Critical Victimology*, ed. by Marian Duggan (Bristol, 2018), 12. Full reproduction of his original text first published in 1986.

victim and perpetrator and the perpetrator being perceived as ‘big and bad’.²⁴⁵ Applied to human trafficking, the construction of the ideal victim is built on the idea of a victim ‘typically female, possessing characteristics associated with notions of vulnerability, weakness and innocence.’²⁴⁶ These features may also be associated with some of Nussbaum’s categories of objectification addressed earlier, specifically the denial of autonomy and inertness that treats the object (in this case the woman) as being devoid of agency, autonomy and self-determination. The status of ideal victim of trafficking would therefore be given to women who are perceived as weak and good compared to the strong and evil perpetrator, and blameless in regard to the nature and location of their activities.

6.4.2 Constructed gender-related binaries

This perception of the ideal victim of human trafficking contributes to the elaboration and maintenance of gender-related binaries in the narrative about human trafficking. First, the notion of the ideal victim produces the idea of the ideal offender as the two are interrelated.²⁴⁷ The division between victim and perpetrator is framed along gender lines, in the sense that the ideal victim is mostly portrayed as a woman and the ideal trafficker as a man. This narrative comes from the sex industry being represented as the prevalent area of a trafficking victim’s exploitation. In this context, ‘the pimp, the brothel owner and the man who buys sex are the ideal offenders. They are deemed irredeemable...and profiting from the rape and sexual abuse of women.’²⁴⁸ Consequently, human trafficking is predominantly depicted as trafficking by bad men of innocent women, victims of sexual exploitation. While the majority of reported traffickers are men involved in sexual and labor exploitation, a look at traffickers’ profiles reveals a much more nuanced reality than the prevailing narrative of the strong and evil male trafficker. Despite limited research on the gendered engagement of traffickers, data collected by UNODC between 2007 and 2018 on the number of suspected and prosecuted female traffickers and information gathered from experiences of victims show that women are also involved in human trafficking.²⁴⁹ The female traffickers portrayed by the Madames in the film *Joy* illustrate this point.

²⁴⁵ Christie, ‘The Ideal Victim’, 12–13.

²⁴⁶ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 33.

²⁴⁷ Christie, ‘The Ideal Victim’, 18.

²⁴⁸ Erin O’Brien, ‘Ideal Victims in Trafficking Awareness Campaigns’, in *Crime, Justice and Social Democracy*, ed. by Kerry Carrington and others (London, 2013), 319.

²⁴⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 46.

Another prevailing gender related narrative is that of the victim in need of rescuing and the rescuer. Women are portrayed ‘as helpless and passive victims who need to be rescued by others, and men as strong and active agents who can survive on their own.’²⁵⁰ These perceived notions of passivity and helplessness imply that women who are victims of trafficking are passive objects without any capacity of agency. They also reflect the patriarchal assumptions that men are considered as ‘authors of their own destinies, whereas women and children’s grip on their own wills is understood to be already fragile and tenuous. They are readily imagined in the garb of victimhood.’²⁵¹ Because they have limited control over their lives and fate, women must be rescued from traffickers. This perceived lack of agency is framed within a prevalent liberal view that regards people in employment relations as either passive objects or ‘freely contracting subjects,’²⁵² which does not reflect the reality of how exploitation works. Viewing all women as lacking agency, especially in the context of sexual exploitation, is simplistic and erroneous. It dismisses the choices and decisions many of them consciously make in their own interests within the limited opportunities provided to them, which they view as their best options at the time.²⁵³ For instance, the decision to engage in prostitution shows that women have agentic power and can take responsibility for their own actions, even though it is not considered respectable and socially acceptable.

The longstanding debate over prostitution and trafficking exemplifies the issue of agency within the human trafficking narrative and has divided feminists over the question of whether prostitution is a voluntary choice.²⁵⁴ One side views prostitution as sexual exploitation, based on the assumption that it is degrading and endangers the physical and mental health of women, and therefore can only be forced upon women.²⁵⁵ This reflects the idea of women’s perceived lack of agency when it comes to engaging in the sex industry. On the opposite side, prostitution is considered legitimate sexual labor and distinguishes between voluntary prostitution (or sex work) and trafficking as forced prostitution. It recognizes the agency of sex workers who willingly choose sexual labor as their line of work as well as the necessity to protect their rights as voluntary sex workers.²⁵⁶ This divisive debate on prostitution was

²⁵⁰ O’Brien, ‘Ideal Victims in Trafficking Awareness Campaigns’, 319.

²⁵¹ Julia O’Connell Davidson, ‘Gender, Migration, “Trafficking” and the Troublesome Relationship between Agency and Force’, 2015 <<https://www.compas.ox.ac.uk/2015/-gender-migration-trafficking-and-the-troublesome-relationship-between-agency-and-force/>> [accessed 3 January 2023].

²⁵² Julia O’Connell Davidson, *Modern Slavery: The Margins of Freedom* (Basingstoke New York, 2015), 77.

²⁵³ O’Connell Davidson, *Modern Slavery*, 77.

²⁵⁴ Claudia Aradau, *Rethinking Trafficking in Women: Politics out of Security* (Basingstoke, 2008), 29.

²⁵⁵ Aradau, *Rethinking Trafficking in Women: Politics out of Security*, 30.

²⁵⁶ Aradau, *Rethinking Trafficking in Women: Politics out of Security*, 30–31.

also central in the negotiations leading up to the adoption of the Palermo Protocol. On one hand, the Human Rights Caucus and GAATW advocated in favor of prostitution as legitimate work and for the inclusion in the definition of human trafficking of forced prostitution, along with other types of labor affecting women, men and children. The opposite view represented by the Coalition Against Trafficking in Women (CATW) argued that prostitution could never be voluntary and all forms of prostitution constituted a violation of women's human rights.²⁵⁷ However, only equating trafficking to forced prostitution also reinforces the idea of the innocent and passive victim who must be protected, in contrast with the guilty prostitute who must be 'policed and punished'.²⁵⁸ The reality is more nuanced than the dichotomy of innocence versus guilt. Accepting the idea of the sex worker who may have freely engaged in prostitution and subsequently finds themselves in an exploitative situation also questions the notion of the ideal victim, innocent, passive and helpless.

This last point is not only valid in the context of sexual exploitation, but also in other forms of exploitation, and brings up the issue of a victim's criminalization. Victimhood is mostly opposed to the ideas of agency and self-determination in judicial systems, which makes the notion of the victim-offender difficult to situate within this binary narrative.²⁵⁹ Victims of trafficking may have exercised their agency at various points in the trafficking process, for instance by voluntarily accepting employment with risky conditions or continuing to have ties with their traffickers. Victims who acted on a voluntary basis at some point of their trafficking experience are blamed for acting in a reprehensible manner.²⁶⁰ This is particularly relevant in the case of men who are trafficked for the purpose of forced criminality and are forced to take part in crimes. Their status of victim-offenders often prevents them from being seen as victims worthy of protection,²⁶¹ which is also compounded by men being mostly perceived as potential offenders, as discussed previously.

Another important narrative concerns the perception that the ideal victim should not have any kind of relationship with the offender, which is illustrated by the question often asked to

²⁵⁷ Elżbieta M. Goździak and Kathleen M. Vogel, 'Palermo at 20: A Retrospective and Prospective', *Journal of Human Trafficking*, 6/2 (2020), 109.

²⁵⁸ Aradau, *Rethinking Trafficking in Women: Politics out of Security*, 31.

²⁵⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 46.

²⁶⁰ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 46.

²⁶¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 46.

victims on why they did not escape from the traffickers when they had the opportunity.²⁶² This implies that victims are mere captives waiting at the first chance to leave their captors. However, as introduced in the previous chapter in relation to the emotional dimension of gender relations, the nature of the relationships between victim and trafficker is far more nuanced and involves complex psychological dynamics. First, victims can be recruited and exploited by their own family members and through family networks, which implies pre-existing familial bonds. This pattern also has a gender dimension in the sense that young women are more likely coerced into trafficking than young men who would instead be sent off to provide for themselves and the family, which reflect patriarchal structures as addressed earlier.²⁶³ Besides, the lover-boy method, which is used by traffickers to deceit and recruit young women by faking romantic interest, creates a false sense of romantic attachment, which ties (predominantly) female victims to their traffickers emotionally and psychologically. Trauma bonds (defined on page 30) are also used by traffickers to develop a victim's strong psychological reliance and emotional attachment, for instance by creating a false sense of family and community and acting as their provider,²⁶⁴ as illustrated in the film *Joy* by the caretaker figure taken on by the Madame.

These various patterns highlight the complexity of relationships between victim and trafficker, their gender dimension and the various ways in which traffickers psychologically control victims and maintain their power. These complex psychological dynamics have a significant impact on the three pillars of prevention, protection and prosecution. Preventing the trafficking of young women may be particularly difficult if their own family members are involved in their exploitation. Protecting trafficked persons may also prove challenging when emotional boundaries are blurred by a false sense of love and family belonging and prevent trafficked persons from perceiving themselves as victims. Besides, they contribute to impeding the investigation and prosecution of traffickers as victims with a strong emotional attachment to traffickers may be reluctant to testify against them and even protect them during investigations by the police.²⁶⁵

²⁶² OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 41.

²⁶³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 42.

²⁶⁴ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 42-44.

²⁶⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 41-42.

6.4.3 Conclusion

Expanding on the ongoing common narrative of human trafficking focused on women and sexual exploitation, this subchapter explored constructed narratives structured along the binary division between women and men. The notion of victimhood in human trafficking opposes the female ideal victim and the male ideal trafficker. Women are perceived as passive, devoid of agency, innocent and in need of rescue unlike men. The longstanding debate on the voluntary or forced nature of prostitution reflects the deep-seated narrative of the female victim of trafficking without agentic power and the common reluctance to view prostitution as legitimate labor. The subchapter also highlighted the complex relationships between victim and trafficker, which have a detrimental impact on their self-perception as victims and their willingness to testify against their traffickers, therefore undermining their protection as victims and the prosecution of traffickers as perpetrators of a crime.

6.5 Searching for the Invisible

The gender related binaries that persist in the human trafficking narrative have a significant impact on who is perceived as a victim of trafficking, and subsequently, who is given the status of victim. They create a ‘hierarchy of suffering’²⁶⁶ and victimhood, with women being exploited for the purpose of sexual exploitation at the top of the hierarchy. Those who do not fit in the framework of the ideal victim face greater challenges for being identified as victims and experience greater invisibility along gender lines and across forms of exploitation.

6.5.1 Men as invisible victims

Men victims of trafficking are made invisible by ‘interactionally constructed assumptions about victimhood and masculinity’²⁶⁷, as highlighted earlier, and are not generally associated with the state of victimhood. They are rather perceived as being in control of their lives, able to endure hardships, and with enough strength, resilience and willpower to overcome challenges. Negative images also portray men as the main perpetrators of violence and crimes. In this context, it is difficult to visualize men as capable of becoming vulnerable and victimized. In addition, the harm and suffering that men experience as victims are not in line with how they are viewed by society. The status of victimhood is conferred if ‘the harmful event (form of exploitation) is understood as injurious enough to be construed as

²⁶⁶ Noemi Magugliani, ‘(In)Vulnerable Masculinities and Human Trafficking: Men, Victimhood, and Access to Protection in the United Kingdom’, *Journal of Human Rights Practice*, 14/2 (2022), 730.

²⁶⁷ Polina Smiragina-Ingelstrom, ‘Human Trafficking of Men: A Gendered Perspective on Victimhood’ (University of Sydney, 2020), 239.

victimizing.²⁶⁸ This means that the degree of harm experienced by a victim of human trafficking is determined not by the victim's experience, but rather by how the experience is interpreted in the human trafficking debate, the general understanding being that men experience less harm than women. Consequently, the status of victimhood will be considered less relevant for men affected by trafficking than women.²⁶⁹

These constructed assumptions produce significant obstacles, not only to the identification of men as trafficking victims by anti-trafficking actors, but also to men identifying themselves as victims. Many men reject the idea of being a victim and 'perhaps more importantly, they do not identify with the socially constructed image of the victim.'²⁷⁰ For instance, the traditional idea of men providing for their families may contribute to them continuing to work despite precarious conditions and retained income, only because working is what is expected of them.²⁷¹ In this case, they would not see themselves as victims in need of protection.

6.5.2 Transgender persons as invisible victims

Transgender persons form another group whose invisibility as victims of human trafficking prevails. The reasons for their invisibility in the human trafficking debate comes from their non-conformity to the ideal victim profile as well as a lack of dedicated research on transgender people and human trafficking. The latter remains extremely limited and mostly falls under studies covering LGBTQ trafficking victims, which is also limited and conducted mainly in the United States, despite their heightened vulnerability to trafficking as previously shown. The status of victim is not conferred to them as the prevalent notion of the victim of trafficking is assumed to be a cisgender woman, therefore excluding transgender and specifically transwomen from the picture²⁷². In the hierarchy of victimhood, 'transwomen, in particular, tend to be viewed as "less exploitable" by law enforcement because of their assumed willingness to work in the sex industry.'²⁷³ This assumption refers back to the prevailing notion of the innocent victim and prostitution as being abusive to women. However, it fails to acknowledge the structural factors faced by transgender people as

²⁶⁸ Smiragina-Ingelstrom, 'Human Trafficking of Men: A Gendered Perspective on Victimhood', 240.

²⁶⁹ Smiragina-Ingelstrom, 'Human Trafficking of Men: A Gendered Perspective on Victimhood', 240.

²⁷⁰ Smiragina-Ingelstrom, 'Human Trafficking of Men: A Gendered Perspective on Victimhood', 176.

²⁷¹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 34.

²⁷² Fehrenbacher and others, 'Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States', 182-183.

²⁷³ Fehrenbacher and others, 'Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States', 190.

increased vulnerability to trafficking. The higher rate of homelessness experienced by transgender people often leads them to engage in survival sex in exchange for basic needs such as food and shelter.²⁷⁴ Besides, transwomen are less likely to be viewed as victim-offenders than cisgender women, and more like offenders, when reporting a crime to the police because of their involvement in sex work related charges.²⁷⁵ In addition to issues of identification by law enforcement, self-identification of transgender people as victims of trafficking may be restrained by their normalized experiences of violence in and outside of their work.²⁷⁶ The misidentification and lack of self-identification of transgender people as victims combined with the quasi absence of research on the impact of human trafficking on transgender people, contribute to their invisibility as victims of trafficking.

6.5.3 Invisible forms of exploitation

Another factor of invisibility comes from the hidden and isolated characteristics of certain locations where exploitation occurs. Isolation and secrecy are exemplified by private apartments provided by traffickers and clients' private homes in the context of sexual exploitation,²⁷⁷ as well as workplaces in the domestic work, fishing industry or agricultural sector. While the adoption of the Domestic Workers Convention²⁷⁸ in 2011 marks an important step in recognizing the rights of domestic workers, domestic work 'remains undervalued and invisible.'²⁷⁹ Domestic workers who work and live in the same house as their employers, often with limited contact with the outside world, are particularly vulnerable to exploitation as the privacy of the household means that exploitation happens behind closed doors. The combination of isolation and privacy contributes to the invisibility of (predominantly female) victims of trafficking in domestic work.²⁸⁰ This may be further aggravated by a lack of regulations and limited labor inspections in the private household.²⁸¹ This context makes the identification of victims of trafficking challenging, particularly those in total confinement who never leave their employer's premises. Agriculture and the fishing

²⁷⁴ Shanna K. Kattari and Stephanie Begun, 'On the Margins of Marginalized: Transgender Homelessness and Survival Sex', *Affilia*, 32/1 (2017), 92, 99.

