

“Unless we find out what effect our anti-trafficking laws, actions and policies are having, we’re flying in the dark!”

This briefing explains why monitoring is needed, how it can be effective, but also how it can be manipulated so that appearances look good while a country’s anti-trafficking responses remain ineffective. Once individual governments agreed at the start of the 21st century to implement a new agenda against human trafficking, numerous changes were made to laws and policies around the world. But were they effective? Various entities soon started passing comment, some in a very politicised way and others with more objectivity. After two decades, the publication of monitoring reports no longer attracts much attention. Does that mean it is a waste of time and effort?

Is Robust Monitoring the Key for Change?

TIME TO GET REAL!

**ASSESSING THE IMPACT OF ANTI-TRAFFICKING LAWS AND
POLICIES IN EUROPE & BEYOND: THE STATE OF PLAY IN 2023**

Compilation by Mike Dottridge¹ for the International Expert Round Table, Vienna, 6 October 2023

1. MEASURES REQUIRED BY TREATIES TO STOP HUMAN TRAFFICKING (SUMMARY)

Following the adoption of a new definition of ‘trafficking in persons’ by the United Nations (UN) at the turn of the century, one international treaty and one regional convention set out the obligations for European countries to standardise their definitions of crimes related to trafficking in human beings, to investigate and punish the crimes in particular ways, to protect individuals who are trafficked and to take action to prevent trafficking from occurring in the first place. European Union (EU) member states have additional obligations created by EU directives. The two key treaties are: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime (both adopted in 2000, along with a Protocol against the Smuggling of Migrants); and (2) the Council of Europe Convention on Action against Trafficking in Human Beings (2005). The two contain essentially the same definition of what constitutes human trafficking, but the European Convention contains substantially more provisions on the protection of trafficking victims and set up its own treaty-monitoring body, along the lines of other human rights treaty-monitoring bodies in the UN and Council of Europe. In contrast, the UN Anti-Trafficking Protocol does not have a treaty-monitoring body to check on whether states parties are implementing its provisions.

¹ The author was both an author and an editor of parts of Amnesty International’s annual reports (monitoring violations of certain civil and political rights) over 15 years in the 1980s and 1990s. During the past two decades he has evaluated numerous anti-trafficking projects and was able to observe closely the activities of monitors of anti-trafficking actions, both in Europe and elsewhere.

However, both treaties have a 'Committee of the Parties' (COP) which can comment on ways the treaty is implemented.² Neither treaty contains strong prevention measures, with the result that these have been interpreted in some countries to involve little more than public information about human trafficking.³ Measures intended explicitly to prevent human trafficking are supplemented by a range of measures concerning business and human rights, some setting out the responsibilities of individual businesses and others specifying the minimum steps to be taken by states.

2. HOW TO FIND OUT IF THE REQUIRED CHANGES HAVE BEEN MADE (AND IF THEY HAVE THE INTENDED EFFECTS)

After Brazil declared its independence from Portugal in 1822, the British put considerable pressure on the Brazilian authorities to join them in banning the slave trade (as Britain had done in 1807).

In 1831 the Brazilian Congress passed a bill to ban the slave trade, but it was never implemented. **This 1831 legislation is said to be the origin of the common phrase in contemporary Portuguese “for the English to see – *para inglês ver*” to describe legislation or measures that are never implemented** – a saying that is still all too relevant today.⁴

Brazil eventually put a stop to slavery in the 1880s, half a century after it duped the 'English' into believing that it was moving rapidly towards abolition.

At international level, various types of monitors have been involved in checking on the extent to which governments have implemented their obligations under international anti-trafficking treaties. The first type involves prominent individuals, acting in effect as Ambassadors, who visit countries where human trafficking was known to be a particular problem. They talk to political leaders to persuade them to implement reforms of law, policy and practice. Such monitors, in effect an extension of the international community's efforts to bring about compliance with the new treaties, were particularly prominent in the first decade of the 21st century. A second set of monitors, who came to the fore in the second decade, are technical experts who are either part of a country's administration or who visit from outside to engage (usually) in more of a fine-tuning operation.

In a formal sense, monitoring is not a political exercise, but a technical one, whereas pressuring governments to be pro-active in implementing recommendations made by monitors is quite clearly a political exercise that often requires someone with the status of an Ambassador or other high-level VIP.

At the technical level, 'monitoring' is defined as "A continuing function that uses systematic collection of data on specified indicators to provide management and the main

² A decade ago the possibility of establishing a treaty-monitoring body for the UN Anti-Trafficking Protocol was discussed but the proposal was not accepted. According to Anne Gallagher, "very loose oversight" over the Protocol" is undertaken by "a working group of States Parties attached to the broader Conference of Parties to the UN Convention against Transnational Organized Crime...that meets annually" (A T Gallagher, 'Two Cheers for the Trafficking Protocol', *Anti-Trafficking Review*, 4, 2015, <https://www.antitraffickingreview.org>).

³ Prevention has also been defined in Europe to require measures to regulate the labour market and the recruitment of temporary workers and action to reduce the vulnerability of particular groups of people to being trafficked, that is to say those known to have a particular 'vulnerability' that has been exploited.

⁴ A. Sutton, *Slavery in Brazil: A link in the chain of modernisation. The case of Amazonia*, Anti-Slavery International, London, 1994.

stakeholders of an ongoing development intervention with indications of the extent of progress and achievement of objectives and progress in the use of allocated funds”.⁵

Alongside the monitoring of anti-trafficking efforts, the Council of Europe’s European Court of Human Rights has had a major influence. Each judgment issued on cases involving servitude, trafficking in human beings or forced labour requires the state concerned to take a set of remedial actions that are specified in the judgment. The Court monitors the extent to which these are implemented. In Europe, therefore, the actions of the European Court and those of the Council’s Anti-Trafficking Convention treaty-monitoring body function as two sides of the same coin.

