Sent Away

The Trafficking of Young Girls and Women within the Family Unit
Introduction

1. Domestic work is the largest employment category for young girls and women worldwide,¹ with many of these young workers having been forced into exploitative labor as domestic servants and/or sex workers by their own family members. By putting a spotlight on trafficking within the household-work labor “market,” this report highlights the particular vulnerability of young girls and women and the serious, neglected problem of intrafamilial trafficking in this area.

2. While countries and supranational agencies all over the world have already taken a stand against the trafficking of women and children,² family participation in trafficking – especially of children into domestic servitude – remains epidemic. Because of this continuing problem, it remains essential for national and supranational authorities, which have both the authority and responsibility to enforce international human rights laws, to make continued efforts to combat the phenomenon of intrafamilial trafficking and protect those who are most at risk.

I. Intrafamilial Trafficking for the Purposes of Forced Domestic Labor or Sex Work is a Widespread Phenomenon that Particularly Affects Women and Young Girls.

3. Every day, family members send their children, especially their daughters, away to be used for domestic servitude or sexual exploitation. The International Labor Organization (“ILO”), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that, of the 12.3 million adults and children trafficked at any given time for forced labor or sexual exploitation, young girls and women make up more than six million of all forced labor victims.³ Frequently, family members actively participate in the trafficking of these young girls.⁴

4. Intrafamilial trafficking, where parents and other relatives actively traffic their daughters, nieces and other young female relatives into the labor market,⁵ takes several forms.⁶ Most typically, family members who traffic their children make use of small, informal

² For purposes of this report, and according to international law, “child” is defined as any person under the age of 18. See United Nations Convention on the Rights of the Child.
³ U.S. Department of State, Trafficking in Persons Report 8 (2009), available at http://www.state.gov/g/tip/c16467.htm (hereinafter TIP Report). The 6 million victims estimated by the ILO do not include victims of sexual exploitation. Thus, compared to the 1.39 million victims trafficked into commercial sexual servitude each year, many more women and girls are forced into exploitative labor.
⁴ TIP Report at 7.
⁵ Although boys are often trafficked as well, girls and young women are especially vulnerable for reasons explained below.
⁶ TIP Report at 7.
networks of friends and relatives.\textsuperscript{7} Through these networks, they not only force children into sex work but also into various other forms of work that trafficking laws similarly prohibit.\textsuperscript{8} For example, according to the \textit{2009 U.S. State Department Trafficking in Persons Report}, parents in Cambodia sell their children into prostitution or domestic servitude to repay debts; in Albania, Roma parents bring their children to Greece and force them to beg or sell goods on the street; and in Niger, parents force children into cattle herding against their will, despite visible signs of the physical and psychological toll that the work takes on the children.\textsuperscript{9}

5. While parents are often complicit in the trafficking of their children, the U.S. State Department has also observed that in some instances, extended family members trick parents into giving up their children.\textsuperscript{10} In these instances, these family members may “promise education and opportunity but instead sell the children into exploitative situations for money.”\textsuperscript{11}

6. In both instances, young girls are particularly vulnerable. Three reasons stand out.

7. First, the power structure inherent in the child-parent relationship discourages young girls from resisting trafficking efforts. This structural constraint, which affects young boys as well, helps explain why young family victims may not protest when the trafficking first takes place. Although children typically do not want to be sent away and certainly do not want to be trafficked, children will often submit to parental authority and, as a result, to their own victimization.\textsuperscript{12} Moreover, because states generally defer to parents’ decisions about childrearing, parents can exploit and traffic their children with little concern about state intrusion.\textsuperscript{13} This is particularly the case when parents send their children through networks of friends and relatives, which enables them to appear to be engaging in ordinary parenting even while they are actually engaged in exploitation. Further, the young age of children may limit their ability to escape: by virtue of their developmental

---

\textsuperscript{7} \textit{Bottom of the Ladder} at 26 (describing specifically female victims of forced labor in Mali and Guinea).

