

OSCE Resource Police Training Guide: Trafficking in Human Beings

TNTD/SPMU Publication Series Vol. 12

- The Organization for Security and Co-operation in Europe (OSCE) works for **stability, prosperity and democracy** in 57 States through political dialogue about shared values and through practical work that makes a lasting difference.

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Acronyms and Abbreviations

ABS.....	Alternative Banking System
ACPO.....	Association of Chief Police Officers
APOV.....	Abuse of Position of Vulnerability
ASI.....	Anti-Slavery International
ATM.....	Automatic Teller Machine
CEOP.....	Child Exploitation Online Protection Agency
CIS.....	Commonwealth of Independent States
CJS.....	Criminal Justice System
COE.....	Council of Europe Convention on Action against Trafficking in Human Beings
ECHR.....	European Court of Human Rights
EU.....	European Union
FATF.....	Financial Action Task Force
FI.....	Financial Investigations
FIU.....	Financial Investigation Unit
ICMPD.....	International Centre for Migration Policy Development
ILO.....	International Labour Organisation
ILP.....	Intelligence Led Policing
IOM.....	International Organisation for Migration
JIT.....	Joint Investigation Team
MLA.....	Mutual Legal Assistance
NGO.....	Non-Governmental Organisation
NRM.....	National Referral Mechanism
OCN.....	Organised Crime Network
OCTA.....	Organised Crime Threat Assessment
ODIHR.....	Office for Democratic Institutions and Human Rights
OSCE.....	Organisation for Security and Co-operation in Europe
OTC.....	Organs, Tissues and Cells
PTSD.....	Post-traumatic Stress Disorder
SOM.....	Smuggling of Migrants
SPMU.....	Strategic Police Matters Unit
SR/CTHB.....	Special Representative/Combating Trafficking in Human Beings
THB.....	Trafficking in Human Beings
OCEEA.....	OSCE Coordinator of Economic and Environmental Activities
UK.....	United Kingdom
UN.....	United Nations

UNGA.....	United Nations General Assembly
UNICEF.....	United Nations Children's Fund
UNODC.....	United Nations Office on Drugs and Crime
UNTOCC.....	United Nations Convention against Transnational Organised Crime
US.....	United States

Clarification of Terms

Collectivist Culture cultures that stress interdependence and seek the welfare and survival of the group above that of the individual.

Grooming actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a victim, to lower the victim's inhibitions in preparation for exploitation.

Hawala Banking an informal value transfer system based on the performance and honour of a huge network of money brokers, which are primarily located in the Middle East, North Africa, the Horn of Africa, and the Indian subcontinent. It is basically a parallel or alternative remittance system that exists or operates outside of, or parallel to, traditional banking or financial channels.

Individualistic Culture a culture group that focuses on rights and independent action of the individual.

“Loverboy” a male who starts a relationship with a young girl and provides material support to make her dependent on him, only to later demand repayment of that support, usually through forced prostitution.

National Referral Mechanism a co-operative framework through which State actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.¹

“Organised criminal group” (Article 2(a) UNTOCC) a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Pull Factors circumstances within destination countries that make it attractive to people to want to go to that country. These factors can include employment, higher salaries, improved living standards or a belief of a better life.

¹ OSCE Office for Democratic Institutions and Human Rights, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, Warsaw, 2004, pp. 15-16.

Push Factors circumstances within source countries that push people to leave their homes. These factors can include poverty, poor education, and conflict and are often gender related.

Root Cause(s) various and often differ from one country to another; many of the factors are specific to individual trafficking patterns and to the States in which they occur. There are, however, many factors that tend to be common to trafficking in general or found in a wide range of different regions, patterns or cases.

Special Measures can help victims/witnesses who may be vulnerable or feel intimidated to give their evidence in the best way possible.

“Structured group” (Article 2 (c) UNTOCC) a group that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Preface

Human trafficking is considered to be complex, difficult to investigate and a growing global criminal activity. Law Enforcement Agencies perform a key role in preventing and combating this criminal activity. However, to be able to carry out their duties they need to be aware of the current trends and to be able to identify and protect victims. The crime of human trafficking is evolving, new forms are being developed and the modus operandi of the perpetrators is continuously adapting. Police training is an essential part of the fight against trafficking in human beings.

The OSCE Strategic Framework for Police-related Activities adopted in 2012², defines the fight against trafficking in human beings as one of the Organization's priorities in the area of police-related activities. In line with the OSCE Action Plan to Combat Trafficking in Human Beings and other Ministerial Council decisions the TNTD/Strategic Police Matters Unit (SPMU) is to develop training materials and to provide training for law enforcement authorities in different aspects of trafficking in human beings.³

The objective of this guide is to create an OSCE Resource Police Training Guide for police officers in the OSCE participating States and Partners for Co-operation, updating the knowledge in the area of combating trafficking in human beings.

The aims of the Training Guide are:

- to strengthen law enforcement capacities for preventing and combating trafficking in human beings;
- to facilitate identification of the emerging trends and new forms of human trafficking reflecting on the current features of criminal groups engaged in trafficking;
- to be adaptable to legislative and operational framework in the OSCE participating States and Partners for Co-operation;
- to provide a minimum set standard for both internal and external OSCE trainers; and
- to focus on trafficking in human beings relating to topics that are currently prioritised by the OSCE.

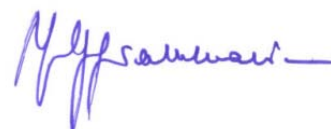
² OSCE Strategic Framework for Police-related Activities, PC.DEC/1049, 26 July 2012

³ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

This guide is also to share some best practices on how to investigate human trafficking cases, how to identify victims of trafficking and how to use the indicators of trafficking as practical tools. It is also designed to enable police and interested authorities in the criminal justice sector in all OSCE participating States and Partners for Co-operation, to promote and benefit from international co-operation as well as closer co-operation between law enforcement agencies and civil society, including, where appropriate, through police-public partnership.



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The guide includes the conclusions of an expert seminar group held in Vienna between 29 and 31 January 2013 and its content is based on an in-depth study of all available literature and training material.

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Executive Summary

Human Trafficking not only involves so much human suffering, but it is the new slavery, no longer legitimized by law but implying the same heinous subjugation. Trafficked people, including children, are forced to work for no wages, are sexually exploited, are beaten and even killed if they try to leave, and are constantly threatened, violated and traumatized.⁴

The OSCE is committed to playing an active role in addressing human trafficking, which is both a severe violation of human rights and a crime. Human trafficking cuts across all three dimensions of the OSCE's work – politico-military, economic and environmental, and human – and therefore requires a multi-disciplinary and comprehensive approach. The OSCE's political commitments constitute a comprehensive framework for preventing and combating trafficking in human beings for the OSCE participating States.

In 2000, the OSCE participating States adopted their first Ministerial Council Decision specifically addressing trafficking in human beings. Since then, the OSCE has set the fight against this form of modern-day slavery as a priority and has dedicated numerous Ministerial Council Decisions to trafficking in human beings.

In 2003, the OSCE Ministerial Council endorsed the OSCE Action Plan to Combat Trafficking in Human Beings and established the position of the OSCE Special Representative.⁵ The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (SR/CTHB), called for a second wave of anti-trafficking action in the fight against modern-day slavery, arguing that anti-trafficking action must be improved in four significant ways.

First, the human rights of vulnerable and trafficked persons must take precedence, including their right to compensation. Second, prevention is key, especially through non-discrimination and social inclusion of vulnerable groups and persons such as Roma, persons belonging to minorities, migrants, children on the move, asylum seekers and refugees. Third, all related policy areas such as migration and labour policies should be consistent with anti-trafficking action. Fourth, enhanced international co-

⁴ Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

⁵ OSCE Factsheet Special Representative and Co-ordinator for Combating Trafficking in Human Beings, p2.

operation is needed to tackle organized crime and provide better victim protection.⁶

OSCE Secretary General Lamberto Zannier underlined the link between human rights and trafficking in the OSCE context: “We cannot afford to underestimate the gravity of discrimination and exploitation as cross-cutting components of trafficking, seriously undermining the core values of the OSCE. Together we will find better ways to address modern-day slavery through empowerment, non-discrimination and human rights protection, through vigorous implementation of the OSCE commitments.”⁷

One of the strategic priorities of the SR/CTHB is to promote a human rights based approach in all anti-trafficking activities ... adopting a gender perspective on, and a child sensitive approach to all aspects of anti-trafficking policies, and action.⁸ The Ministerial Council decided in 2005 to continue to pay closer attention to the threat of human trafficking, and to pursue a multidimensional and victim-centred approach to issues related to combating trafficking in human beings as an aspect of organized crime, criminality and corruption, within the OSCE concept of comprehensive security.⁹

This guide reflects the OSCE’s three dimensional approach, its integration with respect for diversity, and promotion of respect for human rights and fundamental freedoms, democracy and rule of law. It advocates the importance of a victim-centred human rights approach whilst providing best practice information.

⁶ OSCE 2012 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, p8

⁷ Speaking at the 12th Alliance against Trafficking in Persons Conference, Vienna, 11 October 2012

⁸ OSCE Factsheet, Office of the SR/CTHB.

⁹ MC.DEC/13/05, Combating Trafficking in Human Beings, Ljubljana 2005.

I. Introduction

Combating human trafficking is one of the most demanding and complex security issues in the OSCE region. Every year, hundreds of thousands of women, children and men are trafficked to, through, within or from OSCE participating States for the purpose of exploitation. The scale of human trafficking is massive and it is a serious transnational threat throughout the OSCE region, as well as a grave human rights violation. There are no reliable estimates of the numbers of trafficked persons because most of it remains invisible and unrecorded in official criminal and administrative registers.¹⁰

Human trafficking is a complex problem brought about by inter-related economic, social, cultural, political and personal factors. It involves the exploitation of people through force, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and may include acts that are defined as human rights abuse. Those trafficked are exploited into prostitution, forced labour, for the removal of their organs, and into other emerging forms of trafficking including organised begging, benefit fraud, domestic servitude and forced marriage.

Human trafficking has been described as modern-day slavery, and is a fundamental violation of the human rights of an individual. According to the United Nations (UN), it is a global criminal business that impacts on every country in the world. It is estimated to have a global worth of \$32 billion and is recognised as a high profit, low risk crime.

According to the United Nations Office on Drugs and Crime (UNODC), over 140,000 victims at any one time were trapped in trafficking situations across Europe in 2010. There is no sign of the overall number of victims decreasing, with up to 70,000 additional victims exploited each year. In their 2012 report¹¹, the International Labour Organisation (ILO) claimed that there were 29.9 million victims of forced labour; 18.7 million in the private economy (90%), 4.5 million in forced sexual exploitation (22%) and 14.2 million victims of forced labour (68%).

The proportion of traffickers prosecuted for sexual exploitation increased from 66% to 70% between 2008 and 2009. In the same period there was a corresponding decrease in the proportion of traffickers prosecuted for

¹⁰ OSCE 2012 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, p1.

¹¹ ILO Global Estimate of Forced Labour. Results and Methodology 2012.

labour exploitation. Between 2009 and 2010 there was no significant change in the distribution of prosecuted traffickers by form of exploitation. In the countries reporting in all three reference years, the number of convicted traffickers decreased by 13% between 2008 and 2010, with Belgium demonstrating the most significant fall. The proportion of convicted traffickers who are male was close to 75% in each of the three reference years. The overall conclusion based on the findings of this report is that significant challenges remain in tackling the different aspects of trafficking in human beings. Another challenge is the need to strengthen the investigation of trafficking in human beings cases and the prosecution and conviction of human traffickers.¹² This is a particular problem in child trafficking cases where there are very few convictions.¹³

The identification of victims of human trafficking has increased globally and emerging forms of trafficking are being identified. However, the number of successful investigations is low. There are concerns regarding the number of prosecutions and convictions, with low conviction rates proving to be a further concern. According to the UNODC Global Report on Trafficking in Persons, the conviction rates are at the same level as those for rare crimes such as homicides in Iceland or kidnappings in Norway.