²⁷⁵ Fehrenbacher and others, 'Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States', 190.

²⁷⁶ Fehrenbacher and others, 'Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-Trafficking Protection in the United States', 187.

²⁷⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, V.

²⁷⁸ International Labor Organization Convention Concerning Decent Work for Domestic Workers (Adopted 16 June 2011, Entered into force 5 September 2013), No. 189 (Domestic Workers Convention).

²⁷⁹ Ricard-Guay, *Trafficking in Domestic Work: Looking at Demand-Side*, 4.

²⁸⁰ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings*, 27.

²⁸¹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020*, 110.

industry form other invisible sectors, in which men are typically trafficked.²⁸² Places of employment in remote and inaccessible areas, such as isolated rural farms or at sea, contribute to workers' physical isolation and total reliance on their employers, who can easily maintain them in a state of exploitation.²⁸³ Therefore, identifying victims of trafficking in these areas is extremely difficult due to their complete seclusion as well as a lack of labor inspections and control by authorities.

6.5.4 Conclusion

The common gender-related narratives on human trafficking contribute to increasing the invisibility of certain groups as victims of trafficking along gender lines and across forms of exploitation. Because of perceived notions of victimhood and masculinity, men are generally not associated with victimhood, nor do they identify themselves as victims. Transgender persons, particularly transgender women, also fail to be identified as victims, a status mostly associated with cisgender women. Besides, the isolation and privacy of certain locations and workplaces of both sexual and labor exploitation, combined with limited labor regulations and inspections, make it particularly challenging to identify female and male victims of trafficking being exploited in these areas.

6.6 Conclusion

This chapter aimed at gaining a comprehensive understanding of the gender dimension of human trafficking by addressing its main gender aspects and the ways in which they affect trafficked persons and potential victims of trafficking and contributed to providing answers to the first research question about the role played by gender in human trafficking. In order to gain a comprehensive picture, it was important to explore gender aspects not only within the reality of human trafficking, but also within common human trafficking narratives.

Forms of trafficking, particularly sexual and labor exploitation, show a marked gender dimension, with women, men and transgender persons affected to varying degrees and in different ways depending on the form of exploitation, which also reflect larger gender structures in society. This helps to frame gender patterns of human trafficking within a broader structural context, as illustrated by the gendered division of labor. Gender is also apparent in structural factors of vulnerability, which increase the susceptibility of certain

²⁸² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 36.

²⁸³ European Union Agency for Fundamental Rights, *Severe Labour Exploitation*, 49.

groups to being exploited due to their gender. Patriarchal power structures, gender-based violence and commercialized intimacy contribute to the perpetuation of gender stereotypes and gender-based discrimination, which are harmful to women, persons of non-conforming genders, as well as men, albeit to variable degrees, and result in their heightened vulnerability to exploitation. Also affected by structural factors of discrimination, specifically in employment, migrant workers are another group particularly vulnerable to exploitation.

Furthermore, underpinned by the longstanding common narrative of human trafficking focused on women and sexual exploitation, associated narratives reveal a strong gender element due to their construction along gendered binary lines. This is reflected in a constructed hierarchy of victimhood that conceives of the ideal victim of trafficking as female, innocent, devoid of agency and in need of rescue, in opposition to the male rescuer, the male criminal and the male trafficker, mostly in association with sexual exploitation. In perpetuating these binary views, gender-related narratives contribute to increasing the invisibility as victims of those who do not fit the common conception of victimhood and have a detrimental impact across genders and trafficking forms, including on trafficked men, transgender persons and female and male victims of hidden forms of exploitation.

Understanding the full dimension of gender in human trafficking, both as a gendered reality and gendered narrative, helps to comprehensively address the gender issues inherent to human trafficking and the challenges faced by trafficked persons and potential victims of trafficking across the three anti-trafficking pillars of prevention, protection and prosecution. Addressing the lack of identification of invisible victims in relation to prevalent human trafficking narratives contributes to improving their protection in terms of access to victim support services as well as protection and fulfillment of their human rights. Prosecution efforts can be enhanced by understanding the complex relationships between victims and traffickers and how the psychological control exercised by traffickers influence the victims' conduct and may contribute to their reluctance to cut ties with traffickers and cooperate in police investigations. Prevention of human trafficking can also be better understood by addressing the impact of gender-related factors that systemically contribute to increasing the vulnerability of women, men and transgender persons to exploitation. Therefore, a comprehensive understanding of these various gender aspects is an essential first step towards developing anti-trafficking responses aimed at guaranteeing the respect, protection and fulfillment of the human rights of all trafficked persons and potential victims of trafficking.

Chapter 7. Austria's anti-trafficking legal and policy framework through a gender and rights lens

7.1 Introduction

This chapter focuses on anti-trafficking responses, specifically on Austria's anti-trafficking legal and policy framework. Its goal is two-fold. It first aims at gaining a comprehensive understanding of the gender dimension of the three anti-trafficking instruments currently relevant to Austria, namely the Palermo Protocol, the Council of Europe Convention and the EU Directive, as well as Austria's anti-trafficking policies. It also aims at addressing the rights afforded to victims of trafficking in the aforementioned instruments and their implementation in Austria's anti-trafficking legislation and policies, which will be assessed within the conceptual framework of social justice and gender justice developed in chapter 5. To achieve these objectives, the chapter will first explore the gender aspects and the rights afforded to victims in the three anti-trafficking instruments. It will then explore Austria's national anti-trafficking legal, institutional and policy framework by analysing how the rights of victims are implemented in its legislation and derived policies and how gender is addressed in its anti-trafficking National Action Plans (NAPs). The data on Austria used in this chapter was collected from legal sources using RIS, Austria's Legal Information System online,²⁸⁴ and relevant documents, including governmental websites, GRETA's²⁸⁵ evaluation reports on Austria, and reports from NGOs and international organizations.

7.2 International and regional anti-trafficking framework relevant to Austria

This chapter explores how gender is addressed in the Palermo Protocol, the Council of Europe Convention and the EU Directive, and the rights they afford to victims of trafficking.

7.2.1 Gender dimension: From a selective focus to a comprehensive approach

Historically and prior to the Palermo Protocol, anti-trafficking instruments first solely focused on women and sexual exploitation, as illustrated by the 1904 International Agreement for the Suppression of the White Slave Traffic and the 1910 International Convention for the Suppression of the White Slave Traffic. As addressed in chapter 2, they contributed to the emergence of the issue of human trafficking as a gendered phenomenon

²⁸⁴ 'Rechtsinformationssystem Des Bundes', 2023 <<https://www.ris.bka.gv.at/defaultEn.aspx>> [accessed 1 June 2023].

²⁸⁵ GRETA's definition and function is explained on page 76.

and the common narrative centered on sexually exploited female victims of trafficking. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others²⁸⁶ marks an evolution towards a gender-neutral language,²⁸⁷ by employing the gender-neutral term “person” in reference to a victim of trafficking. While this semantic evolution implies that a person of any gender could be considered a victim, the focus still lies on prostitution and sexual exploitation, therefore implicitly on women.

Palermo Protocol

Amid this historical context, the Palermo Protocol takes a gender-neutral approach by using the term “trafficking in persons” in its official title, and the gender-neutral term “person” in the document.²⁸⁸ It means that a victim could be any person without distinction of gender. Its definition also recognizes various forms of exploitation, including labor exploitation, which affect persons of all genders as addressed in chapter 6. While this represents an evolution from the historical selective focus on sexual exploitation, the Palermo Protocol still puts a strong emphasis on women, as reflected in its full title and various articles.²⁸⁹ It assumes that women (and children) are the most likely victims of trafficking and should be the object of particular attention in anti-trafficking prevention and protection measures. This reflects and contributes to perpetuating the common gendered narrative of the ideal trafficking victim as female, weak, innocent, devoid of agency and in need of rescue.

Council of Europe Convention

Adopted in 2005, five years after the Palermo Protocol, the Council of Europe Convention marks a significant evolution in the understanding of gender in the anti-trafficking field. It includes the same definition of human trafficking as the Palermo Protocol, except that it uses the interchangeable term “trafficking in human beings” in place of “trafficking in persons.”²⁹⁰

²⁹¹ It was deemed essential to use an internationally agreed definition of human trafficking in

²⁸⁶ United Nations, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Adopted 2 December 1949, Entered into force 26 July 1951) 96 UNTS 271. This Convention has not been ratified by Austria.

²⁸⁷ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings* (Vienna, 2021), 13.

²⁸⁸ The term “person” is also taken up in the Trafficking in Persons (TIP) report, the annual global report issued by the United States Government, which ranks governments’ efforts to fight human trafficking.

²⁸⁹ Palermo Protocol, Preamble, Articles 2, 9.

²⁹⁰ Council of Europe Convention, Article 4.

²⁹¹ The author did not find reference in her literature research to the change in terminology, and no specific meaning seems to be attached to the different terminologies.

order to improve the fight against trafficking and assistance to victims.²⁹² Its explanatory report also states that the intention was to build on the Palermo Protocol and other international legal instruments ‘to strengthen the protection afforded by those instruments and to raise the standards which they lay down.’²⁹³

One of the main contributions of the Council of Europe Convention is its comprehensive scope of application. Not only does it recognize all forms of human trafficking, including national, transnational, related or not to organized crime,²⁹⁴ it also applies to ‘all persons who are victims of trafficking whether they are women, children or men.’²⁹⁵ Included not in the Convention itself but in its explanatory report, this wording is the first specific reference to men as victims in an anti-trafficking legally binding instrument. While the Council of Europe Convention still uses gender-neutral terms such as “person” and “victim”, it goes beyond by encompassing men, in addition to women and children, in the spectrum of trafficking victims entitled to assistance and protection. This is a significant evolution towards effectively recognizing the lived experiences and rights of all trafficked persons.

Another gender-related contribution of the Council of Europe Convention is its emphasis on pursuing gender equality (between women and men) and using gender mainstreaming in protection and prevention measures, as clearly stated in the Convention’s Purposes and several other articles.²⁹⁶ While it recognizes the role of gender-based discrimination in human trafficking and reiterates the principle of non-discrimination in its Article 3, it does not explicitly refer to discrimination on grounds of sexual orientation and gender identity, which is a structural factor of vulnerability to exploitation affecting LGBTQ+ people and transgender persons (as addressed in chapter 6). However, it is important to note that this does not mean that these grounds are excluded from the Convention’s understanding of discrimination as the list is understood as being non-exhaustive.²⁹⁷

²⁹² Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Warsaw, 2005), para. 72.

²⁹³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 6.

²⁹⁴ Council of Europe Convention, Article 2.

²⁹⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 51.

²⁹⁶ Council of Europe Convention, Articles 1(1), 5, 6, 17.

²⁹⁷ Julia Planitzer and Helmut Sax, eds., *A Commentary on the Council of Europe Convention on Action Against Trafficking in Human Beings*, Elgar Commentaries (Cheltenham; Northampton, 2020), 52.

EU Directive

Adopted in 2011, the EU Directive also uses the same definition of human trafficking as the Palermo Protocol but expanded it by adding two forms of exploitation, namely forced begging and criminal activities. Similar to the Council of Europe Convention, the EU Directive provides a broader understanding of gender but takes a step further by being the first anti-trafficking instrument to explicitly acknowledge male victims in its provisions. In its Recital 3, it specifically ‘recognizes the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes.’²⁹⁸ It also ‘adopts contextual understandings of the different forms of trafficking,’²⁹⁹ which indirectly recognizes the gendered forms of trafficking addressed in chapter 6. Besides its stresses the importance of integrating a gender perspective, albeit without specifications, to reinforce the prevention of human trafficking and the protection of victims.³⁰⁰

Therefore, the historical development of the gender dimension of anti-trafficking instruments shows a gradual evolution from a selective focus on women and sexual exploitation, to the recognition of all forms of exploitation and the recognition of male victims of trafficking.

7.2.2 Rights of victims of trafficking: From a criminal justice to a human rights focus

This section explores the main rights afforded to victims of human trafficking in the anti-trafficking instruments relevant to Austria.

At the time of its adoption, the Palermo Protocol was, on one hand, praised for developing the first internationally accepted definition of human trafficking, and on the other hand, criticized by human rights advocates for its limitations regarding the rights of trafficked persons and its lack of monitoring system.³⁰¹ While states parties are required to criminalize human trafficking through a series of binding provisions concerning law enforcement and border control,³⁰² the provisions concerning the assistance and protection of trafficked persons do not create obligations for states parties. They also fail to address the issue of identification of trafficked persons and root causes of trafficking in prevention measures.³⁰³

²⁹⁸ Directive 2011/36/EU, Recital 3.

²⁹⁹ Directive 2011/36/EU, Recital 7.

³⁰⁰ Directive 2011/36/EU, Article 1, Recital 25.

³⁰¹ Anne Gallagher, ‘Two Cheers for the Trafficking Protocol’, *Anti-Trafficking Review*, 4, 2015, 14.

³⁰² See Palermo Protocol, Articles 10, 11, 12.

³⁰³ Anne Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’, *Human Rights Quarterly*, 23/4 (2001), 990, 994–95. See Articles 6, 7, 8, 9.

This shows a strong emphasis of the Palermo Protocol on criminalization and border protection, which, combined with a weak enforcement mechanism, contributes to its limitations in developing an effective framework for the protection of the human rights of trafficked persons.

While the obligation to criminalize human trafficking is stipulated in the Council of Europe Convention and the EU Directive, the two legally binding instruments adopt a clear focus on the human rights of trafficked persons. The table below provides a list of the main rights they afford to victims of trafficking along with their corresponding articles, which aim at contributing to the protection and promotion of their human rights.

Table 1: Rights of victims of trafficking in Council of Europe Convention and EU Directive (author's table)

	Council of Europe Convention	Directive 2011/36/EU
Right to be identified: Obligation of Parties to the Convention and EU Member States to take measures for victims' identification	Art 10	Art 11(4)
Right to assistance including: appropriate and secure accommodation; psychological assistance; material assistance; access to emergency/necessary medical treatment; translation and interpretation services; counselling and information	Art 12(1), Art 12(3)	Art. 11(5)
Right to a residence permit (for the purpose of cooperation with authorities)	Art 14	Art 11(3)
Right to a residence permit on personal grounds	Art 14(1)(a)	<i>not included</i>
Right to a recovery and reflection period	Art 13	Art 11(1)
Right to protection of private life and identity	Art 11	Art 12(3)
Right to assistance and protection during investigations and legal proceedings	Art 15, Art 28	Art 12
Right to compensation and legal redress	Art 15	Art 17
Right to repatriation and return	Art 16	Recital 23 <i>(in relation to child victims)</i>
Obligation of Parties to the Convention/EU Member States to take measures for the non-punishment and non-application of penalties to victims	Art 26	Art 8

While the above list is not exhaustive, it is meant to highlight the main rights afforded to victims of trafficking, mostly overlapping between the two instruments with a notable exception regarding the right to residence, and their particular relevance to this study. Linking these to the three anti-trafficking pillars introduced in chapter 5, the majority of the provisions cover the domain of protection, while a few articles cover the pillar of prosecution. The provisions concerning prevention do not confer specific rights, but, in the case of the Council of Europe Convention, they reiterate the importance to promote a HRBA in measures aimed at preventing human trafficking.³⁰⁴ The listed rights are particularly pertinent as they underline key issues previously addressed in this thesis and will be explored in detail next.

