

DISCOURAGING THE DEMAND

that fosters trafficking for the purpose of sexual exploitation

Introduction

Trafficking in human beings (THB) is - at its core - a financially motivated crime, and no greater economic incentive for the crime exists than the exchange of money for sex and sexual services with trafficking victims. Producing annual profits of nearly \$100 billion, the crime of trafficking for the purpose of sexual exploitation—and exploitation of prostitution in particular—is motivated by traffickers' knowledge that they will be able to earn money from men paying for sexual services with trafficking victims.

Numerous international instruments require countries to take action to discourage the demand that fosters trafficking for sexual exploitation as a core strategy to combat trafficking in human beings.¹ The most broadly adopted example—Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol)—requires all parties to the Protocol to take steps to discourage demand. However, in the twenty years since the signing of the Palermo Protocol, most States have placed relatively little attention on discouraging the demand that fosters trafficking for the purpose of sexual exploitation, leaving a gap in national anti-trafficking responses.

In response, the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings published the Occasional Paper #11 *Discouraging the demand that fosters trafficking for the purpose of sexual exploitation*. This Brief summarizes the findings of the Occasional Paper, which draws attention to the reasons why States should discourage demand; outlines the international legal obligations and political commitments relating to demand; discusses the criminal justice and prevention policy options that OSCE participating States have at their disposal to discourage demand; and makes recommendations on how countries can better incorporate demand-side interventions into their existing anti-trafficking strategies.

“ **While demand is a core driver in all forms of THB, nowhere is it more pronounced and direct than in the case of THB for the purpose of sexual exploitation, given the lack of separation between the exploited victim and the end “user”.**

Valiant Richey
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¹ In the context of this report, “demand” refers to the desire by buyers, including users, to purchase sex and sexual services, both individually and as a collective market force.

Why Demand

Important reasons exist for States to implement demand-side interventions, irrespective of their existing international obligations.

First, countering demand serves as a means of undermining the financial motivations behind THB for sexual exploitation. THB for sexual exploitation—and exploitation of prostitution in particular—is motivated by traffickers' desire to earn money from men paying for sex with trafficking victims. Traffickers put trafficking victims into the prostitution marketplace and sex buyers, knowingly or unknowingly, purchase sex with these victims. Thus, sex purchasers fund human trafficking: while money is paid **to** traffickers, it is paid **by** users of trafficking victims.²

Second, addressing demand also serves to counter the multi-faceted harms suffered by trafficking victims. At the most basic level, demand causes the harm inflicted by traffickers onto victims, because - as the financial motivator for the trafficker - it is what incites trafficking to occur in the first place. By being in direct and intimate contact with victims, the user is also a direct source of harm for trafficking victims. This manifests itself through the sex act, which by its very nature takes places with a person who did not voluntarily enter the transaction, making the act akin to rape. Thus, purchasing sex from a trafficking victim not only fosters exploitation, it is exploitation. Moreover, users often supplement the sex act with other acts of violence that are additionally and separately harmful (or fatal) to trafficking victims.

Third, it counters the racial and gender dynamics of the crime. The harms of trafficking for sexual exploitation are highly gendered, overwhelmingly created by men and disproportionately, though not exclusively, suffered by women and girls who account for 92% of identified victims of trafficking for sexual exploitation worldwide. It also impacts children at high rates, and manifests with strong racial and ethnic biases, disproportionately subjecting minority women and girls to sexual and physical violence.

By discouraging demand, these harms can be reduced and vulnerable persons protected - key objectives in any comprehensive anti-trafficking strategy.

² The term “user” refers to an individual who exchanges money, goods or services for sex or a sex act with a trafficking victim, with or without the user’s knowledge that the other individual is a victim of trafficking. Thus, the term “user” is used when specifically discussing instances involving a trafficking victim, whereas “buyer” is used to describe persons who pay for sex in general.

International Legal and Policy Framework

Discouraging the demand that fosters trafficking for the purpose of sexual exploitation is not an optional choice for OSCE participating States: all OSCE participating States are politically or legally obligated to discourage the demand that fosters trafficking for the purpose of sexual exploitation, either through their adoption of OSCE Decisions or by virtue of being a State party to the Palermo Protocol.³ Other international obligations, such as the Council of Europe Convention on Trafficking in Human Beings and the European Union Anti-Trafficking Directive, reinforce these obligations for many OSCE participating States.