The information, practical tools and best practice knowledge contained within this guide should encourage and assist police investigators who have responsibility for investigating human trafficking cases. It will inform them about potential investigative and legal problems, the emerging forms of human trafficking and differing types of exploitation. It will provide guidance on how to identify victims and provide victim protection, at all stages of the Criminal Justice System (CJS), and provide good practice that will enable victims to assist and engage within the CJS.

Financial gain is the sole motivation for those involved in trafficking whether they are an individual trafficker or an organised crime network. One of the main deterrents in combating human trafficking is the removal of profits from the traffickers. Financial investigations (FI) should be an intrinsic part of all investigations and the seizure of assets, by civil or criminal remedies, are an important tool in any investigation. The information provided in this guide can assist and address the challenges of financial investigations.

The main purpose of this guide is to ensure that police investigators take a victim-centred human rights approach when investigating human trafficking cases. It will explain what is meant by human rights, what a victim-centred

¹² EU Commission Eurostat Trafficking in Human Beings (2013).

¹³ Child Trafficking in the European Union Challenges Perspectives and Good Practices FRA (2009) p145.

approach is and why the human rights and the dignity of the victim should be the primary consideration in all investigations.

The training guide is divided into fourteen chapters:

- Chapter two provides an overview of the international legal framework of human trafficking including conventions, legislation and case law and how this applies to police investigations.
- Chapter three outlines the definition and process of human trafficking and how legal problems with the definition can create problems for police investigators.
- Chapter four describes the smuggling of migrants and the differences between smuggling and trafficking.
- Chapter five focuses on the meaning of exploitation and the differing and emerging forms of exploitation, and how police investigators can identify them.
- Chapter six outlines the current and emerging control methods employed by traffickers.
- Chapter seven provides an overview of internal trafficking, how it can be identified and how it should be investigated.
- Chapter eight focuses on the rights of victims, how trafficking impacts on victims, how they can be identified and the importance of victim protection.
- Chapter nine gives a brief overview of corruption and how it impacts on human trafficking cases.
- Chapter ten describes how to investigate human trafficking cases, the importance of a victim-centred human rights approach, how to interview victims and the reasons why victims may be unable or unwilling to co-operate.
- Chapter eleven describes the importance of a financial investigation, the techniques, tools and benefits and why it should be a parallel investigation.
- Chapter twelve provides a brief overview of the emerging and increasing use of the internet in human trafficking cases.
- Chapter thirteen describes who the traffickers are and the trafficking networks.
- Chapter fourteen outlines the importance of international co-operation, international platforms and networks, and how to obtain mutual legal assistance.

II. International Legal Framework

II.1 Introduction

The definition of trafficking derives from international law, and international law developments continue to influence developments at a national level; in addition, human trafficking operates transnationally and therefore requires a response at a global level.¹⁴

II.2 International Law

International law derives from a variety of sources and it governs the legal relations between States and nations. It includes international agreements, primarily conventions and treaties, and when a State signs and ratifies these agreements it becomes a party to the agreement and is bound by its content.

Police investigators should be aware of the influence of international law and conventions and how they have impacted on the development of human trafficking legislation, including criminal offences, victim protection, financial investigations and international co-operation in each OSCE participating State. They can potentially limit or expand the scope of an investigation, preclude mutual legal assistance, create a duty of care and place a legal onus on the police to investigate human trafficking cases.

II.3 International Conventions

Police investigators should consider the protection afforded to all victims, especially children, from a wide range of conventions including the Universal Declaration of Human Rights (1946).

The purpose of the UN Convention against Transnational Organized Crime (2000) (UNTOCC)¹⁵ is to promote co-operation and combat transnational organised crime more effectively (Article 1). This convention is supplemented by The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (The

¹⁴ Drew, S. Human Trafficking – Human Rights Law and Practice (2010), p12.

¹⁵ United Nations Convention against Transnational Organized Crime and the protocols thereto, United Nations New York, 2004 (<http://untreaty.un.org/English/notpubl/18-12-a.E.doc>).

Palermo Protocol). They both aim to attain a global response to human trafficking within the international community.

The Palermo Protocol is not a stand-alone tool; it supplements the UNTOCC and is complemented by an array of international legal instruments, some focussing on the suppression of crime and others on human rights.¹⁶

Article 5 of the Palermo Protocol states that each State party should adopt such legislative and other measures as may be necessary to establish criminal offences. The scope of the UNTOCC applies to the investigation of human trafficking cases. The scope of investigations has been further expanded, within EU Member States, by the Council of Europe Convention on Action against Trafficking in Human Beings (COE)¹⁷ and latterly the EU Framework Directive on preventing and combating trafficking in human beings and protecting victims (Framework Directive).¹⁸

The COE is a tool for combating human trafficking whilst safeguarding and protecting the dignity of the victims of trafficking.

Council of Europe Convention

Article 1 – Purposes of the Convention

1. The purposes of this Convention are:

- a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- c) to promote international cooperation on action against trafficking in human beings.

¹⁶ ICAT Inter-Agency Coordination Group against Trafficking in Persons *The International Legal Frameworks concerning Trafficking in Persons* (Vienna, October 2012), p2.

¹⁷ Council of Europe, Convention on action against Trafficking in Human Beings, Warsaw, 16 May 2005.

¹⁸ 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 victims.

The Framework Directive is part of the global action against trafficking in human beings. It recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes.

Framework Directive

Article 9 Investigation and Prosecution

- 1 Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by the victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
- 2 Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
- 3 Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.
- 4 Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

II.4 National Legislation

The objective of all conventions and treaties is that they are implanted into the national legislation of all OSCE participating States. In implementing the legislation a number of States have copied the wording of the Palermo Protocol into their national legislation whilst others have drafted their own legislation.

II.5 International Cases

Those OSCE participating States that are members of the Council of Europe will probably be subject to the presumption that they will not act incompatibly with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Article 4 of this convention prohibits slavery, servitude and forced labour. The convention is supervised by the European Court of Human Rights (ECHR) and there have been several decisions of the court that have had an impact on States' obligations to victims of trafficking. These have included: *Van der Musselle v Belgium*¹⁹ in which the court recognised the International Labour Organisation (ILO) conventions and *Siliadin v France*²⁰ where the court used the definitions in the Slavery convention and found that the victim had been subjected to forced labour and in violation of Article 4.

The most recent human trafficking case heard before the ECHR was *Rantsev v Cyprus and Russia*²¹, when the court used both the Palermo Protocol and COE to expand the scope of Article 4. The decision in this case impacts all police investigators in that they have a positive obligation to protect potential victims and investigate human trafficking cases.

Rantsev v Cyprus and Russia

In summary, the Court found that the Council of Europe States have three positive obligations towards trafficked victims:

- to have in place a legislative and administrative framework designed to punish human traffickers;
- to protect individuals who have been or are at risk of becoming trafficked victims; and
- to investigate acts of human trafficking and, where possible, prosecute the traffickers²²

¹⁹ Application 8919/80 (1983) 6 EHRR 163.

²⁰ Application 73316/01 (2005) 43 EHRR 287.

²¹ Application 26965/04 (2010) 28 BHRC 313.

²² Chaudray, S. and Weiss, A. ECHR and EU Protection for Victims of Trafficking in the UK pp231-234 in *Human Trafficking Handbook recognising Trafficking and Modern-Day Slavery in the UK* ed. Chandran, P. (LexisNexis 2011) .

States are also subject to the jurisdiction of the International Criminal Court which can hear cases concerning crimes against humanity and enslavement, if recognised as such a crime. In *Prosecutor v Kunerac, Kovac and Vukovic*²³ it was held that enslavement was a crime if there was the intentional exercise of any or all of the powers attaching the right of ownership over a person.

II.6 Children

It is especially important when dealing with child victims of human trafficking to have knowledge of the differing conventions, treaties and guidelines that are applicable to children. The international legal framework for the protection of children, including the instruments that address trafficking-related activities, places the principle of the best interests of the child into the central position.²⁴

As well as adopting treaties and conventions designed to stop trafficking, the principal UN agencies concerned with human rights and with children have recently adopted guidelines concerning children who are trafficked. These are chiefly addressed by government agencies responsible for assisting and protecting trafficked children, and for deciding what should subsequently happen to them. The UN High Commissioner for Human Rights issued a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking in 2002, and UNICEF issued a set of Guidelines for Protection of the Rights of Children Victims of Trafficking in 2003.²⁵

Further and more detailed information on the impact of international law, conventions and substantive criminal law can be found in the following training guides:

- ICMPD Regional Standard for Anti-Trafficking Training for Judges and Prosecutors (2004) - Chapter 4
- ICMPD Anti-Trafficking Training Manual for Judges and Prosecutors Curriculum – Training Guide in EU Member States and Accession and Candidate Countries (2006) - Chapter 3
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) - Unit 1

²³ Case No It-96-23_T and IT-96-23/I-T.

²⁴ Child Trafficking in the European Union Challenges, perspectives and good practices FRA (2009) p27.

²⁵ Dottridge, M. Kids as Commodities? Child trafficking and what to do about it. *Terre des Hommes* (2004), p9.

- ILO/UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other Forms of Exploitation (2009) Textbook 1 (1.2)
- UNODC Toolkit to Combat Trafficking in Persons (2nd Edition) (2008) Chapters 1 & 3 to Human Trafficking (2010)
- UNODC Needs Assessment Toolkit on the Criminal Justice Response (2010) - Chapter ii
- UNODC First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking (2011) - Leaflet 12
- Child Trafficking in the European Union - Challenges, perspectives and good practices FRA (2009) - Chapters 2 & 3
- Dottridge, M., Kids as Commodities? Child trafficking and what to do about it, Terre des Hommes (2004) - Chapter 8

III. The Definition of Human Trafficking

III.1 Introduction

The OSCE Ministerial Council, in its Decision No. 6 (2001), called on participating States to sign and ratify the United Nations Convention against Transnational Organized Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. The OSCE Action Plan to Combat Trafficking in Human Beings²⁶ is based on the human trafficking definition contained in Article 3 of United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

This aim of this chapter is to outline and analyse the definition of human trafficking, identify the problems with the definition, and consider if these are contributory factors that cause difficulties in the investigation of human trafficking cases. It will describe the differences between human trafficking and smuggling of migrants (SOM), and review the increasing and emerging types of exploitation.

Human trafficking is prevailing as a crime because there is both a ready supply of potential victims and a demand for the services of those who are trafficked. There are multiple root causes of human trafficking and numerous push and pull factors²⁷ that make victims vulnerable and susceptible to being exploited by traffickers.

²⁶ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

²⁷ See Clarification of Terms (p12).

III.2 The Legal Definition of Human Trafficking

The first agreed definition of human trafficking was in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) (Palermo Protocol).

Palermo Protocol

Article 3

- (a) “Trafficking in persons shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph (a) of this article shall be irrelevant where any of the means set forth in paragraph (a) have been used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.
- (d) “Child” shall mean any person less than eighteen years of age.

This is the definition that has been adopted by OSCE participating States and extended by COE and Article 2 of the Framework Directive to include begging and the exploitation of criminal activities.

The definition of the Palermo Protocol is divided into three elements; the act, the means and the purpose, which when combined make up the crime of human trafficking:

- the act of recruitment, transportation, transfer, harbouring, or receipt of persons;
- by means of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving of payments or benefits to person with control of another;
- for the purpose of exploitation.