Right to be identified

Placing obligations on states to deal with the issue of identification of victims in binding instruments is primordial to effectively protect trafficked persons. Being correctly and timely identified is the essential first step for trafficked persons to access the benefits of the rights established in the Council of Europe Convention and the EU Directive,³⁰⁵ including timely access to assistance and support services. Dedicated to the identification of victims, Article 10 of the Council of Europe Convention provides detailed obligations of state parties regarding the identification process, including the use of trained and qualified personnel of public authorities likely to be in contact with victims of trafficking, specifically given the risk of certain trafficked persons (who are most often not in possession of their identity documents) of ‘being treated primarily as illegal immigrants, prostitutes or illegal workers’³⁰⁶ and being denied the status of victims. This echoes the gender-related identification challenges faced by invisible groups that were addressed in chapter 6.

In comparison, the EU Directive does not include a specific article on identification, but its Article 11(4) requires Member States to ‘establish appropriate mechanisms aimed at the early identification of (...) victims,’³⁰⁷ while its Recital 25 also refers to the obligation of training for personnel potentially in contact with trafficked persons working in various fields ranging from law enforcement, border control, immigration to the judiciary and labor inspections.³⁰⁸

³⁰⁴ Council of Europe Convention, Article 5(3).

³⁰⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 127.

³⁰⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 128.

³⁰⁷ Directive 2011/36/EU, Article 11(4).

³⁰⁸ Directive 2011/36/EU, Recital 25.

Right to a residence permit

Another central issue is related to the right to a residence permit granted to victims of trafficking. As Table 1 illustrates, both the Council of Europe Convention and the EU Directive grant the right to a residence permit for the purpose of cooperation with law enforcement authorities. The EU Directive itself does not include provisions concerning the right to residence, but makes reference to Directive 2004/81/EC, that specifically address the issuance of residence permits to trafficked third-country nationals.³⁰⁹ While Article 11(3) of the EU Directive states that access to assistance and support should not be made conditional on a victim's cooperation in investigations and court proceedings, it nevertheless makes cooperation a condition for being granted a residence permit by linking this article to Directive 2004/81/EC, as the latter specifically makes cooperation a requirement for third-country nationals to obtain temporary residence, as reflected in its full title and purpose.³¹⁰

In addition, the Council of Europe Convention grants victims the right to a renewable residence permit 'if the competent authority considers that their stay is necessary owing to their personal situation.'³¹¹ The issuance of a residence permit based on personal grounds, rather than being solely conditioned on cooperation, is one of the major contributions of the Council of Europe Convention. It recognizes the personal situation of each victim and ensures that victims who do not or cannot cooperate with law enforcement authorities can stay in the country and have access to assistance for the duration of the permit.

Right to repatriation and return

The Council of Europe Convention affords the right to repatriation and return under conditions aimed at respecting the rights, safety and dignity of victims and preventing re-victimization,³¹² while the EU Directive makes reference to return and reintegration for child victims of trafficking. Both instruments also reiterate the states' obligation to guarantee the principle of non-refoulement and the right of foreign victims of trafficking to claim asylum as established by standards of international law.³¹³

³⁰⁹ European Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities OJ L261/19. (Directive 2004/81/EC)

³¹⁰ Directive 2004/81/EC, Article 1.

³¹¹ Council of Europe Convention, Article 14(1)(a).

³¹² Council of Europe Convention, Article 16.

³¹³ Council of Europe, Article 40(a).; Directive 2011/36/EU, Article 10.

Additional rights

Furthermore, equally important to ensure the protection of victims of trafficking and their access to justice, the additional rights and obligations cited in Table 1 include:

- (i) providing timely access to a full range of support and assistance services;
- (ii) providing a recovery and reflection period during which victims illegally present in the country cannot be expelled, the duration of which is at least 30 days in the Council of Europe Convention and left at the discretion of national authorities in the EU Directive;³¹⁴
- (iii) providing victims with access to compensation for the harm suffered, encompassing information about their legal rights, legal assistance and pecuniary compensation resulting from a claim against the trafficker(s) or access to victims' compensation programs;³¹⁵
- (iv) requiring states not to prosecute and apply penalties on victims of trafficking if they were forced into criminal activities by traffickers;³¹⁶
- (v) providing identified and presumed victims information about their rights, available services and options regarding residence, return, legal redress, so that they can properly assess their situation and make informed decisions.³¹⁷

The Council of Europe Convention and the EU Directive share an emphasis on the protection of the human rights of victims of trafficking, which represents a shift from the Palermo Protocol, primarily focused on crime prevention and border control, and explains the selective focus of this chapter on the rights afforded by the Council of Europe Convention and the EU Directive. While both instruments contain certain similar provisions and rights, the Council of Europe Convention provides a higher standard of protection, as reflected in the right to a residence permit based on a victim's personal situation, which is not included in the EU Directive. This is particularly important for the effective protection and fulfillment of the human rights of all trafficked persons. Another strength of the Council of Europe Convention is the establishment of a strict and independent monitoring mechanism made of the Group of Experts on Action against Trafficking in Human Beings (GRETA) whose function is to monitor compliance of its obligations by State Parties and the Committee of the Parties.³¹⁸

³¹⁴ Council of Europe Convention, Article 13.; European Council Directive 2004/81/EC 9, Article 6(1).

³¹⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, paras 191-198.

³¹⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, paras 272-274.

³¹⁷ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 160.

³¹⁸ Council of Europe Convention, Chapter VII.

7.2.3 Conclusion

This subchapter aimed at understanding the gender aspects of the three anti-trafficking instruments relevant to Austria as well as the rights they afford to victims of trafficking. The analysis shows not only a gradual evolution from a selective emphasis on women to a comprehensive approach, including male victims and all forms of exploitation, but also a shift from a criminal justice focus to the prioritization of the protection of the human rights of trafficked persons. The gender neutrality adopted by these instruments is important as it makes their provisions applicable to all human beings who are victims of trafficking. However, it may hide the gendered reality, common narratives and challenges faced by trafficked persons to access their rights as addressed in chapter 6. The recognition by the Council of Europe Convention and EU Directive of human trafficking as a gendered phenomenon, impacting women and men, and the necessity to integrate a gender perspective in all anti-trafficking measures contribute to acknowledging these challenges by connecting gender aspects of trafficking to the protection of the human rights of all trafficked persons.

7.3 Austria's national anti-trafficking legal, institutional and policy framework

Because of its central location in Europe, Austria has long been affected by human trafficking as a transit and destination country, which primarily manifests in sexual exploitation and labor exploitation in various sectors,³¹⁹ and more recently forced begging and forced criminal activities.³²⁰ In order to address the challenges posed by human trafficking in Austria, the Austrian Federal Government has developed legislation and policies aimed at fighting and preventing human trafficking. This subchapter will focus on the gender and rights dimensions of the main national anti-trafficking legislation and policies developed since early 2000s in connection with the standards established by the Palermo Protocol, the Council of Europe and the EU Directive. While the EU Directive was transposed into Austria's national law as required by EU law,³²¹ the implementation of the Council of Europe Convention by Austria has been assessed by GRETA through three rounds of monitoring in 2011, 2015 and 2020.³²²

³¹⁹ Federal Ministry Republic of Austria European and International Affairs, 'Combating Trafficking in Human Beings' <<https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/>> [accessed 26 April 2023].

³²⁰ Martin Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria* (Vienna, 2021), International Organization for Migration, 14.

³²¹ See EUR-Lex, 'Document 32011L0036' <<https://eur-lex.europa.eu/legal-content/en/NIM/?uri=CELEX:32011L0036>> [accessed 11 June 2023].

³²² Council of Europe, Action against Trafficking in Human Beings, 'Austria' <<https://www.coe.int/en/web/anti-human-trafficking/austria>> [accessed 19 June 2023].

The resulting evaluation reports provide valuable information on how Austria has implemented the provisions of the Convention.

7.3.1 Austria's anti-trafficking legislation and policies: Implementation of rights of victims

This section addresses national anti-trafficking legislation and derived policies, which concern the criminalization of human trafficking and related prosecution of traffickers as well as the rights afforded to victims of trafficking and their implementation.

Criminalization of human trafficking

A key legislation on criminalization was adopted in 2004 with the introduction of the offense of trafficking in human beings in Austria's Criminal Code. Section 104a of the Criminal Code³²³ establishes the charges subject to prosecution and the sentences in relation to human trafficking as well as defines trafficking in human beings according to the same three constituent elements of the act, means and purpose as in the Palermo Protocol's definition. While the law specifically refers to sexual exploitation, labor exploitation and the removal of organs, today's official interpretation also includes forced begging and forced criminal activities,³²⁴ which reflects the current forms of exploitations present in Austria. Besides, the criminal offense of "trans-border prostitution trade" was added in 2004 to Section 217 of the Criminal Code,³²⁵ which punishes the recruitment, deceit or coercion into prostitution by force or threat of a person in a country different from its country of nationality or residence. Anybody covered by this section would therefore be considered a trafficked person.³²⁶ In 2006, the criminal offense of exploiting a foreigner, that punishes any person who exploits a foreigner for profit by taking advantage of their particular dependency, was incorporated in Section 116 of the 2005 Aliens Police Act.³²⁷

Anti-trafficking pillar of prosecution: the issue of traffickers' conviction

While these provisions form a comprehensive legal framework, their application is very limited, as reflected in the extremely low and declining number of convictions under the three aforementioned sections. Official data for 2015-2020 show that convictions under Sections 104a and 217 fluctuated between 17 and 4, with only a handful of convictions under Section

³²³ Strafrechtsänderungsgesetz 2004, BGBl. I Nr. 15/2004 (Act Amending the Criminal Code 2004), para. 7.

³²⁴ Bundeskriminalamt (Criminal Intelligence Service Austria), *Lagebericht Schlepperei und Menschenhandel 2020* (Vienna, 2020), 23.

³²⁵ Act Amending the Criminal Code 2004, para. 26.

³²⁶ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 8.

³²⁷ Fremdenrechtspaket 2005, BGBl. I Nr. 100/2005, 76.

116.³²⁸ These figures represent a very small percentage of the total number of supported victims in Austria, estimated at 395 in 2021 based on the number of female victims (334) and male victims (61) supported by LEFÖ-IBF and MEN VIA respectively.³²⁹ In its third evaluation report on Austria, GRETA points to the low number of convictions, particularly for labor exploitation, and the lack of appropriate sanctions as obstacles to the effective access to justice for victims of trafficking.³³⁰ Its recommendations include the timely investigation of human trafficking cases, the effective prosecution of traffickers and the establishment of ‘effective, proportionate and dissuasive sanctions.’³³¹ Investigations of suspected and confirmed cases must be conducted even in the absence of a formal complaint, and methods of investigations must be enhanced by collecting evidence and avoiding an excessive dependence on victims’ testimonies.³³² This is particularly important as victims may not be able or willing to testify against the traffickers and participate in criminal proceedings, especially in light of the complex relationships between victim and trafficker addressed in the previous chapter and their risk of re-traumatization. This approach reduces the burden placed on victims to provide evidence of a crime of trafficking and contributes to increasing the possibility for an investigation to lead to the prosecution of traffickers. In this sense, GRETA recommends Austria emphasize the training of prosecutors and judges as well as their specialization in handling human trafficking cases.³³³ Therefore, the application of the criminalization obligation present ongoing challenges to Austrian authorities.

Rights of victims of trafficking

Furthermore, the rights afforded to victims of crime, including victims of trafficking, are included in Austria’s CCP, specifically in Sections 66, 66a, 67 and 70 concerning the rights of victims, the special protection of vulnerable victims, private participation and right to information.³³⁴ While the main rights contained in the Council of Europe Convention and the EU Directive are found in Austria’s various anti-trafficking legislative and policy measures, this section will focus on their implementation.

³²⁸ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 10.

³²⁹ LEFÖ-IBF, *Tätigkeitsbericht 2021* (Vienna, 2022), 8.; MEN VIA, *Leistungsbericht 2021* (Vienna; obtained through MEN VIA Representative), 23.

³³⁰ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 129.

³³¹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 131.

³³² GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 130.

³³³ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 131.

³³⁴ Strafprozeßordnung 1975 § 66, BGBl. Nr. 631/1975 idF BGBl. I Nr. 148/2020 (CCP Section 66). Strafprozeßordnung 1975 § 66a, BGBl. Nr. 631/1975 idF BGBl. I Nr. 105/2019 (CCP Section 66a). Strafprozeßordnung 1975 § 70, BGBl. Nr. 631/1975 idF BGBl. I Nr. 26/2016 (CCP Section 70). Strafprozeßordnung 1975 § 67, BGBl. Nr. 631/1975 idF BGBl. I Nr. 19/2004 (CCP Section 67).

Anti-trafficking pillar of prosecution: the issue of access to justice and compensation

As introduced in chapter 5, prosecution also entails access to justice and legal remedies for victims, which starts with the criminal conviction of traffickers and includes the victims' right to compensation. Compensation is essential as it serves as 'payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, [and] as a form of punishment and deterrence of traffickers.'³³⁵ However, as addressed earlier, the low number of traffickers' conviction in Austria undermines the effective access to justice and compensation for victims. In its evaluation report, GRETA has raised concerns about the issue of compensation, citing challenges with the collection of evidence to be used to seize the traffickers' assets and substantiate compensation claims in legal proceedings as well as the lack of standards and enforcement of compensation orders.³³⁶ Therefore, GRETA has recommended that Austria enhances its efforts to guarantee effective access to compensation for victims, by for instance making the State responsible for paying victims the amount awarded to them in criminal proceedings and later collecting the sum from traffickers.³³⁷

Concerning the obligation of non-punishment, GRETA has recognized the measures taken by Austria to reinforce its implementation with the issuance of a nationwide internal decree, but recommends that the forced involvement of victims of trafficking in criminal activities be adopted as a specific legal provision.³³⁸ This is particularly significant as trafficking for forced criminal activities is an increasing form of trafficking in Austria.

The recovery and reflection period, during which no deportation measures can be taken by the authorities, is set at thirty days, the minimum established by the Convention. As it is only regulated by an internal decree of the Ministry of the Interior, GRETA has urged Austrian authorities to enshrine the recovery and reflection period into law and to ensure it is systematically and unconditionally provided to all trafficked persons.³³⁹ Regarding the right to repatriation and return, the law provides for an individual risk assessment based on the person's needs in cases of voluntary and forced returns, which, as reiterated by GRETA in its recommendation, must take into account the 'rights, safety and dignity, including the right to

³³⁵ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 75.

