

Judicial, quasi-judicial and specialised non-judicial bodies as determinants of anti-trafficking efforts

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This blog post builds on a presentation Dr Noemi Magugliani and Dr Jean-Pierre Gauci delivered at the [PluriCourts Research Conference on Compliance Mechanisms](#) on 28 October 2021. It presents initial findings on the topic from the [Determinants of Anti-trafficking Efforts Project](#).

In the last two decades, the international community has increasingly turned its attention towards the phenomenon of trafficking in human beings. Since the adoption of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as subsequent regional conventions (e.g., Council of Europe Convention on Action against Trafficking in Human Beings, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa), many States have progressively sought to align their domestic legislation with the standards required by international law. Although the majority of States have adopted legislation criminalising trafficking in human beings, and many also passed legislation aimed at protecting trafficked persons, States' compliance with international and domestic standards has often been questioned.

Whilst there is significant analysis of States' anti-trafficking efforts, it is necessary, in our view, to shift the focus of inquiry towards the determinants of anti-trafficking efforts - understood as factors shaping governments' anti-trafficking efforts and influencing compliance and implementation of international standards. Put differently, there is value in trying to understand why States adopt, or comply with, legislative and other measures to tackle human trafficking. While some determinants are readily identifiable (e.g., the ratification of international instruments, pressure by external donors), others have not yet been sufficiently explored - including decisions of judicial and quasi-judicial bodies, as well as activities of non-judicial expert bodies.

Moving beyond an analysis of judicial bodies' decisions

Building on existing literature on the role of regional courts in shaping changes in anti-trafficking action ([Duffy 2016](#); [Milano 2017](#)), we have moved beyond the focus on judicial bodies and on the European Court of Human Rights. We have explored processes before and decisions by judicial, quasi-judicial and specialised non-judicial bodies (including United Nations Special Procedures, and in particular the United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children) as determinants of anti-trafficking efforts: how their role is perceived by anti-trafficking stakeholders, the various ways in which such processes influence anti-trafficking efforts, and how they interact with other determinants in influencing anti-trafficking efforts at the domestic level.

Preliminary research has identified [19 individual communications to the United Nations Treaty Bodies](#), [342 communications of the United Nations Special Rapporteur on Trafficking in Persons](#), [12 judgments of the European Court of Human Rights](#), and [2 judgments of the Inter-American Court of Human Rights](#) that tackle issues related to the implementation of anti-trafficking legislation (the first trafficking case before the African Commission on Human and Peoples' Rights, *J v Namibia*, is currently pending). Deploying a comparative approach, and as part of a large-scale research project exploring the [determinants of anti-trafficking efforts globally](#), we have evaluated four case studies in order to assess the role of judicial, quasi-judicial and specialised non-judicial bodies, including supervisory bodies, in effecting change at domestic level.

Findings from Argentina, Brazil, the Republic of Cyprus and the United Kingdom

In the Argentinian context, the influence of judicial cases as determinants for public policies and legislations in anti-trafficking has always been critical. Indeed, judicial cases influenced the enactment of all three main anti-trafficking laws, namely Law 26.364 (2008), Law 28.842 (2012), and Law 27.508 (2019). The [Montoya](#) landmark case in particular highlighted the lack of provisions with

respect to adequate redress for trafficked persons, a gap that was already [highlighted](#) by the United Nations Special Rapporteur on trafficking in 2010. Even though the special fund was only created in 2019, following the judgment in the Montoya case, this multiple engagement reflects both the cumulative effect of various determinants and the broader context and timescales within which determinants must be considered.

In the Brazilian context, although the national Government's response to trafficking remains not fully compliant with the Palermo Protocol, efforts to address slave labour during the 2000s were implemented largely in response to key recommendations from the Inter-American Commission in the [José Pereira](#) case. In 2016, the Inter-American Court of Human Rights ruled, in the case of [Fazenda Brasil Verde v Brasil](#), that Brazil had violated the right not to be subjected to slavery, forced labour and human trafficking, among several other rights. The decision resulted in at least two significant legislative changes concerning accessibility to non-pecuniary measures and the establishment of a prosecutorial task force to comply with the duty to prosecute cases of trafficking.

In the Republic of Cyprus, it was international pressure, including in the form of [a decision by the European Court of Human Rights](#) that led to substantive legislative changes namely the removal of a so called entertainer visa which has been used by traffickers. While there are no individual complaints before United Nations Treaty Bodies with respect to the Republic of Cyprus and trafficking, the 2017 Law on Associations and Foundations and Other Related Issues was subject to scrutiny through the United Nations Special Procedures. In March 2021, several mandates, including the mandate of the Special Rapporteur on trafficking, addressed with concern the information received on the deteriorating environment for civil society organisations in Cyprus. In particular, the [letter](#) was concerned with the deregistration of KISA, an NGO that provides support to migrants, asylum seekers and trafficked persons, from the Register of Associations and Foundations in December 2020 - with respect to which a case is currently pending before the Cypriot Supreme Court.