The definition states that to qualify as a violation of the article, these three elements must be present. The first element of the trafficking process is the recruitment of the victim by the trafficker. The most common means of recruitment are deception and abuse of position of vulnerability (APOV).²⁸ The second element of the trafficking process is the movement of the victim. This movement, or intent to move, is by transportation, transfer, harbouring or receipt and involves movement across international or within national borders. The third element, exploitation, is when the victim is subjected to numerous forms of exploitation in order to make a profit for the trafficker.

It is worth highlighting that many OSCE participating States still do not recognise the relevance of the Palermo Protocol's clause on the victim's consent, or realise that the trafficking definition is different for children.²⁹

III.3 Definitional Problems

The definition of human trafficking in persons has been met with some confusion, and generally people, including those in law enforcement, do not know how to define trafficking.³⁰ It can cause difficulties for those investigating human trafficking cases and presents a number of important questions for the investigator, all of which need to be answered, and all of which can, potentially, have an adverse effect on an investigation and/or prosecution.

The definition is not easy to navigate or understand and has been criticised for its complexity, which can make investigations and prosecutions difficult.

²⁸ See APOV (3.8.1).

²⁹ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A community Policing approach (2011), p24.

³⁰ Smith, C.J. Kangaspunta, K. Defining Human Trafficking and Its Nuances in a Cultural Context p.25 in *Human Trafficking Exploring the International Nature, Concerns, and Complexities* ed Winterdyk, J. Perrin, B. Reichal, P. (CRC Press 2012).

This is largely because the wording was the result of long debates between the representatives of governments with quite different interests. However, the complexity of the definition has raised problems when adopted word for word in national legislation and passed to law enforcement officials as an operational definition of a crime they are supposed to detect or prevent.³¹

The definition of human trafficking does not contain any common definitions of recruitment, deception or coercion, the responsibility for which is left to each OSCE participating State. They should define these notions within their own domestic legislation. This can be more problematic in those States that have replicated the wording of the Palermo Protocol within their legislation and have added no further explanation or definition. This has caused difficulties and it is therefore important to have an exact description of each constituent element of trafficking in persons within national legislation. The provision of definitions and clarity of meaning of the elements of human trafficking is necessary to ensure that trafficking cases are identified and investigated.

Legislation: Moldova

The definition of “trafficking in persons” from the Palermo Protocol has played a crucial role in the development of legislation in the Republic of Moldova, as well as the national legislation of other countries. It is therefore important to have an exact description of each element of trafficking in persons.

Trafficking in persons can be identified only if separated from cases of workers who find themselves in difficult situations. But this is where difficulties appear, since the Palermo Protocol does not define elements that are included in the definition of trafficking in persons, thus providing space for law-making at a national level.³²

These definitional problems within human trafficking legislation make it difficult for investigators and prosecutors to deal with the cases. These are simply not the easiest of legally determinable and certain concepts, let

³¹ Global Alliance Against Traffic in Women (GAATW), *Collateral Damage: The Impact of anti-Trafficking Measures on Human Rights around the World* (2007) p.4.

³² *Trafficking in Persons for Forced Labour Exploitation in the Republic of Moldova* (2011) p8.

alone ones that can be easily proved.³³ It is probable that these problems may explain why there are a minimal numbers of convictions and that traffickers are charged with lesser offences which are easier to prove, where there is a lesser evidential burden.

There are examples within the legislation of participating States where a State has either transposed the Palermo Protocol directly into their national legislation or they have drafted legislation in which the definitions, or lack of definitions, of the key elements have caused difficulties for investigators of human trafficking cases.

Legislation: United Kingdom

Section 4 of the Asylum & Immigration (Treatment of Offenders etc.) Act 2004

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and:
 - (a) he intends to exploit the passenger in the United Kingdom elsewhere, or
 - (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and:
 - (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
 - (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and:
 - (a) he intends to exploit the passenger outside the United Kingdom, or
 - (b) he believes that another person is likely to exploit the passenger outside the United Kingdom.

³³ Wade, M. Prosecution of Trafficking in Human Beings Cases p165 in *Human Trafficking Exploring the International Nature, Concerns, and Complexities* ed Winterdyk, J. Perrin, B. Reichal, P. (CRC Press 2012).

- (4) For the purposes of this section a person is exploited if (and only if):
- he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour), or
 - (a) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)), or
 - (b) he is subjected to force, threats or deception designed to induce him:
 - (i) to provide services of any kind, or
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
 - (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person,
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable:
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

III.4 Specific Definitional Problems

These problems relate to each element of the trafficking definition. They can impact on all human trafficking investigations as well as restricting the scope of investigators; they may also necessitate the use of other types of legislation. There is also a problem regarding legislative coherence, in that legislation to address human trafficking may have been enacted prior to the introduction of the Palermo Protocol. New legislation adopted after 2000, to meet the requirements of the Protocol, may thus cause inconsistencies.³⁴

³⁴ ICAT Inter-Agency Coordination Group against Trafficking in Persons, The International Legal Frameworks concerning Trafficking in Persons (2012) 2.2

III.4.1 Legal Interpretation

A narrow legal interpretation was applied to the legislation within some OSCE participating States, stating that human trafficking was only transnational. Article 2 COE extended the definition to all forms of trafficking, whether national or transnational. However, not all OSCE participating States have enacted legislation to make internal trafficking an offence. Some participating States have chosen to maintain a clear distinction between legislation prohibiting trafficking in persons and laws on particular forms of exploitation mentioned in the Palermo Protocol, resulting in some victims of internal trafficking not being recognised and thus not provided with the protection or assistance encouraged by the Palermo Protocol or by other international instruments.³⁵

III.4.2 The Definition of Transnational Organized Crime

Major international organised crime groups are perpetrators of trafficking in human beings. But they are not the sole perpetrators. Crime groups often co-operate with other crime groups, with smaller ad hoc collections of criminals and even with talented criminal entrepreneurs to perpetrate human trafficking. The relationship between organised crime and trafficking in human beings is, therefore, more complicated than one might assume. Traffickers, in other words, are a diverse set of actors.³⁶

Article 5 UNTOCC refers to the criminalisation of participation in an organized crime group, while Article 2, Use of Terms, refers to “organised criminal group”³⁷ and “structured group”³⁸. These definitions appear to preclude the commission of human trafficking offences by individual traffickers or criminal networks that are either randomly formed or not structured. They also appear to preclude those responsible for trafficking victims of domestic servitude, including diplomats and family units.

Article 2 COE extended the scope of definition within the Palermo Protocol by stating; “This convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime”; however, this is not applicable in all OSCE participating States.

³⁵ ICAT Inter-Agency Coordination Group against Trafficking in Persons, *The International Legal Frameworks concerning Trafficking in Persons* (2012) p3.

³⁶ Picarelli, J. *Human Trafficking & Organised Crime in the US & Western Europe* p115 in *Strategies Against Human Trafficking: The Role of the Security Sector* ed Friesendorf, C. (SCHUTZ & HILFE 2009)

³⁷ See Clarification of Terms (p11).

³⁸ See Clarification of Terms (p12).

III.4.3 The Definition of Exploitation

Exploitation is only described, not defined, in the Palermo Protocol, allowing States to elaborate other forms of exploitation when defining “trafficking in persons” in national legislation.³⁹

Police investigators need to know⁴⁰ what words such as ‘recruitment’, ‘deception’ and ‘forced labour’, actually mean. Has the meaning of any of these words changed over time, and if so what do they mean now? What is, for example, contemporary slavery? Has ‘exploitation’ been defined and if so does the exploitation of a child differ from that of an adult?⁴¹

III.4.4 A Human Rights Protocol?

Whilst the Palermo Protocol is perceived as a criminal justice related protocol, it is recommended that those investigating human trafficking cases should adopt a human rights approach to all investigations. This involves taking a victim-centred human rights approach and ensuring that the rights of the victim are paramount. This can be contrary to the national and legislative policy and procedures adopted by police investigators within participating States. It can also be contrary to how other criminal offences are investigated and, therefore, present investigative problems. These include not being able to interview a victim and/or witness until they are either able or agreeable to being interviewed.⁴²

Sometimes there is disagreement as to whether the Palermo Protocol is more of a human rights or a criminal matters protocol, and sometimes those who focus on human rights are accused of paying insufficient attention to the criminal law dimension – and vice versa. This problem becomes clear, for example, in much of the expert discussion about the Palermo Protocol, which is sometimes criticized for lacking sufficiently strong human rights guarantees. On one level, this criticism might be true; however, the protocol was never intended to be a human rights instrument. It is an instrument designed to encourage international co-operation in fighting the crime of trafficking of human beings. Thus, it in no way detracts from applicable human rights law.⁴³

³⁹ ICAT Inter-Agency Coordination Group against Trafficking in Persons *The International Legal Frameworks concerning Trafficking in Persons* (2012) p3.

⁴⁰ Refer to 5.1 for a more detailed explanation

⁴¹ Chandron, P. A Commentary on Interpreting Human Trafficking p6 *Human Trafficking Handbook Recognising Trafficking and Modern-Day Slavery in the UK* (NexisLexis 2011)

⁴² See Victim Interviewing. (8.5.3)

⁴³ Piotrowicz, R., “The Legal Nature of Trafficking in Human Beings,” *Intercultural Human Rights Law Review* 175 (2009)

There are problems for investigators, and prosecutors, when seeking to apply the definitions of human trafficking, as transposed, in their domestic legislation. Police investigators should continue to treat human trafficking as a criminal offence and use all investigative knowledge and tools to arrest the perpetrators. However, in doing this they must fully respect the human rights of the victim and ensure that they are the first priority. Further clarification is provided in the Framework Directive which adopts a comprehensive, integrated approach that focuses on human rights and on the victims and is gender-specific. It is expected to have considerable impact, once fully transposed by the Member States. It not only focuses on law enforcement but also aims to prevent crime and ensure that victims of trafficking are given an opportunity to recover and to reintegrate into society.⁴⁴

III.5 The Process of Human Trafficking

Human trafficking is a complex crime comprising of the three distinct phases which are often referred to as recruitment, transportation and exploitation. It is a process involving a number of interrelated actions rather than a single act at a given point in time, and may include multiple actors. A trafficked victim must be recruited and moved to the place of their exploitation by one of the means⁴⁵. Trafficked victims, when recruited, can be moved internally or across borders prior to exploitation.

The fact that human trafficking is described as a process has legal considerations. Police investigators have always been informed that all three elements should be present and linked to each other for a crime to have been committed. It is now being contended that to prosecute the perpetrators, and prove the offence of trafficking, it is not necessary to prove all elements of the trafficking process, only the individual elements.

III.5.1 Legal Problems in the Trafficking Process

There has been active discussion that it is not necessary to prove all the elements of the trafficking process to prove the crime of human trafficking. If this is correct it could make it easier for police investigators to obtain sufficient evidence of certain elements to prove the offence. Alternatively, it could complicate matters because it is not known which elements need to be proven. This is at variance with the law in certain OSCE participating States where it is a legal requirement to prove that the trafficker intended to exploit the victim at the time of recruitment, hence all elements need to be proven.

⁴⁴ The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016

⁴⁵ In the case of a child, "the means" do not have to be present.

The potential legal problems are:

- Does recruitment need to be linked to exploitation, especially if there is no continuum between the two elements? Not all OSCE participating States have incorporated the need to prove the intention to exploit at the time of recruitment in their legislation, therefore, it is arguable that it is not necessary to prove the nexus between the two elements.
- Do you only need to prove movement and not exploitation?⁴⁶ If this assertion is correct, police investigators may have difficulty distinguishing between trafficking and smuggling cases.
- Is movement required? There has been considerable debate as to whether trafficking must involve some movement of the trafficked person, either within or across national borders, together with the process of recruitment, or whether the focus should only be on the exploitation that occurs at the end.⁴⁷
- What is meant by receipt and, again, is movement required? Article 3 of the Palermo Protocol refers to harbouring and receipt and not movement, therefore, is the Protocol not fully understood? Does the definition of receipt include employment agencies, and others, who promise jobs when they don't exist and can't be offered, knowing that this is exploitation? Therefore, can this be defined as receiving persons into employment and are they criminally liable as traffickers?

