

## Surviving Sex Trafficking: The Vicious Circle of Discrimination

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### 1. *An Introduction to International Trafficking*

Growing economic inequalities within and among nations have dramatically increased global migration flows mixing asylum-seekers and economic migrants, creating a perfect profit-making opportunity for smugglers and traffickers. Most developed countries, including the EU, have introduced a series of non-entrée policies aimed at deterring irregular entry and/or stay, which have however resulted in the necessity of migrants to resort to smugglers and traffickers rather than in true deterrence. Instead of preventing migrants and asylum-seekers from crossing transnational borders, in reality strict immigration laws create new obstacles for legal entries, including visa restrictions and limitation of access to services fundamental for human development and dignity. While thus encouraging discrimination, immigration control also creates incentives for default: job specialization and demographic decline in developed nations have resulted in a labor gap in low-income and unregulated sectors mostly covered by undocumented migrants, who are in turn further pushed into the shadows of the informal economy.

Such a context has created an optimal scenario for the rising incidence of human trafficking and labor exploitation. Because trafficking – hereafter, THB – is a complex, multilayer crime involving multiple actors and stages, it is currently impossible to quantitatively measure its real incidence; however, the ILO estimates that there are at least 40 million victims per year globally<sup>1</sup>, with over 20,500 registered victims in the EU<sup>2</sup>; however, there are grounds to believe that this number is substantially higher, as many victims are not identified as such. Of all registered victims of THB, over 70% constitute women and girls<sup>3</sup>. The most common forms of THB include forced labor and sexual exploitation, where the latter affects women and girls disproportionately: the yearly average of 95% of the victims of THB for sexual exploitation in the EU are women and girls<sup>4</sup>, 30% of which originate from third countries<sup>5</sup>. Sub-Saharan African women represent the highest share of non-EU victims detected in the trafficking flows towards Western and Southern Europe, 16% of which originate from West Africa<sup>6</sup>.

Due to its increasing incidence, THB has now modernized so much that, in many ways, it resembles a corporate business<sup>7</sup>. Indeed, trafficking in general, and international trafficking

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in particular, requires a sophisticated network of separate individuals engaged in recruitment and transportation across continents, each of which is located in a different site and assigned a different task. Similar to any modern enterprise, the business of human trafficking is formed by a hierarchy with a certain level of division of labor. Thus, in the case of migrant victims who engage in debt bondage to finance their travel costs, the main exploiter is not the only individual benefitting from the profits; an entire chain of traffickers, smugglers and corrupt officials make their earnings in proportion to their role in the plot. These individuals include, but are not limited to, recruiters at origin, drivers and transporters, escorts, law enforcement officials, owners of connection or safe houses along the way, and broker owners<sup>8</sup>.

Although the obscure nature of THB renders it practically impossible to accurately determine the revenues it generates, the total annual profits are estimated to amount to over US\$150 billion, of which US\$99 billion would originate from sex trafficking alone<sup>9</sup>. In order to illustrate this number in comparative terms, modern slavery is today the second largest source of illegal income in the world after drugs trafficking, generating more than three times the profits of the world's most successful corporations like Apple and Google. This means that, on average, every victim of sex trafficking generates yearly profits of US\$21,800<sup>10</sup>.

## *2. The Feminization of Poverty and The Element of Trust as Factors for Supply*

In general terms, it could be argued that the increase in the number of trafficked individuals worldwide is linked to the increase in international migration, which in the last 30 years has augmented by over 100 million persons—from ca. 150 million in 1990 to ca. 272 million today<sup>11</sup>. In the context of massive irregular migration flows of low-skilled workers into developed economies, higher migration rates of females have been observed too<sup>12</sup>. The UN Department of Economic and Social Affairs estimates that while females comprise less than half (47.9%) of the global migrant stock, in Europe and North America they constitute the majority, amounting to 51.4% and 51.8% respectively<sup>13</sup>.

Female migration patterns go hand in hand with the so-called feminization of poverty, that is, a trend widening the income gap between men and women in society. Limited access to education and the subsequent lack of decent employment opportunities, lack of control over financial resources, as well as cultural norms that normalize gender violence are all factors that contribute to the exacerbation of women's vulnerabilities in their countries of origin. The absence of opportunities to gain valuable skills at home drives migrant women into low-wage occupations—such as domestic and sex work—at destination that often fall under unregulated or informal sectors offering little or no protection. In communities where disregard for women's rights is endemic, the threshold of exploitation—i.e., a community's tolerance to and perception of exploitative practices—plummets. This means that, for many victims and their families, the means justifies the ends; exploitation is perceived as a necessary rough passage<sup>14</sup>.