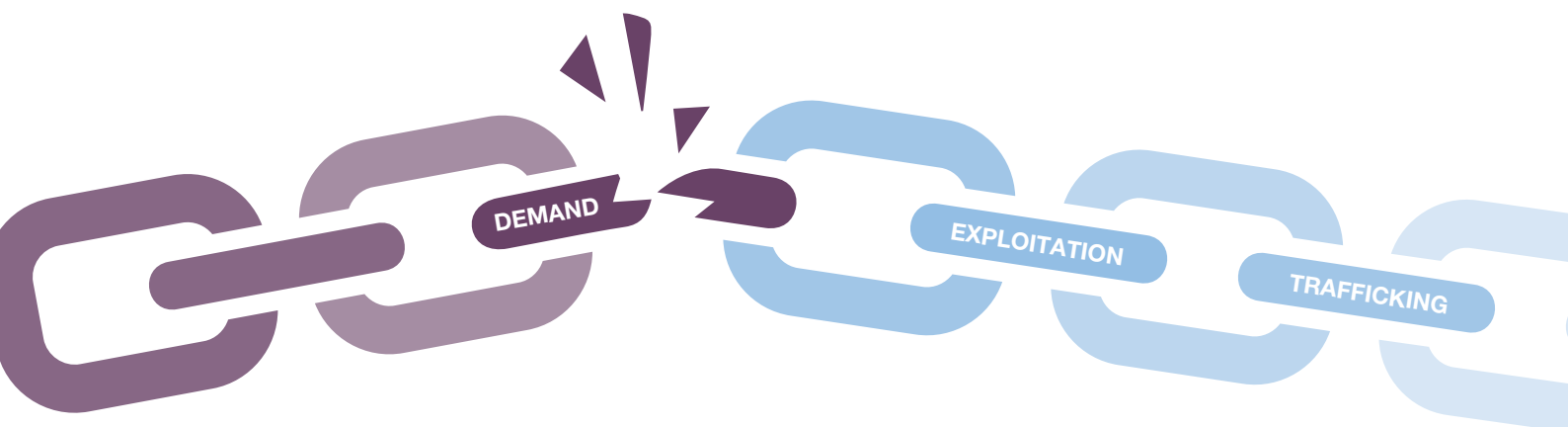
PALERMO PROTOCOL

The most comprehensive legal obligation to discourage demand stems from the Palermo Protocol: almost all OSCE participating States (55 of the 57) are required to take measures to discourage demand based solely on being parties to the Protocol. As the preeminent international agreement on combating THB, it establishes a benchmark for other international instruments and is legally binding, while giving States broad leeway on how to discourage demand.

Article 9(5) of the Palermo Protocol mandates that “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.

Under the international framework on demand laid out by the Palermo Protocol, States are required to take measures to “discourage the demand that fosters all forms of exploitation of persons... that leads to trafficking”. In referring to the demand that “fosters exploitation” that “leads to trafficking”, the Protocol establishes a concept of demand that moves beyond the “demand *for* trafficking” to broadly address demand that *encourages* exploitation that in turn leads to trafficking. Thus, the Protocol extends the scope of demand to buyers or users whose conduct – even if unintentionally or unknowingly – motivates third parties to exploit prostitution.

³ United Nations (2000), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.



Article 9 also establishes demand as a root cause of trafficking because it creates a causal chain: demand that fosters exploitation which in turn leads to trafficking. In this regard, Article 9(5) illustrates how the existence of demand ultimately encourages the trafficking of persons for sexual exploitation.

Finally, by expressly mentioning women and children, international legal instruments also call upon States to pay particular attention to gender and age dynamics, as well as to trafficking for the purpose of sexual exploitation, since women and girls are disproportionately represented among VoTs for sexual exploitation.

Criminal Justice Responses

One of the most common ways States have sought to meet their obligations to discourage demand is through legislative measures that criminalize the purchase of sex, whether from trafficking victims or otherwise: 31 of the 57 OSCE participating States have a least one criminal law directly pertaining to demand.