The objective of the Dutch Barrier Model is to assist police investigators and LEAs to identify when human trafficking can occur by using a practical model. This can clarify the trafficking process and overcome some of the potential legal problems.

Case Study: The Dutch Barrier Model

The Barrier Model aims to involve numerous stakeholders that are in a position to collaborate in constructing structural barriers, so that it becomes more difficult for human beings to be trafficked into the Netherlands.

The Barrier Model identifies five stages at which stakeholders can construct barriers to hinder THB.

1. Entrance (smuggling, border crossing)

2. Housing (prostitution circuit, illegal housing)

3. Identity (false documents, false social security numbers)

⁴⁶ Kara. S., *Sex Trafficking: Inside the Business of Modern Slavery* (2010)

⁴⁷ ILO *The cost of coercion*, Geneva, (2009) p2.

4. Work (pimps, exploiters, violence, exploitation)

5. Financial (money laundering)

The Barrier Model further identifies illegal service providers and illegal activities at each of the five stages. More importantly, strategic partners have been identified who may come into contact with victims or traffickers at each stage and who are in a position to erect barriers to hinder or prevent THB. Barriers can be erected at any of the five stages, but an integrated approach requires barriers to be erected at all five stages.⁴⁸

III.6 Children

Article 3 (c) of the Palermo Protocol states that the means set forth in the protocol do not apply to children. This can be problematic for police investigators as, evidentially, they may have to show that one of the means was applicable to prove the criminal offence. The definition in the Palermo Protocol has not been implemented in all States⁴⁹ who have chosen not to reflect this provision in their legislation.

III.7 The Means of Human Trafficking?

Police investigators need to know what the means of human trafficking are, what means the traffickers are using to commit the trafficking act, how this impacts on a human trafficking investigation and what potential legal problems can arise.

The means are as follows:

- Force – the threat or use of force or actual use of force on the victim or family
- Coercion
- Psychological – refers to victims' relationships with other people; threats of rejection from/disapproval of peer group/family; anger/displeasure by person considered boyfriend/partner; blackmail.
- Economic – forced to pay excessive amounts of money; significant salary deductions or no pay; debt bondage.

⁴⁸ A.A. Aronowitz Human Trafficking: The Involvement of Criminal Organizations and Prevention Measures, OSCE, Vienna (Sept 14-15, 2009).

⁴⁹ ICAT Inter-Agency Coordination Group against Trafficking in Persons *The International Legal Frameworks concerning Trafficking in Persons* (2012) p3.

- Abduction – removing the victim by force or kidnap.
- Fraud – actions involving five separate elements: (1) a false statement of a material fact, (2) knowledge on the part of the perpetrator that the statement is untrue, (3) intent on the part of the perpetrator to deceive the alleged victim, (4) justifiable reliance by the alleged victim on the statement, and (5) injury to the alleged victim as a result.
- Deception – giving false or inaccurate or misleading information, i.e. when recruiting workers for labour exploitation or offering a false job for sexual exploitation.
- Abuse of power or of a position of vulnerability; any situation in which the person involved has no real acceptable alternative but to submit to the abuse involved.
- Payment or receipt of a benefit to a person with control of another.

III.8 Definitional Problems relating to the Means

III.8.1 Abuse of Position of Vulnerability (APOV)

An “Abuse of Position of Vulnerability (APOV)”⁵⁰ has been accepted as an integral part of the definition of trafficking, however the intentions of the drafters of the Palermo Protocol with respect to the definition of the APOV are unclear. International law does not provide a definition either and unofficial guidance is of limited usefulness. Problems include the place of abuse of a position of vulnerability in the crime of trafficking, and the relationship of abuse of a position of vulnerability with other means, with the ‘act’ element, with exploitation and with consent.

There are also evidentiary issues. APOV, as it is set out in the Palermo Protocol, appears to comprise of two separate evidentiary requirements:

- (i) proof of the existence of a position of vulnerability on the part of the victim; and
- (ii) proof of the abuse of (or intention to abuse) that vulnerability as the means by which a particular act (recruitment, harbouring, etc.) was undertaken.

⁵⁰ UNODC guidance note on position of vulnerability 2012.

III.8.2 Psychological Coercion

There are problems in defining psychological coercion and, therefore, problems for police investigators in proving that the victim was coerced. There has been limited research into the impact of psychological coercion on victims of human trafficking. Police investigators need to understand the significance of coercion, the impact on the victim, and how it enables the trafficker to recruit and control the victim.

Psychological abuse and coercion are easier to conceal and may be overlooked. Many people have difficulty understanding how psychological means can be used to manipulate other people.⁵¹

Case Study: Netherlands

In October 2009, the Supreme Court issued interpretative guidance on the concept of “abuse of a vulnerable position”. The case concerned six Chinese irregular migrants who, desperate for work and afraid of being discovered by authorities, approached a Chinese restaurant owner. They were provided with accommodation and work that paid well below the statutory minimum wage.

A district court initially ruled that this set of facts did not constitute trafficking in persons because “abuse of a position of vulnerability” implies that the perpetrator takes the initiative. In this case, the victims took the initiative by approaching the restaurant manager, in some instances “begging” him. The Court of Appeal upheld this decision, confirming that “abuse of authority arising from the actual state of affairs” and “abuse of a vulnerable position” requires a certain initiative and positive action on the part of the perpetrator, whereby the weaker or vulnerable position of the victims is consciously abused. The case was appealed to the Supreme Court, which took the view that it was not necessary for the perpetrator to take initiative. It also disagreed with the lower court that the perpetrator must “intentionally abuse” the vulnerable position of the victims. The Supreme Court held that “conditional intent” is sufficient: it is enough that the perpetrator was aware of the state of affairs that must be assumed to give rise to power or a vulnerable position.⁵²

⁵¹ Hopper, E. and Hidalgo, J. *Invisible Chains; Psychological Coercion of Human Trafficking Victims* (Intercultural Human Rights Law Review 2006), pp. 185-209.

⁵² Supreme Court, 27 October 2009, LJN: B17099408.

Further and more detailed information on the definition of trafficking in human beings can be found in the following training guides:

- FRONTEX Anti-trafficking training for border guards Trainer's Manual (2011) – Chapter 1
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) – Unit 1
- ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Curriculum Training Guide in EU Member States and Accession Countries (2006) – Chapter 1
- ICMPD Anti-Trafficking Training Material for Frontline Enforcement Officers (2006) – Chapters 1 & 2
- ILO/UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other Forms of Exploitation (2009) Textbook 1 1.1
- IOM Caring for Trafficked Persons Guidance for Health Providers (2009) – Chapter 1
- UNODC First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking (2008) – Leaflet 2
- UNODC Toolkit to Combat TIP 2nd Edition (2008) – 1.1
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009) – Module 1

IV. Smuggling of Migrants

IV.1 Introduction

Smuggling of Migrants (SOM) is the provision of a service to migrants (regular or irregular) to allow them to illegally cross a border. It comprises of three elements:

- procurement of illegal entry
- for financial or other material gain
- across a border into another country

IV.2 The Definition of Smuggling of Migrants

Definition

“ Smuggling of Migrants means the procurement, in order to obtain, directly or indirectly, a financial gain or other material benefit, of the illegal entry of a person into a state party on which the person is not a national or permanent resident.”⁵³

SOM refers to the facilitation of illegal border crossings or of illegal residence in a country with the aim of making a financial or other material profit. Migrants are often smuggled by organised criminal networks that exploit the lack of opportunities available to migrants seeking a better life.

SOM is transnational only and is a consensual process. Those who are smuggled enter into a contract and pay the price of the contract either before departure, upon arrival, or in instalments. The debt may be paid by the person who has been smuggled or a member of the family.

The victims usually have freedom of movement, and are not controlled by those smuggling them. They are smuggled covertly or by using false documents.

⁵³ Article 3a UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime 2000.

IV.3 The Difference between Human Trafficking and Smuggling of Migrants

A distinction needs to be made between human trafficking and migrant smuggling; the two terms are often used interchangeably, but it is important to distinguish between them. SOM is transnational and is illegal migration involving the organised transport of persons across an international border, usually in exchange for a sum of money. The financial component of a migrant-smuggling transaction may be a one-time fee paid to the smuggler before arrival, or instalment payments after arrival. In THB, the relationship between the trafficker and victim does not end upon arrival at the destination, as the victim may be subjected to debt bondage (forced labour to pay off a debt). Human trafficking occurs both across international borders and within national boundaries.

The knowledge of the individual can differ between a person who is smuggled and one who is trafficked: a smuggled individual knows they are being smuggled. In contrast, victims of human trafficking will, in most scenarios, be unaware of what awaits them until they arrive at their destination.

It is important that the differences between the two activities are accurately understood. The confusion between the two frequently leads to trafficking being seen as, and contextualised within, an immigration issue rather than a human rights and broader policy issue that requires a broader policy response across governments.⁵⁴ This difficulty has been highlighted consistently and was again highlighted within the 2010 US Trafficking in Persons Report.⁵⁵

Dismantling the “3D” Approach to Human Trafficking

In the 10 years since the passage of the Palermo Protocol with its “3P” paradigm of prevention, protection and prosecution, a competing, more unfortunate, paradigm seems to persist in impeding greater anti-trafficking progress: the “3D” phenomenon of detention, deportation and disempowerment.

The use of this approach in detaining and deporting trafficking victims is most often the outgrowth of immigration policies or archaic laws that have

⁵⁴ Kinsella, N. Rankin, G. Human Trafficking – The Importance of Knowledge Exchange. in ed. Akhgar, B. Yates, S. *Intelligence Management Knowledge Driven Frameworks for Combating Terrorism and Organized Crime*. (Springer 2011)

⁵⁵ www.state.gov/j/tip/rls/tiprpt/2010

yet to fully appreciate the phenomenon of modern slavery. However, some of the manifestations of this response are new, appearing only in the last few years and affecting many more women than men.

In such a response, governments may act out of self interest in ridding themselves of potential burdens. Or they may act in what they claim are the best interests of foreign victims. This usually includes detaining the victims for a short period of time and then deporting them to their country of origin without offering them credible opportunities to seek legal redress (including civil restitution), adequate psychological repair, longer term residency and work, or relocation to a third country. Attempts to hold identified trafficking victims in detention-based facilities that governments describe as “shelters” – no matter how comfortable and safe they may be – has a disempowering effect on victims at a critical time, when they need a restored sense of individual freedom. Detention models undercut any rapport service providers or investigators might build with victims. Research and law enforcement practice indicates that initial trauma lasts for months and that victims can only give a partial account of their experiences in the early stages of an investigation; a response based on detention and repatriation – even if initial statements have been reduced to video or affidavit – will likely prevent law enforcement from arriving at critical facts.

Sending victims back to their countries of origin without informing them of a full range of options not only exposes them to possible trauma associated with being identified as a trafficking victim, but it also risks returning them to the same condition and exposing them to the same or even more enhanced pressures that contributed to their initial trafficking experience, thus increasing the prospects for their re-trafficking. Furthermore, when a country jails and repatriates victims without screening or protection, NGOs are deterred from bringing their clients to the government’s attention.