3. EFFORTS TO ENCOURAGE IMPLEMENTATION AND TO MONITOR (2000 – 2010)

We worked hard to explain what human trafficking was and what needed to be done to stop it and to protect victims. Were we wasting our time?

The OSCE’s Office for Democratic Institutions and Human Rights

Despite its name, the Organization for Security and Co-operation in Europe (OSCE) spans the northern hemisphere and includes Canada and the US, as well as the Russian Federation (which quit the Council of Europe in 2022). Involved as it was in trying to resolve the Balkan Wars of the 1990s, the OSCE should have been aware before other European organisations of the scale of criminal exploitation occurring in places where peacekeepers were deployed (first Bosnia and Herzegovina; later Kosovo). The OSCE has a specialist organisation that focuses on human rights and democracy, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), based in Warsaw. ODIHR’s work on the issue of human trafficking started at the turn of the century and involved country visits, collecting information about patterns of human trafficking and commenting on how a country was responding to cases of trafficking. However, ODIHR’s visits did not have a high profile. Much of ODIHR’s anti-trafficking work has been normative, particularly with respect to the way in which National Referral Mechanisms (NRMs) should be set up, monitored and, if necessary, modified.

In 2003 the OSCE Ministerial Council established the OSCE Anti-Trafficking Mechanism, consisting of a Special Representative (of the OSCE Secretary General) and an Anti-Trafficking Assistance Unit (ATAU), based in the OSCE’s secretariat in Vienna, subsequently renamed the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (see ‘OSCE’ below). Prior to the appointment of the first Special Representative, the acute human trafficking situation in the Balkans was addressed by the Stability Pact for Southeastern Europe Task Force on Trafficking in Human Beings, set up in 2000. This described itself as “an initiative to encourage and strengthen co-operation between the countries of South Eastern Europe [SEE] as well as to streamline existing efforts in the combat against human trafficking in SEE. It is an instrument to co-ordinate and accelerate the development in the region, acting under the auspices of the ...OSCE”.⁶ As such, it was primarily a political initiative to pressure governments (and others in control of territory) to take action to prevent human trafficking and to protect the women and girls who were being trafficked in large numbers in post-conflict situations. The Stability Pact also emphasised the importance of government agencies working in partnership

⁵ See OECD (Organisation for Economic Co-operation and Development) Development Assistance Committee *Glossary of Key Terms in Evaluation and Results Based Management*, 2002, available at <http://www.oecd.org/dac/evaluation/glossaryofkeytermsinevaluationandresultsbasedmanagement.htm>.

⁶ Text downloaded in 2004 (but no longer available) from <http://www.stabilitypact.org/trafficking/default.asp>.

with specialist NGOs, many of which had more expertise at responding to trafficking cases than statutory organisations.

When a Global Superpower opts to monitor everyone else

It was shortly before the UN Anti-Trafficking Protocol was adopted that the United States of America (US) decided to embark on its own monitoring and assessment of anti-trafficking efforts across the globe, using criteria specified in US law (not the same as those in international treaties). Since 2001 the US Department of State has published an annual 'Trafficking in Persons' (or 'TIP') report which tries to measure progress around the world, ranking each country in one of four 'tiers', known as Tier 1 (in effect, 'very good'), Tier 2 ('good but room for improvement'), Tier 2 Watch List ('dodgy') and Tier 3 ('totally inadequate').⁷

This was not the first time that the US authorities had opted to make annual comments on the behaviour of other states. Since the late 1970s, the US Department of State is supposed to have monitored respect for human rights in every country and it publishes its observations each year. By the 1980s, these reports were criticised for failing to mention torture and killings carried out by governments considered by the US government to be allies. A separate US official publication comments regularly on respect for religious freedom around the world.

Initially, the US reports commented on anti-trafficking responses in only a limited number of countries and the report did not assess actions in the US itself. In response to criticisms, however, since 2010 the annual TIP reports have included a chapter commenting on the performance of the US alongside other countries. Not surprisingly, it is always ranked in Tier 1. The TIP reports have been influential, in part because they are the basis in many countries for the financial assistance provided by the US to strengthen the country's responses to trafficking. However, the reports are perceived by many anti-trafficking practitioners and by some national authorities to lack objectivity and to be biased in favour of the US' own ideologies and policy choices, in particular the objection by successive US governments to prostitution/sex work, whereas the UN Anti-Trafficking Protocol is clear in stating that the Protocol is "without prejudice to how States Parties address prostitution in their respective domestic laws".⁸

The 2015 edition provided substantial evidence that the TIP report's tier ranking of individual countries was manipulated in Washington for political reasons. The main evidence concerned two countries with particularly bad records for protecting trafficking victims, Malaysia and Mexico. Despite the discovery of secret graves of suspected trafficking victims along the border between Malaysia and Thailand, Malaysia's tier rating was improved from Tier 3 to Tier 2 (Watch List). A representative in Asia of the NGO Human Rights Watch, Phil Robertson, commented that: "The discussion on Malaysia is...a triumph of diplomatic writing trumpeting process rather than impact".⁹ Critics commented that the alleged

⁷ The US *Trafficking Victims Protection Act 2000* introduced the term "severe forms of trafficking" (unknown to international law), offered its own definition of this term and required other states to respect the 'Minimum standards for the elimination of trafficking' stipulated in the Act. These standards required states in which there were "a significant number of victims of severe forms of trafficking" to "prohibit severe forms of trafficking in persons and punish acts of such trafficking" and to take a range of other measures.

⁸ *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN document A/55/383/Add.1 of 3 November 2000. Paragraph 64 says: 'The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.'