\textsuperscript{8} See Part II for a description of the international laws that expressly prohibit the trafficking of human beings.

\textsuperscript{9} \textit{TIP Report} at 5.


\textsuperscript{12} See Part II for a discussion of the laws of consent with respect to trafficking. Many international human rights laws and treaties do not consider consent a factor in a case of child trafficking.

\textsuperscript{13} There are, however, limits to how the state allows parents to raise their children. \textit{See Z and Others v the United Kingdom}, 29392/95, Council of Europe: European Court of Human Rights, 10 May 2001 (holding that the neglect and abuse suffered by the four children at the hands of their parents reached the threshold of inhuman and degrading treatment).
stage and their limited life experience, children are often unaware of their rights, the illegality of their situation, or the means to return home.

8. Second, the relatively submissive way in which many young girls are taught to behave and the cultural expectations that girls and young women should perform domestic labor render girls particularly vulnerable to intrafamilial trafficking. Indeed, the stereotype (and reality) that many girls and young women are more submissive than boys and young men frequently leads the “consumers” of trafficked children to prefer girls and women for forced labor. As the U.S. State Department has observed:

> Exploitative employers prefer to use trafficked women – traditionally seen as submissive, cheap, and pliable – for simple and repetitive tasks in agriculture, food processing, labor-intensive manufacturing, and domestic servitude.14

This preference is reinforced by prevailing societal attitudes in many countries that girls, and not boys, are expected to perform domestic labor,15 that girls do not deserve as high a level of education as boys,16 and that parents can treat their daughters as chattel. As a result of these views and unlike for young boys, families will sell young girls into marriage or force them into relatives’ or strangers’ homes as domestic servants.17

9. Third, states are often unable or reluctant to recognize and investigate intrafamilial trafficking, in part because of detection difficulties and in part because of gender

---

14 TIP Report at 36. For an example of the trafficking of a young girl for the purposes of forced domestic labor, see United States v. Mubang, No. 03-0539 (D.Md. 2003). There, a naturalized U.S. citizen of Cameroonian origin was convicted of having trafficked an eleven-year-old girl to provide free labor to care for the defendant’s two children and to perform household chores. The trafficking victim received no wages, was isolated, was not allowed to attend school, and was subject to verbal and physical abuse. Organization for Security and Co-operation in Europe, *A Summary of Challenges on Addressing Trafficking for Labour Exploitation in the Cultural Sector in the OSCE Region 5* (2006), available at [http://www.osce.org/publications/ebth/2009/07/38709_1338_en.pdf](http://www.osce.org/publications/ebth/2009/07/38709_1338_en.pdf) (hereinafter *A Summary of Challenges*). See also *Siliadin v France*, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2005, available at [http://www.unher.org/refworld/category,LEGAL,TGO,4406f0df4,0.html](http://www.unher.org/refworld/category,LEGAL,TGO,4406f0df4,0.html). There, a fifteen-year old girl was transported from Togo to France to work in isolation as an unpaid domestic servant. She was shared between two families and these families nurtured her fear of being arrested because of her unlawful residence in France. *Id.* at para. 21.

15 Examples of these countries include Mali, Guinea, Afghanistan, and Iraq, among others. For example, Human Rights Watch reports that in West Africa, “Girls are expected to perform domestic work and then marry at a young age. Sending girls away to do domestic labor becomes one of few ‘career paths’ available.” Bottom of the Ladder at 29.