³³⁶ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 95.

³³⁷ GRETA, *Evaluation Report Austria: Third Evaluation Round*, paras 97, 98.

³³⁸ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 139.

³³⁹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 250.

non-refoulement³⁴⁰ of victims. Besides, the right to protection of private life is guaranteed, legally by the Data Protection Act,³⁴¹ and in practice by the data confidentiality procedures in place at LEFÖ-IBF and MEN VIA,³⁴² aimed at protecting the privacy and safety of victims.

Unconditional support

Concerning the right to assistance, victims of trafficking are entitled to assistance and care, including safe accommodation, material and psychological assistance, access to free medical care, translation and interpretation services, legal and psychosocial assistance and counseling during court proceedings. These services are mainly provided by specialized victim protection organizations, namely LEFÖ-IBF and MEN VIA for adult trafficked persons.³⁴³ A significant characteristic is the unconditional access to free assistance and care services in Austria, in the sense that it is afforded to trafficked persons regardless of their residence status, their willingness or ability to cooperate with law enforcement authorities, and the place of trafficking.³⁴⁴ This means that all trafficked persons can benefit early from the care and support they need. This understanding and practical implementation of unconditional support is cited as good practice by other anti-trafficking actors.³⁴⁵

The issue of residence permit

Austria's legislation grants the right to a renewable one-year residence permit to third-country nationals who are victims of human trafficking under Section 57 of the Asylum Act,³⁴⁶ known as the 'special protection residence permit'.³⁴⁷ While it does not require the cooperation of trafficked persons with law enforcement authorities, its issuance and renewal are respectively contingent on pending criminal or civil proceedings and their continuation, in order to ensure the criminal prosecution of a trafficker or the enforcement of civil claims

³⁴⁰ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: Second Evaluation Round* (Strasbourg, 2015) (*Evaluation Report Austria: Second Evaluation Round*), para. 157.

³⁴¹ Federal Ministry Republic of Austria Finance, 'Data Protection', 2021 <<https://www.bmf.gv.at/en/data-protection.html#:~:text=The%20GDPR%20is%20a%20regulation,of%20the%20controllers%20and%20processors>> [accessed 20 June 2023].

³⁴² GRETA, *Evaluation Report Austria: Second Evaluation Round*, paras 125, 126.

³⁴³ Task Force zur Bekämpfung des Menschenhandel (Task Force Human Trafficking), *Rechte Der Opfer von Menschenhandel in Österreich* (Vienna, 2017), 4–6.

³⁴⁴ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 5.

³⁴⁵ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 41.

³⁴⁶ Asylgesetz § 57, BGBl. I Nr. 100/2005 idF BGBl. I Nr. 70/2015 (Asylum Act Section 57).

³⁴⁷ Johanna Schlintl and Liliana Sorrentino, *Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law* (Vienna (published by LEFÖ-IBF), 2021), 24.

made by victims.³⁴⁸ Included in the Council of Europe Convention, the right to a residence permit based on personal grounds is not granted in Austria. In its third evaluation report, GRETA views the conditioning of the residence permit on legal proceedings as ‘[undermining] the unconditional nature of assistance to victims’³⁴⁹ and reiterates the need to grant a residence permit ‘on account of the personal situation of the victim, [that] takes in a range of situations, such as the victim’s safety, state of health and family situation, and tallies with the human rights-based approach to combating human trafficking.’³⁵⁰ This highlights a significant limitation of Austria’s legislation in implementing its obligation to ensure the protection of all trafficked persons.

Besides, while the one-year residence permit gives access to the labor market, its limitations in ensuring effective access for victims have been raised by GRETA, including its short duration and the requirement to obtain a work permit, which are aggravated by the victims’ lack of knowledge of German, low skillsets and employers’ biases.³⁵¹ All these factors undermine their ability to find a job and the willingness of employers to hire them.³⁵² Also, even though victims claiming asylum are allowed to work as self-employed, NGOs working with trafficked women, formerly sexually exploited, reported that in practice prostitution was their only access to work.³⁵³ Measures to improve effective access, such as awareness-raising, employment services, and vocational and language training, including for asylum seekers, are recommended by GRETA.³⁵⁴

Therefore, Austria’s anti-trafficking legislation and derived policies form a comprehensive framework that incorporates the criminalization obligation originally established in the Palermo Protocol, as well as the main rights afforded to victims of trafficking in the Council of Europe Convention and the EU Directive. Drawing from GRETA’s evaluation reports issued in 2015 and 2020, an analysis of how these provisions have been implemented by Austrian authorities reveal both positive developments and challenges. While the unconditional access to assistance and care services is viewed as a good practice, the

³⁴⁸ GRETA, *Evaluation Report Austria: Second Evaluation Round*, para. 132.

³⁴⁹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 254.

³⁵⁰ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 254.

³⁵¹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 68.

³⁵² Schlintl and Sorrentino, *Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law*, 26.

³⁵³ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 72.

³⁵⁴ GRETA, *Evaluation Report Austria: Third Evaluation Round*, 73.

recommendations pertaining to the right to a recovery and reflection period, the right to compensation and the right to a residence permit highlight ongoing issues in guaranteeing their effective access for all victims and the need for additional measures aimed at enhancing the protection of their rights.

7.3.2 Austria's anti-trafficking actors

Before addressing Austria's anti-trafficking NAPs in the following section, it is important to highlight the various actors in Austria involved in the development and implementation of anti-trafficking policy measures and their coordination at the national level.

Established in 2004 with the aim of coordinating and strengthening anti-trafficking measures in Austria, the Task Force on Combating Human Trafficking reflects the multi-stakeholder approach adopted by the Austrian government. Headed by the Federal Ministry for European and International Affairs, the Task Force is comprised of representatives of governmental entities, including competent federal ministries (such as Ministry of Interior, Ministry of Justice, Ministry of Labour, Ministry of Social Affairs, Health, Care and Consumer Protection, Ministry of Finance, Federal Chancellery, Division for Women and Equality, Ministry of Education, Science and Research), governmental agencies (such as Federal Agency for Immigration and Asylum, Federal Office of Criminal Investigation, Federal Refugee Support Agency), the federal provinces, social partners (such as Chamber of Labour), and specialized NGOs, including LEFÖ-IBF and MEN VIA.^{355 356}

One of the main responsibilities of the Task Force is the development and monitoring of National Action Plans on Combating Human Trafficking (NAP), initiated in 2007 and currently in the implementation phase of the sixth NAP covering the time period 2021-2023. The NAPs are essential as they establish a comprehensive policy program that guides anti-trafficking efforts. Equally important are the annual and three-year implementation reports issued by the Task Force to assess the progress and results achieved within the NAP period.³⁵⁷ This ensures that policies continue to be adapted and strengthened based on past

³⁵⁵ This non-exhaustive list of Task Force members was extracted by the author from the 2021-2023 National Action Plan for Combating Human Trafficking issued by the Task Force. In the past, the division of ministries were different, but this list aligns with the titles currently in use.

³⁵⁶ Federal Ministry Republic of Austria European and International Affairs, 'Combating Trafficking in Human Beings'.

³⁵⁷ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023* (Vienna, 2021).

experience and achievements, new research and recommendations. In addition, three working groups, comprised of multidisciplinary experts, were created to address specific issues relevant to the Austrian context, namely child trafficking, prostitution and labor exploitation. Since 2009, the working group on prostitution is in part responsible for developing recommendations aimed at improving the working and living conditions of sex workers. Set up in 2012, the working group on labor exploitation contributes to raising awareness of the various forms of labor exploitation and developing recommendations for authorities.³⁵⁸

Therefore, the participation of all relevant state and non-state actors in the Task Force reflects a comprehensive approach to human trafficking by incorporating multiple perspectives in the development and implementation of anti-trafficking policies, particularly of those in direct contact with trafficked persons, such as the specialized victim protection organizations.

7.3.3 Austria's National Action Plans through a gender lens

This section analyzes the NAPs through a gender lens to provide a deeper understanding of how gender is addressed in Austria's anti-trafficking policy framework. The six consecutive NAPs have played a fundamental role in addressing the issue of human trafficking, by laying out priorities, goals and actions to achieve these objectives, and clearly identifying the responsible actors, timeframes and indicators for the implementation of each stated action.³⁵⁹ Comprised of 109 actions, the current NAP is centered on five main goals: (i) strengthening coordination and cooperation at the national and EU levels and international cooperation;³⁶⁰ (ii) prevention through awareness raising measures among the public and selected target groups;³⁶¹ (iii) protection of victims aimed at enhancing identification, support and compensation;³⁶² (iv) improving prosecution related measures;³⁶³ (v) expanding research, developing structures, and monitoring implementation of results.³⁶⁴ This structure reflects a consistent and comprehensive approach that encompass all domains of intervention, including the three Ps of prevention, protection and prosecution. As it is neither possible nor the intention to address all the various actions contained in the current NAP, the focus will be

³⁵⁸ Federal Ministry Republic of Austria European and International Affairs, 'Combating Trafficking in Human Beings'.

³⁵⁹ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 5.

³⁶⁰ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 8-16.

³⁶¹ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 17-26.

³⁶² Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 27-35.

³⁶³ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 36-37.

³⁶⁴ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 38-44.

put on selected actions, most relevant to this study and in relation to gender aspects addressed in previous chapters.

State recognized victim protection organizations

The gender dimension is first reflected in the ongoing participation to the Task Force of the two recognized victim protection organizations, LEFÖ-IBF³⁶⁵ and MEN VIA, which provide a range of assistance and care services, previously identified, to trafficked women and girls above the age of 15 and adult trafficked men respectively. While their contributions will be explored in the following chapter, it is important to highlight how their involvement within anti-trafficking policies has historically evolved. Established in 1998, LEFÖ-IBF is an early member of the Task Force, involved from the start in carrying out protection and prevention measures. Mandated under Section 25(3) of the Security Police Act³⁶⁶ as an official intervention center, it operates throughout Austria on behalf of the Federal Ministry of the Interior and the Federal Chancellery, Division for Women and Equality.³⁶⁷ As part of the NAP action on the continuation of the existing victim protection services, the implementation reports have consistently reported on funding allocated to LEFÖ-IBF by the two ministries and its annual increases according to needs-based capacity and inflation rate.³⁶⁸

While the first two NAP implementation reports emphasize the protection of female victims of trafficking, the discussion around the need for protection facilities for male victims took a few years to develop until the creation of MEN VIA in 2013. Originally set up as a pilot project, the organization emerged with the recognition of an increased number of male victims trafficked for labor exploitation, which was facilitated by the results of a study conducted by LEFÖ-IBF and Vienna Men's Health Center (of which MEN VIA is a division).³⁶⁹ A member of the Task Force since 2014, MEN VIA has since been involved in the implementation of protection and prevention measures. Funded by the Ministry of Social

³⁶⁵ The acronym IBF stands for Interventionsstelle für Betroffene von Frauenhandel (Intervention Center for Trafficked women)

³⁶⁶ Rechtsinformationssystem des Bundes, 'Bundesrecht Konsolidiert: Sicherheitspolizeigesetz § 25, Tagesaktuelle Fassung', 2023
<<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792&ArtikeId=&Paragraf=25&Anlage=&Uebergangsrecht=>> [accessed 21 June 2023].

³⁶⁷ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 7.

³⁶⁸ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020* (Vienna, 2021), 45–46.

³⁶⁹ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels von Jänner 2009 Bis Dezember 2011* (Vienna, 2012), 21–22. Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels von Jänner 2012 Bis Dezember 2014* (Vienna, 2015), 9.

Affairs, Health, Care and Consumer Protection, and the Ministry of Interior,³⁷⁰ it does not have the same official status of intervention center as LEFÖ-IBF. This means that the funding of MEN VIA is not guaranteed on the long-term, which limits its capacity to expand its support services. GRETA has called on the Austrian authorities ‘to give an official intervention status to MEN VIA and secure the long-term funding of its activities.’³⁷¹

The later creation of MEN VIA, fifteen years after LEFÖ-IBF, reflects the evolving understanding of gender in the anti-trafficking instruments previously analyzed, shifting from an earlier focus on women to the explicit recognition of male victims of trafficking in connection with the increased recognition of labor exploitation as a form of trafficking.

Transgender persons

Another evolution in relation to gender is the first reference to transgender persons made in the 2021-2023 NAP. Under the goal of enhancing the early identification of victims of trafficking, the NAP sets out the action of addressing ‘the current situation of trans persons as victims of trafficking in the context of sexual exploitation.’³⁷² It designates various actors, including LEFÖ-IBF and MEN VIA, as responsible for its implementation through the submission of a report to the Task Force. While trafficking of transgender persons from Latin America was noted as an emerging trend in Austria in GRETA 2015 evaluation report,³⁷³ this is the first explicit policy action in the NAP concerning transgender persons. This shows a positive, albeit slow, development towards an increased visibility of transgender persons as victims of trafficking, who remain mostly unidentified, due to structural obstacles and lack of research as addressed in chapter 6.

Protection of trafficked persons: issue of identification of victims

The latter point brings up the gender-related issue of identification and the measures put in place by the Austrian government to fulfill its obligation to ensure the early identification of victims of trafficking (see chapter 7.2.2). The main measures from the two most recent NAPs concern the evaluation and revisions of indicators for victim identification in labor exploitation, sexual exploitation and exploitation through begging.³⁷⁴ Developing sets of

³⁷⁰ MEN VIA, *Schutzwohnung, Basisversorgung und Opferbetreuung Leistungsbericht 2021* (Vienna; obtained through MEN VIA Representative), 3.

³⁷¹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 246.

³⁷² Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 28.

³⁷³ GRETA, *Evaluation Report Austria: Second Evaluation Round*, para. 13.

³⁷⁴ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 27.

indicators adapted to the various forms of trafficking and implementing their use among the relevant organizations contributes to improving identification of trafficked persons, especially those less likely to be perceived as victims.

Concerning indicators for sexual exploitation, no specific information is provided in the 2018-2020 NAP implementation report, but the 2021-2023 NAP refers to their revision by the competent authorities, including the Ministry of Interior, LEFÖ-IBF and MEN VIA. As these indicators were not made available to the author, a general reference can be made to those developed by UNODC, which include working in different brothels and locations, be under constant supervision, have tattoos as sign of ownership, working long hours, live or travel in a group, inability to provide an identity document.³⁷⁵ Besides, the implementation report refers to a list of indicators for labor exploitation developed in 2014 by the Task Force working group on labor exploitation, used by controlling authorities, including the Labour Inspectorate,³⁷⁶ in order to identify potential victims of trafficking.³⁷⁷ This list include poor working conditions, unsuitable accommodations, long working hours, low or lack of wages, deduction of food, travel and housing expenses from wages, missing or false identity documents, signs of abuse, limited knowledge of local language and area.³⁷⁸

This raises gender-related issues of identification mechanisms in sexual and labor exploitation. Primarily affecting women, sexual exploitation remains the most reported form of trafficking in Austria, which can be partly explained by the more frequent controls conducted by the competent police units, traditionally focused on the red-light districts.³⁷⁹ As the second form of trafficking, labor exploitation is reported to have doubled between 2015 and 2020,³⁸⁰ an increased recognition reflected in the measures taken by Austria during that time period, as commended by GRETA.³⁸¹ However, identification in gendered employment sectors most prone to labor exploitation, such as domestic work, construction and agriculture (addressed in chapter 6), remains a challenge, particularly in relation to the low rates of labor

³⁷⁵ United Nations Office on Drugs and Crime, 'Human Trafficking Indicators', (no date) <https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf>.

