

Notes for Mike at Vienna Round Table on 30 September 2022

Session 1. PRINCIPLES TO GUIDE INITIATIVES TO PREVENT TRAFFICKING IN HUMAN BEINGS AND TO DISCOURAGE TRAFFICKING-RELATED DEMAND

“The most effective way of preventing trafficking in human beings is NOT likely to involve using the criminal justice system to punish people, but rather for governments to modify some of their policies. Most governments are reluctant to do this.”

I have worked for more than 25 years on today’s topic – how to prevent the various forms of exploitation that are listed as ‘purposes’ of human trafficking and how to prevent people from getting into situations where they are subjected to exploitation.

When I started in 1995, the prosecution of criminals received virtually no attention, though officials in Brazil and parts of South Asia were active in withdrawing people from the control of those subjecting them to various forms of servitude and forced labour. All this changed after the UN Anti-Trafficking Protocol was adopted in 2000, followed by the European Union’s first Framework Decision on Trafficking in 2002 and a Council of Europe Convention in 2005. Each mentioned prevention in passing but put the focus on criminal justice system responses to trafficking.

You’ve all heard of the phrase that ‘prevention is better than cure’. However, in this particular case I realised that a lot of the motivation for investing resources in the issue of trafficking was precisely so that money would go towards finding ‘the cure’, in influencing national criminal justice systems and law enforcement, rather than giving priority to preventing patterns of extreme exploitation from occurring.

After two decades relying on law enforcement to stop trafficking, but with estimates of the numbers of people being trafficked still very high, it’s high time that more attention was given to prevention. Furthermore, the right prevention methods have the potential for high impact – reducing the need to repeatedly count the number of traffickers who are convicted or the souls who have been ‘saved’ in police raids and the like.

However, the situations in different parts of the globe are very different. Even in Europe, options in countries where people are recruited or from where they migrate and in countries where people are exploited are so different that it might not help simply to describe the programmes or projects that are known to have prevented trafficking effectively. I am even reluctant to recommend what is ‘good’ or ‘best practice’. Precisely because many of the measures labelled as ‘prevention’ have had little preventive effect and some have actually inflicted harm on the adults or children they were supposed to protect, our focus today is on the foundation stones or principles that should guide initiatives to prevent trafficking in

human beings, rather than specific methods that I and others have evaluated over the past two decades.

I wanted these principles to be brief and realise they are not. I hope they will eventually come to the attention of more people than those of you participating today, either in this form or as amended on the basis of suggestions today or afterwards. So, the text includes cross-references that practitioners in government agencies or NGOs (non-governmental organisations) should find helpful. Ultimately it is individuals and organisations that plan prevention measures who we would like to influence, for example when they wonder what they should be doing in the week of 18 October to 'prevent' trafficking. We also need to influence politicians who currently assume that human trafficking simply needs to be tackled by the police, without acknowledging that a wide range of government policies create the conditions in which trafficking flourishes.

To make it easier to navigate through the 25 principles, they are divided into six sections. Some of the general points at the beginning, such as the principle of proportionality, are indeed principles in international law that are relevant to take into account when planning measures to prevent trafficking. There are some other general points which are based on lessons learned from experience.

I expect we'll hear some general comments in the first session and some more specific observations on two particular issues in the subsequent sessions. The UN Anti-Trafficking Protocol was the first international treaty that used the language of 'Discouraging demand'. Although the European Commission spent several million Euros on a project to clarify what this meant doing and the OSCE published a report about it earlier this year, the concept remains divisive, so session 2 will focus on this.

The third session will focus on issues related to 'Discrimination'. These have not been debated in nearly as much detail at international conferences, for they don't seem so divisive. Since the early years of this century it has been apparent that traffickers tend to pick their prey because the individuals they pick have certain characteristics, sometimes to do with their identity and sometimes to do with their personal experience. I am one of many who assumed early on that finding out what these characteristics were should give us a clue about what to do to prevent such people being trafficked. What I failed to recognise enough is that this approach could easily encourage discrimination, both among officials employed in efforts to stop trafficking and among the wider public.

In the end, this boils down to a tension between the need to protect the privacy of trafficking victims and data collected about them, on the one hand, and a corresponding need to adopt

prevention methods that will benefit people who fall into any category of humanity that is known to have been trafficked in disproportionately larger numbers than others. In the technical vocabulary of anti-trafficking, this is referred to as ‘vulnerability’, a term I loathe. However, even on the basis of personal experience, I recognise that many of us end up in excessively vulnerable situations from time to time, and that taking action to reduce the likelihood of such situations from occurring is an effective form of prevention. In my case, I was a new graduate who arrived to work in another country with a contract, only to be told that it was not valid and that I’d have to accept a lower salary than promised.

Let me repeat that we are interested in supplementing this list of principles and deleting any points which seems entirely inappropriate. So please feel free to send me comments over the coming few weeks, as well as sharing your views today.

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SESSION 2: DISCOURAGING DEMAND

“A more rigorous approach is needed to identify measures to discourage demand for all sorts of products and services (including commercial sex) that involve people who have been trafficked, men and boys as well as women and girls.”