IV.4 Investigative Problems

The main problem for all police investigators is differentiating between trafficking and smuggling, as it is not always clear cut and can be misunderstood with victims only being deceived and exploited on their arrival in a destination State.⁵⁶ This problem is further compounded by the emerging trend amongst traffickers of victims being smuggled then trafficked once they have reached their destination.

⁵⁶ Shelley, L. *Human Trafficking: A Global Perspective* (Cambridge 2010).

Case study: UK

Operation “Bluesky”, which involved thousands of people, was the biggest investigation into migrant smuggling undertaken by the Metropolitan Police. The smuggling operation ran into millions of pounds and the police could not quantify the exact number of people smuggled into the UK. The illegal immigrants brought into the UK were mostly from Turkey, and some from Iraq. 400 would-be illegal immigrants were identified as a result of the investigations.

The victims were transported, in deplorable conditions, on planes, trains, and in lorries and cars to evade customs. In one case four young children in a van were found gasping for breath by French border police. Often a "coffin-like" secret metal compartment welded to the underside of the lorries was used to transport "customers". The significance in trying to put the compartment as low as possible was to try to avoid police techniques designed to find evidence of breathing and heartbeats. The illegal immigrants would often be forced to go without food or water for days and these included women, at least one of whom was pregnant at the time, and several children.

The smuggling network was run by Turkish nationals and the three network heads saw themselves as untouchable by the law. They used 39 mobile phones to run the organisation and try to avoid detection. The operation involved investigations across the UK and 21 European countries, and more than 60 arrests linked to the ring were made across Europe. Law enforcement officials from France, Italy, Holland, Belgium and Denmark and Europol all contributed to the investigation. The Judge said that the network considered people "more as commodities rather than individuals".

Further and more detailed information on SOM, and the difference with THB, can be found in the following training guides:

- FRONTEX Anti-trafficking training for border guards Trainer’s Manual (2011) – Chapter 1
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) – Unit 1

- ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Curriculum Training Guide in EU Member States and Accession Countries (2006) – Chapter 1
- UNODC Toolkit to Combat TIP (2nd Ed) (2008) 1.1 and 1.2
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009) – Module 1
- UNODC First Aid Kit for use by Law Enforcement First Responders in addressing Human Trafficking (2011) – Leaflet 3

V. Exploitation

V.1 Introduction

The essential element of trafficking is the exploitation of people in conditions amounting to slavery. Trafficked persons are held in unfamiliar and isolated environments where they are forced to work under violence, threat or subtle means of coercion, often to pay back insurmountable debt.⁵⁷

This chapter aims to outline the differing types of exploitation as well as emerging types of exploitation. This is to assist the police investigator by identifying both the exploitative situations and the impact of new and emerging types of exploitation.

Whilst exploitation is the third element in the trafficking process, in order to prove the offence of human trafficking it is also necessary to prove the recruitment and transfer of the victim.⁵⁸ However, exploitation is an important and problematic element in human trafficking cases. The main objective for the majority of traffickers is to profit from the exploitation of victims once they have arrived at their final destination. In addition, there are trafficking situations where the traffickers benefit from the services obtained from the victims, through exploitation. These can include domestic servitude and begging.

Human trafficking remains a serious crime and is an abuse of an individual's human rights. It is the exploitation of vulnerable individuals by criminals who deal with people as commodities to be traded for the sole purpose of financial gain. Whilst reporting on the issue of how much profit is made by the criminals involved in THB is highly subjective, it is universally accepted that it is a multi-million euro/dollar a year business.⁵⁹

V.2 Definitional Problems

Article 3(a) of the Palermo Protocol states: "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Whilst including three types of

⁵⁷ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. Preventing and Combating Trafficking Human Beings in the OSCE Region, p1 (osce.org/cthb).

⁵⁸ See The Definition of Exploitation (3.4.3).

⁵⁹ EUROPOL Knowledge Product Trafficking in Human Beings in the European Union (2011).

exploitation, it does not seek to define exploitation, it is only described, thus allowing States to elaborate on other forms of exploitation when defining “trafficking in persons” in national legislation.⁶⁰

The fact that the responsibility for defining exploitation has been left to the governmental ministries responsible for legislation and the courts in each individual OSCE participating State has, conceivably, created problems for police investigators. If there is no recognised definition of exploitation, or the different forms of exploitation, within the legislation of participating States, it could mean that no criminal offence is committed, and therefore no investigation. These differing definitions of exploitation, if there is a definition, can also cause additional investigative problems, especially when the offences are transnational and mutual legal assistance is required, because it could be a criminal offence in one State and not another.

Difficulties in legislation and defining exploitation can make it difficult to understand or identify victims in exploitative situations and victims may be unable to obtain protection.⁶¹

Legislation: Netherlands

Article 273(f) of the Criminal Code is a very extensive ex provision, because the choice has been made to have a single provision on THB, criminalising a large number of courses of conduct of disparate natures. The complicated wording leads to problems of interpretation. This is partly because of the number of expressions from international legislation, which are not explained by the Dutch legislator in detail. The exact definition of the key expression “exploitation” as regards labour and services, outside the sex industry, has been left to the courts”.⁶²

Article 2 (3) of the Framework Directive directly references exploitation, and whilst it doesn’t provide a definition, it does incorporate additional types of exploitation as elements of human trafficking, namely, begging and the exploitation of criminal activities. This extended definition of the types of exploitation can potentially create legal problems for police investigators as there is no formal definition of either “begging” or “the exploitation of criminal activities”. Although not formally defined, the Framework Directive gives guidance on how both should be understood.

⁶⁰ ICAT Inter-Agency Coordination Group against Trafficking in Persons The International Legal Frameworks concerning Trafficking in Persons (2012) 2.2.

⁶¹ See APOV/Psychological Coercion (3.8.1/3.8.2).

⁶² Trafficking in Human Beings Fifth Report of the Dutch National Rapporteur (2007) p39

However, it is again the responsibility of each OSCE participating State to provide a legal definition and in the interim period this could continue to provide problems for police investigators.

Framework Directive

(11) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA, and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. In light of the relevant case-law, the validity of any possible consent to perform such labour or services should be evaluated on a case-by-case basis. However, where a child is concerned, no possible consent should ever be considered valid. The expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.⁶³

One of the principle objectives of the Framework Directive is to ensure that emerging forms of exploitation are identified and investigated as criminal offences, and that victims are afforded protection and assistance. However, these definitional problems and a lack of clarity could make it difficult for those in police investigations. The problems for police investigators are further aggravated by the fact that international legislation makes no distinction between human trafficking for sexual exploitation and human trafficking for other forms of exploitation.⁶⁴

The failure of the Palermo Protocol to define exploitation, and other terms, can be problematic for investigators and make human trafficking cases virtually impossible to investigate. Whilst the purpose of the protocol was to

⁶³ Directive 2011/36/EU Of European Parliament of the Council of 5 April 2011

⁶⁴ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach (2011) p70.

allow States to specify additional forms of exploitation, in practice it has meant that proving exploitation can be difficult and that a criminal recognized as a trafficker by one State may not be regarded as such by another State.⁶⁵

V.3 Legislative Problems

Whilst conventions and directives are defining additional forms of exploitation, the perpetrators of trafficking are also developing new forms of exploitation. Traffickers are both creating new markets to exploit victims as well as catering to already existing markets. The exploitative element of the human trafficking process generates the profits and this provides the motive to devise new and emerging forms of exploitation. Police investigators need to be aware of these emerging trends, and equipped with the knowledge and provided with the tools to identify the offences, and identify and protect the victims of these crimes.

V.4 Forms of Exploitation

Exploitation of the victim begins upon arrival at the destination which fulfils the definition of the crime of trafficking in human beings.⁶⁶ A victim of human trafficking can be subjected to more than one type of exploitation, e.g. domestic servitude when both sexual and labour exploitation can be perpetrated by the trafficker.

NRM Figures: Netherlands

In January 2012, the Dutch Rapporteur on Trafficking in Human Beings published an updated report on the prosecution and trial of trafficking in human beings (THB) cases in The Netherlands.

The total number of (potential) victims encountered in 2011 was 1,222. Of these, around 1,000 were women and around 200 were men. Of the women, 716 were (potential) victims of sexual exploitation and 115 of labour or other kinds of exploitation. Of the men, 66 were sexually exploited and 141 were exploited through labour or otherwise. (Figures from Comensha).⁶⁷

⁶⁵ ICAT Inter-Agency Coordination Group against Trafficking in Persons The International Legal Frameworks concerning Trafficking in Persons (2012).

⁶⁶ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims, A Community Policing Approach (2011) OSCE, p67.

⁶⁷ EU DG Home Trafficking in Human Beings website

The differing types of exploitation, some of which may appear in national legislation, are as follows (this list is not definitive or exhaustive):

V.4.1 Sexual Exploitation

The Palermo Protocol states, “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation”. This obligation on the OSCE participating States to define sexual exploitation, through their respective domestic legislation, has resulted in diverse definitions, some of which are comprehensive and others limited.

Trafficking for sexual exploitation is the most common form of trafficking. Victims are moved in and around the EU, both across borders and internally, and are exploited in all environments. The active rotation of women forced into prostitution is aimed not only at maximising the profit by supplying new ‘faces’ to clients and by exploring new markets, but also at avoiding victims establishing relationships and, consequently, avoiding law enforcement detection.⁶⁸

Police investigators within OSCE participating States need to be aware of the definition of sexual exploitation within their own States. In some States the definition may be limited.

Limiting Legislation

Belarus

Limited by state Article 171 refers to “making use of engagement in prostitution”, and “involvement in prostitution”.

Scotland

Section 22 of the Criminal Justice (Scotland) Act 2003 refers to “traffic in prostitution etc.” - the legislation relates only to prostitution.

However, within OSCE participating States there are examples of comprehensive legislation that provide clear definitions of exploitation.

⁶⁸ EUROPOL Knowledge Product Trafficking in Human Beings in the European Union (2011).

Comprehensive Legislation

Ireland

Criminal Law (Human Trafficking) Act, 2008:

Section One of the Act defines trafficking as follows:

- a) “trafficks” means, in relation to a person (including a child) – procures, recruits, transports or harbours the person, or
 - i. transfers the person to,
 - ii. places the person in the custody, care or charge, or under the control, of, or
 - iii. otherwise delivers the person to another person,
- b) causes a person to enter or leave the State or to travel within the State,
- c) takes custody of a person or takes a person –
 - i. into one’s care or charge, or
 - ii. under one’s control, or
- d) provides the person with accommodation or employment.

The means required to be used by the trafficker to recruit the victim into the trafficking process are similar to those detailed in the Palermo Protocol, including coercion, force, deceit, fraud or the abuse of authority.

The 2008 Act defines labour exploitation for adults and children to include:

- Subjecting the person to forced labour
- Forcing him or her to render services to another
- Enslavement of the person
- Subjecting him or her to servitude or similar condition or state

Sexual Exploitation under the 2008 Act is defined in relation to a person as:

- The production of pornography depicting the person alone or with others
- Causing the person to engage in sexual activity for the purpose of production of pornography
- Prostitution of the person
- Commission of an offence specified in the Schedule to the Sex Offender’s Act, 2001 (the Schedule to the Sex Offender’s Act 2001 lists a range of sexual offences criminalized in other criminal and sexual offences acts, such as rape, indecent assault and the distribution of child pornography)

- Causing another person to commit such an offence against the person; or causing the person to commit such an offence against another person
- Otherwise causing the person to engage in any sexual, indecent or obscene act

Exploitation for the purpose of organ removal is also criminalized for adults and children

Note 1. The definition of sexual exploitation from the 2008 Act does not apply to a child, unlike the definition of traffic and labour exploitation. A separate definition of sexual exploitation in relation to a child is set out in the 2008 Act as an amendment to the Child Trafficking and Pornography Act 1998.⁶⁹

V.4.1.1 Modus Operandi

The modus operandi of criminal organisations or individuals managing human trafficking has changed over time. Even though physical violence is still regularly used against some groups of trafficked persons, traffickers and exploiters currently tend to employ more subtle methods of coercion, including forms of “negotiation” of the exploitative terms and partial earnings sharing. In some countries, such methods, along with the fact that many victims were aware of ending up in prostitution, can significantly challenge their position when identified and required to describe the coercion suffered.⁷⁰

Modus Operandi

A key development has been a move away from the use of the traditional red light districts in built-up urban areas to semi urban and rural areas. The use of private accommodation for purchased sex activities is another trend which makes it more difficult for law enforcement to detect trafficking-related offences. Recent investigations confirm that the proportion of female offenders involved in trafficking for sexual exploitation is increasing. Although normally involved in the recruitment process and likely to be former victims of trafficking, there are more and more examples of women

⁶⁹ Counter-trafficking Training Modules Human Trafficking is a Modern Day Form of Slavery. (2010) IOM Ireland p15.