³⁷⁶ The Labor Inspectorate is the largest authority responsible for monitoring employment conditions in Austria.

³⁷⁷ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020*, 40.

³⁷⁸ Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung im Rahmen der österreichischen Task Force Menschenhandel, *Bericht für die Jahre 2018 - 2020*, 2021, 19.

³⁷⁹ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 16.

³⁸⁰ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 14.

³⁸¹ GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 218.

inspections in these areas, which is an issue taken up by GRETA. In its 2020 evaluation report, it recommends that emphasis should be placed on reinforcing the mandate and resources allocated to labor inspections, including in private homes and isolated locations prone to trafficking, in order to improve identification of victims and prevention of exploitation.³⁸² These recommendations underline Austria's ongoing challenges in identifying female and male victims exploited in the private sphere and in isolated locations.

Prosecution measures

As part of its goal of improving measures in the field of prosecution, the current NAP contains four actions, including the ongoing evaluation of the criminal legal regulations on human trafficking, with a particular focus on the implementation of the EU Directive.³⁸³ The 2018-2020 NAP implementation report highlights the concerns raised by the European Commission, similar to GRETA, on the low number of investigations and convictions and the need for improvement. It also refers to the good practice of information exchange between the Ministry of Justice and LEFÖ-IBF and MEN VIA that contributes to the ongoing review and increased awareness of practical cases of human trafficking, involving both female and male victims.³⁸⁴ The last two NAPs also mention the development of practice-oriented guidelines for the implementation of the non-punishment principle (addressed earlier), which is still ongoing due to the complexity and scope of the relevant legal framework.³⁸⁵ Another measure underlines the need to ensure the criminalization of the knowing use of services of victims of trafficking,³⁸⁶ with the goal of discouraging the demand that fuels exploitation.³⁸⁷ While this provision is included in the Council of Europe Convention,³⁸⁸ it has not been implemented yet in Austria. It is important to note that the criminalization of the knowing use of services is applicable to all forms of trafficking, even though much attention has been placed on discouraging demand in sexual exploitation and holding (primarily male) sex buyers accountable.³⁸⁹ Therefore, while this measure shows an implicit gender aspect, the

³⁸² GRETA, *Evaluation Report Austria: Third Evaluation Round*, para. 218.

³⁸³ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 36.

³⁸⁴ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020*, 54.

³⁸⁵ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020*, 55.

³⁸⁶ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 37.

³⁸⁷ The states' obligation to discourage demand is included in Article 9(5) of the Palermo Protocol, Article 6 of the Council of Europe Convention and Article 18(1) of the EU Directive.

³⁸⁸ Council of Europe Convention, Article 19.

³⁸⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Discouraging the Demand That Fosters Trafficking for the Purpose of Sexual Exploitation* (Vienna, 2021), 35.

other actions concern trafficked persons across genders and forms of exploitation.

Preventive measures

The current NAP first focuses its preventive actions on a comprehensive range of awareness-raising actions and training, which are essential to raise awareness of current issues, legislation and policies and enhance the role and responsibilities of anti-trafficking actors.

Awareness-raising measures have been important actions of the successive NAPs and the Task Force, aimed at raising public awareness of the issue of human trafficking and enhancing the visibility of all forms of trafficking among targeted groups.³⁹⁰ The activities and reports of the Task Force working groups also contribute to raising awareness among potential victims of trafficking. For instance, in 2017 the working group on prostitution issued a comprehensive information brochure in several languages for sex workers, specifically for women, men and transgender persons providing sexual services in Austria, including information on counseling, legal framework, rights, health care, taxes and police inspection.³⁹¹ The working group adopts a clear stance on prostitution as legitimate sexual labor distinguishing it from trafficking as forced prostitution, therefore recognizing the agency of sex workers (as addressed in chapter 6). Besides, the working group on labor exploitation collaborated with relevant labor and social agencies to develop measures to raise awareness among seasonal workers in the agricultural sector.³⁹² GRETA has recognized the expertise of the working group on labor exploitation by suggesting Austrian authorities build on its experience and recommendations to strengthen measures against labor exploitation.³⁹³

A key component of Austria's anti-trafficking measures since the first NAP,³⁹⁴ training is conducted by competent organizations, including LEFÖ-IBF and MEN VIA, and targets a wide range of authorities dealing with human trafficking, including the police at all hierarchical levels, the Federal Refugee Support Agency, the Federal Agency for Immigration and Asylum, military personnel, embassy staff, judiciary personnel, financial

³⁹⁰ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 17, 20.

³⁹¹ Task Force „Prostitution“ as a subgroup of the Task Force „Human Trafficking“, *Sex Work Info* (Vienna, 2017).

³⁹² Prisca Ebner, *Austria – Annual Report on Migration and Asylum 2021* (International Organization for Migration, Vienna, 2022), 44.

³⁹³ GRETA, *Evaluation Report Austria: Third Evaluation Round*, 219.

³⁹⁴ Task Force zur Bekämpfung des Menschenhandel, *Erster Österreichischer Bericht Zur Bekämpfung Des Menschenhandels*, 2008.

administration and labor inspectorate.³⁹⁵ Even though training among these institutions vary in frequency and depth, its large application shows the comprehensive approach adopted by Austria. For instance, the Ministry for European and International Affairs has developed a comprehensive policy aimed at preventing the exploitation of private domestic workers in diplomatic households, including training diplomatic and consular personnel, informing domestic workers about their rights in Austria, and strict entry and employment procedures, which have been recognized as effective preventive measures.³⁹⁶

Furthermore, the current NAP mentions measures for the support of relevant preventive programs and projects in partner countries involving the Austrian Development Agency (ADA).³⁹⁷³⁹⁸ Previous NAPs highlight the implementation of preventive actions taken as part of its goal to combat poverty and increase human security in partner countries. The 2018-2020 NAP refers to the support of projects aimed at improving the living conditions and socio-economic opportunities of families and particularly women in Albania, Nigeria and South Africa, together with vocational training initiatives.³⁹⁹ The 2015-2017 NAP mentions the funding of projects in Nigeria and South Africa aimed at integrating women in the garment industry to generate new sources of revenue.⁴⁰⁰ By targeting gender-related socio-economic issues, such as women's education and employment opportunities, these projects address structural factors of vulnerability to trafficking in countries where trafficked persons are originally recruited. LEFÖ-IBF reports that in 2021 two-thirds of the supported trafficked women were third-country nationals, Nigeria being the first country followed by Romania,⁴⁰¹ while half of the men supported by MEN VIA came from Romania and Bulgaria.⁴⁰²

³⁹⁵ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020*, 31–36.

³⁹⁶ Stiller, *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, 41.; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: Second Evaluation Round*, para. 84.

³⁹⁷ Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023*, 16.

³⁹⁸ As the operational unit of Austrian Development Cooperation, ADA funds projects and programs aimed at ensuring sustainable development and improving living conditions in key regions and countries. See Austrian Development Agency, 'ADA' <<https://www.entwicklung.at/en/ada>> [accessed 30 June 2023].

³⁹⁹ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2018-2020*, 15.

⁴⁰⁰ Task Force zur Bekämpfung des Menschenhandel, *Umsetzung Des Nationalen Aktionsplans Zur Bekämpfung Des Menschenhandels 2015-2017* (Vienna, 2018), 16.

⁴⁰¹ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 15.

⁴⁰² MEN VIA, *Leistungsbericht 2021*, 23.

Therefore, an analysis of selected actions of the NAPs through a gender lens provides a nuanced picture of the gender dimension of Austria's anti-trafficking policies. On one hand, gender aspects of human trafficking are reflected in the NAP's recognition of women, men and, more recently, transgender persons as victims of trafficking, as well as the active involvement of the two victim protection organizations, LEFÖ-IBF and MEN, in the Task Force and the implementation of prevention and protection measures. The wide spectrum of awareness-raising and training measures also contributes to increasing awareness of all forms of trafficking, encompassing female and male victims. The measures related to prosecution concern all trafficked persons as they aim at increasing the effective prosecution and conviction of traffickers and enhancing the practical application of the non-punishment principle. Preventive measures include the funding of projects focused on structural vulnerability factors within and in cooperation with countries of origin. On the other hand, actions aimed at strengthening the identification of victims reveal challenges in detecting forms of trafficking in gendered sectors of activity most prone to exploitation and less controlled by authorities. This has a detrimental impact on trafficked persons exploited in these areas, as they remain unidentified and unable to access their rights as victims.

7.3.4 Conclusion

Austria's anti-trafficking legislation, policy measures, actors and NAPs addressed in this subchapter form a comprehensive legal, institutional and policy framework. The overall picture shows positive developments, such as the unconditional access to support services and the strengthening of measures against labor exploitation. It also reveals challenges in effectively prosecuting and convicting traffickers, guaranteeing the effective access of rights to all victims and fulfilling Austria's obligation to ensure their identification, including women, men and transgender persons. While gender aspects are recognized in current anti-trafficking policies, the ongoing challenge in identifying trafficked persons in gendered and hidden forms of exploitation contributes to perpetuating their invisibility as victims of trafficking.

7.4 Conclusion: Austria's anti-trafficking efforts within the social justice framework

This chapter provided an overview of the international and regional anti-trafficking framework relevant to Austria through an analysis of the gender aspects of the Palermo Protocol, Council of Europe Convention and EU Directive and the rights afforded to victims

of trafficking in these instruments. It shows a shift from a selective emphasis on women to a more comprehensive approach, including male victims and all forms of exploitation. It also shows an evolution towards the prioritization of the protection of the human rights of trafficked persons. This background informed the subsequent analysis of Austria's anti-trafficking legislation, policies and NAPs, through a gender and rights lens. They form a comprehensive legal, institutional and policy framework, involving multidisciplinary actors, which reflects Austria's ongoing efforts in addressing the protection of trafficked persons and the prevention and prosecution of human trafficking.

How do these efforts fit within the conceptualization of social justice and gender justice in the context of human trafficking developed in chapter 5 as a critical framework of this thesis? As stated in chapter 5, pursuing the realization of social justice for trafficked persons, integrating gender justice, entails

- (i) working towards dismantling structural barriers to the fair and equal treatment of women, men and transgender persons vulnerable to exploitation or already exploited,
- (ii) the establishment and implementation of adequate conditions to ensure that all trafficked persons and potential victims, regardless of their gender, have access to the resources and benefits they need in order to live a self-determined and dignified life,
- (iii) integrating the experiences of all trafficked persons affected because of their gender in the pursuit of social justice.

Regarding the third point, the analysis of Austria's anti-trafficking policies shows mixed achievements in the effective recognition of all trafficked persons as victims of trafficking. The increased recognition of male victims of trafficking in connection with the increased recognition of labor exploitation, the explicit reference to transgender persons in the NAP, and the continuation of governmental support to the existing victim protection organizations are positive steps towards pursuing objectives of gender justice. However, these are undermined by the ongoing issue of identification of victims, particularly in gendered employment sectors prone to labor exploitation, which underlines an insufficient recognition of the various forms of labor exploitation affecting female and male victims.

The first point requires addressing the root causes of trafficking and structural factors, including gender-related and socio-economic factors, that facilitate exploitation, which fall under the prevention of human trafficking. The above analysis shows positive efforts

including the funding of projects aimed at improving living conditions of groups vulnerable to exploitation in countries of origin, including women's employment opportunities. This is particularly important in light of the gender-based discrimination and inequalities experienced by women and marginalized groups as addressed in chapter 6. While evaluating the effectiveness of these projects is outside the scope of this thesis, Austria's participation works towards the pursuit of goals of social justice. Other preventive measures, including awareness-raising measures and the training of a wide spectrum of state and non-state anti-trafficking actors, illustrate Austria's comprehensive approach and success in some areas, such as preventing the exploitation of domestic workers in diplomatic households.

The second point is concretely realized through the effective protection and fulfillment of the human rights of trafficked persons and potential victims in all anti-trafficking responses, which underpins a HRBA to human trafficking. The rights afforded to victims of human trafficking should therefore effectively promote and protect their human rights, with a particular attention on those most relevant to their lived experiences, including the right to redress, the right to work and freely choose their employment, the right to be free from gender-based violence and discrimination, and the right to an adequate standard of living. On this point, the analysis of the implementation of the rights afforded to victims in Austria's anti-trafficking legislation and policies shows a mixed picture of positive developments and ongoing challenges. On one hand, good practices are implemented as best illustrated by the unconditional support available to trafficked persons. On the other hand, it reveals an overall difficulty in ensuring effective access to these rights for all trafficked persons, as reflected in issues developed in the previous subchapter. They include limited access to justice, including traffickers' low prosecution and conviction rates and ineffective access to compensation for victims, and the non-systematic application of the recovery and reflection period. They also fail to grant adequate protection to victims by conditioning the issuance of a residence permit on pending legal proceedings and restricting effective access to the labor market.

Therefore, this chapter's analysis of Austria's anti-trafficking legal and policy framework reveals a nuanced picture of its efforts in addressing the protection of trafficked persons and the prevention and prosecution of human trafficking, with a variety of legislative and policy measures that either contribute or undermine the pursuit of goals of social justice for all trafficked persons.

Chapter 8. Practices of Austria's recognized victim protection organizations

8.1 Introduction

Because of their active and direct involvement with trafficked persons and their participation to the Task Force, the contributions of Austria's state recognized victim protection organizations are essential to address the issue of the realization of social justice for trafficked women, men and transgender persons. While working within the constraints of Austria's legal framework, LEFÖ-IBF and MEN VIA have developed practices that both inform and are informed by the anti-trafficking policies addressed earlier. In light of the challenges raised in the previous chapter, this chapter will focus on important practices of LEFÖ-IBF and MEN VIA and aims at understanding how they complement Austria's anti-trafficking policies and contribute to the protection of trafficked persons, their access to justice and the prevention of human trafficking. The chapter will mostly rely on reports of both organizations as well as the interviews conducted by the author with a representative of MEN VIA on 22 November 2022 and Isabella Chen, Deputy Director at LEFÖ-IBF,⁴⁰³ on 12 December 2022. The interviews aimed at supplementing the information collected from the review of literature and documents and gaining a deeper insight on the work and perspectives of both organizations, including their understanding of gender. The systematic analysis of the interviews' content using the MAXQDA software generated ten main categories (action, gender, services and needs, participation, prevention, access to justice, protection, rights, roots causes, and target groups)⁴⁰⁴, which reveal important themes in relation to the work of LEFÖ-IBF and MEN VIA and guide the below analysis.

8.2 A broad and inclusive gender perspective

As introduced in the previous chapter, LEFÖ-IBF and MEN VIA are organizationally structured along gender lines, respectively providing assistance and care services to trafficked women and girls above the age of 15 and adult trafficked men. They operate respectively under the umbrella of LEFÖ and Men's Health Center (referred to as MEN) both located in Vienna. As a feminist migrant organization, LEFÖ advocates for the rights, empowerment and enhancement of living and working conditions of migrant women⁴⁰⁵, while MEN

⁴⁰³ Isabella Chen agreed to be referred to by her full name and title as per her signed declaration of consent.