⁹ H. Whiteman, 'Who's Fighting Human Trafficking? U.S. Releases Rankings', *CNN*, 28 July 2015.

improvements in Malaysia had more to do with US authorities' wish to conclude a Trans Pacific Partnership agreement with Malaysia than with the fate of people who had been trafficked.

A week after the Department of State's report was issued, the Reuters News Agency reported that both Malaysia and Cuba (which had just renewed diplomatic relations with the US) had been moved off Tier 3 status and that US diplomats had turned down a proposal by the Department of State's anti-trafficking specialists to downgrade Mexico from Tier 2 to a lower ranking, "even though the State Department's own trafficking experts believed neither had made notable improvements".¹⁰

Monitoring by International Organisations

Various parts of the UN pay in-depth attention to the anti-trafficking laws and policies in individual countries, but usually on a sporadic basis. It is only the UN Organization on Drugs and Crime (UNODC) which pays regular attention, compiling a biennial report on human trafficking based on data and statistics provided by governments: this is 'monitoring' that presents interesting statistics on prosecutions and convictions but does not assess a country's performance against specific performance standards.

A UN Special Rapporteur on trafficking in persons, especially women and children, was first appointed in 2004. She carries out several country visits each year to monitor and comment on the country's anti-trafficking efforts, assessing these on the basis of human rights standards (particularly those set out in UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002) and the *Basic principles on the right to an effective remedy for trafficked persons* presented to the UN Human Rights Council in 2014.¹¹ As in the case of country visits by other organisations (see the 'OSCE' below), these are in-depth assessments but they are not repeated, so the Special Rapporteur does not usually have an opportunity during a return visit to check whether her recommendations have been implemented or ignored. The data collected during country visits form part of the database that informs the rapporteurs' normative work, such as the *Basic principles*.

4. GLOBAL MONITORING BY AN NGO (since 2013)

***"These reports haven't helping solve the problem. They've simply diverted attention away from problems that do need addressing."*¹²**

In many countries and regions, local NGOs monitor their own government's anti-trafficking measures, sometimes to influence decisions made by their government and sometimes to provide data to visiting monitors, such as a UN Special Rapporteur. There has been one major NGO initiative to monitor what is called 'modern slavery' rather than human trafficking, by an Australia-based foundation, Walk Free (financed by a wealthy and well-known businessperson and philanthropist, Andrew Forrest). This published its first '*Global Slavery Index*' (GSI) in 2013, giving special attention to estimates of the number of 'modern slaves' in each country (estimated to total 29.8 million in 2013) and highlighting 'worst performing' countries. The 2013 Index explained its interpretation of the term 'modern slavery': "Modern slavery includes slavery, slavery-like practices (such as debt bondage, forced marriage, and sale or exploitation of children), human trafficking and forced labour". Subsequently the authors of

¹⁰ J. Szep and M. Spetalnick, 'Special Report: State Department Watered Down Human Trafficking Report', *Reuters*, Washington, 3 August 2015, accessed in August 2015 (not no longer available) at www.reuters.com/article/2015/08/03/us-usa-humantrafficking-disputes-special-idUSKCN0Q821Y20150803.

¹¹ See UN document A/HRC/26/18 of 2 May 2014.

¹² Oral comment to the author by Helga Konrad, August 2023.

the GSI developed a set of performance standards and reported on the success or failure of governments to meet these.

Perhaps surprisingly, Walk Free chose to collect data on a worldwide basis for itself, using Gallup surveys,¹³ rather than taking advantage of the expertise of local NGOs. Although the country-specific chapters in recent GSIs have commented on whether the government meets certain standards specified by Walk Free, the reports have been dominated by an ongoing preoccupation with the number of people in ‘modern slavery’. As the numbers keep on increasing, this approach has detracted from attention to any performance standards. The second GSI increased its estimate from 29 million to 35.8 million “people in modern slavery globally”. The next one (2016) accelerated its global estimate upwards to 45.8 million. An extra complication came in 2017, when Walk Free joined with the International Labour Organization (ILO) to issue a joint ‘*Global Estimate of Modern Slavery*’, noting that modern slavery “consists of two components: forced labour and forced marriage”. Unlike the previous GSI reports, this did not estimate the number of people in modern slavery in individual countries, but asserted that, in the world as a whole, “40 million people were victims of modern slavery” on any single day in 2016. While the ILO worked jointly with Walk Free to reach the estimate that 25 million people were in forced labour, the estimate that 15 million others were in forced marriage was calculated by Walk Free by itself. It was not based on internationally recognised criteria for assessing which types of forced marriage should be categorised as slavery or servitude.¹⁴ The International Organization for Migration (IOM) was also said to have contributed data for the report.

In 2021 the ILO and Walk Free again worked together to come up with new estimates. This time they increased the estimated total from 40 to 50 million said to have been “living in modern slavery in 2021”, 28 million of whom were reckoned to be in forced labour and 22 million trapped in forced marriage. In 2023 Walk Free again published its estimates on the number of modern slaves in individual countries. To illustrate these, here are the numbers estimated in seven selected European countries and the reported prevalence of modern slavery in each:

Country	Estimated number of people in modern slavery	Estimated prevalence of modern slavery (per 1,000 of population)
Austria	17,000	1.9
Germany	47,000	0.6
Italy	197,000	3.3
Netherlands	10,000	0.6
Russian Federation	1,899,000	13
Serbia	61,000	7
United Kingdom	122,000	1.8

In August 2023, Walk Free’s website noted that “An estimated 50 million people were living in modern slavery on any given day in 2021, an increase of 10 million people since 2016”.¹⁵ As few anti-trafficking practitioners could credit that there had been increases of 20 per cent between 2016 and 2021 in the area they knew best, some concluded that the increase was due to changes in the GSI’s methods for

¹³ Gallup says of itself, “We’re a global analytics and advice firm that helps leaders and organizations solve their most pressing problems” (<https://www.gallup.com/corporate/212381/who-we-are.aspx>). It says it operates more than “20 regional city centers” (more than half in the Asia-Pacific region).