16 See Women’s International Center, *Women’s History in America*, available at [http://www.wic.org/misc/history.htm](http://www.wic.org/misc/history.htm) (reporting that wifehood and motherhood have often been regarded as women’s “most significant professions”). See also Overseas Development Institute, *Girls’ Education Through a Human Rights Lens: What Can Be Done Differently, What Can Be Made Better 4*, available at [http://www.odi.org.uk/rights/meeting%20series/girlseducation.pdf](http://www.odi.org.uk/rights/meeting%20series/girlseducation.pdf) (reporting that for young girls in Niger, Gabon, Tanzania, and Mozambique, their right to education ends once a girl has become a woman, usually shortly after her first menstruation, or upon her family arranging her marriage). The Overseas Development Institute also reports that in many countries, the minimum age for marriage is set lower for girls than for boys. This also affects girls’ chances at staying in school as compared to their male peers of the same age. *Id.* at 4-5.

17 TIP Report at 163. In Iraq, for example, family members traffic girls and women to pay debts or resolve financial disputes between families. *Id.* When parents send their children to work in a relative’s house at a young age, their labor is often “not considered work worthy of pay; it [is] just seen as their contribution to family life.” Bottom of the Ladder at 46 (citing Human Rights Watch reports).
stereotypes about the appropriateness of girls performing domestic labor, leaving girls in a position of heightened vulnerability.\footnote{UNICEF, UNICEF Perspectives on Prevention of Child Trafficking and Protection of Child Victims of Trafficking, available at http://ceecis.org/child_protection/PDF/traff.pdf. UNICEF reports that although hard data is unavailable on the number of child victims being trafficked within or into European countries, research and reports from agencies working in various countries indicate that trafficking takes many different forms – both transnational and internal. Accumulated knowledge from field work in South Eastern Europe shows that child victims generally fall into two categories: adolescent girls between 15 and 17 years of age for sexual exploitation; and children under 13 years of age for forced labor, begging and, exceptionally, for the sale of organs. UNICEF also reports that many of the victims who are being returned to their countries of origin have similar vulnerability profiles: They are often (1) children who grew up in institutions; (2) children from families where domestic violence or abuse was taking place; and (3) children who come from poor, disadvantaged and often dysfunctional families.} Several factors contribute: for one, the people who would usually report an exploited or missing child – that is, the parents or relatives of the child – are complicit in the exploitation of the child.\footnote{On the issue of intrafamilial trafficking, the U.K. Home Office reports that “[t]he acceptability of such practices [of intrafamilial trafficking], particularly in some African cultures can hinder detection of African children trafficked as domestic servants to families in the UK.” U.K. Home Office, Trafficking for the Purposes of Labour Exploitation: A Literature Review (2007), available at http://rds.homeoffice.gov.uk/rds/pdf07/rds07r1007.pdf. See also de Jonge, B., Eurojust and Human Trafficking: The State of Affairs 25 (2005) (hereinafter Eurojust Report) available at http://polis.osce.org/library/f/3273/2219/EU-NLD-RPT-3273-EN-Eurojust%20and%20Human%20Trafficking%20-%20The%20State%20of%20Affairs.pdf. The report concluded, based on country studies and interviews with practitioners, that only very few transnational investigations of labor exploitation are started in the European Union. See also A Summary of Challenges.} Also, since forced domestic work takes place inside the home, and thus outside of the public sphere, law enforcement officials face difficulty in accurately monitoring or regulating it. Further, precisely because the trafficking involves in-home labor by girls who are expected to provide domestic service, law enforcement officials are often unable to recognize situations where the work amounts to forced labor rather than permissible demands for familial assistance.\footnote{International Labor Organization, Global Facts and Figures in Brief, available at http://www.ilo.org/ipec/areas/Childdomesticlabour/lang--en/index.htm (emphasizing the “hidden nature,” of exploitative domestic work). See also Kerry Rittich, Rights, Risk and Reward: Governance Norms in the International Order and the Problem of Precarious Work, in PRECARIOUS WORK, WOMEN, AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS 31 (Judy Fudge and Rosemary Owens, eds., 2006) (describing the problem of unregulated, “insecure, badly remunerated, unprotected” work that many women are forced to perform). According to Rittich, those engaged with precarious work, that is, work that is poorly paid, temporary, unregulated and/or unprotected, remain disproportionately women.} Further, that this form of exploitation often goes undetected should not immunize parents and traffickers from liability under international human rights laws, all of which outlaw trafficking in any form.