⁴⁰⁴ A detailed breakdown of the generated codes and sub-codes is provided in Annex 1.

⁴⁰⁵ LEFÖ, 'Mission Statement' <<https://lefoe.at/en/mission-statement/>> [accessed 26 June 2023].

provides counseling services and workshops for men of all ages and backgrounds.⁴⁰⁶ This subchapter explores the understanding of gender of LEFÖ-IBF and MEN VIA beyond their apparent binary division.

According to Isabella Chen, having two organizations working with trafficked women and men is a coherent model from a practical standpoint, in the sense that certain assistance services, such as accommodation in shelter, are not mixed. From a lobbying perspective, while both organizations share common policy issues, such as the residence permit, the gendered lens enables to raise more specific issues affecting women, including connecting residence status with the possibility of bringing their children from their country of origin.⁴⁰⁷ While the main objective of LEFÖ-IBF is ‘to strengthen the agency of trafficked women and girls through intervention and the provision of [its] services’⁴⁰⁸, it retains the focus of its parent organization on migrant women, with a particular concern on the short and long term protection of migrant women from violence and exploitation.

Besides, both organizations have a marked gender perspective. Gender has been embedded in the vision and work of LEFÖ-IBF as it operates within the larger feminist framework of LEFÖ and understands the root causes of human trafficking as gendered issues, particularly within the frame of violence against women rooted in inequalities. When asked how gender is incorporated in their training and awareness-raising activities, Chen states that it is not done in an explicit and performative way but rather forms an underlying frame, that constitutes ‘[their] normal’.⁴⁰⁹ MEN’s framework of activities also reflects a gendered approach, which covers a wide variety of male related physical and psychological issues as well as preventive work against violence with different male target groups. According to the MEN VIA interviewee, the employees of MEN and MEN VIA ‘understand [their] work for men and with men as a contribution to gender equality.’⁴¹⁰ These perspectives of LEFÖ-IBF and MEN VIA highlight the issue of gender-based violence (as addressed in chapter 6), which helps to place their vision and work within the context of deeper structural issues related to human trafficking, beyond the apparent binary distinction of service providers for female and male victims.

⁴⁰⁶ MEN, ‘Welcome to Men’s Health Center!’ <<https://men-center.at/englisch/>> [accessed 26 June 2023].

⁴⁰⁷ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴⁰⁸ LEFÖ, ‘IBF – Intervention Center for Trafficked Women*’ <<https://lefoe.at/en/ibf-intervention-center/>> [accessed 27 June 2023].

⁴⁰⁹ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴¹⁰ Interview with MEN VIA representative, 22 November 2022.

Furthermore, LEFÖ-IBF and MEN VIA adopt an inclusive notion of gender by encompassing transgender persons in the women and men they support. LEFÖ-IBF understands women as all persons who identify as women, including cisgender and transgender women.⁴¹¹ Both organizations have a clear mutual referral procedure for transgender persons which fully supports how they identify themselves. A transgender woman and a transgender man will be respectively directed to LEFÖ-IBF and MEN VIA regardless of their official identity documents, and able to access assistance and care services in line with their gender identity.⁴¹² Therefore, the ongoing practice of prioritizing a trafficked person's gender identity over the sex assigned at birth contributes to recognizing their agency and lived experience and ensuring they receive appropriate support as victim of trafficking.

Therefore, LEFÖ-IBF and MEN VIA have a broad gender perspective and inclusive understanding of gender, which is reflected by their close collaboration since the creation of MEN VIA in 2013, not only on the coordination of trafficking cases,⁴¹³ but also on issues common to all trafficked persons. Their organizational gendered structure does not mean that they are only concerned with issues of trafficked women and trafficked men. On the contrary, in addition to their role as service providers, their outreach and policy work, particularly that of LEFÖ-IBF, contributes to raising awareness of both common and specific issues in order to enhance the protection of the rights of all trafficked persons and inform anti-trafficking policies at the national and European levels.

8.3 Protection, Access to justice, Prevention

This subchapter highlights practices of LEFÖ-IBF and MEN VIA aimed at enhancing the protection of trafficked persons, their access to justice and prevention of trafficking, covering common and specific issues to trafficked women, men and transgender persons.

8.3.1 Protection: Short-term and long-term perspectives

As state recognized victim protection organizations, the essential role of LEFÖ-IBF and MEN VIA is to provide a range of support services (as detailed in the previous chapter), which, in the first place, fulfill the most pressing needs of trafficked persons under their care

⁴¹¹ LEFÖ-IBF, *Tätigkeitsbericht 2021* (Vienna, 2022), 2.

⁴¹² Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴¹³ MEN VIA, *Leistungsbericht 2021* (Vienna; obtained through MEN VIA Representative), 17.

and ensure their safety and short-term protection. Addressing the long-term protection of trafficked persons is also central to the work of LEFÖ-IBF and MEN VIA. Both perspectives will be explored in this subchapter.

Focus on individual needs

Drawing from the close collaboration between LEFÖ-IBF and MEN VIA, Chen observed that trafficked women and men mostly share common general needs in terms of assistance and care, and that at LEFÖ-IBF the focus is placed on the individual needs of each person.⁴¹⁴ This means that the support services, available anonymously and free of charge based on Austria's practice of unconditional support, are tailored to each woman under their care in order to best fulfill their specific needs. The MEN VIA interviewee also highlighted the importance of responding to the individual needs of the men they support given the diversity of their profiles in terms of age, health, ability to function and self-care. However, he also stressed the difficulty of meeting the special needs of certain men in case of severe trauma and additional challenges, such as drug addiction, which require long-term assistance and specialized services.⁴¹⁵ This shows a common practice centered on the individual which recognizes the diversity and equal validity of the lived experiences and realities of trafficked persons and contributes to a better protection adapted to their needs.

Short-term protection of trafficked men

The following practices of MEN VIA illustrate their efforts in enhancing the protection of trafficked men. First, MEN VIA assists trafficked men by providing them with psychological preparation before making a report to the police or speaking in front of a judge about their trafficking experience. The MEN VIA interviewee reported that the feeling of shame often prevented these men from expressing important needs and recounting their experience beyond objective facts. However, adequate and respectful preparation may help them overcome barriers, such as shame and the showing of emotions.⁴¹⁶ These obstacles can also be related to the perpetuated gender stereotypes of the strong, resourceful man and their detrimental impact on trafficked men, as addressed in chapter 6. Besides, MEN VIA provides gender-sensitive training by stressing the impact of exploitation on men, which can manifest in unhealthy coping mechanisms, such as excessive alcohol drinking, aggressive behaviors,

⁴¹⁴ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴¹⁵ Interview with MEN VIA Representative, 22 November 2022.

⁴¹⁶ Interview with MEN VIA Representative, 22 November 2022.

and not wanting to seek help.⁴¹⁷ As these behaviors do not fit the notion of the ideal victim, perceived as female, helpless and in need of rescue (also addressed in chapter 6), it is all the more important for those in contact with presumed victims to know and pay attention to signs that may help identify the less obvious victims of trafficking.

Issue of identification of female and male victims in labor exploitation

As addressed in previous chapters, early identification is an essential step in ensuring the protection of trafficked persons and their access to the rights afforded to them. However, it is particularly challenging to reach and identify invisible victims of hidden forms of exploitation. As part of their efforts to reach women affected by labor exploitation, LEFÖ-IBF recently initiated awareness-raising actions with a clear focus on women working in household activities, including domestic workers, au pairs and nannies.⁴¹⁸ Since 2021, they operate a nationwide online outreach program, which uses social media platforms to provide multilingual psychosocial and legal support from LEFÖ-IBF counselors. The goal is to directly reach women potentially affected by exploitation, particularly those in domestic work.⁴¹⁹ While this program is still being developed, Chen reported that ‘[they] have reached more potential or presumed victims than ever before due to this online outreach work’.⁴²⁰ This shows an innovative practice that effectively contributes to the early identification of hidden target groups and the direct access of trafficked women to the services provided by LEFÖ-IBF. The organization’s focus on labor exploitation in the private sphere is also illustrated by their collaboration to the European Union project, Hidden at Work, aimed at preventing labor exploitation and sexual harassment of women in private workplaces and targeting female migrant workers particularly vulnerable to exploitation (as discussed in chapter 6).⁴²¹ This project advocates for the adoption of the 2011 ILO Domestic Workers Convention (introduced earlier), which grants rights to domestic workers, including undocumented persons. Not yet ratified by Austria, the consideration for its possible ratification is included in the current NAP as part of the goal of strengthening the legal framework.⁴²² This would contribute to addressing the structural factors of exploitation in a gendered sector prone to it.

⁴¹⁷ Interview with MEN VIA Representative, 22 November 2022.

⁴¹⁸ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴¹⁹ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 22.

⁴²⁰ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴²¹ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 25–26.

⁴²² Task Force Human Trafficking, *National Action Plan for Combating Human Trafficking 2021-2023* (Vienna, 2021), 24.

MEN VIA also initiated online outreach work with the creation of short animated clips by two film artists in several languages to raise awareness and reach male victims of trafficking.⁴²³ However, the MEN VIA representative observed that their online presence is limited and would require at least one additional person to use the social media platforms more actively.⁴²⁴ This highlights the issue of available resources, in terms of limited staffing, which limits the scope of MEN VIA's activities and relates to the larger issue of their lack of official intervention center status and long-term funding, addressed in the previous chapter.

Issue of identification of transgender persons

Another particular challenge is the identification of transgender persons, which is reflected in the very low number of transgender women supported by LEFÖ-IBF, whose figures are not made public out of concern that these women could be easily identified. Chen further observed that they are a difficult target group to reach because of existing societal discrimination, exemplified by the ongoing transphobic rhetoric claiming that transgender women pretend to be women only for the purpose of accessing the safe spaces of (cisgender) women. This results in the transgender women supported by LEFÖ-IBF not using the provided shelter out of fear of being discriminated.⁴²⁵ Previously addressed in chapter 6, this form of gender-based discrimination leads to transgender women not accessing the assistance and care services afforded to them and contributes to their invisibility as victims of trafficking.

Focus on long-term protection of trafficked persons

In addition to short-term protection, an emphasis is placed by both LEFÖ-IBF and MEN VIA on strengthening the long-term protection of victims of trafficking, which covers issues common to all trafficked persons. A long-term perspective is crucial to prevent further risks of exploitation and ensure that trafficked persons have the ability to move on from their trafficking experience and lead a safe, stable and independent life.⁴²⁶ The following current projects involving LEFÖ-IBF exemplify practices and policy work aimed at enhancing the long-term protection of victims of trafficking and draw from issues raised in the previous chapter in relation to the rights of victims of trafficking and their implementation.

⁴²³ The animated clips are available for viewing on MEN VIA website. See MEN, 'MEN VIA' <<https://men-center.at/arbeitsbereiche/men-via/>> [accessed 26 June 2023].

⁴²⁴ Interview with MEN VIA Representative, 22 November 2022.

⁴²⁵ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴²⁶ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 22.

Initiated by LEFÖ-IBF in 2021, the project “Safe Return through Risk Assessment for Victims of Human Trafficking” represents a comprehensive and gender-sensitive approach to improve the safe return of trafficked third-country nationals to their country of origin.⁴²⁷ Built on LEFÖ-IBF expertise, it is centered on conducting high quality risk assessments in every situation of voluntary return to prevent re-victimization and human rights violations upon return. It also includes coordination mechanisms with other victim protection organizations in the country of origin to ensure the protection of returned victims and work towards their effective reintegration in society.⁴²⁸ Meant to complement the return counseling provided by the Federal Agency for Reception and Support Services (BBU),⁴²⁹ this project highlights a good practice that aims to reinforce the implementation of the right to safe return.

Coordinated by LEFÖ-IBF in collaboration with five European partner organizations, the project REST (REsidency SStatus: Strengthening the protection of trafficked persons) addresses the issue of the residence status of trafficked third-country nationals, which is an ongoing challenge in Austria (as shown in the previous chapter). REST aims to ‘strengthen the rights to residence and international protection for third-country nationals trafficked in Europe, by examining promising practices, gaps and challenges in their actual access to these rights.’⁴³⁰ Placing a particular emphasis on the long term protection of victims, it is based on the idea that ‘[their] access to long term or permanent residence is critical for their safety, stability, and future perspective.’⁴³¹ Informed by research assessments, this project provides recommendations on improving granting procedures for residence permits, and advocates for the residence permit for personal situation and access to long-term or permanent residence, including full and unrestricted access to the labor market.⁴³² This project exemplifies a strong policy work of European NGOs, coordinated by LEFÖ-IBF, which comprehensively addresses an ongoing significant challenge to the effective protection of trafficked persons.

⁴²⁷ LEFÖ-IBF, ‘SAFE RETURN – Sichere Rückkehr Durch Gefahrenanalyse Für Opfer Des Menschenhandels’ <<https://lefoe.at/safe-return-sichere-rueckkehr-durch-gefahrenanalyse-fuer-opfer-des-menschenhandels/>> [accessed 29 June 2023].

⁴²⁸ LEFÖ-IBF, *Tätigkeitsbericht 2021*, 24.

⁴²⁹ BBU ‘[provides] care, counselling and support to foreigners in need of assistance and protection in Austria within the framework of [its] legal mandate.’ BBU, Federal Agency for Reception and Support Services, ‘What We Do’, 2023 <<https://www.bbu.gv.at/en/what-we-do>> [accessed 29 June 2023].

⁴³⁰ Johanna Schlintl and Liliana Sorrentino, *Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law* (Vienna (published by LEFÖ-IBF), 2021), 10.

⁴³¹ LEFÖ-IBF, *REsidency SStatus: Strengthening the Protection of Trafficked Persons - Policy Paper* (Vienna, 2021), 3.

⁴³² LEFÖ-IBF, *REsidency SStatus: Strengthening the Protection of Trafficked Persons - Policy Paper*, 8.

Therefore, the practices highlighted in this subchapter reveal a large range of outreach and policy work done by LEFÖ-IBF and MEN VIA aimed at strengthening the short-term and long-term protection of victims of trafficking. They concretely address ongoing gender-related issues affecting trafficked women, men and transgender persons in Austria, including their identification as victims, gender stereotypes and discrimination, as well as common issues, including their effective access to the right to safe return and the right to residence.

8.3.2 Access to justice and compensation

As covered in the previous chapter, the right to access to justice and effective remedies for victims of trafficking, including the right to compensation, is not effectively implemented in Austria. The work of LEFÖ-IBF and MEN VIA in this area address these limitations, common to trafficked women and men, with the goal of improving effective access to justice for all victims of trafficking.