¹⁴ These were set out in a 1956 UN treaty, referring to women who were sold into marriage or inherited if their husband died. Some other cases of forced marriage constitute ‘sexual slavery’ or other crimes against humanity defined by the Rome Statute of the International Criminal Court (1998): “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” (article 7).

¹⁵ <https://www.walkfree.org/global-slavery-index/>

counting or the way data was interpreted rather than to any genuine increase in the numbers concerned.

5. LESSONS FROM MONITORING OUTSIDE EUROPE

Europeans think they know best. Why can't they listen to valuable lessons from other parts of the world?

While Europe has the most developed anti-trafficking treaty-monitoring system, other regions have generated lessons that European institutions could (or should) learn from. These systems and lessons vary widely. For example, in Nigeria, the first African country to adopt legislation against human trafficking (2003) and reputedly the one from which the largest number of women have been trafficked to Europe, there is no national monitoring system but international organisations have dispatched specialists to monitor the effectiveness of Nigeria's dedicated anti-trafficking unit, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP).¹⁶ Not surprisingly, some monitors representing UN organisations who were anti-trafficking experts but unfamiliar with Nigeria have had the wool pulled over their eyes. To prevent anything along these lines that might be considered "For the English to see" in Brazil, where the government started taking action against what Brazilians call 'slave labour' five years before the adoption of the UN Anti-Trafficking Protocol, a Brazilian NGO experienced at carrying out clandestine investigations was given responsibility for monitoring adherence to a 2005 National Pact to Eradicate Slave Labour by individual businesses.¹⁷ This was effective though the implications for a single business of having slave workers identified of their farm or work place became so serious that it was difficult for anything except a state-run institution to take on such a responsibility. The arrangement was modified a decade later with the creation of an Institute for the National Pact (InPACTO).¹⁸ Ranches, farms and other Brazilian workplaces where the authorities confirm the existence of slave workers are named on an official 'dirty list', a public shaming that carries with it various disadvantages for the business.

Southeast Asia: Monitoring by a peer group and a UN project

Outside Europe it is Southeast Asia which has seen most spending on anti-trafficking programmes and which has generated significant lessons. In 2004 the six governments of the Greater Mekong Sub-region (Cambodia, China, Lao PDR, Myanmar, Thailand, and Viet Nam) established the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT). They signed a Memorandum of Understanding (MoU) committing themselves to responding to human trafficking in ways that would meet international human rights standards. The MoU highlighted the need for multi-lateral, bilateral, and government-NGO cooperation to combat human trafficking ("Improving regional cooperation against trafficking, in particular through bilateral and multilateral agreements" was one of the 34 commitments made).

¹⁶ <https://naptip.gov.ng/>

¹⁷ See <https://www.ethos.org.br/conteudo/apoiados/pacto-nacional-pela-erradicacao-do-trabalho-escravo/>. The NGO is Repórter Brasil.

¹⁸ See <https://inpacto.org.br/trabalho-escravo/> for details on the Instituto do Pacto Nacional pela Erradicação do Trabalho Escravo. In contrast to the 2023 estimate by the Global Slavery Index that there were more than one million people in modern slavery in Brazil (with prevalence reckoned to be 5 per 1,000), InPACTO estimated on its website in August 2023 that there were 370,000 people 'in conditions of work analogous to slavery' in Brazil, while it also noted in that more than 53,000 people had been rescued from slave labour in Brazil since 1995.

COMMIT states have adopted a series of sub-regional plans of action, each with slightly different objectives. Until 2018, the UN office in Southeast Asia (based in Bangkok) acted as secretariat for the process, with a sub-regional anti-trafficking project, the *UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region* (UNIAP), supporting the process for planning the regional grouping's targets and developing methods to monitor the progress made towards achieving targets. During its first decade the performance of each country in the context of COMMIT's plan of action was measured by a three-tier grading which indicated whether a target in a particular country had been achieved, if action was underway or if the action required had not yet started. Eventually, on the basis of monitors' findings, COMMIT states developed common guidelines to address particular problems.

The main monitoring role was undertaken initially by the UNIAP. However, eventually the different roles being performed by this secretariat – on the one hand urging states to take relevant action and providing technical advice, and on the other conducting independent research to find out what was happening in reality – resulted in a clash. A UNIAP publication based on interviews with migrants deported from Thailand to Cambodia estimated there were a hundred times more trafficking victims in Thailand than the several hundred officially identified by the Thai authorities. There was a strong political reaction by the Thai authorities. Combined with several other factors, this political reaction against the UN secretariat resulted in the head of the UNIAP losing his job and the status and role of the UN secretariat being changed in major ways. An independent evaluator noted that there was an inherent contradiction in the roles that the UNIAP had been asked to perform. While objective research and monitoring continued to be essential, political interference became problematic once serious criticisms of weaknesses in particular countries were mentioned by UNIAP. The unsurprising lesson was that researchers and monitors need to be fully independent so they cannot be silenced or manipulated by governments or particular agencies which dislike their messages. A second lesson was that monitors need to take care on how they deliver their findings to government officials!

