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Human Trafficking for Sexual Exploitation Purposes

A gender-based approach to the Nigerian - Italian route

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Abstract

This thesis explores the phenomenon of trafficking of women and girls for the purpose of sexual exploitation. Firstly, I analyse the definition and scope of the phenomenon, in accordance with the international legal framework, whilst analysing some of its main features and characteristics. In the second chapter, I examine the gender dimension of human trafficking, through a gendered approach to the push and pull model, focusing on the main factors that cause women and girls being particularly exposed to this crime. In the third chapter, I present the case study of Nigerian women and girls trafficked to Italy for the purpose of sexual exploitation, especially investigating some of the elements that render this crime so difficult to eradicate, namely the harmful instrumentalisation of traditional practices, as well as the presence of a particularly strong trafficking network, born from a powerful transnational cooperation between different organised crime groups. Finally, I conclude the thesis with some reflections regarding the inadequacy of the current immigration laws, both at the European and the Italian level, which are responsible for fomenting the use of illegal migration channels, therefore strongly enhancing the vulnerability of the people on the move.

Introduction

The trafficking of human beings is commonly considered as a criminal practice which forces individuals in conditions of exploitation for the purpose of financial benefit; it can be classified as a modern form of slavery. Human trafficking is an overly complex phenomenon, and it deeply varies depending on the scope of exploitation, as well as the context in which it develops. It consists of a serious crime, which results in a massive violation of a person's Human Rights. Human trafficking can be briefly described as “the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit¹”. The most common forms of trafficking include forced labour, sexual exploitation, forced marriage, coercion into taking part in criminal activities, forced begging, organ removal and the recruitment of child soldiers².

In the first chapter, some of the main features of human trafficking will be examined, including the scope of the matter and the main forms in which it manifests itself, considering also the variables of sex and age. Additionally, the issue will be analysed according to the current international legal framework, viz the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The data provided by the the United Nations Office on Drugs and Crime report a predominant presence of women and girls among the trafficked persons worldwide, respectively 50% and 20% of the total. Moreover, the most widespread purpose of trafficking proved to be sexual exploitation, namely 50%³. Hence, it is undeniable that this crime presents a fundamental gender-based dimension. For this reason, the second chapter will focus on the aetiology of the matter, through a gender-based approach. Indeed, patriarchal societies promote harmful gender norms and discrimination, which enhance women's and girls' exposure to trafficking. Therefore, the most common and widespread causes leading to female vulnerability to trafficking will be explained, primarily through the “push and pull factors” model. Among them, the leading factors are the impact of globalisation-induced feminisation of poverty and migration, the issue of unequal access to education, the lack of representation in leadership positions, and the gendered demand for labour abroad, often in the Global North. In the third chapter, the case study of Nigerian women and girls trafficked to Italy for the purpose of sexual exploitation will be analysed. Indeed, many of the above-mentioned factors can be observed in this case; also, some

¹ “Human Trafficking,” United Nations : Office on Drugs and Crime, accessed June 15, 2021, <https://www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html>.

² “Types of Human Trafficking,” INTERPOL, accessed June 15, 2021, <https://www.interpol.int/Crimes/Human-trafficking/Types-of-human-trafficking>.

³ “Trafficking in Persons,” United Nations : Office on Drugs and Crime, accessed June 14, 2021, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

unique features can be found, such as the instrumentalisation of religious beliefs as control and subjugation tools. Sex trafficking from Nigeria to Italy can be traced back to the late 80's, and ever since the Nigerian trafficking network has been able to strongly develop and create a systematic presence on the Italian territory, also thanks to the collaboration with local organised crime. Furthermore, in light of the current refugee crisis taking place along the Central Mediterranean route, Nigerian trafficking cults have been able to take advantage of the uncontrollable situation in Libya and thus enhance its activities. All this makes the matter particularly difficult to address and eradicate.

From a human rights perspective, the fight against human trafficking shows to be a priority, since it provokes multiple violations of a person's fundamental rights. Indeed, according to the very core principles of the human rights system, it is a practice completely inadmissible, as it foresees the “inherent immorality and impermissibility of one individual usurping the legal personality, labour, or humanity of another person⁴”. However, human trafficking is expressly addressed solely in two of the main human rights treaties: firstly, in the Convention on the Elimination of All Forms of Discrimination against Women, which states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women⁵”; secondly, in the Convention on the Rights of the Child, which affirms that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form⁶”.

Nevertheless, the crime of human trafficking implies direct violations of fundamental rights included in the major human rights conventions, in the first place the right to life and the right not to be subjected to torture and/or cruel, inhuman, degrading treatment or punishment - established, respectively, by the Art. 3 and Art. 5 of the Universal Declaration of Human Rights, and in Art. 6 and Art. 7 of the International Covenant on Civil and Political Rights. In addition, the inviolability of the right to freedom of torture is comprehensively addressed in the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. Likewise, several other fundamental rights are violated in practices of human trafficking, including but not only: the right to liberty and security; the right not to be submitted to slavery, servitude, forced labour or bonded labour; the right to be free from gendered violence; the right to freedom of association; the right to freedom of

⁴ “Fact Sheet No. 36, Human Rights and Human Trafficking” (UN Office of the High Commissioner for Human Rights (OHCHR), 4.

⁵ Art. 6, “Convention on the Elimination of All Forms of Discrimination against Women”, opened for signature December 18 1979, United Nations, Treaty Series, vol. 1249, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

⁶ Art. 35, “Convention on the Rights of the Child”, opened for signature November 20 1989, United Nations, Treaty Series, vol. 1577, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

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; the right of children to special protection⁷.

Human trafficking is an extremely complex phenomenon, which varies significantly across different regions of the world. In order to find efficient tools to combat it, it is fundamental to address every situation differently, taking into account all the elements that are present. Yet, a human-rights based approach can constitute an appropriate universal framework, especially with regards to re-establishing the victim's dignity and well-being.

⁷ “Human Rights and Human Trafficking”, OHCHR, 4

Chapter 1: A general introduction to the phenomenon of human trafficking

1.1 Introduction to human trafficking

Human trafficking is a serious crime which violates fundamental rights and dignity of its victims. It entails the exploitation of people in a position of vulnerability with the aim of financial profit; victims are recruited, employed and abused through different forms of coercive measures. Human trafficking is considered a modern-day form of slavery, and it is a source of multi-billion-dollars activity for organized crime all over the world⁸. It is a multi-faceted phenomenon, often transnational in nature: it comes in diverse forms, depending on the context in which it develops. Indeed, it can occur as forced labour, sexual exploitation (including prostitution), forced marriage, servitude, forced begging, recruitment of child soldiers, organ removal and forced criminality (for instance, thievery and drug dealing⁹¹⁰). Trafficking has massive repercussions on several aspects of society's proper functioning, "as it is a political, economic, crime, health, migration, and most importantly, a human rights issue¹¹".

Human trafficking is estimated to be one of the three largest sources of income of transnational crime, together with arms and drug trafficking. Indeed, it is a worldwide spread phenomenon, still persistent in every region of the world, whether as origin, transit or destination country. It is closely interwoven to multiple criminal activities such as, "extortion, racketeering, money laundering, bribery of public officials, drug use, and gambling¹²" and cybercrime. For this reason, trafficking can be considered as "a major source of both activity and income for organised criminal networks¹³".

It is hard to precisely gauge the magnitude of human trafficking, as it is an underground activity taking place in a clandestine industry. The obstacles of properly calculating the size of the issue are also due to several other variables, in the first instance to national authorities' recognition and response to these types of crime. As a matter of fact, with respect to the persecution phase, a major

⁸ "Human Trafficking," INTERPOL, accessed June 10, 2021, <https://www.interpol.int/Crimes/Human-trafficking>.

⁹ "Trafficking in Human Beings," Europol, accessed June 8, 2021,

<https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>.

¹⁰ "Human Trafficking FAQs," United Nations : Office on Drugs and Crime, accessed May 10, 2021,

<https://www.unodc.org/unodc/en/human-trafficking/faqs.html>.

¹¹ Amy O'Neill Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime," *DCI Exceptional Intelligence Analyst Program An Intelligence Monograph*, November 1999, 2.

¹² Richards, "International Trafficking", 1

¹³ Alexis Aronowitz, "Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets That Drive It and the Organisations That Promote It," *European Journal on Criminal Policy and Research* 9 (June 2011): pp. 163-195, <https://doi.org/https://doi.org/10.1023/A:1011253129328>, 169.

role is played on the quality of the investigations, and for this reason the level of corruption results to be a fundamental factor to take into consideration. Corruption is considered to be an essential condition for the trafficking industry to take place, and constitutes a severe offence undermining both law enforcement and the legal order of a country. Many scholars and non-governmental organisations point out that the very business of human trafficking is fundamentally rooted in corruption, as the latter not only allows this crime to exist, but it also enables it to flourish¹⁴. Likewise, apart from not protecting the victims' security and their fundamental rights, the lack of accountability foments the cycle of impunity and strengthens the structure of criminal groups.

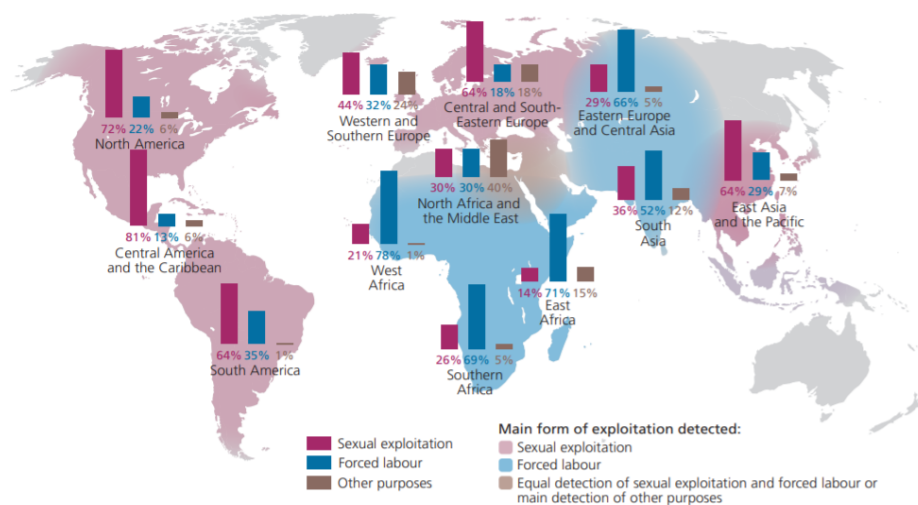
Under the UN General Assembly's mandate, as part of the 2010 United Nations Global Plan of Action to Combat Trafficking in Persons, the United Nations Office on Drugs and Crime (UNODC) has been gathering information on detected victims of human trafficking. This resulted in five Global Reports on Trafficking in Persons, which illustrate different trends and flows of human trafficking on global, regional and national scales, established mainly within the identified trafficking cases. The most recent Global Report was published in 2020: it gathers information coming from 148 countries and it covers the 2016-2019 period¹⁵. The 2020 Report indicates that the majority of the detected victims were trafficked for the purpose of sexual exploitation: precisely, 50% of the total victims, whereas 38% of them were trafficked for forced labour. This can lead the way to a gender-based perspective on human trafficking; indeed, as the Report provides a general profile of the victims, it confirms the historical trend that foresees women as the major component of the trafficked persons. In fact, 50% of the total victims were women (adults) and 20% girls (minors). Regarding the purposes for which they were employed, 77% of the women were trafficked for sexual exploitation, 14% for forced labour and 9% for other forms of exploitation; approximately the same trend can be observed for girls, with a 72% of them being trafficked for sexual exploitation and 21% for forced labour.

¹⁴ Richards, "International Trafficking", 1

¹⁵ "Trafficking in Persons - Data and Analysis," United Nations : Office on Drugs and Crime, accessed June 8, 2021, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

As can be observed in the following image, human trafficking is a phenomenon widely spread all

MAP. 5 Shares of detected trafficking victims, by form of exploitation, by subregion of detection, 2018 (or most recent)



Source: UNODC elaboration of national data.

over the world, and both gender/reason of exploitation are variable depending on the country or, in broader scale, region taken into consideration. The data regarding male victims, on the other hand, show that 17% of them were trafficked for sexual exploitation – higher trend in boys, 23%; 67% for forced labour, 15% for other forms of exploitation and 1% for organ removal. The gathered data only report the official victims, therefore solely the ones that authorities were able to detect; because of the illegal and clandestine nature of this industry, it is estimated that the incidence of human trafficking is way higher than the provided official information.

At the international level, UNODC has been responsible for handling this issue, and in 2000 it promoted the very first international legal instrument to properly define and address this crime. The purpose was to reach a common ground among the parties and therefore promote cooperation between them, which results to be indispensable, taking into account the transnational nature of this phenomenon. Indeed, as trafficking develops at a global scale, it is imperative to combat it through international cooperation; countries of origin, transit and destination need to proactively collaborate, as global challenges require global responses.

1.2 Human Trafficking in International Law

1.2.1 The United Nations Convention Against Transnational Crime (UNTOC)

In the mid-1990s, the international community started to become increasingly aware of the rampant danger that organised crime constituted for national security, and its potential to severely undermine state's sovereignty. Therefore, the debate regarding an international convention emerged. Certainly,

Italy and the United States played a fundamental role in the creation of the Convention, and had been pushing for it since the beginning. In fact, both countries were particularly affected by organized crime and had previously undertaken combined efforts in investigations and persecutions of this nature¹⁶ – hence, they both acknowledged the vital importance of transnational cooperation on these matters¹⁷. In November 2000, the UN General Assembly of the United Nations adopted the UN Convention Against Transnational Crime (UNTOC) with resolution 55/25, which entered into force in September 2003. This treaty is commonly known as the Palermo Convention; the appellation comes from the Italian city which was chosen for hosting the signing ceremony and special conference to celebrate the creation of this legal instrument; indeed, it constituted a symbolic location for the fight against organised crime. The Convention aims to “promote cooperation to prevent and combat transnational organized crime more effectively¹⁸”. To do so, UNTOC requires its Parties to criminalise certain actions in their national legal system, namely the participation in an organized criminal group, together with money laundering and corruption – to be intended as the bribery of public officials¹⁹. The Parties of the Convention commit not only in adopting proper mechanisms against transnational organised crime by incorporating it in their domestic penal codes but also in promoting the creation of adequate tools that allows “extradition, mutual legal assistance and law enforcement cooperation”; lastly, the Convention supports mutual assistance and capacity-building activities between the States.