Firstly, the MEN VIA interviewee raised the issue of certain forms of exploitation, specifically sexual exploitation and forced begging, being more easily recognized by state prosecutors and judges than forms of labor exploitation. This is based on the prevailing assumption that sexual exploitation and forced begging do not involve work and are therefore more easily associated with trafficking.⁴³³ Therefore, awareness-raising of all forms of labor exploitation is all the more important among justice practitioners to ensure that cases of labor exploitation are effectively prosecuted and that victims have access to justice and compensation. As observed by the MEN VIA interviewee, it may take another decade for certain forms of exploitation, such as the systemic exploitation of delivery drivers, to be recognized by the justice system in Austria.⁴³⁴

However, it is important to highlight some positive developments in relation to the prosecution of cases of labor exploitation and training of justice practitioners. In 2021, as part of their psychological and legal support of victims during court proceedings, MEN VIA was involved in a group case of construction workers exploited in the province of Vorarlberg, which resulted in the trafficker's conviction and a total compensation of 155,000 euros awarded to the exploited men. MEN VIA states that this is the first conviction in the field of construction, which sets a significant legal precedent and contributes to expanding the

⁴³³ Interview with MEN VIA Representative, 22 November 2022.

⁴³⁴ Interview with MEN VIA Representative, 22 November 2022.

knowledge and awareness of trafficking in the construction industry.⁴³⁵ As this sector is predominantly male, this also indirectly contributes to raising awareness of male victims of trafficking. Besides, LEFÖ-IBF started a training plan this year with trainee judges, which Chen viewed as a positive development given the frequent difficulty to reach judges.⁴³⁶

Finally, the project, Justice at Last, led by La Strada International and eleven partner organizations, including LEFÖ-IBF, specifically addressed the issue of access to compensation for victims of trafficking, which remains challenging at the national level due to various practical, procedural and legal barriers. Even when a financial compensation is awarded, the compensation orders are rarely enforced, which means that trafficked persons do not receive compensation for the harm suffered.⁴³⁷ These limitations severely undermine their right to compensation. The project aimed at enhancing access to compensation by uncovering obstacles, sharing best practices, and increasing the knowledge and awareness of anti-trafficking actors.⁴³⁸ Chen observed that in Austria, as a result of lobbying on the project, the Ministry of Justice systematically asks about the compensation award when cases of human trafficking are discussed during an annual round table, which is an effective step towards increasing awareness and responsibility of judges, prosecutors and the police.⁴³⁹

These practices highlight the challenges in improving the effective access to compensation for victims of trafficking and the efforts of LEFÖ-IBF and MEN VIA, either directly or in coordination with other NGOs, to raise awareness of the issue and bring down the existing barriers faced by victims in claiming compensation for the damages suffered.

8.3.3 Prevention of trafficking: Addressing the root causes

As one of the three anti-trafficking pillars, preventing human trafficking (from happening in the first place) may be the most complex and daunting efforts of anti-trafficking actors. The insights gained by the author from the panel discussions at the International Expert Round Table, entitled “Mind the Gap! Tackling the Lack of Attention on Preventing Human Trafficking and Exploitation” (introduced in chapter 4) reveal a general lack of prioritization of preventive measures and even a lack of common understanding of what prevention really

⁴³⁵ MEN VIA, *Leistungsbericht 2021*, 2, 9.

⁴³⁶ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴³⁷ La Strada International, *Working Paper: Legal Assessment: Compensation Practices* (Amsterdam, 2018), 45.

⁴³⁸ La Strada International, *Working Paper: Legal Assessment: Compensation Practices*, 6.

⁴³⁹ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

means.⁴⁴⁰ As discussed earlier, addressing the root causes of human trafficking brings to light the structural factors that facilitate human trafficking, particularly structural inequalities and discrimination.

Addressing the root causes of trafficking and their impact on trafficked women is central to the work of LEFÖ-IBF, who understands human trafficking as a very complex and multi-faceted issue rooted in inequalities and discrimination. This complexity is emphasized in the training they provide for state and non-state anti-trafficking actors.⁴⁴¹ In light of the particular vulnerability of migrant workers to exploitation (as shown in chapter 6), LEFÖ-IBF aims to tackle the structural discrimination experienced daily by migrant women and overcome the structural obstacles they face in finding accommodation and employment. Two new programs contribute to supporting the long-term needs of migrant women under their care who remain in Austria, by providing access to small affordable apartments and offering a “buddy program” with German-speaking volunteers to facilitate their social inclusion.⁴⁴²

Furthermore, both LEFÖ-IBF and MEN VIA raised the issue of structural factors of exploitation in relation to Austria’s labor market structures, particularly the precarity of self-employment status. The MEN VIA representative refers to a case of men who were exploited in construction as self-employed, which was the only option available to them as asylum seekers. Their exploitation was facilitated by their precarious self-employed status, which meant that they had to pay for their own insurance and taxes, and their inability to access employed positions.⁴⁴³ Besides, the issue of precarious working conditions within the care industry is taken up by LEFÖ-IBF through their collaboration with the association IG24 on the current project, Care4Care: From precarious to safe working conditions.⁴⁴⁴ This project aims to improve the working conditions and safety of migrant live-in care workers who mostly commute from Romania and Slovakia to provide 24-hour care to Austrian clients. They face various systemic problems, including low wages and pensions, lack of social security and a precarious self-employment status (as business license holders) that in practice binds them to their clients and placement agencies. The issue of low wages can be related to

⁴⁴⁰ THB Regional Implementation Initiative, ‘Think Tank Event: International Expert Round Table – 30 September 2022’.

⁴⁴¹ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴⁴² LEFÖ-IBF, *Tätigkeitsbericht 2021*, 22-23.

⁴⁴³ Interview with MEN VIA Representative, 22 November 2022.

⁴⁴⁴ IG24, ‘Care4Care: From Precarious to Safe Working Conditions.’ <<https://ig24.at/en/care4care-from-precarious-to-safe-working-conditions/>> [accessed 2 July 2023].

the demand for inexpensive labor in the domestic and care work, which are among the least valued and least paid (as shown in chapter 5). These labor structures increase their vulnerability to exploitation, which the project aims to prevent by developing best practices and an employment model for live-in care workers.⁴⁴⁵ Therefore, this example highlights a collaborative practice of LEFÖ-IBF aimed at concretely addressing structural factors of exploitation and trafficking, within a gendered employment sector most prone to exploitation.

8.3.4 Conclusion

The practices of LEFÖ-IBF and MEN VIA highlighted in this subchapter work towards strengthening the short-term and long-term protection of trafficked persons, their access to justice and the prevention of human trafficking, including structural factors of exploitation. They place a primary focus on fulfilling the individual needs of each trafficked woman, man and transgender person and protecting and enhancing the rights of trafficked persons.

8.4 Participation

As a key operational principle of a HRBA, the issue of the participation of trafficked persons in anti-trafficking responses was raised by the author during the interviews, as a result of her observing an absence of survivors of human trafficking at the 2022 conference organized by the Austrian Task Force on Combating Human Trafficking. In this context, the non-legal term “survivor” refers to ‘a person who has been able to exit and overcome their situation of trafficking [and] does not connote a permanent status of victimhood, but that of survival.’⁴⁴⁶ Participation, in the form of a participatory process, is central to the work of LEFÖ-IBF with trafficked women. Their approach recognizes the diversity of needs and experiences and that women are experts of their own life. Chen observed that the organization has an ongoing practice of engaging the women they support, learning from them and using their expertise and the knowledge gained to develop more targeted responses, including programs and materials. For instance, LEFÖ-IBF is currently heading an international working group to further develop the innovative and successful concept of online outreach work (addressed earlier), which relies on the experience and knowledge of the concerned women.⁴⁴⁷ This highlights a practice of active and non-public participation of trafficked women in the

⁴⁴⁵ IG24, ‘Care4Care: From Precarious to Safe Working Conditions.’

⁴⁴⁶ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, Second edition (Warsaw, 2022), 345.

⁴⁴⁷ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

development and enhancement of programs and policy work. On the question of public participation, Chen cautions against the risk of representation that may further exploit the experiences of trafficked women and the importance of having strong safeguards to ensure that it is done under clear and safe conditions.⁴⁴⁸ The MEN VIA representative shared a similar concern on the sensitive issue of public participation of trafficked men.⁴⁴⁹

This raises the question of the conditions of survivors' engagement in anti-trafficking responses. Attended by the author, the 23rd Conference of the Alliance against Trafficking in Persons, organized by the OSCE in April 2023,⁴⁵⁰ provided valuable insights on the topic as, for the first time, survivors of human trafficking led a discussion on anti-trafficking leadership in the 21st century. As active practitioners in the anti-trafficking field, they emphasized the limitations of only telling their stories to bring about change. Creative Director of MenHealing⁴⁵¹ and Lived Experience Consultant, Jordan Masciangelo spoke of the ongoing invisibility of male survivors, the lack of gender inclusion and the importance of recognizing the diverse experiences of sexually exploited men so they can heal from their trauma. Chief Executive Officer of the Global Fund to End Modern Slavery (GFEMS),⁴⁵² Sophie Otiende stressed the importance of a meaningful inclusion of survivors and capacity building for the effective engagement of persons with lived experience of trafficking in the decision-making and implementation of policies and programs on issues affecting them.⁴⁵³

While different, the approach to participation adopted by LEFÖ-IBF and the survivor-centric approaches garnered from the OSCE conference show a commonality in empowering victims and survivors to actively contribute and engage in anti-trafficking responses, albeit in various ways (directly, indirectly, publicly or not), through their knowledge and lived experiences. This recognizes the agency of each trafficked person to choose their degree of engagement, but requires the establishment of effective systems of inclusion, including gender inclusion.

⁴⁴⁸ Interview with Isabella Chen, LEFÖ-IBF, 12 December 2022.

⁴⁴⁹ Interview with MEN VIA Representative, 22 November 2022.

⁴⁵⁰ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, '23rd Conference of the Alliance against Trafficking in Persons'.

⁴⁵¹ MenHealing, 'Core Values and Mission Statement', 2023 <<https://menhealing.org/about-menhealing/core-values/#>> [accessed 2 July 2023].

⁴⁵² Global Fund to End Modern Slavery, 'Building a Survivor Centric Anti-Trafficking Movement', 2023 <<https://gfems.org>> [accessed 2 July 2023].

⁴⁵³ GFEMS and the National Survivor Network issued an innovative tool kit to support organizations towards the meaningful engagement of survivors. See <https://gfems.org/wp-content/uploads/2023/01/Meaningful-Engagement-of-People-with-Lived-Experience.pdf>

8.5 Conclusion: Towards strengthening the human rights of trafficked persons

Informed by the insights gained from the interviews and respective reports from LEFÖ-IBF and MEN VIA, this chapter first contributed to understanding the broad gender perspective adopted by both organizations and their inclusive understanding of gender, encompassing transgender persons. It then highlighted various important practices, albeit non exhaustive, which reveal the extensive scope of their activities and a comprehensive range of outreach work, policy work and lobbying efforts in relation to key gender and rights related issues discussed in previous chapters. These issues include the identification of hard to reach victims in labor exploitation, gender-based discrimination faced by transgender persons and migrant women, men's psychological barriers, safe return to country of origin, access to residence permit, access to compensation, and structural factors facilitating exploitation. Besides, the active participation of trafficked women as well the collaboration with multinational anti-trafficking NGOs contribute to developing relevant policy work continuously informed by the expertise of trafficked persons, research and the sharing of knowledge and good practices among anti-trafficking actors. The associated lobbying efforts are equally important as they contribute to raising awareness of these central issues, both common and specific to trafficked women, men and transgender persons, and laying out concrete recommendations and solutions to address them.

Therefore, the various practices of LEFÖ-IBF and MEN VIA show a strong commitment to going beyond the implementation of Austria's anti-trafficking policies and working towards improving the protection of trafficked women, men and transgender persons, their effective access to justice and the prevention of trafficking by addressing structural factors of exploitation. They also demonstrate positive achievements through sustained awareness-raising, training, policy work, and the development of innovative programs and new services, as well as recurrent challenges, as best illustrated by the issue of residence permit for personal situation that has long been advocated by LEFÖ-IBF.

Placed within the conceptualization of social justice and gender justice in the context of human trafficking developed in chapter 5, these practices contribute to enhancing the protection and fulfillment of the human rights of trafficked persons and potential victims, placing their individual needs, experiences and challenges at the core of their work. In this sense, they contribute at pursuing the realization of social justice for trafficked women, men

and transgender persons and potential victims vulnerable to exploitation within the limitations of Austria’s legal and policy framework.

Chapter 9. Final considerations and conclusion

9.1 A practical conception of social justice for trafficked persons and application of a HRBA to human trafficking

Drawing from the theoretical and conceptual chapter and building on the insights gained throughout this thesis, this chapter offers considerations for elaborating a practical conception of social justice for trafficked persons and practically applying a HRBA to human trafficking, integrating a gender perspective, as a means to effectively realize social justice for trafficked women, men and transgender persons. The following two boxes provide a detailed account of these considerations. While Box 2 focuses on essential goals to be pursued for the realization of social justice and gender justice for trafficked persons, Box 3 develops central points for the practical application of key principles of a HRBA to human trafficking, based on the PANEL principles introduced in chapter 5, supplemented by an integrated gender perspective and comprehensively applied to the three pillars of prevention, protection and prosecution.

Box 2: A practical conception of social justice for trafficked women, men and transgender persons

A practical conception of social justice for trafficked women, men and transgender persons	
1. Aims to address root causes of trafficking	<i>Manifestations of root causes</i>
Target gender ideology that facilitates exploitation	
<ul style="list-style-type: none"> • ‘Patriarchal gender orders’⁴⁵⁴ • Hegemonic masculinity • Gender stereotypes 	<ul style="list-style-type: none"> <i>unequal power structures</i> <i>subordinated and marginalized groups</i> <i>feminine vs. masculine traits and social roles</i>
Address structural discrimination	
<ul style="list-style-type: none"> • Gender-based violence • Gendered division of labor • Vulnerability of female and male migrant workers 	<ul style="list-style-type: none"> <i>increased vulnerability of women and transgender persons</i> <i>employment sectors most prone to exploitation</i> <i>undocumented migrants</i>

⁴⁵⁴ Raewyn Connell, *Gender: In World Perspective*, Short Introductions, 4, 4th edition (Medford, 2020), 77.