Mike: note for Introduction to Session 2

This session is going to talk about a measure that some policy-makers see as the ‘Great White Hope’ of preventing human trafficking. I fear the concept of ‘discouraging demand’ actually represents the pot of gold that we are supposed to find at the end of the rainbow – that’s to say, some treasure that no-one ever finds! I’ve been worried that the repeated efforts by some, such as the OSCE this year, to focus attention on ‘discouraging demand’ for trafficking for the purpose of the exploitation of prostitution has had the effect of side-lining prevention methods that were likely to bring bigger and swifter benefits.

Once again, however, our interest today is to identify principles that should help, and not only principles that are relevant to ‘demand’ in cases of commercial sex, but also ones that would be relevant, for example, for us in the U.K. to know what to discourage when it comes to young people from Viet Nam who come all the way to England to work as secret gardeners cultivating cannabis; or in a different example, when the purpose of trafficking is to transplant body organs from trafficking victims to prolong the lives of richer, aging people.

When I and others gave advice to the UN High Commissioner for Human Rights in 2002 on what became the Principles and Guidelines on Human Rights and Human Trafficking, I bought into the notion that something could be done about ‘demand’ and reckoned it was essential to give attention to “the factors that generate demand for exploitative commercial sexual

services and exploitative labour”. In large part this was because of the predatory behaviour I’d observed among foreign soldiers deployed in various parts of Africa, along with what I was hearing at the turn of the century about the exploitation of adult and child workers in artisanal mines in Kivu, in the centre of Africa, where foreign armies were competing to keep control of the production and export of cassiterite (a primary source of tin, used in circuit board solder), an essential mineral in the manufacture of mobile phones.

I’ve identified 8 principles to guide initiatives taken to discourage demand, but these are supplemented by another principle (#7) concerning business and human rights and the way in which a business that takes appropriate action can affect the behaviour of other businesses that either supply them or buy from them.

I have listened to a lot of debates about demand that have been a stale repetition of two contrasting views: one side calling for ‘demand’ for commercial sex to be eradicated and the other side complaining that measures to ‘discourage demand’ constitute an attack on sex workers’ who have not been trafficked to earn a living. If measures to influence demand are only considered in the context of closing the commercial sex sector, I fear we are missing a valuable opportunity to prevent all sorts of extreme exploitation in other industries, varying from Thailand’s seafood sector to garment workers around the world and live-in domestic workers here in Europe.

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SESSION 3: DISCRIMINATION versus NON-DISCRIMINATION

'How can we balance the need for privacy with the need for data about discrimination? The problem is that we have learned not to trust ‘Big Brother’ to guarantee the confidentiality of personal data.'

Mike: Notes for Introduction on this topic

Only three of the 25 principles specifically concern measures to prevent individuals or groups who are reckoned to be especially ‘vulnerable’ from being trafficked.

The new version of the Office for Democratic Institutions and Human Rights’ National Referral Mechanisms Handbook, published earlier this year, lists a series of “pre-trafficking vulnerabilities” that it says have been found to increase the likelihood that particular people will be trafficked. It comments, for example, on vulnerability due to an individual’s personal experiences (such as family violence) and also on what it calls the vulnerability of entire communities that have particular features, such as Roma in parts of Europe, as well as the marginalization and discrimination that occurs within some communities that makes particular individuals vulnerable. At least this is a more focused set of categories that the

initial approach that categorised ALL women or ALL children as ‘vulnerable’ to being trafficked.

As I commented earlier, there are inherent contradictions between focusing prevention efforts on particular categories of people, on the one hand, based on data collected about people who have already been trafficked, and, on the other hand, the need to discourage the authorities from collecting and keeping lots of personal data about such people. There are three principles on this topic, one of which says, “Measures to prevent human trafficking should pay particular attention to preventing particular social groups or categories of people from being trafficked, when there is evidence that such groups have been trafficked in disproportionately larger numbers than others (i.e., are particularly ‘vulnerable’ to being trafficked”). There are three subsequent principles about “Basing prevention on accurate information”.

In the European context I’ve been concerned about the way that anti-trafficking measures target Roma and Roma-related minority groups such as ‘Roma, Ashkali and Egyptian’ in the Western Balkans. Of course, this is an issue that goes beyond prevention and concerns discrimination in general, as well as discrimination affecting the prosecution of minority group members accused of being traffickers and also how trafficking victims belonging to the minority are protected.

My worries can be reduced (if not eliminated altogether) if the data about who is being trafficked is collected, stored and analysed with particular care by objective researchers, rather than by officials who may already be biased against particular nationalities or minorities. However, once such data is handed over to policy-makers or politicians, there is a great danger that it’s misused. We’ve also seen the crude categorisations across Europe for labelling some people who are trafficked, such as ‘women from Nigeria’ (without distinguishing between 100+ ethnic groups, yet along their personal circumstances) or even ‘young women who are ambitious’ (a category once described as especially vulnerable in some research in Romania).

Because inaccuracies, distortions and inaccurate stereotypes have crept into so much public information about patterns of trafficking, the principles refer not only to the importance of avoiding discrimination, but also to (four) principles emphasising that prevention should be based on accurate information. I haven’t mentioned the obvious operational implication, which is that in those countries which have a National Rapporteur on trafficking, that person really ought to check whether information made publicly available in her or his country is accurate and based on good quality research and objective analysis – and report publicly on their findings.