Criminalization is an obvious policy response for a number of reasons. It sets a clear societal norm that the targeted behaviour is discouraged. It creates risk, which further discourages sex buying, including from trafficking victims. It holds buyers and users accountable for their direct as well as indirect role in causing the harms associated with trafficking. And it incentivizes law enforcement to closely scrutinize an industry that is rife with exploitation and violence.

However, as international instruments do not set parameters on the criminalization of demand, a broad range of criminalization options have emerged, creating fragmentation and a lack of consistent norms across the OSCE region.

Approaches to criminalization can generally be classified as:

- Criminalizing the knowing use of services from trafficking victims;
- Criminalizing the use of services from trafficking victims (without knowledge);
- Criminalizing all sex buying; and
- Utilizing indirect approaches, such as sexual violence statutes

Other variations of criminalization include penalizing the purchase of sexual services from child victims of trafficking, criminalizing buying services from a victim of trafficking as a form of trafficking, and criminalizing online platforms which facilitate the purchase of sexual services from victims of trafficking.

While all of these responses are in line with the general concept of demand as presented by the Palermo Protocol, some have more potential for success than others to address the broad view of demand it articulates as well as the scale of the problem.

For example, although the criminalization of the knowing use of services from victims of trafficking is the most common criminal justice response adopted by OSCE participating States, it suffers from several policy and practical shortcomings.⁴ By criminalizing only the demand for trafficking—i.e., those who know that the person is a trafficking victim and still proceed with the transaction—it is too narrow to respond to the scale of demand and fails to reflect the realities of the transaction because buyers are incentivized to avoid knowledge of whether the person is a victim.

It is also too difficult to implement, as the standard of proof – showing the prior knowledge of the user – is onerous and challenging for prosecutors to meet. For example, only 9 of the 22 OSCE participating States utilizing a knowing use

⁴ 40% of participating States have criminalized the use of any service from a trafficking victim or the use of sexual services from trafficking victims

statute have reported any prosecutions of users, and during 2017-18, there were only 162 prosecutions of users within the EU 27, a rate of 1 for every 72 identified victims.⁵

To overcome these obstacles, some States have adopted strict liability statutes, which criminalize the use of services from trafficking victims regardless of the knowledge of the user. Removing the knowledge component makes the statute easier to implement and puts the onus on the buyer to exercise caution. By criminalizing the act itself, these statutes also prioritize addressing the harm to the victim, rather than the ability to prove the mental state of the user, making such statutes better suited to discourage the demand that fosters exploitation that leads to trafficking.

The third main approach has been to criminalize all sex buying. This type of statute is the broadest approach to discouraging demand and is used in systems where selling sex is either illegal or legal/decriminalized. Such statutes are typically much easier to use in practice because they do not require proof that the person in prostitution was a VoT or that the user knew the person in prostitution was a VoT. They also contribute broadly to norm-setting by discouraging a comprehensive range of conduct connected to exploitation.

Irrespective of the criminal justice response used by OSCE participating States, however, lack of implementation is a profound issue as noted above. Beyond poorly constructed statutes, key system factors contributing to low implementation include limited political will, human and financial resources, and expertise, particularly in online operations.

Prevention Measures

There are many methods of discouraging demand that lie outside the criminal justice system. Referred to as prevention measures, these efforts seek to curb demand prior to an actual transaction taking place, and can usually be used regardless of the criminal justice response to demand.

Within the OSCE region, a wide variety of prevention methods exists, including public awareness campaigns, educational programmes, codes of conduct and employment policies, research initiatives, and deterrence/disruption activities that passively or actively target buyer and user behaviour. Such efforts are either specifically geared toward users, and thus focused on the issue of trafficking for the purpose of sexual exploitation, or aimed at discouraging the demand for paid sex in general.

Of these methods, public awareness campaigns are the most widespread. Predominantly organized by civil society, awareness campaigns typically use television, radio or print media to educate the general public or specific groups about demand and its role in fostering trafficking for sexual exploitation. Able to reach large audiences and relatively inexpensive to create, they represent a useful tool. However, as a passive means of communication that is often time limited and rarely assessed for effectiveness, their impact is unclear.