II. **International Law Recognizes that Intrafamilial Trafficking is a Human Rights Violation.**

11. Despite the heightened difficulty in detecting intrafamilial trafficking, international law is clear: neither strangers nor family members may engage in the trafficking of persons.

Thus, states parties to treaties, which prohibit trafficking and protect women and children, have a firm obligation to address the problem of intrafamilial trafficking and provide...
support to its victims. This section examines the three treaties most applicable to the trafficking of young girls by their family members: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol"); the United Nations Convention on the Rights of the Child ("CRC"); and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").

12. The Palermo Protocol is the broadest international treaty that exclusively addresses and prohibits human trafficking. Intrafamilial trafficking, a form of human trafficking, violates several of its prohibitions. The Protocol defines "trafficking in persons" as:

- the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

As noted in Part I, the typical intrafamilial trafficking experience involves the transportation of young girls, either domestically or across state borders, into domestic service and/or sex work. This type of forced labor, in turn, is expressly addressed by the Protocol, which defines "exploitation" to include not only sexual exploitation but also forced labor, debt bondage, and servitude.

13. Importantly, the Palermo Protocol acknowledges the vulnerability of children to intrafamilial trafficking. Specifically, it does not require children to prove whether they "consented" to or were "coerced" into trafficking, recognizing that children often...
submit to the will of their parents or find it difficult to refuse their parents’ requests.\textsuperscript{26} Thus, the Palermo Protocol regards trafficked children as victims whether or not parents have “coerced” them into exploitative situations.

14. Intrafamilial trafficking also implicates the Convention on the Rights of the Child by violating three separate but interrelated prohibitions: the direct prohibition on child trafficking; the child’s right to an education; and the child’s right to grow up in an atmosphere of “happiness, love and understanding.”\textsuperscript{27}

15. First, intrafamilial trafficking violates the CRC’s explicit prohibition against child trafficking. Not only does the CRC condemn trafficking of children as a general matter, but it also makes clear that forced labor falls well within that prohibition. Specifically, the CRC requires that states “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or… harmful to the child’s health or physical, mental, spiritual, moral or social development.”\textsuperscript{28}

16. These conditions prohibited by the CRC, including hazardous and harmful exploitation of the child’s labor, violence and neglect, and involuntary separation from parents, are all features that characterize the intrafamilial trafficking of young women and girls, as described above. In particular, domestic servitude, often far from home, as well as the more familiar circumstances of forced marriage, sexual servitude, and forced industrial labor, plainly violate these provisions of the CRC.

17. Second, intrafamilial trafficking violates the child’s right to an education under the CRC.\textsuperscript{29} In intrafamilial trafficking, this right is almost always directly violated, with parents often pulling their children out of school for long periods of time, or even permanently, for the forced labor or other exploitation.\textsuperscript{30} Once removed from school, the child will rarely, if ever, be able to return.\textsuperscript{31}

\textsuperscript{26} The Palermo Protocol further details special assistance and protection for victims of trafficking in persons that states parties must provide. As intrafamilial trafficking violates the Protocol, states parties to the Protocol must ensure that the young victims of such trafficking be afforded all these protections. In addition, the Council of Europe Convention on Action against Trafficking in Human Beings defines trafficking that occurs “by means…of the abuse of power or of a position of vulnerability” and therefore acknowledges that trafficking victims, including women and children, often submit to the will of their traffickers out of fear or vulnerability. \textit{Palermo Protocol} Section 4; \textit{see also} para. 20.

\textsuperscript{27} CRC Preamble (“Recognizing that the child… should grow up in a family environment in an atmosphere of happiness, love and understanding.”). \textit{See also} CRC, Art. 28, para. 1 (recognizing the right of the child to education).