The Convention is of particular relevance as it provides definitions and standards to certain key concepts. Despite the lacking univocal definition of “transnational organized crime” and “organized crime”, it does establish what an “organized criminal group” and a “serious crime” are, therefore enabling criminal groups and crimes of a particular nature to be included through the enforcement of the treaty. An organized criminal group is described in Art. 2(a) as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. In addition, a serious crime is defined in Art. 2(b) as a “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

¹⁶ The most renowned case is probably the so-called “Pizza Connection Trial” which took place in New York in 1987; the Italian judiciary cooperated on the prosecution of drug trafficking activities of the Italian Mafia in the US.

¹⁷ Ian Tennant, “The Promise of Palermo” (Global Initiative Against Transnational Organized Crime, April 2020), <https://globalinitiative.net/wp-content/uploads/2020/10/The-promise-of-Palermo-GI-TOC-Tennant.pdf>, 3.

¹⁸ Art. 1, “United Nations Convention Against Transnational Crime”, opened for signature December 12, 2000, United Nations, Treaty Series, A/RES/55/25, https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-11%20AM/Ch_XVIII_12p.pdf.

¹⁹ Respectively, Art. 5, Art. 6 and Art. 8, UNTOC

Three Additional Protocols were added to the Convention, in order to address specific issues that constitute important activities and manifestations - and therefore sources of income, of organized crime. These include the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms their Parts and Components and Ammunition, and the the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter referred as to Palermo Protocol²⁰).

1.2.2 The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children

The Palermo Protocol entered into force in December 2003, and as of June 2021, it has been ratified by 178 countries²¹. This document is crucial in the fight against the massive human rights violations that trafficking of human beings entails. Firstly, it consists of the very first international legally binding document that provides an exhaustive definition of what human trafficking is, and it requires the signatories to persecute it as a crime²². Secondly, the Protocol provides a comprehensive framework aimed to harmonize national criminal approaches with regards to human trafficking, having the scope of incentivizing efficient international cooperation in both investigations and persecutions. Moreover, it sets the goal to protect and support the victims in a rights-based approach, therefore in line and by complementing the already present international human rights law in terms of victim protection.

Art. 3 of the Protocol provides the following definition of human trafficking:

- (a) ‘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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a)

²⁰ In truth, the Convention and the three Additional Protocols were all drafted in Palermo; nevertheless, it has become customary to refer to the Trafficking Protocol as the Palermo one

²¹ “United Nations Convention Against Transnational Organized Crime” United Nations Office on Drugs and Crime, accessed May 2021, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

²² “Countering Trafficking in Persons in Conflict Situations” (United Nations Office on Drugs and Crime, 2018), https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf, 5.

have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a)

(d) ‘child’ shall mean any person under eighteen years of age.

The Palermo Protocol defines the act of human trafficking through three interconnected but still autonomous concepts: firstly, the “act” - namely, the recruitment, transportation, transfer, harbouring or receipt of persons; the “means”, such as the threat or use of force or other forms of coercion, and lastly a “purpose” of exploitation. At least one element of each of the three concepts needs to be present in order for the crime to take place. When the victim is a child, namely a person under eighteen years old, the “means” element is not a necessary component for defying trafficking; indeed, any of the acts listed in Art. 3(a) perpetrated towards a minor with the intention of exploitation has to be considered as a trafficking offence. The Protocol has to be considered as an essential law enforcement instrument, whose goal is to incentivize governmental cross-border cooperation, based on the fact that all Parties foresee proper legal tools to criminalise trafficking. Indeed, the treaty recognizes trafficking as a “transnational” phenomenon which “involves an organized criminal group²³”, and foresees criminalisation for whoever “attempts to commit”, “participates as an accomplice” or “organizes or directs other persons to commit” the offences listed in Art. 3²⁴. Furthermore, it is important to underline that the Protocol, through the “means” element, tackles the topic of the possible consent of the affected party. Indeed, one may argue that a victim of trafficking agreed to the exploitation they were inflicted. However, in presence of any form of coercion or any of the means listed in Art. 3(a), for example “the abuse of power or of a position of vulnerability”, then any expression of consent coming from the victim has to be considered irrelevant in establishing whether an act consists of human trafficking or not. Nevertheless, It has to be noted that the Protocol purposely does not provide any definition of these crucial indicators, together with other relevant ones such as “exploitation,” “vulnerability²⁵,” and “control”. Clearly, the more subtle forms of coercion can be more complicated to establish: for instance, vulnerability can arise depending on age, gender and socioeconomic status, in contexts of conflict, displacement or endemic poverty, and be amplified if the person is an irregular migrant, or has a drug addiction

²³ Art. 4, Palermo Protocol.

²⁴ Art. 5, Palermo Protocol.

²⁵ A description of the term can be found on the official records of the negotiation of the Protocol: “the abuse of a position of vulnerability must be understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved”. Interpretative Notes on article 3, “Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, United Nations Office on Drugs and Crime, A/55/383/Add.1, https://www.unodc.org/pdf/ctoccp_2006/04-60074_ebook-e.pdf, 347.

or particularly stigmatising health conditions. At the same time, they can consist of pre-existing conditions, or even be generated and aggravated from the traffickers themselves²⁶. Indeed, for all these reasons, it can be stated that human trafficking consists of both a cause and a consequence of violations of human rights²⁷. It is undeniable that the Palermo Protocol plays a fundamental role in the international protection of human rights and the persecution of such a serious crime. Nevertheless, despite it being a model for some of the Parties' national anti-trafficking laws, it is indispensable to delineate with precision such key terms, in order to eliminate any difficulties in the implementation at a national level.

Regarding the protection of the survivors of trafficking, the Protocol establishes that the injured parties should receive adequate assistance and protection; in the first place, the Signatories have to guarantee legal support and safeguard the privacy of the injured parties; moreover, they commit in implementing measures for providing physical, psychological and social recovery, through medical and psychological aid. Adequate housing and all the measures needed for guaranteeing the physical safety of the survivors are also requested on behalf of the State. Furthermore, the Signatories should ensure that their domestic legal systems allow the survivors to receive damage compensation. Finally, the Protocol describes the legal status of the trafficked person - in a country in which they are not a citizen, they should be guaranteed a residence - and then it accurately describes the conditions under which repatriation should occur²⁸.

1.2.3 Relation between sexual exploitation and prostitution in the Palermo Protocol

Simply put, International Human Rights Treaties consist in political compromises between the Parties. The Palermo Protocol, in particular, contains a “divisive” concept, which is the one of sexual exploitation. Indeed, it is clear that what can be considered as procuring prostitution varies depending on one country's legislation regarding prostitution. For instance, if the latter is considered to be a completely illegal activity, then any act related to it can be re-conducted to exploitation. In fact, the legislation regarding prostitution enormously differs from country to country, depending on cultural, economic and religious grounds. Generally, it can be stated that there are five different approaches to prostitution law: prohibitionism, decriminalisation, legalisation, abolitionism and neo-abolitionism²⁹.

²⁶ Marjan Wijers, “Analysis of the Definition of Trafficking in Human Beings in the Palermo Protocol” (UNDP Belarus, October 2005),

<https://documentation.lastradainternational.org/Isidocs/354%20Analysis%20def%20Palermo%20protocol.pdf>, 4.

²⁷ “Recommended Principles and Guidelines on Human Rights and Human Trafficking” (Office of the High Commissioner for Human Rights, 2002), <https://www.ohchr.org/documents/publications/traffickingen.pdf>, 3.

²⁸ Art. 6, 7, 8, Palermo Protocol.

²⁹ Laura Barnett and Lyne Casavant, “Prostitution: A Review of Legislation in Selected Countries” (Library of

Since, generally, the aim of International Human Rights treaties is to be approved to the maximum extent possible, the Protocol was designed to harmonize between all these disparate national legislations. For this reason, it was decided to employ the expressions “sexual exploitation” and “exploitation of the prostitution of others” without defining them on purpose and solely in the context of human trafficking. Consequently, it has to be acknowledged that the Protocol tackles the issue of the connection between prostitution and sexual exploitation as long as the other two criteria of the definition contained in Art. 3(a) are met: namely, the “acts” and the “means”. By doing so, all Parties would be able to approve the text, regardless of their national regulations regarding prostitution.

Something important to underline from the above discussion is that, even if one country legalises prostitution, sex workers must be treated equally and as possible victims of traffic themselves. Indeed, according to all major human rights treaties, non-discrimination and equal protection by the law principles are to be considered as fundamental and inalienable rights of the individual. In addition to this, the Protocol itself foresees a non-discrimination clause: as stated in Art. 14.2, the interpretation and application of the measures set forth in the Protocol “shall be consistent with internationally recognized principles of non-discrimination³⁰”.

1.2.4 The differences between trafficking and smuggling

In order to fully understand the crime of human trafficking, it is important to underline the characteristics that differentiate it from human smuggling. Human smuggling is defined in Art.3(a) of the Additional Protocol against the Smuggling of Migrants by Land, Sea and Air as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. By confronting the definitions provided from the two Protocols, the first difference rises, namely the geographical criteria: human trafficking does not imply necessarily a transnational movement, as a person can be trafficked within the same nation; on the other hand, smuggling always consists of a border trespassing, as its very own purpose is the entrance into another country³¹. Nevertheless, both practices often follow similar patterns, primarily because they may

Parliament, Canada, November 2011),

<https://bdp.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2011-115-e.pdf>, 2.

³⁰ Wijers, “Analysis of the Definition of Trafficking”, 10-12.

³¹ “Non-Criminalization of Smuggled Migrants,” United Nations Office on Drugs and Crime, accessed July 2021, <https://www.unodc.org/e4j/en/tip-and-som/module-1/key-issues/non-criminalization-of-smuggled-migrants.html>

both happen in situations of migration and displacement³², which leads to a generalised confusion between the two.

Surely, one of the main striking distinctions is marked by the willingness of the person that undergoes these activities. As can be deduced from the above-mentioned definition, smuggling entails the wish to enter into a foreign country – even if this action implies illegal border crossing. Therefore, a person subjected to this practice will be voluntarily involved with those responsible for supplying this sort of illegal services – in other words, the so-called smugglers. Hence, the relationship between the actors engaged in smuggling activities is characterized by general agreement, as they share the same goal; all this results into a collaboration between the parties involved. By contrast, as previously outlined, the “means” element included in Art. 3(a) of the Palermo Protocol defines a person subjected to trafficking as entirely lacking consent, as they are forced to take part in the activity through various measures of coercion.

Another substantial difference between these two activities depends upon the relationship between the actors involved in the crime. As the very purpose of human trafficking is the exploitation of the victim, after a movement the trafficked person remains in a state of lack of freedom, abuse or violence. This happens through several practices, such as enslavement, imprisonment, confiscation of documents, or blackmail. On the other hand, the relationship between a smuggler and a smuggled person is generally restricted to the movement itself - essentially, the crossing of a border. Normally, after the “mutual exchange” (the payment of a certain sum in trade of the entrance into a foreign country) the rapport between these two people comes to an end. Indeed, if we consider that a criminal network is present behind each of these activities, the economic gain is different too: in the case of smuggling, the profit is limited to prior or during the movement itself; on the other hand, the earning in trafficking is not restricted to the step of recruitment, but it intensely takes place during the exploitation phase. This generally makes smuggling a “short-term monetary profit” activity, whereas trafficking usually involves long-term exploitation for economic gain³³

Most importantly, the legal status and treatment of a trafficked person quite differs from that of a smuggled one. In the first case, the person will be treated as a victim, and will receive benefits and protection, such as housing and psychosocial aid; on the other hand, undocumented migrants are considered guilty of infringing border control laws and therefore possibly face deportation (clearly, this is not the case if the smuggled person is considered eligible for asylum status³⁴). Indeed, even

³² “Trafficking in Human Beings”, Europol.

³³ Richard, “International Trafficking”, 1.

³⁴ Alexis A. Aronowitz, “Background and History,” in *Human Trafficking: A Reference Handbook* (Santa Barbara, CA:

by confronting the terminology used in the treaties, smuggled migrants are not to be considered “victims” according to the Smuggling Protocol. Nevertheless, depending on the circumstances and in accordance with other human rights instruments, they could still be evaluated as injured parties, such as in an aggravated smuggling context that can lead to attempts of violations of their right to life or if they are subjected to inhuman or degrading treatments³⁵. Besides, as stated in Art. 5 of the Smuggling Protocol, smuggled migrants shall not undergo criminal liability for participating in smuggling offences; in other words, this means that they will not be persecuted as accomplices of smuggling activities. However, as previously affirmed, the Protocol does not impede them from being persecuted for other crimes under national legislation, in the first place for breaching immigration law.

In theoretical terms, these two phenomenons may appear quite straightforwardly distinct in their definitions; yet, they are often strictly linked and not necessarily mutually exclusive. For instance, a person can start their journey with solely the purpose of entering into a foreign country (therefore, through smuggling) and end up being a victim of trafficking during the journey or once arrived at their destination. Strictly separating the two crimes can lead to improper interpretations, since the complexity of these contexts leads to “victimisation in smuggling and agency in trafficking, or a mixture of choice and compulsion³⁶.”

