In the past 10 years, there has been increased international attention to the issue of trafficking in human beings. Yet people in search of a better future still get trafficked and end up in situations of exploitation and abuse without ever being identified as victims of human trafficking.

**From sensational sex stories to tangible legislation**

Whereas in the nineties of the past century, NGOs working with exploited women had to struggle hard to get the issue on the political agenda and media coverage was limited to sensationalist stories of sex slaves, from 2000 on, anti-human trafficking legislation has become an issue for international policy.

This is reflected in the development of international legislation, such as the Palermo Protocol from 2000, the Council of Europe Convention from 2005 and the new EU Directive from 2011, but also in the number of international and intergovernmental organisations involved in the fight against human trafficking. The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe and different bodies of the United Nations have their own counter-trafficking programmes.

However, the rate of successful court cases is extremely low. It is therefore time to reconsider anti-trafficking policies.

**Prosecute the trafficker or protect the victim?**

Although trafficking in human beings is widely acknowledged as a human rights violation, international legislation to combat trafficking in human beings has mainly developed within the criminal justice framework. The international legally binding norms on combating trafficking are therefore not based on human rights principles, but on the criminal justice system. States’ accountability does not so much concern the trafficked person, but rather the national system of laws. The effect is that protecting the rights of trafficked persons and preventing people from being trafficked is secondary to prosecuting the traffickers. International legislation does provide some protective measures for identified trafficked persons, but in reality most countries do not offer trafficking victims adequate remedies such as assistance, protection and compensation. Even if short-term assistance and protection are offered, long-term solutions, such as compensation for damages and unpaid wages, access to the labour market or long-term residence permits – if a trafficked person cannot or does not want to return to her or his home country – are lacking.

** Trafficked persons treated as criminals**

In general, trafficked persons cannot fall back on the support of the state because they have no legal residence status or cannot prove their identities. Moreover, they risk being detained, deported, prosecuted or punished for the illegality of their entry or stay, for having been involved in prostitu-
tion or other illegal activities, such as begging, or for other offences that are a direct consequence of their situations as trafficked persons, such as the use of false papers. The majority of people who have been trafficked do not dare notify the police or press charges out of a fear of reprisals from their traffickers. Also, professionals and practitioners who come in contact with trafficked persons, such as police officers, border guards, immigration officials, labour inspectors, social, child welfare and health care workers, consular staff and others, often do not recognise a trafficked person as such. They see an irregular migrant, an illegal worker, a foreign prostitute and do not identify them as victims of a crime.

**Most victims are never identified**

This all results in the fact that only a small fraction of trafficked persons are actually identified. And of that small fraction, only a few decide to press charges or act as witnesses, which is the only way to obtain ‘official’ victim status that provides access to support and assistance. In an evaluation report on the implementation of European legislation in the Member States, the European Commission concludes: “figures show that in countries where there are a significant number of assisted victims, statistics on criminal proceedings are higher”.

Despite the fact that the Palermo Protocol stipulates that consent is irrelevant if any of the coercive or deceptive means listed in the definition of "trafficking in persons" is used, government agencies still tend to take the incorrect position that women who have previously worked in the sex industry, or who are willing to do so, cannot be victims of trafficking. There have also been several cases in which judges ruled that trafficking could not be proven since the trafficked person had signed a contract with his or her exploiter.

**Criminal justice approach has failed: traffickers are rarely sentenced**

In addition, a number of countries lack adequate legislation, in particular with regard to internal trafficking and trafficking into industries other than the sex industry. In other cases, legislation exists but is flawed or not properly implemented. Another structural problem hindering successful detection and prosecution is corruption within governmental institutions. All these factors mean that cases of trafficking are still rarely brought to prosecution. Many cases are dismissed and traffickers are infrequently sentenced, so victims remain unprotected.

It is not too bold to conclude that the criminal justice approach to fighting trafficking in human beings has more or less failed to prevent people from being trafficked, to prosecute traffickers and to protect the rights of those who have been trafficked. Moreover, over the years there have been many examples of how anti-trafficking measures have infringed upon the human rights of trafficked persons or groups at risk and even increased their vulnerability to trafficking. These include shelters where victims are locked up in order to protect them, limited migration possibilities for women to prevent them from being trafficked, raids on brothels in which all the working women are arrested and jailed or deported in the name of rescue.
Human rights based approach: do no harm to victims

La Strada International, the European NGO network against trafficking in human beings, has been advocating the human rights based approach to trafficking in human beings for many years now as a more effective and structural means of stopping the exploitation and abuse of workers.