⁷⁰ 2010 Annual Report of the Special Representative and Co-ordinator Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security p14.

controlling victims and organising the business operation. This modus operandi is especially relevant in respect of Nigerian sponsored trafficking where the role of a 'madam' or female supervisor is integral.⁷¹

V.4.1.2 Identifying Sexual Exploitation

The indicators relating to potential victims of sexual exploitation have been criticised for being too stereotypical and focusing on pre-conceived ideas of what a victim of trafficking looks like. Victims of trafficking may certainly share common characteristics that make them vulnerable to traffickers. But there are countless numbers of individuals who do not fit the stereotypical background of adversity. Individuals with higher education, including university qualifications and second and third languages, who are employed and in stable relationships are now considered to be amongst the most vulnerable.⁷²

There is no definite description of what a victim of sexual exploitation is - it can be a woman, man or child. While few cases of trafficking of adult men for sexual exploitation have been recorded, they should not be dismissed. Two men identified in such a case in the Republic of Moldova suffered significant long term trauma as a result. The case also revealed that men, like women, can be trafficked for multiple types of exploitation.⁷³

Case Study: Sweden

In Kosovo, Sonja, who was under 18 years of age, was contacted by Sebastian. He persuaded her to go to an apartment, where she was locked up for ten days before being forced into a car and driven to Sweden by Filip. Filip was ordered to kill her "if she tried anything on the way". Sebastian met Sonja in Sweden, where he raped her on several occasions and, using assault and threats, forced her to sell sex. She had no passport or other official documents and did not know where she was. She was afraid of Sebastian and did not dare run away. Filip was convicted of human trafficking and Sebastian of human trafficking and rape.⁷⁴

⁷¹ EUROPOL Knowledge Product Trafficking in Human Beings in the European Union (2011) p7.

⁷² OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach (2011) pp45-46

⁷³ USAID Trafficking of Adult Men in the Europe and Eurasia Region, Final Report (2010), p15

⁷⁴ Claude, K. Targeting the Sex Buyer. The Swedish Example: stopping Prostitution and trafficking Where it all begins 92010, p21

Investigators can refer to the operational indicators of trafficking, provided by the “Delphi Methodology” which can be used to assess if a victim is in a situation of sexual exploitation.⁷⁵

V.4.1.3 Children

In addition to many trafficked adults, UNICEF estimates that about two million children are exploited every year in the global commercial sex industry.⁷⁶ The UNODC Global Report states that one of the most worrying trends is the increase in child victims. Between 2007 and 2010, the percentage of child victims had risen to 27 per cent. Of every three child victims, two are girls and one is a boy.

The OSCE Ministerial Decision 14/06 “encourages relevant OSCE structures, within their existing mandates, to devote attention to the area of sexual exploitation of children, including links to trafficking in persons, and emphasizes the need for them and the participating States to co-operate with the other international organizations, NGOs and civil society in combating the sexual exploitation of children.”⁷⁷

It is crucial to identify child victims and refer them to the appropriate services to ensure that they are given access to special protection measures to which they are entitled under international law and as victims of human rights violations.⁷⁸

There is no express definition of child exploitation, however, the European Commission⁷⁹ stated that child exploitation includes: procuring or offering a child for illicit or criminal activities (including the trafficking or production of drugs and begging); using children in armed conflict; work that by its nature or the circumstances in which it is carried out is likely to harm the health and safety of children, as determined by the national legislation or authority; the employment or use for work of a child who has not yet reached the applicable working age for the said employment or work; other forms of exploitation; and illegal adoption. A study of trafficking of males in

⁷⁵ See Victim Identification (8.4).

⁷⁶ UNICEF, “All Children Deserve Protection from Exploitation and Abuse,” UNICEF Child Protection (2008).

⁷⁷ Decision 14/06 Enhancing efforts to combat trafficking in human beings, including for labour exploitation, through a comprehensive and proactive approach MC Brussels 2006.

⁷⁸ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach (2011) p30.

⁷⁹ European Commission – DG Justice, Freedom and Security (JLS). Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings, Brussels, 2007, p5.

Serbia also identified trafficking for the purpose of sexual exploitation of male minors.⁸⁰

V.4.1.4 Modus Operandi: Children

EU national victims of trafficking are recruited with false promises of free housing and well-paid jobs, or groomed abroad with the “loverboy”⁸¹ method with the promise of a better life and marriage. Many of the victims are minors.

For organised trafficking groups, moving children across controlled borders is a straightforward activity. In many cases the victims often travel on genuine passports of non-related adults.⁸²

*V.4.2 Labour Exploitation*⁸³

The OSCE SR/CTHB called for a broad strategic approach to the prevention of trafficking for labour exploitation in line with OSCE commitments. She affirmed the importance of implementing measures aimed at: promoting decent work and encouraging respect for the fundamental rights of workers; monitoring labour recruitment; promoting a stronger role for labour inspectorates; strengthening the rule of law and access to remedies and compensation for harm and unpaid wages; and eliminating corruption.⁸⁴

The Europol Knowledge Report states that labour exploitation in the EU is not a recent development. However, because it is largely a hidden crime which has traditionally not been a priority for law enforcement action, in general terms it has remained undetected. There has always been labour exploitation to some extent within the EU and this can be directly associated with the illegal labour market that exists in every Member State.⁸⁵

Recent studies indicate that labour exploitation in particular is becoming a huge problem. Poorly skilled people who go abroad to work are often exposed to abuse and exploitation because workplaces are relatively

⁸⁰ Copic & Dimitinjevic (2009), p80

⁸¹ See Clarification of Terms (p13)

⁸² Europol Knowledge Report (2011), p8

⁸³ This guide does not seek to distinguish trafficking for forced labour and labour exploitation the terms are used inter-changeably.

⁸⁴ OSCE An Agenda for Prevention Activities and Challenges in 2011 Annual Report of the SR/CTHB, p12

⁸⁵ EUROPOL Knowledge Product Trafficking in Human Beings in the European Union (2011)

unregulated and are often outside any labour inspection regime. Internal trafficking for the purpose of labour exploitation is also common.⁸⁶

V.4.2.1 Definitional Problems

The Palermo Protocol does not define labour exploitation within the protocol but states that exploitation should include “forced labour or services, slavery or practices similar to slavery, servitude”. Therefore, to establish the meaning of these types of exploitation it is necessary to look at the definitions provided within established conventions.

The ILO and the European Court of Human Rights define forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.⁸⁷

Slavery is defined as, “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.⁸⁸

However, the definition of forced labour does not incorporate the concept of ownership, as is the case for the two Slavery Conventions. The difference between forced labour and slavery is therefore related to the concept of ownership. Nevertheless, when referring to trafficking, the key issue is that in both cases, people face exploitative situations.⁸⁹

The important factor is that police investigators can identify situations in which a potential victim has been trafficked for the purpose of labour exploitation.

There is no direct guidance on the definition of labour exploitation, however, the ILO have identified several elements which can either singularly or collectively indicate labour exploitation. These are indicators of labour exploitation only and investigators will still have to provide evidence of the other elements of trafficking to prove a criminal offence.

⁸⁶ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing approach (2012) p68

⁸⁷ Article 2.1 ILO Forced Labour Convention No 29 of 1930.

⁸⁸ Article 1(1) League of Nations Slavery Convention (1926).

⁸⁹ Protocol for Identification and Assistance of Trafficked Persons and Training Kit Anti-Slavery International (2005).

The ILO component elements of forced labour:

- Threats of violence or actual physical harm to the worker
- Restriction of movement and confinement to the workplace or to a limited area
- Debt bondage
- Withholding of wages or excessive wage reductions that violate previously made agreements
- Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status
- Threat of denunciation to the authorities, where the worker is in an irregular immigration situation, with the intention of forcing the person into involuntary work or service⁹⁰

Anti-Slavery International (ASI) has argued that in practice these indicators are often present in a combination of two or more. They would argue that cases where at least one of the ILO listed indicators is identified should at a very minimum prompt a thorough investigation, and where two or more elements of coercion are identified then the case should be identified as forced labour.⁹¹

The definition of Forced Labour comprises of three main elements (see also the preceding paragraph):

- some form of work or service must be provided by the individual concerned,
- work is performed under threat of penalty, which can take various forms, whether physical, psychological, financial or other,
- the work is taken involuntarily, meaning that the persons either become engaged in the activity against their free will or, once engaged, find that they cannot leave the job with a reasonable period of notice, and without foregoing payment or other entitlements.

Despite the guidance on how to define labour exploitation, OSCE participating States may have problems with the definition and distinguishing it from a violation of labour laws within their legislation.

⁹⁰ ILO Human Trafficking and Forced Labour Exploitation: Guidelines for legislators and Law Enforcement. (2004) Geneva.

⁹¹ Trafficking for Forced Labour in Europe Report on a study in the UK, Ireland, the Czech Republic and Portugal Anti-Slavery International (2006).

This can be problematical for police investigators, because, if it is not prescribed in criminal legislation or codes, it may not be a criminal offence. Therefore, it cannot be investigated as a crime and there may be no duty or provision to protect potential victims of trafficking.

In developing the definitions in national law there are ILO Conventions dedicated to forced labour that can be used. However, the notion “forced labour” from ILO Convention No. 29 cannot be directly used in the interpretation of the definition of “trafficking in persons” of the Palermo Protocol since the ILO’s concept of forced labour is very different from the Palermo Protocol concept. These differences are of a purely scientific nature, but they can have a considerable impact on the way governments identify and protect victims of trafficking in persons and forced labour.⁹²

V.4.2.2 Whose Responsibility is the Investigation?

In 2009, Europol reported that trafficking for the purposes of labour exploitation was increasing, mainly in the sectors of construction, drug producing and begging. The 2011 Europol Organised Threat Assessment (OCTA) set out the following types of exploitation:

- Trafficking of children by Roma criminal groups for exploitation in petty crime and adults for the commission of benefit fraud
- Exploitation in a range of sectors; agriculture, construction, textile, healthcare, domestic service and the sex industry

While awareness of trafficking for labour exploitation is growing, and almost all countries have law and policy instruments in place against it, one thing stands out. There has been very little criminal law enforcement against trafficking offences, with very few prosecutions and convictions throughout the OSCE region, especially if compared with the estimated massive scale of the problem and even with the identified number of trafficking victims.⁹³

The ILO observes, “While forced labour is now generally recognised as a crime, it is rarely prosecuted because of the difficulties in articulating the various offences that constitute forced labour in national laws and regulations. In addition, there are various obstacles to law enforcement and the identification of forced labour victims”.⁹⁴

⁹² Trafficking in Persons for Forced Labour in the Republic of Moldova Problems and Solutions (2011) p8.