As noted above, West African nationals conform the highest share of non-EU victims of sex trafficking in the Union, with Nigeria as the main source of supply. Considered the leading country in cross-border human trafficking in Africa, Nigeria is one of the many Sub-Saharan African countries included under the category of 'low human development' of the UN Gender Inequality Index and Gender Development Index, which measure the level of

gender (in)equality on the basis of indicators such as GDP per capita, life expectancy, years of schooling, participation in the labor market, and share of seats in parliament. In addition, the UN Human Development Reports also include an analysis of the life-course gender gap by selecting 12 indicators referring to health, education, labor market, political representation, time use and social protection. Again, Sub-Saharan countries including Nigeria rank extremely low under the category of gender-biased, non-inclusive states.

Endemic gender inequality, however, is not the only factor leading to the rise of the trafficking industry in Nigeria. A series of structural adjustment mechanisms during the 1980s particularly affected Edo State in southern Nigeria, thus adding more pressure on the already impoverished population. Because the adjustment mechanisms focused on neo-liberal reform of regulated sectors, women—who traditionally do not participate in the formal economy—were more severely affected; in fact, it was during the 1980s that women originating from Edo State and Benin City began to migrate to Europe in search of work in factories and farms. At that time, the fear of HIV/AIDS in Europe, and particularly in Italy, rendered local prostitutes unattractive due to the generalized use of intravenous drugs, leaving a major supply gap in the pre-existing sex industry.

In the following years, the first migrant Edo women took up a fraction of the Italian prostitution market and eventually ended up as *madams*, luring poor girls and women in Nigeria into sexual slavery. Sex trafficking to Italy remained in the hands of Edo women for generations to come. During the 1980s, Nigerian prostitutes in Italy were independent workers, but immigration restrictions arising in the 1990s made prospective migrants increasingly dependent on large loans to finance their travels<sup>15</sup>. Former prostitutes then created a system of debt bondage by fronting the money for the journey to Europe of other young women from the same ethnic community<sup>16</sup>. Today, it is estimated that 94% of all the Nigerian women trafficked into Europe for the sex industry originate from Edo State<sup>17</sup>, with the remaining 6% coming from the Niger Delta, Cross River and Akwa Ibom states<sup>18</sup>, thus transforming southern Nigeria into an international trafficking hub.

The success of the Nigerian trafficking network lies in one element only: trust. Instead of abducting girls and women forcibly, the initial contact is conducted by a family member, a friend, or a member of the community of the victim<sup>19</sup>. Yet the element of trust could never work without a pact ensuring that the victim repays the loan financing travel costs. The mystic relevance of the pact lies on many African community's strong belief in traditional customs regardless of the widespread practice of Christianity and Islam<sup>20</sup>. It is a belief so rooted in their communities for generations that no national, regional or international legislation would ever be strong enough to eliminate them. Traffickers are certainly aware of this: instead of resorting to violence like many other criminal organizations do, psychological coercion has proven to be the most effective means of control<sup>21</sup>.

The oath ceremony thus consists of a ritual in which the *native doctor*—i.e., the shaman of an indigenous community—sets a curse called juju on the victim in the case she ever came to disobey her *madam* by, for instance, turning to the authorities or refusing to repay the debt. In indigenous communities, a breach of a 'contract' sealed through voodoo rituals constitutes an act of dishonesty and unloyalty towards one's family, predecessors, and community. Non-compliance with the conditions set by the *madam* and sealed by the *native doctor* will lead to

physical and/or psychological disorders, and even death, not only to the woman who disobeys, but also to her family.

The fear of juju is one of the main elements preventing exploited Nigerian women from speaking out. Deprived from legal documentation, far from home, and with the firm belief that escaping will bring tragedy to their families, they often prefer to ‘work’ for 2-3 years until they are able to repay their debt than to risk seeking help from authorities that they do not trust—and that, in most cases, are not able to understand the importance of traditional beliefs.