In contrast to Europe, COMMIT paid more attention to monitoring the state of coordination between the authorities in different countries. In 2015 an assessment of COMMIT's capacity noted that cross-border cooperation, case management mechanisms, joint meetings and repatriation processes had all improved. However, "Monitoring and Evaluation was found to be the weakest area common to all COMMIT member countries, with M&E systems found to be either inexistent and/or ineffective in most countries".¹⁹

On several occasions an Australian-funded regional project in Southeast Asia, ARTIP (Asia Regional Trafficking in Persons Project), published monitoring reports concerning ASEAN states, focusing specifically on the capacity of each country's criminal justice system (police, prosecutors and courts) to respond to cases of human trafficking. There were two rounds of monitoring in 2006 and again in 2011, using seven performance standards, labelled as 'quality standards', for different parts of the criminal justice system.²⁰ Since 2014 The Australian-funded project has continued under other names, currently as 'ASEAN-ACT'. Although it has not published further general assessments, it now monitors the performance of specific parts of individual countries' criminal justice systems in detail.²¹

¹⁹ C. De Faria. *Capacity Assessment Report. Main Findings: Cross-Cutting Opportunities, Gaps & Challenges*. 2016.

²⁰ The seven were listed in M. Dottridge, *Notes on MONITORING of anti-trafficking initiatives for the Regional Implementation Initiative Forum in Vienna on 20 September 2013*.

²¹ For example, in March 2023 the project published *Indonesian Trafficking in Persons Cases. An analysis of 2019-2021 court decisions* (<https://www.aseanact.org/resources/indonesian-tip-case-analysis/>).

6. THE EXPERIENCE OF MONITORING IN EUROPE

Too many cooks spoil the broth.

European countries have been subjected to monitoring and comments by so many different entities that they can play one off against another. Civil servants in the relevant ministry can spend all their time preparing different sets of statistics and answering the requests for different data put to them by various monitoring bodies outside the country that do not coordinate with each other. This is a nonsense.

Organization for Security and Co-operation in Europe (OSCE)

The OSCE began adopting a plethora of declarations, resolutions and action plans on the issue of human trafficking at the turn of the century. These constitute the standards against which the performance of individual countries and organisations have been monitored and assessed.

Since 2003 (the establishment of the OSCE Anti-Trafficking Mechanism by the OSCE Ministerial Council) the five Special Representatives (so far) have conducted numerous country visits, assessing the responses to human trafficking of each country and commenting on their adequacy. Following each visit they prepare a report, share it with the government concerned and then publish it. They also issue occasional thematic reports and advice to OSCE participating States.

Within the OSCE, there have in effect been several kinds of monitoring, one consisting of high-level visits that are expected to wield political influence over the authorities in the country concerned and the other lower key and more technical in its approach. Overall, as attention given by national politicians to the topic of human trafficking has declined over the past decade, even the visits by the OSCE's Special Representative have lost their influence. Disputes between countries surrounding the appointment of new Special Representatives have added to this weakening, with the US using its political weight to block the appointment of an experienced national rapporteur from a European country. The OSCE Special Representative can still try and make hard hitting criticisms, but it has been rare in recent years to see a government respond positively and rapidly. For example, at the conclusion of OSCE Special Representative's visit to the United Kingdom in 2022, the OSCE press release reported that he had highlighted "the UK's rich history at the vanguard of global anti-trafficking effort, including its pioneering Modern Slavery Act" but also "expressed concern that a stalled anti-slavery agenda risked undermining past achievements".²²

²² 'OSCE Special Representative visits the United Kingdom, calls for strong leadership to reaffirm commitment to combat human trafficking', 11 November 2022, press release issued by the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE Secretariat, accessed at <https://www.osce.org/cthb/530827>. This reported that the Special Representatives was concerned "that a growing number of UK flagship initiatives and commitments – such as an updated strategy, important amendments to the Modern Slavery Act, appointment of the Anti-Slavery Commissioner, establishment of a single enforcement body, and adoption of the proposed Online Safety Bill – have stalled or gone unfulfilled. A burgeoning backlog of NRM cases that await a decision is also an area of acute concern, leaving thousands of victims in limbo and at greater risk of re-victimization". Despite these substantial criticisms, made by a Special Representative who is a US national, the US TIP report issued the following June (2023) again ranked the UK in Tier 1, where it has been placed since the first TIP report was published – despite substantial criticisms being voiced regularly within the UK and by other monitors of the way the UK's anti-trafficking/slavery laws and policies were implemented.

European Union

The European Commission pays a great deal of attention to the anti-trafficking performance of countries that have applied to join the EU or are candidates to join the EU. They are obliged to collect and present data to the European Commission about the way their criminal justice system tackles human traffickers. However, once a country has joined the EU, effective scrutiny seems to come to an end. EU member states are requested to provide information to the European Commission about the measures taken to implement new EU legal instruments.²³ Europol and other agencies ask national government agencies for statistics on anti-trafficking results and publish these, but once again do not monitor or report on the performance of EU member states against quality standards.

Since 2009 the European Commission's Anti-Trafficking Coordinator has convened regular meetings of officials known as 'national rapporteurs', some of whom are serving law enforcement officials, while a small number of others are independent monitors. However, the Coordinator does not have a mandate to comment on the general performance of EU states in stopping human trafficking or to recommend how their performance or cooperation between the authorities in different countries should be improved.

At national level, article 19 of Directive 2011/36/EU on Preventing and Combating Trafficking in human beings and Protecting its Victims (2011) required EU member states to "take the necessary measures to establish national rapporteurs or equivalent mechanisms. **The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting**" (emphasis added).

National Rapporteurs

Article 19 of the EU's Directive 2011/36/EU supplemented the Council of Europe's Anti-Trafficking Convention, which requires state parties to "consider" appointing a National Rapporteur or a similar mechanism to monitor "the anti-trafficking activities of State institutions and the implementation of national legislation requirements" (Article 29{4}). With respect to both this monitoring mechanism and other anti-trafficking specialists in a country, the Convention says that "**Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure.** Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks" (article 29.1, emphasis added).