1.4 Aetiology of human trafficking: push and pull factors

Human trafficking is a serious crime and a grave violation of human rights, and it is a persistent and globally widespread phenomenon. In the attempt to totally eliminate it – or at least significantly decrease it, academic research, international, regional and national authorities together with civil society organisations have been focussing on describing and establishing the factors that lead to its occurrence. As previously described, human trafficking is a crime constituted by precise factors and characteristics, and it is specifically addressed in the international legal system. At the same time, it can be affirmed that it is strictly connected to the broad and multi-faced issue of migration, as “migrants account for a significant share of the detected victims in most regions³⁷”. Hence, these two phenomenons share commonalities, especially with regards to the grounds on which they develop. For this reason, when investigating the root causes of human trafficking, the categorisation

ABC-CLIO, 2017), pp. 14-55, 19.

³⁵ “Non criminalization of smuggled migrants”, UNODC, accessed 15th June 2021

<https://www.unodc.org/e4j/en/tip-and-som/module-1/key-issues/non-criminalization-of-smuggled-migrants.html>

³⁶ Richard Weitzer, “Human Trafficking and Contemporary Slavery,” *Annual Review of Sociology* 41 (2015): pp. 223-242, <https://doi.org/10.1146/annurev-soc-073014-112506>, 225.

³⁷ “Global Report on Trafficking in Persons 2020” (United Nations Office on Drugs and Crime, January 2021), https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf, 4.

of “push and pull factors” is commonly employed, which traditionally belongs to the field of migration studies³⁸. In short, in the trafficking framework, push factors are usually generated from the personal condition of victims, as well as the environment in which they reside, which expose them particularly to such a crime; on the other hand, pull factors are elements belonging to the projected location that are responsible for drawing victims³⁹. If we were to employ economic terminology with regards to human trafficking, it could be stated that push factors determine the supply of victims on the basis of the circumstances in which they find themselves; pull factors, in turn, are constituted by the demand for exploitative activities in the country of destination⁴⁰.

Migration and trafficking both find their root causes in the context of origin: it is commonly agreed upon the principle that people migrate (whether legally or not) for seeking better conditions of living. This can happen inside the same country, typically from a rural area to an urban setting, or internationally, therefore from a poorer to a wealthier state. The country of origin is, therefore, characterised by a condition of instability: whether because of extreme poverty or political regimes that entail violence, corruption and breaches of human rights; or because of emergency and crisis settings, such as conflict or natural disasters situations – or even possible combinations of all these circumstances. Therefore, typical push factors are to be found in the lack of security and adequate standards of living (ranging from fulfilment of basic human needs, such as food and housing, to unemployment and inability to access to proper educational and health services), and/or discrimination and persecution on the basis of ethnicity, gender or religion. On the other hand, the typical pull factors are considered to be the increased easiness in travelling, the higher security and standards of living of the country of destination (not only in terms of salary, but also with regards to personal freedoms). All this is facilitated by already existing migration routes and ethnic communities abroad, amplified by the internet which boosts expectations for migrants. And, of course, the demand for cheap labour or sexual exploitation in the country of destination^{41,42}.

If we consider the dimension of vulnerability, that as previously stated is one of the decisive factors favouring human trafficking, it can be observed that people in conditions of severe economic deprivation are frequently “powerless”, meaning that they lack resources (“physically, legally and

³⁸ “Push and Pull Factors”, Oxford Reference, accessed 15th June 2021
<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100355608>.

³⁹ Abiodun M Geshinde and Ayotunde Elegbeleye, “An Investigation into Push Factors Sustaining Human Trafficking in Nigeria,” *Journal of Functional Management* 4, no. 1 (April 2011): pp. 147-157, 150.

⁴⁰ Seo-Young Cho, “Modeling for Determinants of Human Trafficking: An Empirical Analysis,” *Social Inclusion* 3, no. 1 (2015): pp. 2-21, <https://doi.org/10.17645/si.v3i1.125>, 4.

⁴¹ Aronowitz, *Human Trafficking*, 25.

⁴² Patrick L. Kerr, “Push and Pull: The Intersections of Poverty, Health Disparities, and Human Trafficking,” *Cancer InCytes Magazine* 3, no. 2 (2014), 1-2.

politically⁴³) to get out of situations of coercion and exploitation due to their social-economic status. Additionally, it is fundamental to take into consideration the major role that the immigration law of the Global North plays in enhancing the vulnerability of aliens.

Indeed, the European Union and the United States (among others) have been implementing severely restrictive measures aimed at sharply dwindling the entrance of immigrants in their territory. Suffice to say, one striking example is the realization of the so-called “Fortress Europe”, characterised by increased border patrol and agreements with third parties for the management of migration flows, despite their well-known continuous breaches of basic human rights (examples are the EU-Turkey Deal of 2016 and the Memorandum of Understanding between Italy and Libya of 2017).

All this has led to an increased resort to illegal channels on behalf of migrants, which not only benefits organised crime, but more importantly enormously enhances the vulnerability of people on the move. As a consequence, the illegal status of undocumented migrants brings them to rely on informal and often exploitative employment⁴⁴. Furthermore, the constant threat of deportation leads to fear and impossibility of reporting to the authorities.

As human trafficking constitutes an incredible multi-faced and complicated phenomenon, it can be useful to use the cumulative risk model to explicate its aetiology. This paradigm implies that “accumulated risk factors incrementally increase someone’s susceptibility to being trafficked hence, according to this comprehensive perspective, a risk factor becomes so solely if in the presence of other risk factors⁴⁵”.

In the following chapter, the etiology of human trafficking, in particular the phenomenon of trafficking for sexual exploitation purposes, will be analysed through a gender-based approach.

⁴³ Sally Cameron and Edward Newman, “Introduction: Understanding Human Trafficking,” in *Trafficking in Humans: Social, Cultural and Political Dimensions* (Tokyo: United Nations University Press, 2008), 2.

⁴⁴ Aronowitz, *Human Trafficking*, 29.

⁴⁵ Kerr, “Push and Pull”, 4.

Chapter 2: The Gender Dimension of Human Trafficking

2.1 A gender-based approach to sex trafficking

In the following chapter, the most relevant factors that induce and foment the trafficking of women will be illustrated, in particular with reference to the purpose of sexual exploitation.

It is important to disclaim that this factors are solely an attempt to rationalize the overly complex phenomenon of human trafficking, in the first place with the purpose of finding measures to address this issue. Nevertheless, it is fundamental to remember that, for policies to be truly effective, they must be made-to-order on a national basis, as every country comes with its own peculiar features. Moreover, another crucial aspect to underline is that human trafficking is not determined by a simple cause-effect trend; indeed, different aspects are strictly intertwined and foment each other in a vicious-circle dynamic.

Reliable sex-disaggregated data regarding the numbers of trafficked people are difficult to find; nonetheless, it has been generally agreed upon the fact that women and children constitute the major part of trafficked people. The phenomenon of human trafficking can be analysed through a variety of lenses: in the case of sex trafficking, a gender-based approach proves to be particularly appropriate. As it consists of a holistic approach, it seems suitable to encompass the complex aetiology of this phenomenon.

As Fergus clearly sums up:

“A migration-based approach, for example, will focus on such issues as policies on migration and migrant labour, availability of work opportunities in various countries, globalisation of the economy and development strategies. A criminal justice based approach focuses on legislation and its implementation, policing strategies, impediments to prosecution, and the involvement of organised crime. A human-rights based approach acknowledges the importance of criminal justice, but will situate the causes of trafficking in issues such as the abuse of power, corruption of authorities, discrimination, and state failure to protect civil, political, economic and social rights. Most feminist analyses encompass elements of all these approaches but situate inequalities of sex, race and class, and the power this gives some to abuse others, as central to any detailed analysis of the causes of trafficking⁴⁶”

⁴⁶ Lara Fergus, “Trafficking in Women for Sexual Exploitation,” *Trafficking in women for sexual exploitation* § (2005), ISBN: 0-642-39528-4, 8.

Indeed, the common factors that lead to the risk of being trafficked, both for women and men, are aggravated by unequal gender relations in all the stages of trafficking, ranging from the conditions in the country of origin and the dangers faced during transfer to the contexts of exploitation.

As observed in the previous chapter, sexual exploitation remains the main activity for which women and girls are trafficked. This phenomenon finds its roots in the patriarchal structure of societies, which leads to the multi-faced issue of gender inequality. Women are often assigned a second-class citizen status, born out of socially-constructed harmful norms, behaviours and traditionally-assigned gender roles. This foments various forms of discrimination and persists in all the regions of the world. Eventually, it ends up negatively compassing every aspect of women's lives, including access to adequate health assistance, education, employment, and finally exposing more to gender-based violence. Therefore, when analysing the gender dimension of human trafficking it seems fundamental to take into account the intersectionality aspect of gender-based discrimination, meaning how it intersects with other inequalities leading to social and economic discrimination: namely ethnicity and race, religion, socioeconomic condition, minority status, disability, gender identity and sexual orientation⁴⁷.

Being the phenomenon of trafficking for sexual exploitation extremely diverse, this chapter will also provide some concrete examples, in order to underline how this practice can assume deeply different forms depending on the context in which it develops.

2.1 Push factors

In the recent literature, it is commonly agreed upon the fact that the globalisation process, to be intended as an unregulated market model of development, has enhanced human trafficking all over the world⁴⁸. Globalisation has generated unparalleled migration flows of low-skilled workers to fill labour-deficit markets⁴⁹, such as agriculture, manufacturing, and, in particular with regards to female migration, care and domestic sector. Generally, the flows depart from economically deprived countries, with the objective to reach richer ones. They can be national, namely from rural to urban areas; interregional, such as from Easter to Western Europe, or transcontinental, for instance from the Horn of Africa to the Gulf Countries.

⁴⁷ "Gender and Health." World Health Organization. World Health Organization. Accessed July 1, 2021. https://www.who.int/health-topics/gender#tab=tab_1.

⁴⁸ *Inter alia*, Brewer, Devin. Publication. *Globalisation and Human Trafficking*. Topical Research Digest: Human Rights and Human Trafficking, 2008. <https://www.du.edu/korbel/hrhw/researchdigest/trafficking/Globalization.pdf>; Majeed A. Rahman, "Human Trafficking in the Era of Globalisation: The Case of Trafficking in the Global Market," *Transcience Journal* 2, no. 1 (2AD): pp. 54-71, https://www2.hu-berlin.de/transcience/Vol2_Issue1_2011_54_71_Glossary.pdf.

⁴⁹ Aronowitz, *Human Trafficking*, 29

At the same time, the domestic socio-economic dynamics of developing countries have witnessed significant transformations, too. Indeed, globalisation is a complex phenomenon that has – and still is, drastically reshaping societies worldwide and, in particular, the labour market, making it way more unregulated. For many nations, this has translated into an increase of the informal and intensive manufacturing sector, as they consist of a source of cheap low-skilled labour, especially for multinational corporations. In fact, by doing so, an internationalised division of labour takes place, through practices like outsourcing and subcontracting⁵⁰. In the majority of countries in the Global South, informal employment exceeds legal employment: for instance, in West Africa it consists of more than 90%, and in South Asia at least 80%. Univocally, women are the ones suffering the most of it⁵¹. Informal labour surely entails various damaging and dangerous aspects, especially for the most vulnerable parts of the population. Indeed, it involves unregulated and poor working conditions, insecurity, lower incomes, restricted access to healthcare, lack of protective equipment, as well as major exposition to possible natural hazards, such as heat waves or flooding, due to the inadequacy of the working establishment and infrastructures (which are drastically being amplified by the current climate crisis⁵²).

Traditionally, women suffer from various forms of discriminations with regards to the employment sector, ranging from being excluded from it and confined to housework, to generally less possibilities of advancing in the workplace and other unjust practices, such as the gender wage gap. Moreover, all this is aggravated by the traditional exclusion of women from education, which encourages the recruitment of female workers in low or no-skills jobs. Indeed, the gender gap in the access to education is still present in many regions of the world: it is estimated that two thirds of the 750 million adults without basic literacy skills are women⁵³, and, particularly in low-income countries, girls attend school for less years than boys; regionally, the areas more affected are Sub-Saharan Africa and Central and Southern Asia⁵⁴. In a globalised economy, especially in developing countries, this translates into an increasing female presence in the informal sector. For

⁵⁰ H.B. Spietsma, “International Subcontracting and Developing Countries”, *De Economist* 126, NR. 2, 1978,” *De Economist* 126, no. 2 (1978): pp. 220-242, 220

⁵¹ “Share of Informal Employment in Total Employment,” International Labour Organization, accessed July 9, 2021, https://www.ilo.org/re-Search/informality/map1_en.html.

⁵² “Addressing Risks Facing Informal Workers,” International Institute for Environment and Development, April 15, 2021, <https://www.iied.org/addressing-risks-facing-informal-workers>.

⁵³ “Education and Gender Equality,” UNESCO, July 1, 2021, <https://en.unesco.org/themes/education-and-gender-equality>.

⁵⁴ “Mean Years of Education,” World Inequality Database on Education • Mean years of education (UNESCO), accessed May 3, 2021, https://www.education-inequalities.org/indicators/eduyears#?sort=mean&dimension=sex&group=all&age_group=eduyears_2024&countries=all.

this reason, it proves to be fundamental to carry out a gender-based analysis of the risks of globalisation-induced labour transformations.

The informal industry is a fertile territory for trafficking to flourish: first of all, as a sector of direct employment, through slavery-like working conditions. At once, it is a favourable environment for the recruitment of new victims, as the vulnerability and lack of security that it entails eventually supply pressure for migration, incited by the desire and necessity for better living conditions.