⁹³ Plant, R. OSCE An Agenda for Prevention: Trafficking for Labour Exploitation (2011) p6.

⁹⁴ ILO: A Global Alliance Against Forced Labour, Geneva, (2005) p8.

It can be difficult for police investigators to identify cases of labour exploitation as it is not always defined by the nature of the work being performed, which can be either legal or illegal under national law, but rather by the nature of the relationship between the person performing the work and the person exacting the work. Labour exploitation not only occurs in the recognised economy but also in the illegal sectors, therefore, it can be difficult to distinguish between exploitation in terms of violation of labour rights and extreme exploitation amounting to forced labour.

The availability of victims creates increasing demand and the exploitation of these two factors is then undertaken by those who facilitate demand, including: criminal enterprises, legitimate businesses and consumers. Victims who are subject to forced labour may either be subject to overt/observable coercion, e.g. armed guards/locked in premises, or to subtle coercion (not immediately observable), e.g. confiscation of identity documents or threats of denunciation.⁹⁵ All of these factors make it difficult for police investigators to identify and investigate potential offences of trafficking for labour exploitation.

V.4.2.3 Identifying Labour Exploitation

Police investigators need to have sufficient knowledge to undertake an investigation and they can do this by referring to the human trafficking indicators which will assist them in identifying both potential victims and situations of labour exploitation. However, investigations into trafficking for labour exploitation can be difficult, especially when related to;

- the identification of victims
- defining an exploitative situation
- proving the process of trafficking

Cases of trafficking for forced labour are difficult to identify, in part because exploited workers are often reluctant to identify themselves as victims, preferring to work in poor conditions rather than return to their home countries, and because there is a lack of definition at EU level of the degree of exploitation serious enough to constitute a crime. A lack of awareness and capability of making the distinction between an employment dispute and a case of trafficking can result in a form of serious crime being dealt with as a local labour issue with possible negative consequences for the migrant/illegal worker.⁹⁶

⁹⁵ ICMPD Regional Standard for Anti-Trafficking training for Judges and Prosecutors in SEE (2004) p33.

⁹⁶ EUROPOL Knowledge Product Trafficking in Human Beings in the European Union (2011)

Another difficulty is due to the fact that indicators are usually revealed in a fragmented manner. The information is not usually held by one actor and to bring the pieces of information together requires the sharing of information amongst different actors. This is not always possible because of information-sharing problems including data protection and confidentiality.

Indicators of trafficking will aid investigators to identify situations of forced labour exploitation that will enable them to determine when a criminal investigation is necessary, as well as when potential victims may need protection from a human rights and victim-centred perspective. In certain States the violation of labour laws is sufficient to qualify as exploitation. The presence of means or involuntariness is not required and the exploitation can relate to bad living or working conditions. However, in other States the presence of an exploitative situation doesn't always mean an unconditional entitlement of victims to protection mechanisms.

Case Study – The Czech Republic

The “Tree Workers Case” is the biggest case of labour exploitation to have been exposed in Europe in the last twenty years. Since 2009, at least 2,000 workers, mainly from Vietnam, but also from Romania, Bulgaria, Hungary, Slovakia and the Ukraine have been forced to work under very harsh conditions in the state forest of the Czech Republic.

“It is always the same names and dubious employment agencies that keep surfacing in this case”. Police, ministries and other authorities say that their hands are tied and that they cannot do anything. However, a group of people, lawyers and members of NGOs in Prague have joined forces to investigate this case and win compensation for the forest workers.

One of the workers concerned is PHL from Vietnam. Before finding work in the Czech Republic in 2009, PHL had imagined that Europe would be paradise, but that is not what he found. He and many of his Vietnamese countrymen in the Czech forests experienced working conditions that could be best compared to slave labour. Their employer, different job agencies, had a contract with the biggest Czech forestry company which had, in turn been hired by the national forest authority.⁹⁷

Police investigators will need further guidance to assist them in identifying forced labour situations and potential victims of trafficking. These cases can be difficult to identify and not all situations of labour exploitation will be

⁹⁷ thetreeworkerscase.com.

human trafficking situations or even criminal offences. It is possible that the responsibility for regulating or enforcing certain situations of labour exploitation will lie with a variety of non-law enforcement agencies.

The ILO, together with the European Commission and other partners, has developed operational indicators of human trafficking. They have elaborated 67 indicators covering all the different dimensions of human trafficking and these and other indicators can be used to assist in identifying human trafficking cases.⁹⁸

V.4.2.4 Investigative Problems

When investigating cases of labour exploitation it can be difficult to distinguish if the victims have been trafficked into or placed into a forced labour position. The police investigators may not know if the trafficking process has been completed or whether the victim was recruited for the purposes of exploitation. When a victim is found in an exploitative situation, the investigator should look back through the process of how the victim arrived in the current situation to determine if the elements of trafficking have been completed.

When victims are rescued prior to any exploitation it can be difficult to investigate the case as a crime. This is because it may not be possible to demonstrate that the trafficker intended to place the victim in an exploitative situation and, therefore, complete the criminal offence of human trafficking.

There have been cases within OSCE participating States where it has not been possible for investigators to prove all the elements of trafficking. These can occur when the victim has been in an exploitative situation for a considerable period of time and is unable to give evidence. Or it is not possible to prove when or how the victim was recruited. There are also cases when it has not been possible to prosecute because the legislation in a participating State has been prohibitive.

This situation has arisen in a number of OSCE participating States and has meant that offences have not been investigated as criminal offences of trafficking. In both the United Kingdom and the Republic of Ireland legislation has been enacted that makes Forced Labour an offence. This offence can be used when only the exploitative element of trafficking can be proved.

⁹⁸ See Victim Identification (8.4)

Legislation: UK Forced Labour

Section 71 of the Coroners and Justice Act 2009 ("the 2009 Act") creates an offence of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour. The offence came into force on 6 April 2010.

Section 71 provides that:

1) A person (D) commits an offence if:

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

3) A person guilty of an offence under this section is liable:

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period [12 months] or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

4) In this section:

"Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

"the relevant period" means:

(a) in relation to England and Wales, 12 months; and

(b) in relation to Northern Ireland, 6 months.

Further investigative problems:

- Whose responsibility is it to investigate potential labour exploitation offences in participating States? Those who have responsibility may not be police investigators and may be unfamiliar with the criminal law or lack investigative powers. Without defined responsibilities within States for investigating labour exploitation it is probable that offences may not be investigated.
- When there is a disparity of income and the labour conditions between the country of origin of the potential victim and the country of destination where they are working. Victims of human trafficking cannot consent to exploitation and they must be treated in the same manner as if they were nationals of the State in which they are working.

V.4.2.5 Modus Operandi

Since the most recent expansions of the EU and the lifting of restrictions on employment in many Member States, instances of situations which amount to forced labour have increased. The traffickers involved specifically seek to target their own nationals for exploitation and recent cases have highlighted the involvement of not only Poles, Lithuanians, Romanians and Bulgarians but also Portuguese and British nationals in trafficking their countrymen. Typical examples of the industries and areas where victims of trafficking for labour exploitation will be found are:

- Agricultural/farming sector;
- Construction industry;
- Service sector/HORECA;
- Manufacturing sector;
- Domestic servitude.⁹⁹

Good Practice: The Netherlands

The Social Intelligence and Investigation Service (SIOD) deals with fraud in the areas of employment and income and many of their investigations relate primarily to organised illegal employment. These investigations often concern possible cases of people smuggling.

⁹⁹ Europol Knowledge Product Trafficking in Human Beings in the European Union (2011) pp7-8.

The SIOD focuses on specific risk categories, for example, certain business sectors, which in 2005 included horticulture, fruit growing and the food industry. If the SIOD has indications of THB that go beyond the service's own duties and powers, then either the National Prosecutor or competent local Prosecutor's office are informed.¹⁰⁰

Use of recruitment agencies: This is especially prevalent in cases of forced labour where victims are recruited, usually, through advertisements in the media or online, within their own country. Victims are promised employment in either destination countries, or in towns/cities within their own country, and are even given contracts that are inevitably worthless.¹⁰¹

Recruitment agencies also promise jobs that they know do not exist. They often ask for monies upfront for travel, visas, etc. that can put both the victim and their families into debt bondage. These agencies are potentially guilty of human trafficking as they receive people into employment knowing it doesn't exist and knowing they are going to be exploited.

V.4.2.6 Children

The ILO's most recent estimate is that some 215 million children across the world are trapped in child labour. Children are trafficked into differing forms of forced labour; they are trafficked by their families, by organised crime networks or by persons they know and trust. They are recruited into domestic servitude, cannabis farms, begging and other criminal activities as well as being forced to work in agriculture, the catering industry and factories.

Police investigators need to know how to identify the differing exploitative situations into which children are trafficked both to ensure the protection of the child and to investigate potential traffickers. In all investigations involving children the priority is the best interests of the child. Police investigators also need to be aware of the conventions on child labour, especially those that afford them protection.¹⁰²

¹⁰⁰ Europol Knowledge Product Trafficking in Human Beings in the European Union (2011) pp7-8.

¹⁰¹ See Emerging Trends (13.2).

¹⁰² Child Trafficking in the European Union *Challenges, perspectives and good practices* (FRA 2009) p27.

Good Practice: Belgium

System of tackling trafficking for labour exploitation.

Three key strengths:

- Specialized branch of the public ministry with its own prosecutor
- Focus on protecting victims
- Multidisciplinary approach¹⁰³

V.4.3 Domestic Servitude

Trafficking for the purpose of labour exploitation is commonly perceived as less invasive and damaging than trafficking for sexual exploitation. While in some cases this might be true, trafficking for domestic servitude is often just as devastating an experience, with long-term and serious consequences.¹⁰⁴

V.4.3.1 Definition

Trafficking for domestic servitude covers a range of situations, all of which share certain features: subjugation and an obligation to provide work for a private individual, low or no salary, no days off, psychological and/or physical violence, limited or restricted freedom of movement, or the impossibility of a private life. Be it an adult or a child, the trafficked person usually lives in the house of the family and is constantly at their disposal and mercy.¹⁰⁵

ILO Convention 189 sets out basic rights and protections for domestic workers and if these rights are exploited by employers or victims are deliberately trafficked into a situation of domestic servitude then there is a duty and responsibility on LEAs to protect and investigate.

¹⁰³ Germaine Ligot, Prosecutor General of Liege speaking at the OSCE Tenth alliance against Trafficking in Persons Conference, Vienna, 17-18 June 2010.

¹⁰⁴ SR/CHTB OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010).

¹⁰⁵ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010) p11.

ILO Convention 189 on Decent Work for Domestic Workers (adopted 16 June 2011)

What is Convention No. 189 about?

Convention No. 189 offers specific protection to domestic workers. It lays down basic rights and principles, and requires States to take a series of measures with a view to making decent work a reality for domestic workers.

What is domestic work?

Convention No. 189 defines domestic work as “work performed in or for a household or households”. This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children or elderly or sick members of a family, gardening, guarding the house, driving for the family, or even taking care of household pets.

Who is a domestic worker?

Under the Convention, a domestic worker is “any person engaged in domestic work within an employment relationship”.¹⁰⁶

V.4.3.2 Modus Operandi

Migrant workers, predominantly women, seek employment abroad, usually to support their family in their home country. They are mainly recruited via placement agencies but also by employers who travel to recruit the person directly. Domestic workers who are already employed in a foreign country, may follow their employer when he or she travels or moves (short or long term) to another country.¹⁰⁷

At the destination, trafficked persons are forced to perform domestic work in a household, which includes housekeeping, such as cleaning, laundering, ironing and cooking, and childcare, but sometimes also extends to gardening, maintaining a country home, or any other activity linked to an employer’s needs. Even though in most cases exploitation

¹⁰⁶ www.ilo.org/wcmsp5/groups/.../---ed.../wcms_161104.pdf.