The *Explanatory Report* issued with the Convention contains only a little more information and refers to the experience of the Netherlands, where a National Rapporteur on Trafficking in Human Beings had been first appointed at the beginning of the century.²⁴ By implication, the Netherlands' National Rapporteur was offered as a model for others to follow. This Rapporteur has published regular annual reports since 2002, providing substantial amounts of information and recommendations that it would be appropriate for other countries with similar pattern of trafficking to the Netherlands to take into

²³ Such as Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in human beings and Protecting its Victims and the Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, proposed for adoption in 2023.

²⁴ "The institution of a national rapporteur has been established in the Netherlands, **where it is an independent institution, with its own personnel**, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the Parliament containing its findings and recommendations" (*Explanatory Report*, 2005, paragraph 298, emphasis added).

account.²⁵ In practice, the way other governments have designed their National Rapporteur role has been very diverse. Few have followed the Netherlands' model and appointed a Rapporteur who is truly independent and not subjected to the many sorts of pressure (budgetary and otherwise) that ministries and bureaucrats can apply. By 2010, nine of the EU's 27 Member States were reported to have appointed a National Rapporteur, although not all published regular reports. Indeed, some focused on trafficking for specific purposes (such as trafficking women into prostitution) without reporting on action concerning human trafficking for other purposes. A project in the Western Balkans published a review of the experience of several EU national rapporteurs in 2019.²⁶

A particular flaw built in (by some governments) to the appointment of national rapporteurs concerns limitations on their independence. In the United Kingdom, for example, the National Rapporteur role is officially retained by a group of government ministries, despite the appointment in 2015 of an 'Independent Anti-Slavery Commissioner' who was given broadly similar responsibilities to national human trafficking rapporteurs elsewhere in Europe for monitoring and reporting.²⁷ The first Commissioner resigned in 2018, protesting at unspecified pressures to which he had been subjected.²⁸ The second Commissioner chose to exercise her independence when a new government began to reduce the protection available to 'victims of modern slavery': she criticised the government's policy and did not have her three-year mandate prolonged when it ended in March 2022.²⁹ Thereafter the government kept the post vacant for ten months before confirming that a new Commissioner would be appointed. However, by August 2023 the post had not been filled.

Outside the EU, several states which are candidates to join the EU have created a National Rapporteur role in recent years. In the Western Balkans, North Macedonia was the first country to make such an appointment (2019), followed by Serbia in 2022, where the role was given to an existing Ombudsperson institution.

Five Western Balkans countries participated in a project from 2019 to 2022 to trial monitoring methods and to encourage the appointment of National Rapporteurs. They felt they had learned a great deal about the challenges of collecting data and in analysing and reporting on this in an objective way, but this did not persuade all five of the countries to appoint their own national rapporteurs. Once they had identified various strengths and weaknesses in the way trafficking cases were treated, monitors

²⁵ Many of the reports are available in English: see Bureau Nationaal Rapporteur Mensenhandel (BNRM), Office of the Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in Human Beings; First report of the Dutch National Rapporteur*, The Hague, 2002.

²⁶ Balkans Act Now (BAN) *EU Best Practice on trafficking in human beings*, ASTRA, Belgrade, 2019.

²⁷ "The Commissioner's role is to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as in the identification of victims", according to the Commissioner's website, <http://www.antislaverycommissioner.co.uk/>.

²⁸ In his March 2018 resignation letter, the first Commissioner, Kevin Hyland, commented to the UK Prime Minister: "At times independence has felt somewhat discretionary from the Home Office, rather than legally bestowed. I hope that any future incumbent can be assured the independence I am sure you intended as the author of the legislation."

²⁹ In the foreword to her final annual report (for 2020-21, published in 2022), the Commissioner, Dame Sara Thornton, noted that "In the last twelve months I have been deeply concerned about the impact on victims of the New Plan for Immigration and the Nationality and Borders Bill...My concern has been the proposals for modern slavery. While I welcome the clauses which place support for victims on a statutory footing, I remain most concerned about moves to withdraw support from some victims on account of their criminal past and the requirement for victims to make disclosures to a deadline or to risk undermining their credibility". Accessed at <https://www.antislaverycommissioner.co.uk/news-insights/independent-anti-slavery-commissioner-annual-report-2021-2022/>.

felt able to recommend ways of improving the measures being taken. The project reached interesting conclusions as far as some of the obstacles to effective monitoring are concerned. For example.³⁰

- a) The data provided by different agencies in the same country was qualitatively different – so it was difficult to reconcile data provided by one organisation with data on a similar topic provided by another;
- b) Some statutory organisations regarded all the data they recorded about trafficking cases as ‘confidential’ and were reluctant to share it with others, including monitors;
- c) Forms used for collecting data (whether printed or digital) were considered too difficult and time-consuming for officials to fill in;
- d) Despite efforts in each country to reduce the amount of data that was collected, monitors concluded that too many officials were asked to provide too much data;
- e) Certain statutory organisations had a quite different orientation to others. The Procuracy and Judiciary referred to ‘victims of crime’ but generally regarded an individual as a ‘victim’ only once a court has delivered a definitive judgment (convicting someone of committing a crime against them). In contrast, social services used quite different criteria for assessing who had been trafficked and deserved assistance;
- f) It was difficult to generate enough resources to pay for the monitoring;
- g) In some countries there was a lack of political interest and support from political leaders.

The Balkan project also noted the ill-effects of government officials being under pressure to respond to many requests for data by monitors abroad – up to three a year – and concluded that this was an obstacle to establishing effective national-level monitoring. The requests for data came from: the local US Embassy, asking for information in January each year for the US’ annual TIP report; requests from the UNODC and other UN agencies; and from GRETA, both when its members visited the country and sometimes in between visits.