Besides, it is important to understand the implications of a globalised economy on local ones, in particular more fragile ones. Indeed, “lower revenues from tariff and other trade restricting measures has been offset by down scaling or withdrawal of state subsidies for public service⁵⁵”, which have caused a severe lack of investments and cuts in social security policies, such as healthcare, education and childcare – often leading to their privatisation. Clearly, this has severe repercussions on the main beneficiaries of welfare services, namely the most vulnerable groups of society – which, in strongly patriarchal communities, are largely constituted of women. Eventually, these conditions translate into women's disempowerment: for instance, in a society where women have traditionally been assigned the role of care-givers, they will be the first ones being pulled-out of school and employed in housework. In addition, all such clearly implies heavy socio-economic implications, as it generates poverty among women and dependency on the male components of the family. It can be stated, therefore, that in societies which privilege men, globalisation can negatively impact women, by a disempowerment process that leads to reinforcing harmful gender norms and dynamics.

One remarkable example is the aftermath of the collapse of the Soviet Union and its satellite countries. The drastic shift from the socialist planned economy to the capitalist system induced massive migration flows towards Western Europe. In fact, the start of the new era denominated “wild capitalism” (*dikiii kapitalizm*) led to the elimination of the previous supply lines and trade patterns, causing drastic poverty and unemployment. This allowed organized crime to flourish and take advantage of the vulnerable parts of the population, and one of the main activities turned out to be sex trafficking⁵⁶. Moreover, following the economic collapse of the region, the proliferation of the culture of alcoholism, unemployment, violence and drug taking⁵⁷ in the domestic setting

⁵⁵ Jean D’Cunha, “Trafficking in Persons: a Gender and Rights Perspective” (United Nations, 2002), 6.

⁵⁶ Mary Buckley, “Human Trafficking In and Out of Russia,” *Fair Observer*, September 8, 2013, <https://www.fairobserver.com/region/europe/human-trafficking-and-out-russia/>.

⁵⁷ Kavya Kannan, “Sex Trafficking after Communism,” Political Science (University of Colorado Boulder, May 1, 2019), <https://www.colorado.edu/polisci/2019/04/29/sex-trafficking-after-communism>.

increased. Domestic violence has been demonstrated to be one of the risk factors leading to the trafficking of women⁵⁸: it increases vulnerability, isolation and urgency to find an escape route.

Another important factor to take into consideration when analysing the phenomenon of human trafficking is the issue of unequal access to education. Indeed, schooling is a fundamental tool for women's empowerment, as it allows the acquiring of valuable working skills and it creates awareness – notably, regarding fundamental rights, including labour rights. Consequently, education and job training are essential prerequisites for female emancipation; impeding girls to access them severely hinders their development, and increases vulnerability and marginalisation.

Certainly, globalisation has also positive impacts, namely it has reduced barriers in travelling and therefore increased the movement of people and the possibility to be exposed to other lifestyles and cultures – which may understandably end in the desire to increase one's living conditions, for example by acquiring more freedom and the possibility to fulfil higher aspirations. At the same time, female emancipation and advancements in gender relations in countries of origin have led to major freedom to migrate and find work abroad. Nevertheless, women who live in marginalisation and exclusion may have insufficient and deceptive information, aggravated by “language barriers, naivete about the real world, overestimation of the ability to deal with exploitative situations⁵⁹”, which can increase their risk of being trafficked.

As mentioned in the previous chapter, it can be stated that poverty consists in one of the root causes of human trafficking. To understand its importance in the gendered analysis of trafficking, the concept of “feminisation of poverty” can be useful. This principle is used to underline how gender causes major distress in situations of economic instability, hence the differences between women and men in how they experience poverty. Indeed, this concept belongs to a more holistic approach to the meaning of poverty, not reductive to only considering it as the lack of economic resources; instead, it is deemed in a broader perspective, also taking into account other aspects of life needed for a person to fulfil well-being standards. The Beijing Platform for Action stated that “Women’s poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision-making process⁶⁰”. The feminisation of poverty, often aggravated by inaccessibility to legal employment, strongly

⁵⁸ “Trafficking in Human Beings in South Eastern Europe” (United Nations Development Program, 2005), 21.

⁵⁹ D'Cunha, “Trafficking in persons”, 15.

⁶⁰ Chapter IV, “Women and Poverty”, 51. “Beijing Declaration and Platform of Action”, United Nations, adopted at the Fourth World Conference on Women, October 27 1995, https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf.

undermines women's independence and autonomy, by frequently rendering them dependent on husbands or other male components of the family. This lack of emancipation is considered to be one of the main responsible factors for gender-based violence and liability for sexual abuses, especially in the household⁶¹. This can lead to the desire to seek freedom from situations of abuse perpetrated in domestic settings⁶², especially in countries that lack appropriate services for the protection and support of the victims of gender-based violence.

Therefore, a direct nexus can be observed between the feminisation of poverty and another important phenomenon, viz the feminisation of migration. This phenomenon has developed in the last decades, mainly because of the demand for labour (mostly in richer countries) which is generally becoming more gender-selective – meaning the request is for occupations typically “feminine”, such as domestic work, care-giving and entertainment). Furthermore, a growth in organised trafficking flows with the purposes of forced marriage and coercion into the sex industry has been registered⁶³.

Another important factor to take into consideration is the demographic pressure that results from massive population growth, which can cause an abundance in supply of labour, and therefore more difficulties in finding employment in the home country. This can lead to a push towards migration, and it becomes easier even to fall for traffickers’ false promises regarding employment opportunities abroad. Moreover, Kathleen and Lynne observe that there is a direct correlation between population growth, the deriving sustainable development policies, and human trafficking. High population implies a constraint for wealth creation for the country and few resources available for development. It also means that individuals will move to countries of opportunity and women as poor people will be potential recruits for human trafficking. Indeed, an increase in the population means that a country has the urgent need to create wealth (and opportunities, services etc), and there are going to be less resources for the implementation of development policies, which are often targeted to women (for instance. education programmes) and reaching gender equality. This translates in a push towards migration, especially for that part of the population that is mostly affected by these changes⁶⁴.

⁶¹ “Combating Gender-Based Violence: A Key to Achieving the MDGS” (United Nations Population Fund, 2005).

⁶² John Gacinya, “Gender Inequality as the Determinant of Human Trafficking in Rwanda,” *Sexuality, Gender & Policy* 3, no. 1 (2020): pp. 70-84, <https://doi.org/10.1002/sgp2.12018>, 73.

⁶³ “Feminisation of Migration,” European Institute for Gender Equality, accessed May 2, 2021, <https://eige.europa.eu/thesaurus/terms/1132>.

⁶⁴ Kathleen A. McKee and Lynne Marie Kohm, “Examining the Associations Between Sustainable Development Population Policies and Human Trafficking,” *Michigan State International Law Review* 23, no. 1 (2014): pp. 1-38, 14.

In many countries, sexist traditional practices are considered direct causes of the trafficking of women. Indeed, in social settings that privilege sons over daughters, the latter are perceived as a burden, especially in situations of economic deprivation. As a consequence, inhumane practices are still perpetuated, such as selling women and girls into marriage, or even providing them as brides to strangers without monetary compensation – thus highly exposing them to the risk of being trafficked, or even directly selling them into prostitution (especially in contexts in which sexuality consists of an appealing trade value⁶⁵). Indeed, UNODC indicates certain social or cultural practices as root causes of human trafficking, as they can lead to the devaluation of women and girls, which makes them overly vulnerable to this crime⁶⁶.

Despite the international, regional and national legal systems aimed to combat trafficking, various deeply rooted cultural practices are responsible for this crime. Indeed, misconception and misapplication of local traditions and customs have been among the core main causes of human trafficking. For instance, in the case of some Sub-Saharan African countries, it is possible to witness several traditional costumes that can be included in the broad spectrum of sex trafficking. One of the most tragic examples is the practice of *Trokosi*, viz “slaves to God”, that is conducted in the Ewe ethnic group in West Africa – mainly in Ghana, but also Benin, Togo, and South-Western Nigeria. This tradition foresees that, in order to pay for a committed crime, families need to provide a young girl - normally between six and fifteen years of age, to the community religious authority. The victims find themselves in a total lack of freedom, coerced into forced labour and become sex slaves to priests in the local shrine⁶⁷.

In order to effectively put an end to traditional practices that are harmful towards women, there is the need to engage men in the process, as they are the ones carrying on and benefiting from these unjustifiable praxes. Indeed, given the privileged positions of leadership men profit from, not only on a family level but also on community and governance ones too, “they are in great position to enable the eradication of harmful practices which facilitate women and children trafficking and slavery in Africa. [...] Systematic encouragement and support of collective action among the women themselves must be applied to eliminate such harmful cultures. Women need to have a sense of self-worth and empowerment to be able to act in their own self-interest with respect to their human rights⁶⁸”.

⁶⁵ D’Cunha, “Trafficking in Persons”, 16.

⁶⁶ “Toolkit to Combat Trafficking in Persons” (UNODC), 454-456.

⁶⁷ Norah Hashim Msuya, “Tradition and Culture in Africa: Practices That Facilitate Trafficking of Women and Children,” *Dignity: A Journal on Sexual Exploitation and Violence* 2, no. 1 (2017), <https://doi.org/10.23860/dignity.2017.02.01.03>, 4.

⁶⁸ Hashim Msuya, “Tradition and Culture in Africa”, 30

Additionally, it is interesting to take a closer look at the level of female presence in leadership roles, especially in political spaces. Indeed, if women are represented at the institutional level, it is more likely that they carry out lobbying activities and promote legal instruments that take into account women's needs, for example by promoting healthcare and education funding⁶⁹. On the other hand, many countries still present a preponderant male presence in parliaments and governance positions, which often leads to gender-blind policies – namely, approaches that maintain the status quo and do not promote tools aimed to achieve societal changes towards gender equality⁷⁰. Therefore, considering that poor socio-economic status, for women, incisively increases the risk of being trafficked, facilitating equal representation in the political sphere should be the first step to take in order to address the issue, even if it represents a long-term solution.

2.2 Pull Factors

When stating that globalisation has deeply changed the dynamics of the world, one of the first consequences has been the creation of some sort of international division of labour, in which Global South workers fulfil roles that were typically performed by the working class of the Global North. This particularly concerns some sectors, viz low-skilled ones – among which manufacturing and agriculture.

With reference to industries such as the care sector, as well as sex work (regardless of its legal status in the receiving country, namely whether it is allowed or not), this has resulted in gendered labour demand. As a consequence, it has been one of the main causes leading to the above-mentioned phenomenon of feminisation of migration – thus, to a major exposure to becoming victims of trafficking.

Indeed, this led to the expansion of specific work categories seeking for female employees, especially in the informal sector – to “circumscribed by gendered occupational segmentation, gendered perceptions of attributes, skill, value, perceptions of body and sexuality [...] Women are preferred in these sectors as they are viewed as submissive, suited to simple repetitive tasks, abundant and needy, cheap and pliable⁷¹”. Incited by racial stereotypes too, the expansion of a typically feminised sector is favoured, namely the sex industry and domestic work. In particular,

⁶⁹ Robyn L. White “Invisible Women: Examining the Political, Economic, Cultural, and Social Factors that lead to Human Trafficking and Sex Slavery of Young Girls and Women” (MA diss, University of New Orleans, 2013), <https://scholarworks.uno.edu/td/1708>, 29.

⁷⁰ “Gender Blindness.” European Institute for Gender Equality. Accessed July 23, 2021. <https://eige.europa.eu/thesaurus/terms/1157>.

⁷¹ D'Cunha, “Trafficking in Persons”, 17.

when referring to the sex industry, it is important to underline that it is fueled by male-dominated conceptions of what sexual activities are, namely a masculine prerogative and property. Therefore, women employed in sex work are often considered as “sexualised and commodified bodies functional to that male right. They are to be dissected, fragmented, appropriated, used and abused as ‘common property’, in the interests of male biology, male sexual fantasy and hegemony⁷²”. These jobs are often considered immoral, demeaning, unsafe; they lack of any kind of social protection, and for this reason nationals in destination countries usually refuse to work in these conditions; it often happens that the only ones willing to accept them are marginalised migrant women – whether under constriction, deception, or desperation, or even a mixture of all these factors.

A construct that can be useful in order to fully understand what stimulates, and, to some extent, normalise the demand in destination countries is the concept of “Otherness”. Firstly theorised by the philosopher Friedrich Hegel, it has been used in different disciplines, including Sociology, Anthropology and Psychology. In an extremely simplified summary, this concept lies in the idea that individuals perceive themselves in relation to others. In Conflict Theory, this concept has been used as an explanation for dynamics of power and domination of one group over another; indeed, this framework reflects on how systematic exploitation of different groups in society take place, through a process of dehumanisation, by creating social hierarchies based on stereotypes⁷³.

An important contribution to the understanding of sex trafficking is proposed by Todres⁷⁴, who applies the concept of “otherness” to the phenomenon of human trafficking. It is argued that, originally, the differentiation between “Self” and “Others” can be traced back to the evolution and survival instincts, in particular in situations of scarcity of resources. Nevertheless, with time, this has converted into an instinctual inclination for a person to seek similar people and group with them, and by doing so, creating a separation with different ones. Therefore, this has been included in group behaviour, by the conception of “in-groups” and “out-groups”: the criteria vary and can depend on race, gender, class, nationality, ethnicity. In the case of exploitation of trafficked human beings, the action of “othering” happens towards a particularly vulnerable group, on the grounds of aporophobia⁷⁵, racism or religious intolerance.

⁷² D'Cunha, “Trafficking in Persons”, 17.