Deconstruct gender-related narratives of human trafficking

- Historical focus on women in sexual exploitation *(in)visibility of certain groups*
- Ideal victim of human trafficking *female, weak, innocent, in need of rescue*
- Ideal trafficker *male, strong, violent, evil*
- Debate on prostitution as a (in)voluntary choice *(lack of) agency of sex workers*
- Relationships between victim and trafficker *complex psychological dynamics*

Address structural factors that facilitate exploitation

- Gender-related factors of vulnerability *gender-based discrimination and inequalities*
- Socio-economic structural factors *poverty, lack of employment and education opportunities*
- Labor market structures *precarious working conditions in sectors prone to exploitation*

2. Aims to strengthen the respect, protection and fulfillment of the human rights of all trafficked persons

Recognize the diversity and equal validity of all lived experiences of trafficking

- Promote gender inclusion of female, male and transgender victims
- Ensure effective fulfillment of their individual needs
- Ensure respect of their agency and individual choices

Strengthen and expand the rights of victims of trafficking

- Ensure effective access to afforded rights for all trafficked persons
- Reinforce identification and protection of invisible victims
- Prioritize the long-term protection of trafficked persons

Promote effective realization of a self-determined and independent life

- Guarantee unrestricted access to residence, housing, labor market, education
- Prioritize social inclusion and reintegration
- Ensure effective capability to design a life based on own goals and desires

Box 3: Applied principles of a HRBA to trafficking with integrated gender perspective

Applied principles of a HRBA to trafficking with integrated gender perspective

Participation of victims and survivors

- They are experts of their own lives: their experience and knowledge best inform the development, implementation and evaluation of programs and policies that concern them
- Their agency to participate (or not) under their own terms is respected
- Survivors can effectively engage in anti-trafficking responses as expert practitioners

Accountability of anti-trafficking actors

- State and non-state anti-trafficking actors are aware of current issues, legislation, policies
- They are aware of their role and responsibilities as duty-bearers and held accountable for their effective fulfillment
- GRETA's recommendations to Austrian authorities and the actions laid down in the NAP are effectively implemented and regularly monitored

Non-discrimination

- Anti-trafficking measures are to be applied without discrimination on any grounds, including gender
- Particular attention is paid to avoid perpetuating structural discrimination affecting certain groups, including women, female and male migrants and transgender persons
- Anti-trafficking measures recognize and redress manifestations of gender-based and other structural discrimination

Empowerment of trafficked persons and potential victims

- Their agency as rights-holders is strengthened
- Trafficked persons are provided with a complete knowledge of the rights afforded to them
- They are empowered to claim their rights and make their own informed decisions within the options available to them
- Workers in sectors prone to exploitation are informed about their rights through awareness-raising, particularly sex workers, domestic and care workers, in agriculture and construction

Legality

- Anti-trafficking measures cannot negatively affect the human rights of trafficked persons and other groups vulnerable to exploitation
- Other measures, particularly concerning migration and border control, cannot undermine the rights afforded to victims of trafficking

An integrated gender perspective

- that is comprehensively applied to the three Ps and the development, implementation and evaluation phases of anti-trafficking responses
- that is based on a notion of gender that recognizes gender identity and is inclusive of women, men and transgender persons
- that does not prioritize a gender over others
- that recognizes the gender aspects of human trafficking and their impact on trafficked

women, men and transgender persons. The gained knowledge informs policies and programs

- that is applied to identify and address:
 - gender-related issues of identification to reach invisible victims and enhance their protection
 - structural factors of vulnerability to enhance preventive efforts
 - issues common to trafficked persons and specific to women, men and transgender persons
- that recognizes all forms of trafficking, particularly the various forms of labor exploitation affecting female and male victims, and promotes their awareness through regular training of state and non-state anti-trafficking actors
- that is made possible through the allocation of adequate resources and funding to victim protection organizations to ensure the effective protection and access to rights for female and male victims

9.2 Final conclusion

This thesis aimed at gaining a better understanding of the gender dimension of human trafficking and the ways in which anti-trafficking responses address the realization of social justice for trafficked women, men and transgender persons. Guided by the research questions and underpinned by the comprehensive conceptual framework developed in chapter 5,⁴⁵⁵ the conducted study provides valuable insights on these two main objectives.

First, the study contributes to painting a comprehensive, albeit complex, picture of the role of gender in human trafficking. The exploration of key gender aspects of human trafficking revealed the complex reality of gendered forms of trafficking and gender-related structural factors of vulnerability as well as ongoing common narratives on human trafficking. Their impact on trafficked persons and potential victims is significant. The perpetuation of patriarchal gender ideology, gender stereotypes and gender-based discrimination contribute to increasing the vulnerability of women, migrant workers and transgender persons to exploitation. Besides, the historical focus placed on women and sexual exploitation, the associated binary narratives, and the conception of victimhood contribute to preventing men and transgender persons from being identified (and self-identifying) as victims as well as increasing the invisibility of female and male victims affected by hidden and isolated forms of exploitation. The complex nature of the relationships between victim and trafficker also

⁴⁵⁵ Chapter 5 shows the relevance and interconnection of this thesis' central concepts of gender, social justice, HRBA and three pillars of prevention, protection, and prosecution, as illustrated by Figure 1 on page 48.

reveals an implicit gender dimension and contributes to impeding the prosecution of traffickers. Recognizing human trafficking as a gendered phenomenon and understanding its multiple layers, and the direct and indirect ways they impact trafficked persons and potential victims, is essential to comprehensively address and incorporate these complex issues in anti-trafficking responses.

A valuable contribution of this study is that it frames the fight against human trafficking in terms of the realization of social justice and gender justice for trafficked persons. Why is it important? Human trafficking is first and foremost about human beings being exploited and deprived of their human rights. Pursuing goals of social justice and gender justice helps to orient the focus of anti-trafficking responses on the lived experiences of all trafficked persons, on the root causes of trafficking, including gender-related vulnerability factors and structural factors of exploitation, which is essential to effectively address its prevention, and on the effective respect, protection and fulfillment of the human rights of trafficked persons.

The conducted analysis of Austria's anti-trafficking legal and policy framework through a gender and rights lens, and the practices of Austria's state recognized victim protection organizations contribute to providing answers on the ways in which anti-trafficking responses address the realization of social justice for trafficked women, men and transgender persons. The results reflect the comprehensive but challenging efforts of Austria's anti-trafficking actors in addressing the protection of trafficked persons and the prevention and prosecution of human trafficking and reveal mixed achievements towards realizing social justice for all trafficked persons. On one hand, legislative and policy measures include good practices, such as unconditional support and extensive awareness-raising and training measures, which contrast with ongoing issues of prosecution and conviction of traffickers, identification of female and male victims in various forms of labor exploitation, the effective access to the rights afforded to victims for all trafficked persons, and the limitations of the residence permit. On the other hand, the various practices of LEFÖ-IBF and MEN VIA show an overall aim to go beyond existing policies and strengthen the protection of trafficked women, men and transgender persons, their effective access to justice and address structural factors of exploitation within the limitations of Austria's legal framework.

Furthermore, the knowledge and understanding gained throughout this thesis on the complex gender aspects of human trafficking and Austria's wide spectrum of anti-trafficking policies

and practices informed the elaboration by the author of a practical conception of social justice, incorporating gender justice, which identifies key target points aimed at addressing the root causes of trafficking and preventing structural exploitation, and strengthening the respect, protection, fulfillment of the human rights of all trafficked persons with the aim of providing them long-term protection and creating opportunities for their effective social and economic inclusion and capability to (re)build a self-determined and independent life. The pursuit of these goals cannot be realized without practically applying a HRBA to the three anti-trafficking pillars of prevention, protection and prosecution and integrating a gender perspective. Therefore, the knowledge gained also informed the elaboration of principles of a HRBA, based on the PANEL principles and applied to the context of Austria's anti-trafficking responses. These key principles include the inclusive and respectful participation of victims and survivors in the development and implementation of anti-trafficking policies and programs, their empowerment to know and claim their rights, the accountability of all state and non-state actors to fulfill their responsibilities as duty bearers, The integration of a comprehensive gender perspective to a HRBA is also fundamental to enhance the effective recognition and identification of victims of all genders and all forms of trafficking, particularly those who have remained invisible in the anti-trafficking debate and to incorporate relevant gender-related issues in the elaboration of anti-trafficking responses.

The considerations offered by the author are not meant to be exhaustive but rather aim at inciting further reflection on the relevance of addressing the fight against human trafficking and strengthening the respect, protection and promotion of the human rights of all trafficked persons through practical conceptions of social justice, placing gender at the center. Despite sustained efforts on the international, regional and national levels, as illustrated by Austria's commitment to expand and adapt its anti-trafficking efforts, the daunting reality is that it seems quite impossible to eradicate human trafficking given its ubiquitous presence around the world. However, strengthening the respect, protection and promotion of the human rights of trafficked persons is possible through adequate protection, prosecution and preventive measures adapted to each national and regional context and should be the focus of national governments with the support of a comprehensive network of state and non-state anti-trafficking actors. Austria's example highlights the significant role of anti-trafficking NGOs, particularly the victim protection organizations, in raising awareness of issues, both common and specific to trafficked women and men, and developing policy and practical recommendations aimed at enhancing their human rights. Long-term protection solutions,

such as unrestricted access to residence, housing and employment for all victims including third-country nationals, exist and should be implemented, so no trafficked person is left behind, like the main protagonist of the film *Joy*. Prosecution measures should focus on improving the investigations of all potential cases of trafficking and the prosecution and conviction of traffickers to ensure that victims effectively receive justice and compensation. Measures to effectively prevent the structural exploitation of those particularly vulnerable, including migrant women and men, should also be implemented. These would work towards the realization of social justice and gender justice for trafficked persons and potential victims. However, their implementation requires political will and the allocation of adequate resources to make these goals a reality.

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Annex 1

MAXQDA CODE SYSTEM FROM INTERVIEWS CONTENT ANALYSIS

GENDER

- embedded gender perspective
- LEFÖ (feminist migrant organization)
- violence against women
- transgender persons
- Men's Health Centre
- stereotypes

ROOT CAUSES

- structural inequalities
- vulnerabilities
- gender-based discrimination
 - violence against women
 - transphobia
- structural root causes of exploitation
 - working conditions
 - self-employment status

TARGET GROUPS

- labor exploitation
- women working in household activities
- sexual exploitation or labor exploitation in sex work?
- forced criminal acts
- forced begging
- mixed forms of exploitation
- forestry work

PROTECTION

- short-term protection
 - unconditional assistance
 - support and assistance
- long-term protection
 - secure residence permit
- safe return
 - risk assessment
- transwomen
 - access to protection
- identification
 - new online outreach
- indicators for identification
 - law enforcement
 - tailored to women
- referrals
 - internal police decree
 - practice

ACTION

- awareness-raising
- training
 - civil society actors
 - governmental entities
 - gender sensitive
- lobbying
 - common and specific issues
- collaboration
 - international and European NGOs
- formalization of practices
 - victim referral
- Research

SERVICES & NEEDS

- individual needs
 - special needs
 - diversity of experiences
- common general needs
- resources and funding
 - impact on victim assistance
 - shelter
- respectful treatment
 - overcoming shame
- short term needs
 - safety
- long term needs
 - stability
- transgender persons
 - mutual referral LEFÖ-IBF, MEN VIA
- limitations
 - governmental framework

RIGHTS

- anti-trafficking legal framework
- Council of Europe anti-trafficking Convention
 - strong human rights tool
- EU anti-trafficking Directive
- adverse impact on rights

PREVENTION

- understandings of prevention
 - prevention from further harm
 - preventing from happening in first place
- addressing structural root causes
- economic structures
 - access to labor market
- awareness raising actions
 - transphobic debate
 - women working in household activities
 - labor exploitation

ACCESS TO JUSTICE

- victim recognition
 - justice practitioners
 - training issue
- access to compensation
 - increased awareness
 - barriers
- Evaluation of compensation
 - identification of profits
 - obstacles

PARTICIPATION

- victim participatory process
 - experts of their own lives
- public
 - sensitive issue
 - risks of re-traumatization and representation
- safeguarding conditions
- survivors' inclusion

Declaration of Academic Integrity

Eidesstattliche Erklärung:

Ich erkläre hiermit, dass ich vorliegende Abschlussarbeit selbstständig verfasst, keine anderen als die angegebenen Quellen und Hilfsmittel genutzt und mich auch sonst keiner unerlaubten Hilfen bedient habe, dass vorliegende Abschlussarbeit weder im In- noch Ausland (einer* einem Beurteiler*in zur Beurteilung) in irgendeiner Form als Prüfungsarbeit vorgelegt wurde, und, dass dieses Exemplar mit der beurteilten Arbeit übereinstimmt.

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A handwritten signature in black ink, appearing to read 'Meyn'.

Abstract

English

Recognizing human trafficking as a violation of the human rights and dignity of trafficked persons, anti-trafficking instruments have shifted over time from a criminal justice focus to placing the human rights of trafficked persons at the center of anti-trafficking responses. This thesis explores the gender dimension of human trafficking and aims at providing a comprehensive understanding of the various and complex gender aspects of human trafficking by analysing its gendered reality, its gender-related narratives and their impact on trafficked persons and potential victims. This knowledge is essential to develop responses aimed at enhancing the protection of all trafficked persons, the prevention of trafficking and prosecution of traffickers. Subsequently, this study examines how anti-trafficking responses address the protection and fulfillment of the human rights of trafficked women, men and transgender persons through the analysis of Austria's anti-trafficking legal and policy framework and the practices of its state-recognized victim protection organizations. By applying conceptualizations of gender relations, social justice, gender justice and Human Rights-Based Approach to human trafficking, this thesis demonstrates the relevance of pursuing goals of social justice, incorporating gender justice, for all trafficked persons and potential victims, as they aim to strengthen the protection and fulfillment of their human rights and address gender-related and structural root causes of trafficking.

Key words: gender, human trafficking, human rights, social justice, gender justice, anti-trafficking, Austria, human rights-based approach

Deutsch

Angesichts dessen, dass der Menschenhandel eine Verletzung der Menschenrechte und der Würde der Betroffenen darstellt, haben sich die Maßnahmen zur Bekämpfung des Menschenhandels im Laufe der Zeit von strafrechtlichen Aspekten hin zur Betonung der Menschenrechte der von Menschenhandel betroffenen Personen verschoben. Diese Studie untersucht die geschlechtsspezifische Dimension des Menschenhandels und zielt darauf ab, ein umfassendes Verständnis der verschiedenen und komplexen geschlechtsspezifischen Aspekte des Menschenhandels zu erhalten, indem die geschlechtsspezifische Realität, die geschlechtsspezifischen Narrative und ihre Auswirkungen auf die von Menschenhandel

betroffenen Personen und potenziellen Opfer analysiert werden. Dieses Wissen ist für die Entwicklung von Maßnahmen zur Verbesserung des Schutzes der Opfer des Menschenhandels, zur Verhinderung des Menschenhandels und zur strafrechtlichen Verfolgung von Tätern unerlässlich. Anschließend wird in dieser Studie durch eine Analyse des österreichischen rechtlichen und politischen Rahmens zur Bekämpfung des Menschenhandels und der Praktiken der staatlich anerkannten Opferschutzorganisationen untersucht, wie die Maßnahmen zur Bekämpfung des Menschenhandels den Schutz und die Einhaltung der Menschenrechte der vom Menschenhandel betroffenen Frauen, Männer und Transgender-Personen gewährleisten. Durch die Anwendung von Konzepten der Geschlechterverhältnisse, der sozialen Gerechtigkeit, der Geschlechtergerechtigkeit und eines menschenrechtsbasierten Ansatzes auf das Thema Menschenhandel zeigt diese Studie die Relevanz sozialer Gerechtigkeit, einschließlich der Geschlechtergerechtigkeit, für alle Betroffenen und potenziellen Opfer von Menschenhandel auf, da dadurch der Schutz und die Achtung der Menschenrechte gestärkt und geschlechtsspezifische und strukturelle Ursachen des Menschenhandels adressiert werden.

Schlüsselwörter: Gender, Menschenhandel, Menschenrechte, soziale Gerechtigkeit, Geschlechtergerechtigkeit, Kampf gegen Menschenhandel, Österreich, menschenrechtsbasierter Ansatz