Public campaigns, however, are not the only means of discouraging demand through awareness-raising. Educational and training measures in the form of classroom instruction and programmes are used in some participating States to target young people, current buyers and users, or employees who might encounter buyers and users. These represent a more active and targeted approach to demand reduction by directly communicating with the creators of demand or potential bystanders.

Deterrence and disruption initiatives also seek to aid in prevention by actively dissuading users. Through employer codes of conduct, restricting access to areas known to involve prostitution including online forums, targeted online advertisements for sex buyers, and the use of fictitious persons to disrupt transactions, these methods are the most active in reaching potential users and provide the greatest ability to meet the scale of demand while also being low cost.

While a relatively large number of States have conducted awareness-raising campaigns, more active methods of prevention, in particular deterrence and disruption initiatives, have only been implemented within a few participating States, leaving their potential impact on demand untapped. Moreover, little investment has been put into educating young men about the role of demand in fostering trafficking, representing another missed opportunity.

Overall, despite the requirement that all States address demand in some fashion, the OSR/CTHB found no criminal justice or prevention initiatives in 19 participating States.

Identified prevention initiatives were highly concentrated in participating States employing some form of criminalization; just two awareness campaigns were identified in States without any criminal justice measures. In sum, the OSR/CTHB's research observed a strong divergence in the use of prevention initiatives between States where demand is also criminalized, and those where it is not.

⁵ See European Commission, Data Collection on Trafficking in Human Beings in the EU (Brussels: European Commission, 20 October 2020), p. 243

Recommendations

Considering the importance of discouraging demand and the existing examples of prevention and criminal justice responses, the following actions are recommended for OSCE participating States to consider when evaluating how to improve their demand-related legislation, policies and programmes. In line with their international legal obligations, States are encouraged to take consider policies and strategies that address the demand that *fosters* exploitation that leads to trafficking, not merely the demand *for* trafficking. By taking an expansive view of demand, States can better undermine the financial incentive for traffickers to exploit other human beings, in particular women and children, combat gender based violence and racial inequality, and protect victims from multiple layers of harm.

1. Establish demand as a pillar of national action plans

Demand-side initiatives should be fully integrated into national efforts to combat trafficking in human beings, including a particular focus on prevention. To date, some OSCE participating States have introduced measures to incorporate demand into existing national strategies; however, further efforts should be undertaken to counter demand when crafting national action plans, including establishing demand as a key component of national prevention initiatives and strategies.

Steps for implementation:

- Include demand-side initiatives into strategic plans and ensure adequate funding and resources for efforts to address and discourage demand
- Educate anti-trafficking authorities on the importance of discouraging the demand that fosters trafficking for sexual exploitation as a means of prevention
- Consider the gender dynamics of demand and recognize the importance of countering the harms it incentivizes and creates for victims

2. Develop a holistic response

Efforts by States to discourage demand should be holistic, utilizing multiple measures and tools in a coordinated response so that all factors contributing to demand are addressed. States should implement complementary measures across multiple sectors, for example, pairing criminal justice measures with education initiatives for young men and with

targeted deterrence initiatives such as employer codes of conduct. Moreover, more attention should be given to “upstream” prevention programming and targeted preventative interventions, such as online deterrence and disruption, with criminal justice measures serving as the final tool for accountability.

Steps for implementation:

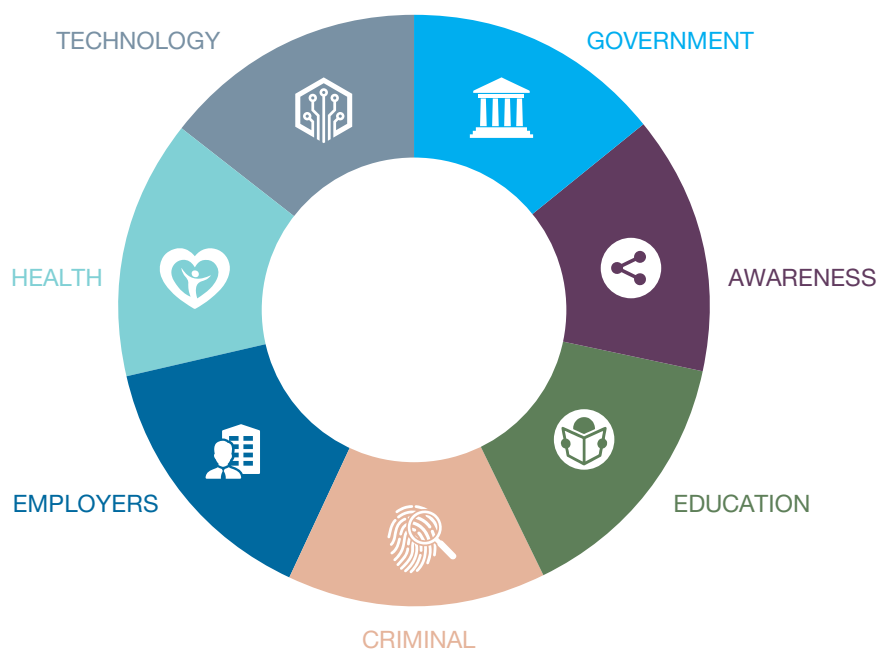
- Convene actors at the national level from across different sectors to allow for a co-ordinated approach to discourage demand
- Foster partnerships between national authorities, CSOs, victim and survivor organizations, and the private sector
- Raise awareness in the medical and public health communities on the harms of sex buying
- Develop and support educational courses for buyers or potential buyers that promote healthy masculinities and counter gender-based violence and sexual exploitation

3. Invest in prevention initiatives

Prevention initiatives provide the best means of proactively discouraging demand, yet this potential remains broadly untapped within the OSCE region. National authorities should invest in and take more direct ownership of efforts seeking to discourage demand, giving particular attention to the gender dynamics of the issue. By doing so, governments can better advance the dissemination of efforts to combat demand, as well as create a stronger social norm against the purchase of sex from trafficking victims

Steps for implementation:

- Place national ministries or agencies in charge of delivering awareness-raising campaigns and other public facing prevention efforts
- Develop and fund education programmes targeting youth, bystanders and potential users, in particular young men
- Invest in and prioritize online means of deterrence and disruption to better tackle venues where sexual services from trafficking victims are predominantly sold
- Support and encourage additional efforts to educate key industry sectors, such as hospitality and transportation, working with national associations and private businesses to adopt a standard approach where contact with users and victims of THB is likely
- Conduct additional research to measure and assess the effectiveness of measures designed to address demand



4. Adopt and implement more effective criminal justice measures

Most of the criminal justice responses to demand within the OSCE region have significant shortcomings, either because their approach is too narrow, they carry onerous—and consequently unworkable—proof standards, or they are insufficiently implemented. Attention to both the legal framework and its implementation are thus needed by most OSCE participating States in order to create an effective criminal deterrent- and norm - against demand.

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

- The broad concept of demand articulated by international instruments;
- The huge scale of demand;
- Criminal laws have an important norm-setting function in society;
- Buyers and users are directly and indirectly responsible for all of the harm suffered by VoTs;
- The realities of the market, including that: there are significant obstacles when implementing knowledge-based statutes; users do not typically aim to buy the services of trafficking victims, yet are unable and/or unmotivated to identify trafficking victims and consequently engage in harmful transactions with victims; and

- The deterrent effect of criminal statutes can be multi-faceted and geared towards certain segments of demand.

Steps for implementation:

- Set the tone for a robust response to demand by adopting legislative measures capable of responding to the scale of the problem and the harm caused by the specific use of trafficking victims, such as a strict liability statute
- Devote additional resources to training law enforcement, prosecutors and judges on how to properly apply legislation criminalizing demand and on the importance of targeting users
- Provide specific training on how to conduct operations in the diverse venues where trafficking for sexual exploitation takes place, such as online, as well as on special investigative techniques for identifying users
- Educate law enforcement on how to properly communicate with, identify and support victims of trafficking, as well as utilize their knowledge as a means of more proactively apprehending users



The full paper and recommendations are available in English at:

<https://www.osce.org/cthb/489388>