⁷³ Staszak, Jean-François. 2009. Other/Otherness. In *International encyclopedia of human geography: A 12-volume set.*, ed. Kitchin & Thrift. 1st ed., -. Oxford: Elsevier Science, <https://archive-ouverte.unige.ch/unige:77582> (accessed July 22, 2021)

⁷⁴ Jonathan Todres, “Law, Otherness, and Human Trafficking,” *Santa Clara Law Review* 49, no. 3 (March 18, 2009): pp. 605-672.

⁷⁵ Neologism developed from the philosopher and scholar Adela Cortina in the 90's; it indicates hostile behaviour and aversion towards poor people

Notably, gender greatly contributes in this process, once again on the basis of sexist discrimination and patriarchal societal structures. As already explained, women's marginalisation is a direct cause of exploitation and major exposure to the possibility of being trafficked. In addition to this, the “othering” process plays a fundamental role in trafficking for sexual exploitation: for instance, Western men may be more keen in participating in sexual exploitation services of women coming from the Global South rather than white women from the Global North. To fully understand this process, one salient example is the phenomenon of sex tourism, which is defined by the World Tourism Association as “trips organized within the tourism sector, or from outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination⁷⁶”. Unfortunately, sex tourism is a wide-spread activity that does not only involve “paedophiles and hardcore sexual deviants⁷⁷”. Indeed, research shows that the beneficiaries of these illegal activities are often occasional exploiters, that is to say people that would not do the same in their home country, and that fill the role of “normal people”, namely by working in ordinary employment and even by having traditional families. Therefore, it can be stated that the “othering” process, as an intersectional phenomenon that takes place at different levels, plays a fundamental role in the happening of sex trafficking, in a mixture of patriarchal and gender-based stereotypes, reinforced by racism and classism. Todres states that “Discrimination based on race, ethnicity, religion, social origin, and class operate both to drive the demand for prostitution globally and to marginalize the poor and minorities, making them more vulnerable targets for trafficking and commercial sexual exploitation⁷⁸”.

When analysing the aftermaths of globalisation in relation to human trafficking, it is important to consider is the paradox that foresees, on one hand, the liberalisation of goods and capital and a decrease in custom duties or import taxes, and, on the other hand, the restriction towards migration flows. Indeed, restrictive laws regulating migration can constitute a barrier to the demand for cheap labour in destination countries and human supply from departure countries, favouring illegal activity and opening a profitable space for traffickers. This affects particularly women that find themselves in vulnerable positions; particularly at risk are those in poor economic conditions, not educated, living far from urban centres, who cannot have access to information about job opportunities and recruitment channels.

⁷⁶ “Statement on the Prevention of Organized Sex Tourism”, World Tourism Organization, Res. A/RES/338(XI), 32, Doc. A/11/Res, October 17–22, 1995), https://web.archive.org/web/20030814172032/http://www.world-tourism.org/protect_children/statements/wto_a.htm

⁷⁷ Todres, “Law, Otherness”, 624

⁷⁸ Todres, “Law, Otherness”, 625

2.3 The gender-based dimension of the COVID-19 pandemic and its impact on human trafficking

On the 11th March of 2020, the World Health Organisation officially declared that the world had entered a pandemic due to the spread of the new COVID-19 virus. So far, the aftermath of this situation has been drastic, not only in terms of loss of lives, but also regarding the fact that social inequalities have been skyrocketing. It is estimated that human development in terms of education, health, living standards are dramatically decreasing; extreme poverty is likely to hit between 40 and 60 million people, especially in the regions of Sub-Saharan Africa and South Asia⁷⁹. This escalation of inequality has been particularly drastic for categories already experiencing vulnerabilities: in the first place, for women and girls, as they have been among the hardest hit from the pandemic⁸⁰.

The outbreak of the pandemic of COVID-19 is impacting the phenomenon of human trafficking too, although it is difficult to calculate the magnitude of these changes. Nevertheless, it is possible to estimate the way in which many variables, previously outlined as push factors, are more likely to increase in contexts of natural disaster and crisis. Women are proven to be among the most affected categories in cases of emergency; this exposure is particularly present when considering the intersectionality aspect, too – therefore, for migrant women, or on the grounds of disability, poverty, minority status. Consequently, the outcomes of the pandemic can exacerbate women's vulnerability in several contexts, including a major exposition to traffic. The effect of the current pandemic on the phenomenon of human trafficking can be analysed through different perspectives. First of all, by considering the impact of the crisis on some of the push factors, both in light of the recent data, as well as making estimations on the basis of past analogous situations.

One of the most striking factors that contribute to trafficking, as formerly stressed, is the lack of access to formal education for women and girls. Indeed, the recent public health crisis has surely severely undermined the right to education worldwide, as schools were closed and confinement measures applied, with the adoption of distance learning methods. This has proven to provoke a negative impact on young girls, in the first place due to the fact that gender inequalities are present also in the access to digital resources and IT. Indeed, throughout low and middle-income countries, men are 8% more likely to possess a cell phone, and 20% more likely to have Internet access on it: this clearly places serious obstacles on the access to distant learning activities. At the same time, due to the closure of schools and staying at home policies, girls are expected to deal with domestic

⁷⁹ Coronavirus vs. inequality (United Nations Development Programme), accessed August 2021, <https://feature.undp.org/coronavirus-vs-inequality/>.

⁸⁰ COVID-19 Has Exposed Endemic Gender Inequality, Guterres Tells UN Women's Commission, UN News (United Nations, March 15, 2021), <https://news.un.org/en/story/2021/03/1087392>.

work, which not only severely limits their time for studying, but also increases the pressure for them to drop out of education, and eventually leads to their permanent exclusion from school⁸¹. This has been previously observed during the Ebola crisis in West Africa, which ultimately caused an augment in gender gaps in the access to education. In fact, research carried out in Sierra Leone showed a 16 percentage point persistent drop in school enrolment for girls⁸². Firstly, this causes a serious violation of the right to education for girls; secondly, in the long term, it translates into critical limitations in future opportunities, therefore broadening the gender gap in multiple ways. As explained, gender inequality, in all its manifestations, is one of the major causes of trafficking for women and girls – ranging from feminisation of poverty and migration and illegal employment to lack of representation in the institutions.

In July 2021, the United Nations Office on Drugs and Crime published a report titled “Effects of the COVID-19 pandemic on trafficking in persons and responses to the challenges”, that aims to present the repercussions of the pandemic on the phenomenon of human trafficking on a global scale. One particularly alarming finding was the registration of a shift in the modus operandi of traffickers, as many have been able to adjust to the “new normal” of the pandemic, by diversifying both tactics of recruitment as well as methods to take advantage of women and girls. One of the main innovations has been the leverage in the increase of Internet usage; for the recruitment phase, for instance, one of the ways has been to advertise false jobs on social media. Moreover, in view of the lockdown measures, many of the locations in which trafficked persons were sexually exploited, such as brothels, bars, and massage parlours, were shut down, and this brought trafficking networks to transfer these types of activities further underground. Across different regions of the world, there has been a major usage of private apartments; also, as a result of the world going digital, online methods of sexual exploitation have dramatically increased, with specific regards to minors. All together, trafficking networks have been able to take advantage of the chaotic situation of the pandemic by establishing new trafficking routes, as well as transportation arrangements. Often, these new routes turn out to be more dangerous, difficult and extended than the ones through which traffickers operated before the pandemic. Besides, the pandemic has not stopped migration flows, even if the strengthening of travelling restrictions, as well as the total closure of national borders, have made it way more complicated. This has enhanced the vulnerability of people on the move, thus rendering them more easily targeted by traffickers.

Furthermore, the pandemic has provoked a series of negative effects on persons who find themselves in situations of deprivation of freedom. Indeed, several of the pre-existing factors

⁸¹ Carmen de Paz et al., “Gender Dimensions of the COVID-19 Pandemic” (World Bank, April 17, 2020), <https://openknowledge.worldbank.org/handle/10986/33622>, 7

⁸² De Paz, “Gender Dimensions”, 7

leading to the violation of the basic rights of trafficked persons have intensified, aggravating even more their living conditions. First of all, in many cases the exploitative activities have not stopped during the pandemic, regardless of the governmental restrictions, especially in the case of sexual exploitation. This has translated into to a major exposure to the risk of being infected with the COVID-19 virus, which sums up to the already present health hazards, as often persons exploited in the sex industry are not provided with protections for sexually transmitted diseases. In addition, the risk of infection has been increased by the housing conditions of trafficked persons, who often live in overcrowded spaces, and therefore it is impossible for them to maintain any kind of social distancing measures. Still, an increase in control from the traffickers has been registered which, together with the impossibility of movement, foments situations of violence and isolation. Some victims have been hesitant in searching for medical aid, due to the irregular status and the fear of deportation. Concomitantly, the action of frontline organisations operating in the prevention and fight against human trafficking has been seriously undermined, as well as the support system for trafficking survivors, such as the access to shelter accommodations, health and psychosocial services and legal aid. The pandemic has also posed serious challenges for law enforcement, prosecution services and the judiciary system in combating this crime.

Chapter 3: Human trafficking for the purpose of sexual exploitation: the case of the Nigerian women and girls exploited in Italy

3.1 Sex trafficking from Nigeria to Italy

In the following chapter, the phenomenon of Nigerian women being trafficked for sexual exploitation will be analysed, in particular with reference to their exploitation in Italy⁸³.

Nigerian women and girls have been extensively trafficked to Italy with the purpose of sexual exploitation in the past three decades due to a variety of factors that will be further explored; these include the geographical aspect and a particularly high presence of strong organised crime groups – not only in the country of origin, but along the trafficking route as well as in the country of destination. The sex trafficking of Nigerian women and girls to Italy is of particular importance as it consists of one of the most dramatic cases in the European continent: not only it entails massive human rights violations, but it has been evolving during more than three decades, proving to be highly adaptable regardless of the variations in terms of legal instrument, migration policies and fight against organised crime, in both countries.

Most certainly, this case can be understood and analysed in light of different perspectives, in the first place by applying the previously outlined “push and pull” categorisation. Some peculiar aspects will be further explained, as they are responsible for rendering the trafficking of Nigerian women notably difficult to eradicate. Indeed, it is crucial to obtain as much information as possible regarding this case, which allows to find specific tools, tailor-made depending on the context in which the crime develops. Indeed, this is essential in order to find effective measures to prevent and combat it, as well as to properly assist the survivors of sex trafficking. Therefore, the phenomenon can be sectioned in different components, starting from the complex situation that makes Nigerian women and girls particularly exposed to trafficking for sexual exploitation; going through the migration route that, across Niger and Libya, raises their levels of vulnerability; and finally, arriving to the country of destination, Italy, which has a high demand for illegal prostitution. All this is worsened by the strong presence of criminal groups that cooperate with each other.

As a whole, the crime of human trafficking for sexual exploitation purposes can also be assessed through the “acts,” “means,” and “purpose” elements, as previously illustrated. Just as for the general crime of human trafficking, even in the case of sex trafficking all three factors need to be present in order to establish a sex trafficking crime (with the exception of child sex trafficking, in

⁸³ Actually, human trafficking is highly widespread within Nigeria; nevertheless, given the complexity of the phenomenon, mainly the transnational aspect will be analysed

which the presence of the “means” element are not to be considered). As explained by the Office to Monitor and Combat Trafficking in Persons of the United States Department of State:

“The “acts” element of sex trafficking is met when a trafficker recruits, harbors, transports, provides, obtains, patronizes, or solicits another person to engage in commercial sex. The “means” element of sex trafficking occurs when a trafficker uses force, fraud, or coercion. Coercion in the case of sex trafficking includes the broad array of non-violent means included in the forced labour definition. These can include serious harm, psychosocial harm, reputational harm, threats to others, and debt manipulation. The “purpose” element in every sex trafficking case is the same: to engage in a commercial sex act. Sex trafficking can take place in private homes, massage parlours, hotels, or brothels, among other locations, as well as on the internet⁸⁴”.

Generally, these women are coercively employed in prostitution, pornography, marriage, as well as to any other occupation involving sexual activities, which makes them, in all aspects, modern sex slaves. Often, they are inflicted physical and psychological abuse, in order to “break them mentally and emotionally⁸⁵” since, frequently, the aim is to force them into inhumane conditions of exploitation. Once they reach the destination, they customarily end up being prisoned by employers - which may relate to criminal groups; often, they are charged with illegal and burdensome debts. Indeed, the practice of debt bondage is commonly highly used in trafficking: it consists of a practice similar to slavery, which “involves a debt that cannot be paid off in a reasonable time. The employer/enforcer who engages in this criminal practice artificially inflates the amount of debt, often by adding exorbitant interest, deducting little or nothing from the debt and increasing the amount of time the so-called debtor must work⁸⁶”. Furthermore, the majority of the victims of trafficking lacks the assets and abilities to successfully participate in or negotiate on matters that affect their well-being⁸⁷, especially if they find themselves in unknown settings – such as foreign countries, or after experiencing severe physical and psychological abuses.

3.2 Human trafficking in Nigeria

⁸⁴ Understanding Human Trafficking (U.S. Department of State - Office to Monitor and Combat Trafficking in Persons, January 20, 2021), <https://www.state.gov/what-is-trafficking-in-persons/>.

⁸⁵ Chineze J. Onyejekwe, “Influences of Global Human Trafficking Issues on Nigeria: A Gender Perspective,” *Journal of International Women's Studies* 7, no. 2 (November 2005): pp. 141-151, <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1439&context=jiws>, 3.

⁸⁶ Ann Jordan, “Slavery, Debt Bondage and Human Trafficking: from Conceptual Confusion to Targeted Solutions,” February 2011, <https://www.issuelab.org/resources/15356/15356.pdf>, 6.