Trafficking in persons is a complex problem and includes different fields of interest: migration, organised crime, sex work, human rights, violence against women, the feminisation of poverty, unequal economic relationships, and so forth. Any analysis and corresponding solution in relation to these issues should be carefully questioned in terms of its effects for the groups concerned. A human rights based approach opposes anti-trafficking measures that adversely affect or infringe upon the human rights of trafficked persons or other affected groups. This approach requires that human rights are at the core of any anti-trafficking strategy. It integrates the norms, standards and principles of the international human rights system into legislation, policies, programs and processes.

Trafficking results in violations of several human rights, such as the right to be free of slavery, the right to safety and the right to life. States are accountable for these human rights violations and thus for the restoration of said rights by providing effective remedies such as support and assistance, legal help for compensation claims and access to the labour market, irrespective of victims' willingness to cooperate in the criminal investigation against their traffickers. Human rights violations are not only a consequence of trafficking, but also a cause and therefore a human rights based approach is about more than ‘just’ protecting the rights of trafficked persons. The task at hand is to put more focus on preventing instead of just fighting trafficking by addressing the factors that increase people's vulnerability to trafficking: the so-called root causes.

Root causes aren't being tackled

Although there has been increasing attention in the last few years to the root causes of human trafficking, this recognition has hardly been incorporated into the measures and policies to combat and prevent trafficking. There are a variety of root causes in all three phases of the trafficking process: in the country of origin, during migration and in the country of destination. Root causes in the countries of origin are poverty, inequality, gender-based violence, discrimination, armed conflicts and social, political and economic instability in general.

Root causes of trafficking are also linked to the global migration process. Strict and repressive immigration polices deprive migrant workers of legal possibilities for crossing borders and finding jobs. The proclaimed wish to combat human trafficking is often used as an argument for increasing restrictive measures against migrants that in practice create situations in which human rights violations are actually more likely to occur. Both irregular migration and undocumented work create precarious working conditions that allow extreme forms of exploitation to take place. In recent years the European Union has adopted legislation that facilitates some forms of labour migration. But for low-skilled jobs, these measures seem to serve predominantly the states’ need to regulate migration and provide their economical sectors with labour – and much less the protection of the rights of migrant workers or upholding labour laws and regulations for all workers.
And last but not least, root causes exist in the countries of destination where there is a growing need for unskilled and labour-intensive work in order to compete with low-wage countries. This work is mostly done by undocumented and unprotected migrant workers. Informal and unregulated work activities should be brought under the protection of labour laws to ensure that all workers enjoy the same labour rights. The fact that several sectors, especially those that are labour intensive, might not survive without cheap and unprotected labour, has also not been openly recognised.

**Putting the villains behind bars is not enough**

In the international debate on trafficking in human beings – especially in the media, but also in discussions among some politicians – the extreme complexity of the phenomenon of human trafficking is often ignored. The problem is presented as black and white. There are perpetrators: these are the traffickers who take advantage of innocent victims whom they lure into (sex-)slavery. Human trafficking can be stopped by putting the villains behind bars and rescuing the victims and sending them back home.

When discussing the root causes of trafficking, it becomes immediately clear that the human trafficking debate cannot be isolated from broader global discussions on development policies, trade barriers, migration policies, labour rights, discrimination, racism and (hyper) consumption. Even if more traffickers were prosecuted with the criminal justice instruments that have been developed to fight trafficking, this would not decrease peoples’ vulnerability to exploitation and abuse nor would it stop the demand for cheap labour, goods and services.

Human trafficking is not an isolated phenomenon in our society that can be fought by arresting and prosecuting the traffickers; It is a symptom of our society and its political and economical structures. Anti-migration policies, trade barriers for developing countries, subsidies, market protection and an economical structure that is based on (hyper) consumption have created a system in which exploitation of labourers flourishes.

**Are we willing to pay the price?**

Millions are spent on the fight against trafficking, but what is needed is the willingness to invest in combating the factors that increase people’s vulnerability to human trafficking. That can only be done if we fully respect and protect the rights of those who are vulnerable and support those whose rights have been violated and restore their universal rights. Can we do that? Will the European Union lift its restrictive trade barriers in favour of the development of the economies in less advantaged countries? Are nations prepared to open the borders for migrant workers and share their wealth? And are we, as individual consumers, ready to pay more for our products so that migrant workers and workers in developing countries have decent wages and labour conditions?

As long as we are not willing to pay that price, the crime of human trafficking will not cease to exist, and ultimately we are all responsible.