### 3. *International Protection and Human Trafficking*

Although the 1951 Geneva Convention and its 1967 Protocol do not specifically mention victims of human trafficking, the UNHCR guidelines<sup>22</sup> clearly state the possibility for victims to be included under the definition of ‘refugee’ so long as all the requirements enabling this definition are satisfied. In other words, a victim of trafficking can be a beneficiary of refugee status if he/she is outside their country of origin, and if they have a well-founded fear of persecution for one of the following reasons: race, religion, nationality, political opinion, or membership in a particular social group. In general, acts such as abduction, rape, sexual enslavement, enforced prostitution, and forced labor constitute serious violations of human rights which will generally amount to persecution, and so do potential ostracism, re-trafficking, and repercussions upon return.

Recent years have brought a significant change for the recognition of victims of trafficking as beneficiaries of international protection in the EU, namely the newly gained legal category under ‘vulnerable persons’ and ‘applicants in need of special procedural guarantees’ pursuant to the Recast Qualification, Reception, and Procedures Directives. This entails that, in the case of female migrant victims, although gender per se does not qualify as a cause for vulnerability, it shall be considered “as a cause of vulnerability where associated to other particular conditions”, including sexual violence, thus granting a right to benefit from certain special procedural guarantees<sup>23</sup>.

However, victims of THB are often granted protection *so long as* they are considered a useful resource for criminal investigations against traffickers. Directive 2004/81/EC on residence permits for third-country nationals makes protection conditional on cooperation, while the Anti-Trafficking Directive ensures that their protection shall not be made “conditional on the victim’s willingness to cooperate in the criminal investigation, *without prejudice to Directive 2004/81/EC or similar national rules*” (article 11(3), emphasis added). Under the Anti-Trafficking Directive, victims shall be granted protection “unconditionally at least during the reflection period” (recital 18). Hence, if after the nationally established reflection period, the individual possesses no legal residence in the country, the Member State “is *not* obliged to continue providing assistance and support” (*ib.*, emphasis added).

In Italy, art. 18 of D.Lgs. 286/98 establishes a double binary (*doppio binario*) which allows for authorities to provide a residence permit either because a victim wishes to start criminal proceedings against her traffickers **or** because the victim does not wish to or is not capable of starting criminal proceedings. In the case of the latter, the victim will be introduced into a social itinerary (*percorso sociale*) led by a private or public entity performing a long-term

protection program as stated below. The residence permit has an initial duration of six months but can be renewed if the beneficiary obtains an employment. In fact, the residence permit issued under art. 18 allows access to education and to the labor market.

#### *4. Early Identification at the Core*

EU Member States are legally obliged to adopt special mechanisms for the identification and consequent protection of migrants and/or asylum-seekers as soon as the competent authorities establish there are reasonable grounds to believe that a person may have been trafficked<sup>24</sup>. Since EU law establishes that trafficked persons are considered extremely vulnerable populations requiring special reception needs, the EU Strategy against human trafficking highlights the need to focus on early identification to ensure their adequate protection. In this context, every Member State has adopted a so-called National Referral Mechanism<sup>25</sup> which creates partnerships between government bodies, civil society organizations (international and local), and law enforcement agencies resulting in a large, multi-disciplinary network of entities trafficked individuals are then referred to in the different phases of their protection programs.

Italy is today one of the primary destinations for victims of trafficking, and has the largest share of Nigerian citizens in Europe after the UK; in fact, it is estimated that 80% of all trafficked individuals being exploited in Italian territory originate from Nigeria. In addition, it is believed that there are around 45,000 prostitutes working in Italian streets—trafficked prostitutes account for 60% of all victims of THB in Italy<sup>26</sup>.