⁸⁷ Onyejekwe, “Influences of Global Human Trafficking”, 3

3.2.1 Push and pull factors for sex trafficking in the Nigerian context

Nigeria represents about half of the West African population, as it counts nearly 202 million people; at the same time, the country has one of the youngest populations in the world, with 43.4% being between 0-14 years old and 53.9 aged 15-64⁸⁸. Nigerian society is characterised by strong economic inequality; indeed, 40% of the population lives below the poverty threshold and the other 25% is at risk. This is strongly related to the high unemployment rates, which undermine the attempts of poverty reduction strategies, and foments regional heterogeneity in terms of opportunities⁸⁹. Nigerian women face high levels of discrimination in the society, with specific regards to the access to schooling and employment; it is common for families to prioritise sons' education over daughters', who may start to work in low-skills job instead⁹⁰. Indeed, according to UNESCO's indicators, Nigerian girls have less access starting from the primary education completion – 62%, compared to 77% of boys; adolescents out of school result to be 30% female and 25% males, and the lower secondary completion rate varies from 59% with girls to 66% with boys⁹¹.

Indeed, the country still presents severe poverty and high unemployment rates, which particularly affect young people. At the same time, inequality and discrimination based on harmful gender roles, together with the instrumentalisation of traditional practices and beliefs, are to be considered the leading sources of trafficking of girls and women in the country. Nonetheless, the reason for the endurance of the trafficking network responsible for this crime is to be found also in the enormous economic gain made by the organised criminal groups, together with the high degree of impunity and the entrenched and flexible character of the criminal system itself⁹².

At the institutional and decision-making level, and in general governmental positions, women are dramatically under-represented: in the current 9th General Assembly of Nigeria, only 9 out of 107 Senators are women, and 11 out of 360 are members of the House of Representative⁹³. As a matter of fact, the political system penalises female representation in Nigerian politics, as parties require mandatory fees in order to participate in the elections, together with extreme expenses coming from

⁸⁸ “World Population Dashboard: Nigeria,” United Nations Population Fund, accessed July 3, 2021, <https://www.unfpa.org/data/world-population/NG>.

⁸⁹ “The World Bank in Nigeria: Overview,” World Bank, accessed August 1, 2021, <https://www.worldbank.org/en/country/nigeria/overview>.

⁹⁰ “Nigeria: Freedom in the World 2021 Country Report,” Freedom House, accessed August 3, 2021, <https://freedomhouse.org/country/nigeria/freedom-world/2021>.

⁹¹ “World Inequality Database on Education – Nigeria”, UNESCO, accessed August 2021 <https://www.education-inequalities.org/countries/nigeria/#?dimension=all&group=all&year=latest>

⁹² United Nations Human Rights Council, “Visit to Nigeria: Report of Special Rapporteur on Trafficking in Persons, Especially Women and Children”, A/HRC/41/46/Add.1, 24 June–12 July 2019, 7

⁹³ Tordue Salem, “List of House of Reps Members and Their Political Parties,” *Vanguard*, July 9, 2021, <https://www.vanguardngr.com/2021/07/list-of-house-of-reps-members-and-their-political-parties/>.

election campaigns. This is strictly connected to the above-mentioned unequal access to education, which leads to the exclusion from well paid employment⁹⁴. The broad spectrum of gender inequality is deeply rooted in some societal structures, such as “unpaid labour burdens, unequal inheritance rights and outright discrimination⁹⁵”, which severely compromise the possibility of reaching leadership roles and encourage female subordination. At the same time, setting aside the level of education, women face “gender stereotypes that assign leadership to men, sexual assault, pay gaps and unpaid labour, including child care and housework, placing them at a disadvantage⁹⁶”. Therefore, the Nigerian human trafficking epidemic can be traced back to several of the “conventional” push factors previously analysed, including extreme poverty, demographical pressure, lack of economic opportunities, as well as rampant corruption and, with specific regards to the trafficking of women, the broad spectrum of gender inequality (among others, manifested in the unequal access to education and the lack of political representation)⁹⁷.

Nigeria is a source, transit and destination country for human trafficking. According to the most recent Global Slavery Index, Nigeria ranks 32 out of 167 analysed countries for their number of enslaved people, reaching 1,386,000. The trafficking of human beings is one of the most widespread crimes in the country, together with drug trafficking and economic fraud⁹⁸.

Since Nigeria consists of such a major hub for the trafficking of human beings, it is important to differentiate the level on which the crime takes place. Firstly, internal trafficking, which is largely widespread, especially from rural areas to big cities; women and girl are mainly trafficked with the purpose of domestic servitude and sexual exploitation, whereas men and boys are generally employed in forced begging and labour, as well as in exploitation in “street vending, mining and stone quarrying, agriculture and textile manufacturing⁹⁹”.

Nigerian people are trafficked to Europe mainly through the Central Mediterranean Route, as well as to Gulf States, Russia and Western and Southern Africa, with the purpose of exploitation in forced labour and sex work. The trafficking processes may start differently, as many could be recruited in the country of origin, whereas others may become victims along the migration route, having previously agreed on fleeing their homeland through smuggling. Because of the lack of secure and legal migration channels, a vast number of people are recruited from traffickers while in

⁹⁴ Damilola Agbalajobi, “Nigeria Has Few Women in Politics: Here’s Why, and What to Do about It,” *The Conversation*, May 3, 2021, <https://theconversation.com/nigeria-has-few-women-in-politics-heres-why-and-what-to-do-about-it-159578>.

⁹⁵ Agbalajobi, “Nigeria has few women in politics”

⁹⁶ Agbalajobi, “Nigeria has few women in politics”

⁹⁷ “Nigeria: Human Trafficking Factsheet,” (Path Finders Justice Initiative, June 16, 2021), <https://pathfindersji.org/nigeria-human-trafficking-factsheet/>.

⁹⁸ Path Finders Justice Initiative, “Nigeria”

⁹⁹ UN HRC, “Report of Special Rapporteur”, 2

transit, predominantly in Libya. There, considering the dramatic situation that the North African country is facing, and the power militia execute over migrants in transit, the latter suffer from countless human rights violations, “including torture, rape, extortion, forced labour, sexual and labour exploitation amounting to trafficking and contemporary forms of slavery¹⁰⁰”.

The trafficking of Nigerian women and girls to Europe for the purpose of sexual exploitation started in the late 1980's. With specific regards to Italy, one of the main pull factors was due to the fact that the country was facing a massive heroin epidemic; the fear of AIDS made many drug-addicted Italian sex workers no longer appealing for the market, therefore leading to a boost in demand. For this reason, Nigerian women became “the first cohort of forced prostitutes” in Italy¹⁰¹, initiating what is today an organised and systematic trafficking route.

When it comes to the calculate the real magnitude of the phenomenon outside of Nigeria, it is difficult to estimate its dimensions accurately: the precise number of victims of human trafficking abroad remains predominantly unidentified. Nevertheless, it is estimated that Nigeria is one of the main countries of origin for trafficking victims, in particular in the European continent. Nigerian women forced into sex trafficking go through at least 34 different countries in different regions of the world. In fact, when considering Non-EU nationals, Nigerians are the most trafficked within the European Union. It has been estimated that over 80% of all female migrant women arriving to Italy from Nigeria were already being recruited for sexual exploitation activities, or at risk of¹⁰².

3.2.2. Legal framework to combat the trafficking of human beings in Nigeria

On the international level, Nigeria is party to both the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. At the regional level, Nigeria ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol. This treaty foresees the Elimination of Discrimination Against Women (Art. 2), the Right to Dignity (Art. 3), The Rights to Life, Integrity and Security (Art. 4), and the Elimination of Harmful Practices (Art.5), giving particular importance to the fight against sex trafficking.

¹⁰⁰ UN HRC “Report of Special Rapporteur”, 2

¹⁰¹ Christiana E.E. Okojie et al., “Trafficking of Nigerian Girls to Italy: Report of Field Survey in Edo State, Nigeria” (University of Benin, July 2003), <https://www.corteidh.or.cr/tablas/23515.pdf>, 13

¹⁰² “2020 Trafficking in Persons Report” (U.S. Department of State - Office to Monitor and Combat Trafficking in Persons, June 2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>, 378.

“The Nigerian system considers a person being trafficked if:

- (i) the individual was sold in exchange for money;
- (ii) the individual was put in debt bondage;
- (ii) his/her travel documents were seized by agents, employers or traffickers;
- (iii) his/her freedom of movement was restricted;
- (iv) the individual was subjected to or suffered violence or threat against his/her family;
- (v) the individual’s traffickers gained any form of benefits at their expense through the use of force, deceit, and other forms of exploitation;
- (vi) the individual has suffered physical, mental and/or sexual abuse; and/or the individual had no prior knowledge of the exploitative nature of the job they were promised¹⁰³”.

At the national level, the country adopts legal measures to criminalise human trafficking, starting from the Constitution:

“Every individual is entitled to respect for the dignity of his person, and accordingly -

- (a) no person shall be subject to torture or to inhuman or degrading treatment;
- (b) no person shall be held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour¹⁰⁴”.

In light of the dramatic incidence of trafficking of human beings in the country, Nigeria adopted the Trafficking in Persons Law Enforcement and Administration Act in 2003, which established the legislative grounds for combating human trafficking in the country; in 2015, the law was considerably amended and established the creation of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP¹⁰⁵). The Act consists of a comprehensive approach to the complicatedness of human trafficking, as it encompasses different sections aimed to tackle different aspects of the phenomenon, ranging from the creation of the NAPTIP, with its functions and powers¹⁰⁶, to the description of the crime of trafficking of human beings and the different forms in which it manifests itself, in conformity with the Palermo Protocol. Additionally, it includes

¹⁰³ “Nigeria Trafficking in Human Beings - Country of Origin Information Report” (European Asylum Support Service -EASO, April 2021), <https://easo.europa.eu/news-events/easo-publishes-coi-report-nigeria-trafficking-human-beings>, 11.

¹⁰⁴ Art 34.1, “Constitution of the Federal Republic of Nigeria”, Nigeria, Act No. 24, May 5 1999, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

¹⁰⁵ “The Trafficking in Persons (Prohibition) Enforcement and Administration Act”, Nigeria, March 30 2015, <https://www.naptip.gov.ng/wp-content/uploads/2017/05/NAPTIP-Re-enactment-Act-1-GAZETTE-10001-1.pdf>

¹⁰⁶ Art. 2-12, “Trafficking in Persons Act”

penalties, both in terms of imprisonment and pecuniary¹⁰⁷, together with the treatment and protection of trafficked persons, including their right to information, shelter and compensation¹⁰⁸, as well as the creation of a “Victims of Trafficking Trust Fund¹⁰⁹” and measures for international cooperation with foreign states in the fight against this transnational crime¹¹⁰.

To a large extent, international organisations have approved the legal endeavours of the Nigerian government, as the Act is considered a much needed tool in order to proactively tackle the problem. Nevertheless, concerns have been raised upon the assignment of an adequate budget to specialised anti-trafficking agencies; indeed, civil society organisations still constitute an essential contribution to the fight against this crime. In order to reach an effective and holistic response to trafficking, there is the need to enhance the cooperation between all actors involved¹¹¹. Moreover, the scarcity of funds reserved to the NAPTIP has not yet allowed the implementation of adequate anti-trafficking operations in the totality of the State's territory, undermining the capacity to identify victims of trafficking, as well as the people responsible for the criminal activities¹¹². Also, it is worth noting that several government officials were found guilty of complicity in crimes of human trafficking, and the measures taken in response to these serious offences resulted to be inadequate¹¹³.

3.2.3 Instrumentalisation of cultural practices: the *juju* oaths

In Nigeria, the recruitment of victims for sex trafficking is carried out through a variety of procedures, ranging from kidnapping to direct purchase from the victim's family. Often, the *modus operandi* consists of women being approached from traffickers with the offer of a good employment opportunity abroad; being the job market particularly precarious in the home country, it is easy for the victims to accept to embark in the journey. In this way, the trafficking starts, and the person is handed over, along the route and then to the final employer, delivered as a mere object. In the country of destination, as it represents an unknown context, they often lack the resources and knowledge to escape from the context of exploitation. Many times, they find themselves trapped in what is referred to as a debt bondage, which consists of an incredibly large amount of money – it

¹⁰⁷ Art. 13-15, “Trafficking in Persons Act”

¹⁰⁸ Art. 61- 66, “Trafficking in Persons Act”

¹⁰⁹ Art. 67, “Trafficking in Persons Act”

¹¹⁰ Art. 69-74, “Trafficking in Persons Act”

¹¹¹ End of Visit Statement, Nigeria (3-10 september) by Maria grazia Giammarinaro, UN Special Rapporteur on Trafficking In Persons, Especially Women and Children (OHCHR, September 10, 2018), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23526&LangID=E>.

¹¹² “2021 Trafficking in Persons Report” (U.S. Department of State - Office to Monitor and Combat Trafficking in Persons, June 2021), <https://www.state.gov/reports/2021-trafficking-in-persons-report/>, 425.

¹¹³ “2020 Report” (U.S. Department of State), 378.

can add up to more than €30 000¹¹⁴, deceived as the price of transportation fees. Once they realised they find themselves in a deceitful situation, fleeing from it is hard and dangerous, considering the violent and abusive state in which they are held¹¹⁵.

Nigeria has the reputation of being one of the principal sources of cross-border traffic of human beings in the African continent. This is due to the efficiency of organised crime groups, and in particular to their ability of recruiting people, as several means are utilized in order to force into slavery women and girls. In particular, they can take advantage of the traditional *juju* oaths, which consist of “a spiritual belief system incorporating objects, such as amulets, and spells used in religious practice, as part of witchcraft in West Africa¹¹⁶”. When employed in human trafficking, these practices becomes a particularly efficacious method for subduing victims into secretiveness and imprisoning them into forced labour. Indeed, as previously observed, traditional practices can be instrumentalised in a harmful way, and become a powerful tool for exploitation and subjugation.