The Council of Europe’s GRETA

Since 2010 the work of the treaty-monitoring body created by the Council of Europe’s Convention on Action against Trafficking in Human Beings (2005), the Group of Experts on Action Against Trafficking in Human Beings (GRETA), has developed substantially, making it a world leader. GRETA consists of 15 anti-trafficking specialists who are nominated by governments and elected periodically by the state parties to the Convention and supported by a secretariat based in Strasbourg. Since the departure of the Russian Federation from the Council in 2022, all Council member states have ratified its Anti-Trafficking Convention. Monitoring has principally been country by country, with international experts visiting each country in turn and exploring how national systems perform against the standards set in the Convention and the detailed *Explanatory Memorandum* which accompanied the Convention. So far GRETA has not tried to assess the effectiveness of the cooperation that is supposed to occur bilaterally between countries (but often does not).

Each state party to the Convention is visited on a regular basis by several members of GRETA and staff of the GRETA secretariat, collecting information about the general implementation of the Convention and focusing on a particular theme. In 2023 GRETA was in the process of carrying out its third round of visits, focusing on remedies for victims such as compensation, and preparing its fourth round. Following each visit, GRETA prepares a report containing recommendations. Initially it shared the draft with the government concerned before publishing the report, together with the government’s comments. More recently, however, GRETA has taken to making its draft report publicly available, unless the authorities in the country concerned specifically ask for this not to happen. This allows other

³⁰ See M. Dottridge, *Developing the Capacity of Governmental Bodies in the Western Balkans to Monitor Responses to Human Trafficking*, Balkans Act Now (BAN3), ASTRA, Belgrade, 2021.

interested parties to get access to the draft. The recommendations are subsequently endorsed and repeated by the Committee of the Parties, to which the state party is required to submit a further report within two years on the measures taken to comply with the recommendations made by both GRETA and the COP.

When making recommendations, GRETA uses three different verbs – GRETA “urges”, “considers” or “invites” – signifying different levels of urgency of the recommendation. When GRETA “urges” a state to take action, it signifies that the state is not complying with the terms of the Convention and has a legal obligation to take action to comply with the Convention. The verb “considers” suggests that further improvements (to comply with the Convention) are required. Simply “inviting” a state party to take an action signifies that the measure is deemed desirable, but not mandatory, to strengthen the country’s anti-trafficking system.

During subsequent visits, GRETA takes note of the extent to which its previous recommendations have been implemented and follows up accordingly. In principle, therefore this is a monitoring system which does not simply produce recommendations that can be glossed over and quickly forgotten.

Alongside its country-specific reports, GRETA also publishes annual reports about its activities and has used these to comment on trends or issues that have been noted during visits to a range of countries. For example, GRETA’s 8th General Report covering 2018 presented findings about the provision of assistance to trafficking victims, while its 10th report covering 2020 focused on the identification of trafficked persons specifically among asylum seekers and access to international protection by victims of trafficking. GRETA followed this up with a *Guidance Note for states on the entitlement of victims of trafficking, and people at risk of being trafficked, to international protection*.³¹

By 2018 GRETA had noted that many state parties focused mainly or exclusively on cases of trafficking for the purpose of prostitution and did not seem responsive to GRETA’s calls to pay more attention to exploitation involving slavery, servitude, slavery-like practices or forced or compulsory labour (referred to collectively in Europe as ‘trafficking in human beings for the purpose of labour exploitation’). On this basis, the Council of Europe as a whole embarked on a course of action to remedy the weaknesses noted by monitors,³² with the result that in September 2022 its Committee of Ministers adopted *Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation*. This called on Council of Europe member states to adopt national laws, policies and strategies which address trafficking for the purpose of labour exploitation, following a human rights-based and victim-centred approach.

³¹ Accessed at <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44#:~:text=GRETA%20has%20adopted%20this%20guidance,being%20trafficked%2C%20to%20international%20protection.>

³² Following discussion at ministerial level, the Council of Europe’s Secretary General presented the Committee of Ministers with a *Roadmap on strengthening action against trafficking in human beings for the purpose of labour exploitation* (2019). In 2020 GRETA issued a *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation* and a subsequent *Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation*. A drafting Committee on Trafficking for the Purpose of Labour Exploitation was set up to prepare a draft recommendation of the Committee of Ministers. The Recommendation drew on the monitoring work of GRETA, the case-law of the European Court of Human Rights, and the conclusions and decisions of the European Committee of Social Rights. The Recommendation is accompanied by a 57-point *Explanatory Memorandum* that contains action points for member states. The implementation of the Recommendation and the 57 points in the *Explanatory Memorandum* is in turn scheduled to be monitored by the Council in 2027, based on prior monitoring and assessments at national level.

7. WHAT LESSONS HAVE BEEN LEARNED AND WHAT NEEDS TO BE DONE TO MAKE ANTI-TRAFFICKING LAWS AND POLICIES MORE EFFECTIVE?

Monitoring objectively versus lobbying and applying political pressure

Is monitoring a political process that needs to be led by someone with political clout? Is monitoring by international-level entities simply a way of compensating for negligence (or a lack of interest) by politicians at home? Or is monitoring primarily an administrative process, best carried out by technical experts to finetune what is usually already a well-oiled machine? Does anyone pay attention to what the technical experts say?

The degree of political will to take effective action against human trafficking in Europe has waned as governments have become more preoccupied with stopping irregular migrants, asylum-seekers and refugees from entering or staying on their territory. Consequently, there is sometimes a need for high-level diplomats (or other influential VIPs) to press governments to take more effective action, but this should be on the basis of professional and objective research and monitoring. Exerting influence does not constitute ‘monitoring’ in its own right.