Turning to the United Kingdom, the obligations flowing from the Council of Europe Convention on Action against Trafficking in Human Beings and the judgment of the European Court of Human Rights in the case of [CN v United Kingdom](#), were instrumental in the adoption of the National Referral Mechanism in 2009. Legislative changes following [CN v United Kingdom](#) are not the only developments in anti-trafficking efforts heavily influenced by decisions (and processes) of courts and tribunals - see, inter alia, [Atamewan v SSHD](#), [Hounga v Allen](#), [PK \(Ghana\) v SSHD](#), and [NN and LP v SSHD](#) (while awaiting for developments linked to most recent European Court of Human Rights' judgment in [V.C.L. and A.N. v United Kingdom](#)). As in the case of the Republic of Cyprus, while there are no individual complaints before United Nations Treaty Bodies, the United Nations Special Procedures have engaged with the British Government on a number of occasions with respect to anti-trafficking efforts. In 2021, the Special Rapporteurs have addressed concerns around the [Overseas Domestic Worker visa and the Immigration Act](#), as well as the [alleged role of Omegle](#), a live video chat website, in facilitating online sexual exploitation of minors. In its responses, the British Government acknowledged that "the UK gives careful considerations to all recommendations by human rights bodies" and that, on the basis of such recommendations, "officials in the Home Office are in the process of developing proposals to reform the [tied visa] route from [2022]", and that the Government has finalised draft legislation on online harms in May 2021 (currently under parliamentary discussion).

Understanding judicial, quasi-judicial, and specialised non-judicial bodies' engagement as a piece of the determinants' puzzle

In all four case studies, decisions of judicial bodies - either domestic or regional - have played a crucial role in advancing anti-trafficking efforts and protecting trafficked persons' rights. The jurisprudence of regional human rights courts has influenced both Governments' actions and domestic courts' interpretation of anti-trafficking law, as well as human rights law provisions relevant to anti-trafficking efforts. They have resulted in the introduction of new measures, the withdrawal of existing non-compliant measures, and more human rights conformant interpretations of existing legislation.

Quasi-judicial human rights bodies, including the United Nations Treaty Bodies, are not yet consistently engaged in human trafficking cases. Yet, the potential of their impact on the improvement of anti-trafficking efforts should not be ignored. Indeed, quasi-judicial bodies [can be viewed as international lawmakers](#) - influencing the interpretation, clarification and refinement of State duties and responsibilities. While courts and quasi-judicial human rights bodies tend to, by their very nature, be reactive in nature, placing the burden of initiating proceedings on individuals whose rights have been violated (or on third States), specialised non-judicial bodies, including United Nations Special Procedures, tend to be more proactive in nature. The engagement of the United Nations Special Rapporteur, both in terms of country visits and thematic reports as well as through letters, has increased sharply in recent years. While responses from Governments to communications of Special Rapporteurs might be circumstantial and be labelled as "empty promises", the engagement that Governments need to show - and against which they are likely to be judged, at least in terms of international reputation - is a meaningful element in the evaluation of the development of anti-trafficking efforts.

The analysis of decisions and observations in different contexts has shown the inter-dependence of judicial, quasi-judicial and

specialised non-judicial bodies, which rely on each other - insofar as interpretation and standards are concerned - to safeguard the rights of trafficked persons and steer Governments to compliance with their international, regional, and domestic obligations. It has also shown that the variety in the type of external pressure applied - e.g., binding judgments and 'soft' pressure - can be used strategically to promote change and to ensure that change is sustainable. Because determinants of anti-trafficking efforts, understood as the factors shaping government responses, do not work in isolation, but rather are part of a process, it would be wrong to assume that decisions and observations of judicial, quasi-judicial and specialised non-judicial bodies can, considered in isolation, yield improved political will and capacity in national governments to address trafficking in persons. Yet - as demonstrated by the cases of Argentina, Brazil, the Republic of Cyprus, and the United Kingdom - they are external points of pressure which can contribute to positive change.

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PS. BIICL's recent Grotius Lecture focused on the issue of UN Treaty Bodies. The event recording is available [here](#).

URL: <https://www.biicl.org/blog/28/judicial-quasi-judicial-and-specialised-non-judicial-bodies-as-determinants-of-anti-trafficking-efforts>