Because Italian law requires the development of both temporary and long-term assistance programs (*see* art. 13 Law n. 228 and art. 18 of Legislative Decree 286/98), the Italian National Referral Mechanism<sup>27</sup> is thus designed after a series of stages known as Standard Operating Procedures (SOPs) which aim at developing comprehensive step-by-step assistance for trafficked persons:

1) *Identification*. The first SOP is to be realized, initially, through a preliminary identification where the competent authority is to analyze the case of a person through an individual interview and, if pertinent, the presumed victim shall be referred to another competent authority that will provide basic needs and relevant information in a language that the affected person understands. After a series of interviews and verification of evidence or claimed facts, qualified persons will proceed to the formal identification of the victim. Due to the complexity of the phenomenon, the NRM suggests that the benefit of the doubt be granted where there is no substantial evidence proving the victim's claims. Early identification is usually conducted through street outreach, through voluntary self-identification, or at hotspots, refugee camps or other facilities in case of non-EU individuals arriving in Italy by air, sea or land. Identification interviews include questions related to personal conditions (health, family, nationality), information about the journey (sponsorships, debts, companions, experiences at transit countries), and current situation in Italy (accommodation, language skills, documentation), and use indicators related to a person's behavior to determine potential patterns of exploitation<sup>28</sup>.

2) *First aid and initial protection*. This program is aimed at providing basic needs to identified victims, including housing, food, and medical assistance. By initiating an inclusion procedure

and an evaluation of needs through an updated risk analysis, the victim is to be granted information on alternatives and rights, including all available options to request temporary or long-term residence permits, judicial proceedings, compensation, or repatriation. After this stage, the victim is to choose, on the basis of an informed decision, whether (s)he wishes to return to their country of origin, apply for long-term protection (e.g. refugee status), or initiate criminal proceedings.

3) *Long-term assistance and social inclusion.* In case of choosing long-term protection, an individualized program according to the specific needs of the victim is to be developed and further updated. The services provided to the victim throughout the initial protection program shall be maintained, with the addition of educational and vocational training programs, as well as language courses and financial support.

4) *Safe return and social integration.* Repatriation is to be performed only under a set of principles, namely: voluntariness, protection of privacy, personalized solution, accuracy, and cooperation between service providers in countries of origin, transit and destination. The safety of the victim and of his/her family upon return must be ensured; in case it is not possible, the victim shall be granted the possibility to remain in the destination country or to be relocated in a safe third country.

5) *Criminal and civil proceedings.* The victim, if (s)he decides to initiate judicial proceedings and cooperate with law enforcement authorities, is to be granted support before, during and after the process. Compensation may be granted regardless of the outcome.

### 5. *The Challenge of Intersectional Discrimination at Destination*

When survivors of sex trafficking are officially identified as such in destination countries, it does not necessarily translate into the beginning of a new, better life. Rather, they often face multiple discriminating processes not only during their status recognition, but also after a form of protection has been granted.

Whether protection programs conclude in re-integration (voluntary repatriation), resettlement (humanitarian admission to a third country) or inclusion (integration in host community), these solutions are hardly ever sustainable. The most challenging solution is perhaps inclusion; in the EU, the integration model follows a gender-responsive approach providing a series of services facilitating survivors' economic empowerment and several options for the issuance of valid residence permits, yet recovery programs often focus on the delivery of short-term services. For instance, when it comes to labor market assimilation, protection programs rarely result in access to dignified employment opportunities—today, among employed female migrants, over 40% are overqualified and the majority are engaged in the unregulated sector of domestic work<sup>29</sup>. By thus entering a situation of lack of financial empowerment, there is a very real risk of re-trafficking as a means for individual economic survival.

Access to employment is in fact essential to ensure that an inclusion program is successful, not only because it facilitates economic stability but also because it potentially allows survivors to create social bonds that may be fundamental for their recovery. In most cases, survivors' skills may not be recognized in their host communities or, simply, they never had the chance to officially develop vocational skills in their countries of origin. Hence, inclusion

initiatives fostering labor participation *after* the protection program can have excellent results, for instance through the development of partnerships with non-profit and for-profit employers and through the creation of internship opportunities.

Yet inclusion initiatives may not be as fruitful as expected if the host community remains unaware of the reality of human trafficking. Stereotypes and prejudice are perhaps the most challenging aspects to overcome in any inclusion project. Society knows that human trafficking exists, but its incidence is largely unknown. Society knows that forced prostitution exists, but most either indirectly participate in it or directly shut their eyes to it. Fighting discrimination to ensure that survivors of sex trafficking can have another chance in life thus means educating society. This could be done through awareness-raising campaigns across all sectors and all age groups, from schools to private and public entities, from society at large to authorities in particular. After all, adopting human rights-based legislation without effectively tackling moral constructs is bound to lead to exclusion rather than inclusion.

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