While NGOs and even superpowers have a legitimate right to comment, proper monitoring needs to be objective and not politically weighted in favour of countries with certain ideologies or against others. It is high time that self-interested ‘monitoring’ by governments or NGOs was seen for what it is and marginalised in favour of objective monitoring. The implication is that every country in Europe should have its own independent monitoring capacity and should not depend entirely on comments from external monitors, yet alone be pushed around by them. Experience in Europe shows that GRETA still has a vital role to play, albeit only every few years. Indeed, it would be helpful if GRETA itself could play a more active role in building the capacity of national rapporteurs. Similarly, it would be helpful if the European Commission’s Anti-Trafficking Coordinator was to be given a stronger mandate to provide advice to EU member states about objective monitoring by independent rapporteurs.

Speaking truth to power: how to ensure monitors are effective

- a. **Monitors must be independent;**
- b. **National monitors need to be held in high regard by those in authority;**
- c. **Monitors must also be (and be seen to be) objective.**

Monitors must be independent. What does this mean? It means having control of sufficient resources to carry out monitoring (without going cap in hand to ask a government minister for additional resources) and being “free from undue pressure”. However, this creates a quandary, for monitors who are not seen to be coordinating closely with anti-trafficking practitioners and also with those in power are likely to be perceived by practitioners in the criminal justice system or elsewhere as neither serious nor influential.

National monitors need to be held in high regard by the government and its ministries and agencies. Some professions, such as police, prosecutors and judges, are more likely to engage with observers who have the same professional background, rather than excellent investigators (and monitors) who come from a different profession. Prosecutors and judges, in particular, are proud of their independence and sovereignty: they are likely to bristle at anyone (even an independent monitor) telling them what to do (or even suggesting politely how things could be done better). Nevertheless,

monitors need to point out the numerous flaws that can occur in their handling of trafficking prosecutions.

Monitors must also be (and be seen to be) objective, rather than biased or motivated by a particular political or religious ideology, or to have a particular agenda of their own that is not based on the specific performance standards that they have been asked to monitor. Telling all those asked to contribute data in advance about what they and others will be asked is a good way of reducing suspicion of bias and lack of objectivity (whether they are asked to fill in questionnaires or to be interviewed or to provide data on-line).

Who should provide data?

It is clear that monitors need to collect data from official institutions and that reluctant institutions should be instructed by a senior government official to cooperate. **Monitors also need data from ‘service users’** (i.e., individuals who have been trafficked) **and service providers** such as NGOs working with official agencies (or trying to). Among the service users who should be asked about their experiences are also individuals who have not been officially identified as victims but who have come into contact with statutory agencies otherwise (such as migrants who have been detained but not identified as ‘trafficked’ and others who may have been trafficked but have preferred to avoid all contact with officials). The need to collect feedback from adults and children who have been trafficked was neglected for several decades but has received more attention recently,³³ particularly from ODIHR.³⁴ It is especially important for monitors to find out whether adults and children who have been trafficked report any adverse effects which policymakers did not intend or appear unaware of. These are sometimes referred to as ‘collateral damage’.

How to persuade governments to listen to monitors’ assessments and to implement their recommendations

Some conclusions can be reached on what constitutes good practice with respect to monitoring and persuading the governments (or individual agencies) that are monitored to take recommendations seriously and do their best to implement them:

1. **Make all monitoring reports public.** In general, it helps to give the authorities an opportunity to comment on criticisms and recommendations before making these public. However, some governments/ministries/agencies have a reputation for abusing their power and using their influence to silence criticisms if they informed of these in advance. This can be done in a variety of ways, from applying direct pressure (“Change the wording!”) to indirect pressure (“Unfortunately we have had to reduce your budget for the next round of monitoring”) or by taking steps to ensure the report is placed in a bottom drawer and never receives any attention (when the authorities in the United Kingdom do this, the British use a phrase based on the game of cricket: “hitting the ball into long grass” so it gets lost). In such instances monitors may have to publish their findings without acting diplomatically and sharing them with the authorities beforehand. If a government (or one of its agencies) does exert pressure inappropriately, this should itself be reported publicly.

³³ The paper on monitoring for the Regional Implementation Initiative in 2013 noted that “Understanding how trafficked persons are affected by anti-trafficking measures...sounds like a key activity for almost any monitoring system. And yet national authorities and even specific projects and programmes have often been reluctant to collect information directly from people who have been trafficked, sometimes arguing that this might re-traumatise them (which it should evidently be a priority not to do—but far from impossible to avoid), and sometimes asserting that trafficked persons routinely change their ‘stories’ and are therefore an unreliable source”. M. Dottridge, *Notes on MONITORING of anti-trafficking initiatives*, op. cit. 2013.

³⁴ See ODIHR, *National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* – Second Edition, Warsaw, 2022.

2. **Monitors should always be willing to correct errors of fact**, but less ready to change the interpretation they have given to the data they collect.
3. **National rapporteurs and other monitors should present their reports to an elected body** (such as a national assembly) rather than confidentially to a minister or the government who might suppress or manipulate some of the findings. The elected body must in turn hold the entities that have been monitored accountable, so they are under pressure to respond positively.
4. **Monitors should routinely include recommendations on how shortcomings could or should be addressed**; an effort should be made to ensure these are realistic rather than too ambitious or idealistic, i.e., design them to be possible to implement within a finite time-frame.
5. Monitors should in turn **monitor how a government responds to recommendations** and reiterate or revisit these recommendations subsequently, reporting publicly on both the implementation of recommendations and failure to implement them.
6. **Do not back down** in the face of government inaction or intimidation.