\textsuperscript{28} \textit{Id.} at Article 32(1).

\textsuperscript{29} CRC Article 28(1)(e). For examples of instances where children have been forced to perform domestic work and have been prevented from going to school, \textit{see} United States v. Mubang and Siliadin v France.

\textsuperscript{30} \textit{Bottom of the Ladder} at 28 (reporting that in rural areas of Guinea, among other countries, there is a “strong bias against girls” education and independence, which serves to ‘track’ girls into the path of domestic labor”).

18. Finally, the CRC recognizes in its preamble that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”32 All trafficking victims are placed in psychologically and physically harmful situations, far from the secure familial environment envisioned by the CRC.33 However, unique to the child victim of intrafamilial trafficking, the harm she suffers results directly from her family’s decision to traffic her. Thus, in these instances, the family plays a key role in undermining the purpose of the CRC.

19. States parties under the CRC have an affirmative duty to protect young girls from being trafficked by their families. States parties must “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”34 More broadly, they also must “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”35 The CRC also demands that states “ensure that a child shall not be separated from his or her parents against their will.”36

20. In addition to directly violating trafficking prohibitions and the CRC, trafficking in women has been recognized as a form of discriminatory, gender-based violence.37 Consequently, it violates the Convention on the Elimination of All Forms of Discrimination Against Women, which explicitly requires states to “suppress all forms of traffic in women.”38 More specifically, states are expected to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and

32 CRC Preamble.
33 TIP Report at 7 (describing that child trafficking victims “arrive home with visible signs of physical and psychological abuse.”).
34 CRC Article 35.
35 CRC Article 19(1).
36 While ensuring that a child not be separated from her parents is the general rule, the CRC provides for exceptions to this recommendation: “[E]xcept when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” Id. at Article 9(1). UNICEF guidelines designed to assist states in complying with international treaties on trafficking define “separated child” as “[s]eparated from both parents or from their legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members.” UNICEF Guidelines at 3.
37 See Article 2(b) of the UN Declaration on Elimination of Discrimination Against Women: “Violence against women shall be understood to encompass, but not be limited to…[p]hysical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.”
38 CEDAW Part I, Article 6.
As set out in Part I, it is precisely these practices, including the view that domestic labor is work for girls and women, that reinforce the particular susceptibility of young girls to trafficking and contribute to parents trafficking their daughters into domestic servitude far more often than their sons.\(^\text{39}\)

### III. Supranational and Inter-European Agencies Have Prioritized Anti-Trafficking Efforts That Include a Special Focus on the Trafficking of Women and Children.

21. Supranational bodies, most notably the Organization for Security and Co-Operation in Europe (“OSCE”), have demonstrated particular concern regarding the trafficking of women and children.\(^\text{41}\) In addition, the measures taken by several inter-European agencies reveal a concerted effort to combat trafficking, especially of women and children. Finally, the European Court of Human Rights jurisprudence supports the greater anti-trafficking agenda in Europe.

22. The OSCE, a coalition of fifty-six states from Europe, Central Asia, and the Americas,\(^\text{42}\) has identified as a serious problem the lack of prosecution for trafficking of human beings into forced labor.\(^\text{43}\) At an OSCE conference on the prevention of child trafficking in 2006, the OSCE Secretary General, Ambassador Marc Perrin De Brichambaut, emphasized the importance of maintaining the goal of fighting child trafficking within the

---

\(^{39}\) CEDAW Article 5(a).

\(^{40}\) See footnotes 13-16 above.


\(^{42}\) European states are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom.

\(^{43}\) A Summary of Challenges. The OSCE has put forth several reasons for the low number of prosecutions that have taken place in OSCE member states: first, trafficking for labor exploitation is a relatively new concept, and many states have not criminalized such conduct, or have only recently done so. Second, because of the victim’s legal status and the type of work she is forced to perform, cases are difficult to identify. In addition, states have tended to focus disproportionately on an individual’s immigration status, rather than on the conditions of their exploitation.
OSCE region for the sake of “human development, prosperity and security at regional, national and international levels.”