The methods used for controlling victims in human trafficking are endless, and they all have the purpose of systematically impose respect and fear towards the pact – regardless of how abusive the conditions it implies. One of the most well-known methods is the use of a traditional oath of silence ceremony, which is an extremely effective mechanism of control, as it forces into silence the victims, whilst also trapping them into debt bondage. Generally, victims undergo the oath before leaving the country, as it is a form of payment guarantee of the debt for the future - hence once they reach their final destination, as well as to protect all the actors involved in the several stages of trafficking from any possible report to the authorities. This practice implicates severe psychological blackmail, as it not only treats illness and death to the trafficked person, but it also extends to their family, therefore making the breaking of the pact even more difficult. For this reason, in a human rights perspective, “the efficacy of the oath as a control mechanism is tantamount to torture as defined by international law¹¹⁷”. Women and minors who undergo this kind of ceremonies are extremely exposed to practices of sexual violence and forced servitude, along with other pre-existing personal circumstances that make them easy targets for traffickers. Indeed, it consists of a peculiar phenomenon, which cannot be simply reconnected to the broad pull and push dichotomy and need to be specifically understood and addressed¹¹⁸, as it “reaches to the depths of

¹¹⁴ “Nigeria Trafficking in Human Beings” (EASO), 33.

¹¹⁵ Okoje et al., “Trafficking of Nigerian girls to Italy”, 27

¹¹⁶ Sunday Oguntola, “Nigeria under the Spell of Juju,” *The Nation*, January 13, 2020, <https://thenationonlineng.net/nigeria-under-the-spell-of-juju/>.

¹¹⁷ Norah Hashim Msuya, “Traditional ‘Juju Oath’ and Human Trafficking in Nigeria: A Human Rights Perspective,” *De Jure Law Journal* 52, no. 1 (2019): pp. 138-162, <https://doi.org/10.17159/2225-7160/2019/v52a9>, 138.

¹¹⁸ Arwa Damon, Brent Swails, and Brice Laine, “The Sex Trafficking Trail from Nigeria to Europe,” *CNN*, March 21, 2018, <https://edition.cnn.com/2017/12/04/africa/nigeria-benin-city-sex-trafficking/index.html>.

their psychological vulnerability¹¹⁹”.

Generally, the trafficked person undergoes the oath ceremony before the departure. They are demanded personal objects to give to the shrine priest, including items such as underpants, saliva, menstrual blood, (pubic) hair or fingernails¹²⁰. Clearly, the aim of the ceremony is to establish a climate of fear, in order to obtain submission and secrecy, by severely compromising the possibility for women and girls to react to the violations of their fundamental rights and criminal acts. As a matter of fact, even if identified by public authorities as victims of traffic, they may refuse to cooperate, which also means obstruct the possibility of receiving a proper protection¹²¹. Of course, all this generates a cycle of unaccountability and empowers criminal organisations. They are forced to undergo these procedures and most importantly to respect them, as some of the threats that women and girls receive following the oath are, among others, “not being able to have a child, or dying in the process of giving birth by excess bleeding that would never stop; that the swearer or her parents will die; that the family of the swearer will be destroyed; that the swearer will become insane¹²²”.

The trafficking chains in Nigeria often begin with an intermediary, who often happens to be known to the victims: they can be just an acquaintance or even part of the family. Therefore, this connection, together with the familiarity and trust that it entails, facilitates the process and the building of reliance between the trafficker and the recruited person. All this makes the latter more keen on accepting precarious conditions and also ensuring secrecy: as a result, it becomes harder for authorities to prosecute such crimes. Moreover, the family may play a fundamental role in putting pressure, especially on women, pushing them into accepting exploitative situations for profit.

The relationship component facilitates also the imposition of *juju* ceremonies, as it makes them apparently trustworthy and agreed upon with ease, especially if the trafficker is portrayed as wealthy and is known within the community. Indeed, the exposure of wealth is also used as a proof - it foments the desire for emigration, strengthening the idea that it is worth it regardless of the means it requires. Often, the amount of debt is already fixed during the oath ceremony, or anyway at the first stages of the traffic process. Therefore, the oath is to be considered as a contract between the parties involved, needed for the “secrecy, adherence, confidentiality and repayment of the cost of the victim’s journey¹²³”. It is common for victims to voluntarily undergo the ceremony, albeit under deceiving information. With specific regard to the amount of debt and the type of job they will have to perform, normally they are not aware of the real amount of money they are committing

¹¹⁹ Hashim Msuya, “Traditional “juju” oaths”, 145

¹²⁰ Hashim Msuya, “Traditional “juju” oaths”, 148

¹²¹ Hashim Msuya, “Traditional “juju” oaths”, 148

¹²² Hashim Msuya, “Traditional “juju” oaths”, 149

¹²³ Hashim Msuya, “Traditional “juju” oaths”, 149

to pay back; many times, they are tricked as traffickers play around exchange rates: the amount may be communicated in Euros, whereas they assume it is in Naira, the local currency, which prevents them from understanding how prohibitively expensive the journey actually is.

It is estimated that around 90% of the women trafficked to Europe undergo the *juju* ceremonies for secrecy¹²⁴.

3.2.4 The importance of the figure of the Madame

The so-called Madame is one of the cardinal figures of the Nigerian sex trafficking networks. They often sponsor and organise the movement of the victims, and they can be involved in the initial recruitment phase, too. Most importantly, they manage and monitor exploitative activities in Europe. It is common for Madams to work in couples, with the first located in the country of origin and the second in the country of destination. They work in accordance with criminal groups, with representatives in all stages of trafficking, in order to ensure the arrival of the victims to their destination¹²⁵.

Various criminal investigations into Nigerian trafficking rings in Europe confirmed the continuing prominence of the model, centred on these female traffickers in the organisation of sex trafficking from Nigeria to Europe. Some investigations conducted in Europe have revealed that the vast majority of Madams were previously employed as prostitutes themselves, and had advanced to an organisational and commanding role. Some of them had even been subjected to trafficking too, and had acquired the role after extinguishing their debt; they would go back voluntarily to their home country, after paying the debt, and start to proactively participate in the illegal business as traffickers¹²⁶. Survivors of sex trafficking often describe them as “the most brutal and vindictive¹²⁷” within the network. According to Europol, “victims often become members of the criminal groups exploiting them, ultimately assuming the role of “madam” in the exploitation of others. In turn, this cultural novelty reduces the likelihood that victims will cooperate with law enforcement¹²⁸”. Therefore, once the pact has finished, some survivors of sexual exploitation may switch from being victims to becoming perpetrators. This is one of the reasons behind the endurance of the Nigerian

¹²⁴ UN HRC “Report of Special Rapporteur”, 3.

¹²⁵ “Nigeria Trafficking in Human Beings” (EASO), 26

¹²⁶ “Country Of Origin Information Report - Nigeria: Sex Trafficking of Women” (European Asylum Support Office (EASO), October 27, 2015), <https://www.easo.europa.eu/news-events/easo-country-origin-information-report-nigeria-%E2%80%93-sex-trafficking-women>, 21.

¹²⁷ “Country of Origin Information Report” (EASO), 21

¹²⁸ EUROPOL, Trafficking in Human Beings in the European Union, 1 September 2011, pp. 15-16.

prostitution network: it is characterised by a “a self-reproducing organizational structure¹²⁹”, which constitutes the strength of the network, as it is based on the element of reciprocity between who exploits and who is being exploited; starting from the solemnity and value of the initial pact, together with the prospect for a better situation once the debt is extinguished, it can create a “strong commitment to comply and respect the pact¹³⁰”.

Nigerian survivors of practices of forced prostitution and sexual slavery reported being trafficked in different places along the route; they report undergoing threat, coercion through fraud, deception, abuse of power. In their narrations, the figure of the Madame is persistent, as the person in charge of directing the exploitative businesses. Survivors interviewed by Human Rights Watch describe being physically, sexually, and verbally abused¹³¹, and report that they were forced to work continuously, without being able to rest; “even while ill, menstruating, pregnant, or soon after childbirth or having undergone forced abortions. In some cases, madams told them to put unsanitary materials, such as mattress foam or wipes, in their vaginas to block menstrual blood or bleeding from abortions so that they could have sex with customers¹³²”.

It appears that all the essential components of the trafficking of young Nigerian women follow a well established pattern. The research describes the control system of the victim through the whole process, centred on a strong psychological subjection.

3.3 Transnational trafficking of Nigerian women

In the past, the route to reach Italy from Nigeria was, at some levels, less complicated: traffickers would provide fake documents, and embark them by plane from Lagos towards Europe. The civil war and the complicated political situation in Libya have opened new possibilities, and in particular, new routes, both through land and sea, which do not imply expensive fake passports and high-priced plane tickets. However, these new routes are incredibly dangerous and life threatening¹³³. Only in 2016, 602,000 Nigerian nationals attempted to reach Europe by crossing the Sahara Desert; dramatically, 27,000 of them lost their life on the route¹³⁴.

¹²⁹ Jørgen Carling, “Trafficking in Women from Nigeria to Europe” (Migration Policy Institute, July 1, 2005), <https://www.migrationpolicy.org/article/trafficking-women-nigeria-europe>.

¹³⁰ Carling, “Trafficking in Women”.

¹³¹ “You Pray for Death’: Trafficking of Women and Girls in Nigeria ”(Human Rights Watch , August 2019), <https://www.hrw.org/report/2019/08/27/you-pray-death/trafficking-women-and-girls-nigeria>, 33.

¹³² “You Pray for Death”, (HRW), 34.

¹³³ “La Tratta Di Donne Dalla Nigeria All’Italia,” *Il Post*, December 8, 2015, <https://www.ilpost.it/2015/12/08/tratta-donne-prostituzione-nigeria-italia/>.

¹³⁴ Path Finders Justice Initiative, “Nigeria”

3.3.1 The phenomenon in Italy

In the European Union, 92% of the victims of trafficking identified for sexual exploitation in the 2017-2018 period were women, with Nigerian trafficked persons being the majority of non-EU citizens among them. In particular, Italy resulted to be the country in which the highest number of persons suspected, arrested or cautioned for involvement in human trafficking activities were brought into contact with law enforcement authorities or the criminal justice system (namely, 4104 cases¹³⁵). According to the Interregional Crime and Justice Research Institute, Italy is currently the destination of more than 10,000 Nigerian prostitutes. Furthermore, the International Organisation for Migration stated that, through the arrivals by sea, the number of potential sex trafficking victims has boosted of approximately 600 per cent since 2014¹³⁶.

The issue is particularly present because of different factors, including the geographical position, the power of local organised crime, especially where the State is less in control of the territory, together with a persistent demand for sexual services.

It would be spontaneous to think that, at the end of the crossing of the Mediterranean, once Nigerian traffic has led women to the Italian shores (considering the emergency context in which the Central Mediterranean route ends), it should be easy for them to denounce the traffickers and find a way out, especially because of the first reception carried out by humanitarians and law enforcement agencies, who are in charge of determining their legal status. Yet, it remains particularly difficult for Nigerian women to escape from the exploitative situation, which is one of the reasons why criminal organisations in Italy are still so difficult to eradicate. This is highly due to the psychological pressure, born out of both the juju rituals and the persistent control enforced by the Madames and other agents of the cults. Besides, it is frequent for reception centres for migrants in Italy to lack security. Therefore, trafficking networks are able to get access without difficulty, and to control and exploit people in the centres. Moreover, being the facilities overcrowded, in such a chaotic situation is even possible to remove people from the centres and already exploit them for sex work¹³⁷.

One of the aspects that has been stressed multiple times, in general when it comes to human trafficking, is the crucial role played by criminal groups. Indeed, it is not coincidentally that both

¹³⁵ European Commission, “Data Collection on Trafficking in Human Beings in the EU”, 2020

¹³⁶ Mike Omilusi, “A Researcher’s Visit to Italy: Human trafficking and the Nigerian-Sicilian Mafias”, *African Sociological Review / Revue Africaine de Sociologie*, Vol. 23, No. 1 (2019), pp. 110-122, 117

¹³⁷ “Intelligence Report Italy: People smuggling, migration and human trafficking in Italy”, Stop the Traffik, <https://www.stopthetraffik.org/intelligence/italy-2-0/>

Nigeria and Italy present a particular strong and structured tradition of organised crime.

3.3.2 Nigerian organised crime groups

The presence of Nigerian criminal groups has been known to the European authorities for decades, as it constitutes a severe challenge not only in terms of national security, but also because of the massive human rights violations they are responsible for. Especially, Nigerian cult groups have been able to establish stable connections and cooperation with autochthonous criminal groups, as they are active, besides in human trafficking, in closely related activities such as “fraud, corruption, migrant smuggling, counterfeiting of documents and money laundering [...] trafficking and distribution of various types of drugs and currency counterfeiting¹³⁸”. The majority of these groups go by the appellation of “confraternities”, as they were originally instituted in Nigerian universities. The “secret cults” that have been developed in Italy since the early 80's are characterised by a strong feel of belonging to one ethnic group, as well as the devotion to a hierarchical and paramilitary structure and to strict affiliation rituals and codes of conduct. Regardless of the differences between the groups, being their structural connotations and the ways they operate substantially akin, they are considered by the Italian Courts as characterised by the connotation of “*mafiosità*”¹³⁹, which, according to the Italian Criminal Code, constitutes a serious crime and is defined by intimidation, often use of weapons, illegal actions aimed to acquire economical gains.