23. Other inter-European agencies have similarly condemned the problem of trafficking in persons in Europe and have demanded that states make efforts to eliminate the phenomenon of trafficking within Europe. With respect to women and girls in particular, the European Union has developed an action plan on “Best Practices, Standards, and Procedures for Combating and Preventing Trafficking in Human Beings,” which highlights the particular susceptibility of women and children to be forced into labor, especially domestic servitude. Also, the Council of Europe has expressed a strong interest in preventing trafficking, including for purposes of forced labor of women and children, in its Convention on Action against Trafficking in Human Beings.

24. In addition to the work of these inter-state agencies, the European Court of Human Rights, through case law, has also condemned the human rights violations caused by intrafamilial trafficking. While trafficking is not explicitly defined in the articles of the European Convention on Human Rights (“ECHR”), case law from the Court strongly suggests that trafficking violates several articles of the ECHR, including Articles 3, 4, and 8. Even where the trafficker is a parent or relative, the acts of removing the child from her family and social network, exposing her to mistreatment and abuse, and forcing her to perform domestic labor or sex work violate these ECHR articles.


46 See Council of Europe, Convention on Action against Trafficking in Human Beings Ch. 2 Art. 6, available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convvtn/CETS197_en.asp#TopOfPage (stating that measures should be taken to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”).

47 Council of Europe, European Convention on Human Rights (hereinafter ECHR). Article 3 states “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Article 4 states in relevant part, “No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour.” Art. 4, para. 1, 2. Article 8 provides, in relevant part, “Everyone has the right to respect for his private and family life.” Art. 8, para. 1. See ECHR Art. 8, para. 1. See also Sen v Netherlands, 31465/96, Council of Europe: European Convention on Human Rights, 21 December 2001 (holding unanimously that from the moment of birth there exists between the parent and child a bond constituting family life and that the state had a positive obligation to allow the applicant to reside with her parents in the Netherlands, permitting the maintenance and development of a family life in their country).

48 See ECHR Art. 3, See also Z and Others v UK.

49 See ECHR Art. 4, paras. 1-2. See also Siliadin v France (finding a violation of Art. 4).
25. Though the Court has not yet addressed trafficking within the family as an Article 8 violation, its decisions construing Article 8 in cases where a child has been removed from his or her family and country of residence are of particular interest because they reinforce the sharp conflict between intrafamilial trafficking and the Convention’s protection for family life. More specifically, when an individual or the state has removed a child from her home, taken her out of school, and separated her from one or both of her parents, the Court has found an Article 8 violation. Even if some time passed from when the child was removed from her family and her country, the ECHR has recognized sufficiently “close personal ties” or “real family ties” between a child and a parent, whether or not the parent and child lived together.

26. Intrafamilial trafficking may also deprive a child victim of her right to be free from inhuman or degrading treatment and from forced servitude or slavery, violating Articles 3 and 4 of the ECHR. A parent’s collusion with traffickers or placement of their child elsewhere for purposes of forced labor amounts to both inhuman and degrading treatment and slavery. Although, here again, the Court has not issued an on-point ruling, its determination that the emotional and physical abuse by a parent violates Article 3, and that the State has a duty to intervene and prevent this abuse, reinforce the Article’s

---

51 The rights protected under Article 8 are broad, and the case law concerning the respect for “family life” consistently privileges the existence of close personal ties and social connections between family members, and finds violations where the state or a private party has interfered with an individual’s family life. See Emre v Switzerland, 42034/04, Council of Europe: European Convention on Human Rights (holding unanimously that there was an violation of Article 8, given plaintiff’s weak ties with his country of origin and the final nature of the deportation order, and that the State authorities did not strike a “fair balance” between the interests of the applicant and his family on the one hand and their own interest in controlling immigration on the other.). See also Nnyanzi v United Kingdom, 21878/06, Council of Europe: European Convention on Human Rights, 28 November 1996 (finding a violation under Article 8, the Court emphasized that though the respondents were Turkish, the respondent couple’s two children had always lived in the Netherlands. They have only had limited links with their country of origin and this would be the chief obstacle to a transfer of the family life to Turkey).

52 See Johnson v Norway, Council of Europe: European Convention on Human Rights, Reports of Judgments and Decisions 1996, at 1008-09 para. 52 (holding that the “mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8”). See also Scozzari and Giunta v. Italy, 39221/98 and 41963/98, Council of Europe: European Convention on Human Rights, 12 July 2000, para. 148 (reiterating that “it is an interference of a very serious order to split up a family” and that “such a step must be supported by sufficiently sound and weighty considerations in the interests of the child”).

53 See Berrehab v the Netherlands, Series A No. 139, Council of Europe: European Convention on Human Rights, 21 June 1988 at 14 para. 21. There, the Court found that cohabitation is not always necessary for “family life”—from the moment of the child’s birth and by the very fact of it there exists between him and his parents a bond amounting to “family life.” The Court distinguished between the situations of an alien seeking admission to a country for the first time and an alien who seeks reentry into a country where he has substantial social connections and emphasized that the applicant was “a person who had already lawfully lived there for several years, who had a home and a job there, and against whom the Government did not claim to have any claim. Furthermore, [the applicant] already had real family ties there” (emphasis added).

54 TIP Report at 19-25 (describing the degrading treatment that children are subjected to, whether trafficked for the purposes of forced labor or sexual exploitation); ECHR Article 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”).

55 See e.g., Z and Others v the United Kingdom (holding that the neglect and abuse suffered by the four children reached the threshold of inhuman and degrading treatment).
applicability in this context. Similarly, the Court’s decisions that the State’s failure to respond adequately to domestic (i.e. intrafamilial) violence can constitute an Article 3 violation show that these provisions of the ECHR are applicable in cases of intrafamilial trafficking. In addition, though the Court has not heard many cases under Article 4, the Court found an Article 4 violation in a 2001 case in which a young girl was trafficked from Togo to France by her family for the purposes of forced labor.

Conclusion

27. Tragically, family members all too often traffic young women, including daughters, nieces, and other relatives, for forced domestic labor or sex work. However, international law, especially the Palermo Protocol, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, expressly prohibits intrafamilial trafficking of young girls and women, and states have a duty under these laws to confront the problem of intrafamilial trafficking. Moreover, supranational and inter-European agencies have indicated their concern about the prevalence of trafficking of young girls and women within Europe. The jurisprudence of the European Court of Human Rights, too, indicates that intrafamilial trafficking, while not expressly prohibited under Articles 3, 4, or 8, likely does violate those Articles. In this light, it is time for both states and supranational bodies to recognize that, as with other forms of trafficking, intrafamilial trafficking of young women and girls for purposes of domestic servitude and/or sexual exploitation is not only a grave problem but also a profound violation of well-settled human rights protections.

56 See Bevacqua and S. v. Bulgaria, 71127/01, Council of Europe: Convention on Human Rights, 2001 (holding that there had been a violation of Article 8 in that the courts had failed to adopt interim custody measures without delay in a situation where there had been instances of domestic violence and abuse by the father which had above all adversely affected the well-being of the child).


58 See Siliadin v France (finding that the applicant was held in “servitude” within the meaning of Article 4 and finding a violation of the State’s positive obligations under Article 4). As in many instances of forced labor, the applicant had been told that she would only work until the cost of her airplane ticket to France was reimbursed, but in reality, her passport was taken from her and the French family held her as an unpaid houseworker. Further, in Siliadin, there is factual support that the 15-year old child victim/applicant was forced into this labor situation by her paternal uncle. Id. at para. 17.