The cults have established considerable control over the territory, and they have at their disposal both logistic resources and personnel. Indeed, one of their major assets is their presence on all the different stages of the trafficking route from Nigeria to Italy, including along the transit phases. Moreover, due to their deep-rooted presence in the European continent, the cults have developed a solid knowledge regarding EU countries' law enforcement systems, being able to exploit even licit tools in order to enable their activities¹⁴⁰. Of particular urgency is the Nigerian trafficking networks' ability to “abuse the asylum mechanism to legalise both their and their victims' status. Many suspects involved in THB hold legal residence permits, are currently asylum applicants, or have refugee status¹⁴¹”. Receiving a legal status, with the protection and documents it entails, also allows secondary movements within the European Union, therefore adjusting to the market demand for sex work.

¹³⁸ “European Migrant Smuggling Centre 4th Annual Report” (EUROPOL, May 15, 2020), <https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report-%E2%80%93-2020>, 21.

¹³⁹ “Relazione Del Ministero Dell'Interno Al Parlamento: Gennaio – Giugno 2020” (Direzione Investigativa Antimafia, December 2, 2020), <https://direzioneeinvestigativaantimafia.interno.gov.it/news/content/7357.pdf>, 394.

¹⁴⁰ “European Migrant Smuggling Centre” (EUROPOL), 22.

¹⁴¹ “European Migrant Smuggling Centre” (EUROPOL), 22.

3.4 Smuggling and Trafficking: an updated differentiation

When it comes to defying what human trafficking consists of, the distinction between this act and smuggling of migrant is used univocally, in what is often an overly simplified analysis of both phenomena. Indeed, some sort of dichotomy is applied between what is voluntary and not; the same thing happens when refugees are compared to “economic” migrants.

Even if the utility of this type of categorisation is considered, which may result to be necessary especially when for defying the legal status of an alien, it is fundamental to take into account that the reality of migration is beyond complex, and using strict categories can turn out to be not only counterproductive, but also a violation of a person's fundamental rights. In light of the restrictive migration policies put in place by the European Union, and the reduction in the possibility of legally entering the EU countries, migration flows have relied more and more on smugglers in order to gain access. This is the case of the three Mediterranean routes, namely the Western, via Morocco to Spain; the Central one, from Libya to Italy, and Eastern path, viz from Turkey to Greece; as well as via land, for example the dramatic Balkan route. What is important to underline is that these migration flows are not homogenous whatsoever, and are composed of so-called “economic” migrants, as well as asylum seekers and future refugees. Beside the danger of these journeys, together with the high risk of being exposed to inhuman treatment during the passage, especially if considering the Central Mediterranean Route, this heightens the vulnerability of being subjected to human trafficking. Both State and humanitarian agencies have reported an alarming increment of Nigerian women and girls being sex trafficked to the Italian shores.

“Distinguishing between human trafficking and migrant smuggling, forced and voluntary migration, is a key organising principle underpinning Italian and European political discourse and practice. The construction and application of distinct identities, such as irregular migrant, refugee, and victim of trafficking, is used to separate between those deemed as deserving protection and others to be deported. It is through this ‘obsession with classification’ that a differential recognition of rights is achieved. However, legal, political, and academic attempts to rigidly distinguish these subsets of migrants clash with increasingly overlapping migratory experiences that generate fluid and complex identities¹⁴²”.

As explained in Chapter I, according to International Law, the categories of “trafficked person” and

¹⁴² Giorgia Serughetti, “Smuggled or Trafficked? Refugee or Job Seeker? Deconstructing Rigid Classifications by Rethinking Women’s Vulnerability,” *Anti-Trafficking Review*, no. 11 (2018): pp. 16-35, <https://doi.org/10.14197/atr.201218112>, 18.

“smuggled person” are markedly opposed, in such a way that these two matters are ruled by two separate treaties, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. The main distinction between these two practices lies in the presence – or the lack, of the consent of the individual. This will establish the treatment that the alien will receive; if consent is lacking, then the individual needs to be treated as a victim; on the other hand, when a voluntarily trans-passing takes place, then the person can be subjected to punishment, on the basis of the national immigration national law of the country.

With reference to the Nigerian women arriving in Italy, a serious discrepancy occurs between bureaucratic classification and the reality of many migrants. Indeed, an analysis of 56 asylum applications submitted by Nigerian women between 2015 and 2016, revealed that only seven of them were allowed to remain in the country, on the ground of humanitarian reasons, regardless of the similarity between the cases¹⁴³. This clearly clashes with the data provided by the OIM, which warned of the dramatic increase of possible trafficking victims arriving to the Italian shores, namely 80% of all the Nigerian women and girls.

4. Conclusions

In the present thesis, the complexity and continuous transformation of the phenomenon of human trafficking has been underlined multiple times. The variety of forms it assumes, and the ability of

¹⁴³ Serughetti, “Smuggled or Trafficked”, 26

criminal organisations to conform with the demand of the market, as well as to exploit the vulnerabilities of their victims, makes it an incredibly difficult phenomenon to predict and tackle.

One striking example is the capacity to thrive and diversify their actions even in situations of global emergency, such as the current COVID-19 crisis, as illustrated in Chapter 2. Consequently, public policies and legal framework need to be in constant adaptation: on one hand, by immediately addressing urgent concerns – such as victims' protection and support, as well as the persecuting phase; on the other hand, it is very much needed to establish strategies aimed to tackle the problem in the long run, namely through the design of policies aimed to reduce those structural issues that enable human trafficking to exist and flourish.

Clearly, if some of the main factors that lead to human trafficking are taken into consideration, it may appear incredibly arduous to address them: for instance, extirpating organised criminal groups and corruption, or eliminating extreme poverty. Nevertheless, especially with regards to sex trafficking, as it has been observed that it finds its roots in patriarchal-based gender discriminations, every step towards equality, in different spheres of society, can prove to be of fundamental importance. Indeed, all the necessary measures should be put in place in order to promote gender equality, whilst fighting gender-based violence and stereotypes. All this also requires the implementation of made-to-measure policies that promote women's empowerment, for instance by rendering leadership roles accessible in the society. Moreover, especially in situations of emergency, such as the current COVID-19 pandemic, it is crucial to maintain a gender-sensitive approach to crisis management, as women and girls turn out to belong to particularly vulnerable groups, which are the most affected.

When it comes to addressing the incredibly complex phenomenon of human trafficking, a human rights based approach proves to be the appropriate one. HRBA is a theoretical framework that aims to obtain human development through the application of international human rights standards; at the same time, it proactively operates in the promotion and protection of human rights of the people involved¹⁴⁴. Indeed, the priority must be putting survivors of such exploitation at the core of the anti-trafficking response, by giving emphasis to the safeguard of their rights and dignity. In doing so, the universality of human rights is guaranteed, regardless of the scope of exploitation; indeed, especially in case of trafficking for sexual exploitation, it is common that processes of stigmatisation, loss of self-worth and rejection from the community of origin take place, establishing in this way some sort of double persecution. On the other hand, by applying a human

¹⁴⁴ “Human Rights-Based Approach,” United Nations Sustainable Development Group (United Nations), accessed May 2021, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

rights based approach, it is ensured that “all victims are entitled to equal access to aid mechanisms, protection, and justice, as well as the choice to access these services in the way that they choose so as not to have their agency compromised¹⁴⁵”. In this way, public authorities have to acknowledge the gendered dimension of the crime, and accordingly incorporate measures that do not allow any kind of discrimination and have a gender-sensitive approach. Moreover, it is a method that allows to take into consideration the multiple factors that render a person particularly exposed to sex trafficking, hence it underlines the importance of intersectionality in this matter. Unfortunately, it is not common yet to address the trafficking of human beings as a human rights violation, but more as an “issue of prostitution, border control, or organized crime, which detrimentally impacts the rights of trafficked persons by making them secondary to another policy objective. [...] A holistic human rights approach is critical to advance anti-trafficking policies that prevent trafficking, rescue victims and provide for reintegration and prosecute traffickers¹⁴⁶”. In so doing, not only the rights of the victim are guaranteed, but also a fundamental process of empowering takes place; for this reason, it is becoming more and more common, when referring to a person that has gone through trafficking of sexual-related nature (but, in general, gender-based violence too), to shift from the term “victim” to “survivor”. In legal terms, the term “victim” is still used and necessary to defy the offended part in the criminal justice system. Nevertheless, the expression “survivor” can indicate that the person has undergone a trafficking experience, and has experienced an empowering process, after healing from the traumatic experience, and finally, achieved the possibility of recovering from the trauma, reaching self-determination and personal freedom.

Another important aspect that is not being addressed enough when it comes to sexual exploitation, is the factor of the demand for sex-related activities. Indeed, it is an aspect commonly overlooked in the development of policies aimed to prevent this crime. This is due to several factors, but probably the common moralistic approach to prostitution plays an important role, as it represents some sort of “taboo” topic, which consequently remains neglected in the public discourse. Generally, it can be stated that the lack of regulation in some employment sectors, including for instance domestic work, allows for the proliferation of illegal activities. These can vary from the absence of labour rights to real exploitation and working conditions that are comparable to modern-day slavery-like practices¹⁴⁷.

¹⁴⁵ Janina Pescinski, “A Human Rights Approach to Human Trafficking,” *Our World* (United Nations University, February 20, 2015), <https://ourworld.unu.edu/en/a-human-rights-approach-to-human-trafficking>.

¹⁴⁶ Janina Pescinski “A Human Rights Based Approach to Human Trafficking”, United Nations University <https://ourworld.unu.edu/en/a-human-rights-approach-to-human-trafficking>

¹⁴⁷ “Gender Mainstreaming in Thematic Areas: Gender Equality and Trafficking in Human Beings” (Council of Europe, October 2018), <https://rm.coe.int/gender-mainstreaming-toolkit-21-gender-equality-and-trafficking-in-hum/168092e9ed,3>.

For this reason, it appears inevitable to take into consideration the national legislation regarding prostitution when addressing the topic of sex trafficking. First of all, as previously outlined in the first chapter, regardless of the legal status of prostitution – namely, even when legalised sex workers have the right of equal treatment and non-discrimination, and anti-trafficking policies always need to be rigorously implemented. Even so, the discourse regarding the legal status of prostitution is overly complex, and it would be quite naïve to believe that univocally, regardless of the context taken into consideration, there is such thing as an equation stating that legalisation of prostitution equals to the end of sex trafficking. For this reason, this matter needs to be constantly evaluated, in the first place by building a proper dialogue with the parties involved, hence trafficking survivors (clearly, if the person is comfortable in doing so, and also by making sure that all the measures of privacy protection are adopted), sex workers and civil society organisations. Eventually, it is important to keep in mind that the priority is to ensure the universal respect of human rights, including, for instance, the right to work.

When considering the case of human trafficking to Italy, one of the most important aspects to analyse is that of the current migration policies. Indeed, European countries have been adopting severely restrictive migration policies, leading to the risk that the number of irregular migrants, namely people without documents and any kind of protection, will skyrocket. Having an irregular status means being more vulnerable, therefore more likely to become a potential victim of the several criminal organisations present in the destination country, as well as on the illegal channels on the route. At the same time, the political debate regarding migration is centred on repatriation of aliens, border security and control, identification and collection of personal data of who arrives to Europe – for instance, through the collection of fingerprints of asylum seekers, as established by the Eurodac regulations¹⁴⁸. This underpins the idea that the current migration flows are often deemed as a threat to public order, much more than in a humanitarian perspective.

Consequently, migrants – generally speaking, namely “economic” ones, asylum-seekers, as well as victims of trafficking, lose in some way their personal identities and thus their basic human rights are not valued any longer. Therefore, a process of “dehumanisation” takes place, fueled as well by the process of “Othering”, as illustrated in Chapter 2. Specifically, as explained in the last chapter, there is the need to re-think and address the whole discourse that surrounds migration. If bureaucratic labels are important to determine the legal status of a person, we have to be aware that their strictness can lead to improper treatment of victims of trafficking. In some ways, this also

¹⁴⁸ Identification of Applicants (Eurodac) (Migration and Home Affairs - European Commission, December 6, 2016), https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en.

incites some sort of hierarchy between people, retaining “some migrants as deserving of protection and others as undeserving¹⁴⁹”; some are simply victims, and treated as such, others just looking for an employment – therefore easily instrumentalised by xenophobic and anti-migration discourses.

In relation to the case of Nigerian women trafficked along the Mediterranean route, one of the most urgent steps to take in the abolishment of the agreement between the Italian Government and the Libyan one, officially called “Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic”. The agreement foresees the payment of Italian funding to the Libyan authorities, in particular the coastguard, in order to stop the migration flows from crossing the Mediterranean Sea. Reception centres in the Libyan territory are also financially supported by the Italian State, regardless of the several fact-finding missions, from International Non-Governmental Organisations and UN bodies too, that report inhumane conditions of the detained migrants, subjected to torture (such as beating and use of electric shock), forced labour, sexual violence including gang rape, lack of sanitary conditions and healthcare^{150,151}. As previously explained, the Nigerian trafficking networks take advantage of the chaotic situation in Libya, and women and girls find themselves in a context that tremendously exposes them to infinite abuses and violations of human rights. Therefore, keeping in place the agreement implies not only directly financing these horrible violences, but in some ways also promoting the human trafficking business, as the Libyan context facilitates the action of organised crime groups.

By way of conclusion, it is possible to observe that the phenomenon of human trafficking is incredibly challenging to address, as it is composed of many different variables. Also, given its transnational nature, it seems particularly difficult to implement effective anti-trafficking policies and plans. For this reason, international cooperation between countries of origin, transit and destination is fundamental. Nevertheless, as in the case of trafficking in Italy, this is not always possible, considering the total lack of stability and respect towards human rights in the Libyan context.

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¹⁴⁹ Serughetti, “Smuggled or Trafficked”, 34

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¹⁵¹ “Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya” (United Nations Support Mission in Libya and United Nations Human Rights Office of the High Commissioner, December 20, 2018), <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>, 27-34.

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