¹⁰⁷ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010) pp17-19.

occurs within private households, it may also take place elsewhere, for instance while cleaning shops or offices.¹⁰⁸

V.4.3.3 Diplomatic Households

It is important to sensitize the diplomatic community to the reality of trafficking for domestic servitude which has been detected in many OSCE countries. The OSCE SR/CTHB has taken leadership on this subject, with a view to disseminating good practices. Momentum has also been generated by the adoption of the International Labour Organization Convention 189 on Decent Work for Domestic Workers in June 2011.¹⁰⁹

In a number of OSCE participating States diplomats can recruit domestic workers directly with only minimal checks, if any, on how they were recruited. These countries give high-level employees of foreign diplomatic missions and international organizations the privilege of bringing household and childcare workers into the host country on special diplomatic visas (or legitimisation/identification cards).¹¹⁰ This makes victims of domestic servitude particularly vulnerable in diplomatic households, as they are not only dependent on their employer, but that employer has immunity from prosecution for any offences committed.

The phenomenon of trafficking by diplomats has been recorded across Europe and in the USA and is receiving worldwide attention, including from the OSCE. Recently the US Government has, in its 2010 Trafficking in Persons Report, made recommendations that States should increase the oversight of the diplomat/worker employment relationship and should create an independent migration status for domestic workers, giving them the right to change their employer.¹¹¹

¹⁰⁸ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010) p11.

¹⁰⁹ SR/CTHB OSCE Workshop on Domestic Servitude, Geneva, 21 June 2012.

¹¹⁰ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010) pp25-29.

¹¹¹ Moss, J. Roberts, K. Protecting the Needs of Victims of Domestic Servitude in the UK pp 201-203 in Chandron, P. *Human Trafficking Handbook Recognising Trafficking and Modern-Day Slavery in the UK* (LexisNexis 2011).

Case Study: Austria

V. replied to an announcement for a job in Austria and was brought from a South-Eastern European country to Vienna by her employer. T. promised her a residence permit, health insurance and accommodation. However, her passport was confiscated immediately after her arrival. She had to clean a mansion where eight people lived. She worked 18 hours a day, seven days a week, and she did not receive any salary. When she started to ask for her passport, her employer threatened her, telling her that she would have to pay for her stay, and that she would even go to prison. V. fled the house and asked a woman on the street for help. The latter brought her to the hospital. V. was taken care of by the NGO LEFOE, and was subsequently allowed to stay in Austria on humanitarian grounds. After two years of procedures she obtained compensation amounting to EUR 14,000.¹¹²

V.4.3.4 Indicators of Domestic Servitude

Police investigators need to be aware of how to identify potential victims of domestic servitude because these victims are rarely identified or assisted.

The following indicators will be of assistance:

Objective Indicators:

- Living with a family
- Not eating with the rest of the family
- Having separate sleeping quarters to rest of the family
- Never or rarely leaving the house for social reasons.

Subjective Indicators:

- Never or rarely leaving the house for social reasons
- Never leaving house without the employer
- Only given leftover food to eat
- Subjected to insults, abuse, threats or violence.

¹¹² OSCE OSR, Occasional Paper Series no. 4 on trafficking in human beings for the purpose of domestic servitude (Vienna, forthcoming)

V.4.3.5 Identified Good Practice

Several countries, including Austria, Belgium, Switzerland and the United States of America, have set up specific procedures to guarantee that domestic workers who work for diplomats are fully informed about their rights and available support, and remain in possession of their travel and identity documents.¹¹³

Good Practice: Switzerland

Measures to protect domestic workers employed by diplomats - to protect migrant domestic workers employed by foreign diplomats the Swiss authorities insist that candidates do the following:

- Learn one of the languages in which advice is available
- Apply in person for their visa
- Satisfy Swiss officials that they understand the conditions of contract
- Collect “legitimation” card in person annually¹¹⁴

It is important to build capacity within police investigators so that they understand what trafficking for domestic servitude means, that they are able to identify and detect and continue to address this crime whilst continuing to protect the rights of domestic workers.

V.4.3.6 Children

Child domestic work is increasing worldwide. The ILO states that 40 to 50 per cent of the 12.3 million people in forced labour are under 18 years of age. Existing studies show that child domestic labour is one of the most widespread forms of child work, deeply anchored in traditions. Across the

¹¹³ OSCE OSR, Occasional Paper Series no. 4 on trafficking in human beings for the purpose of domestic servitude (Vienna, forthcoming)

¹¹⁴ Dottridge, M. Methods to Prevent Trafficking for Labour Exploitation: What to do and How Chapter 2 p19 in *OCSE An Agenda for Prevention: Trafficking for Labour Exploitation* (2011).

globe, more girls under 16 are employed in domestic service than any other form of work.¹¹⁵

Modus Operandi

Children can be trafficked into domestic servitude because of social and cultural practices. These can include placing a child in another household for a better future or placing a child with a wealthier family in the belief that they will have access to education or a better life.¹¹⁶

Tackling the issue of child domestic workers

In adopting Convention No. 189 and Recommendation No. 201 on Decent Work for Domestic Workers, the International Labour Conference gave a clear message: Domestic workers, like other workers, have the right to decent working and living conditions. With regard to children, member States are required to set a minimum age for domestic workers. This minimum age must be consistent with ILO Convention No. 138 on the minimum age and ILO Convention No. 182 on the worst forms of child labour, and must not be lower than that established for workers generally. Convention No. 189 and the accompanying Recommendation No. 201 draw attention to the need to identify hazardous domestic work and to prohibit such work for children under the age of 18. Under a new global project launched in 2011 IPEC is supporting work in ten countries to strengthen protection for child domestic workers. The work will include support for the formulation of regulatory and policy frameworks to protect child domestic workers.¹¹⁷

V.4.4 Trafficking for the Purpose of Organ Removal

The OSCE Parliamentary Assembly invites the OSCE participating States to combat determinedly organized criminal groups dealing with illicit trade in human organs and human trafficking for the purpose of the removal of organs, and recommends for this purpose the establishment of closer co-operation, including exchange of information, and more efficient actions by

¹¹⁵ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (2010) p24.

¹¹⁶ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (Vienna, 2010) p24.

¹¹⁷ ILO Tackling Child Labour from Commitment to Action (2012) p11

the institutions of the OSCE participating States in combating illicit trade in human organs.¹¹⁸

V.4.4.1 Definition

According to the Palermo Protocol definition, trafficking for the purpose of organ removal, like any other forms of exploitation linked to trafficking, requires a combination of three components, namely action, means and purpose. This should not be confused with trafficking in organs, tissues and cells (OTC), which does not necessarily require those three components to be in place.

There is no agreed definition of trafficking in OTC at the international level. This leads to widespread confusion, both in the legal and scientific communities and in the wider general public, between trafficking for the purpose of organ removal and trafficking in organs. Most of all, such confusion hampers the fight against such crimes and the possibility to provide full protection and assistance to the victims involved.¹¹⁹

There have been a growing number of investigations and prosecutions into human trafficking for organ removal. These investigations indicate that the crime is carried out by international brokers who work with corrupt transplant surgeons and local kidney recruiters to exploit the vulnerabilities of both organ recipients and organ sellers, using both coercion and deception, and abusing the position of vulnerability of victims. The motivation is the profit generated by the growing demand for black market organs.

Trafficking for the purpose of organ removal: Kosovo

In 2008, the Kosovo police initiated an investigation on “organ trafficking” once a fatigued Turkish man was stopped at Pristina airport while trying to board his flight to go back home. He had just given his kidney to an Israeli recipient in a private clinic.

The investigation identified about 20 persons from Moldova, Kazakhstan, Russia and Turkey, who were living in very poor conditions or experiencing

¹¹⁸ General Committee on Democracy, Human Rights and Humanitarian Questions Follow-Up on Recommendations in the OSCE PA's Belgrade Declaration Final Report for the 2012 Annual Session

¹¹⁹ Council of Europe, United Nations, Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs (2009), p11

severe financial trouble, when recruited and trafficked to Kosovo with the false promise of payments up to EUR 14,500 in exchange of one of their kidneys. The organ recipients had to pay between EUR 80,000 and 100,000.

The defendants comprised five Kosovar nationals (including a former senior health ministry official), a Turkish doctor and the Israeli recipient who were charged with offences of trafficking for the purpose of removing “human organs for transplant to other persons”, organized crime, abusing official authority, abuse of power, and unlawful exercise of medical activities.¹²⁰

V.4.4.2 Modus Operandi

A recruiter is employed by the “brokers” to find vulnerable victims, from within their own community, and offer them a price for the purchase of an organ. In all recorded cases, the organ requested is a kidney. Recruits are often healthy young people with financial problems and often, after an initial advertisement, supply is then generated by word of mouth and there is a continual demand. Victims are also recruited through a situation of debt bondage. They borrow money but are unable to return the funds when asked, so are then required to donate an organ in lieu of the debt.

The broker, who is usually international and moves freely among the countries where the network is active, arranges both a surgeon and a country in which to perform the operation. This can mean that the donor travels to the victim’s country, the victim travels to the donor’s country or both the victim and the donor go to a third country. The brokers provide passports and other documents that are necessary for the transportation of victims.

There are recorded cases of a third country being used where the operation is not illegal. The operations are usually carried out in private clinics, in undeveloped countries, where the money is needed to keep the clinic open or where the surgeon is corrupt. The recipient of the donor organ may pay between \$100,000 and \$160,000 to the broker. The victim receives between \$2,500 and \$10,000 and the recruiter can receive \$2,000 for each donor they recruit. After payment to the surgeon of \$10,000 to \$15,000, there is a significant profit for the broker (trafficker), assuming the surgeon is not the broker, which has occurred in reported cases.

¹²⁰ Source: <<http://www.bbc.co.uk>>, accessed 12 November 2010.

Case Study: Kosovo

The European Union's rule of law mission in Kosovo brought charges against seven people suspected of running an international organ trafficking ring that took kidneys from poor donors lured by financial promises. A court in Pristina found two of them guilty of human trafficking and organized crime. A panel of three judges sentenced urologist DD to eight years in prison and his son AD to seven years and three months. A third defendant, SH, was sentenced to three years in jail for causing grievous bodily harm. Two others received suspended sentences, while two were freed.

At least 24 kidney transplants, involving 48 donors and recipients, were carried out between 2008 and 2009, the period covered by the case. A Canadian man who admitted to purchasing a black-market kidney abroad was among more than 100 witnesses in the trial, which began in December 2011. RF, a Toronto resident, flew to Istanbul and then Pristina to undergo surgery in 2008, prosecutors said. He never faced charges in the case and died shortly after testifying by video link in 2011, the prosecutor said, adding that he believes the transplant was a "contributing factor" in his death.

The trial heard that the victims were promised \$10,000 to \$12,000 in return for their kidneys, but many said they were never paid. "At least two were cheated out of the entire amount and went home with no money and only one kidney," the court said in its reasoning. The kidney recipients, who were mostly wealthy patients from countries such as Canada, Israel, Poland, the U.S. and Germany, paid up to \$170,000 for the procedure. The defendants are believed to have profited \$1 million from the transplants.

Most of the names of donors and recipients were traced through documents seized during a police raid on a medical facility named "Medicus" on the outskirts of Pristina in 2008. Organ transplantation is illegal in Kosovo's private clinics. It is also rare in public health facilities because of poor conditions. The prosecutor said, "This is the exploitation of the poor, the indigent, the vulnerable and the marginalized in our society — they are the only ones who would even possibly consider this, the sale of your own body parts or organs".¹²¹

¹²¹ The Associated Press, Nebi Qena, The Associated Press, The Canadian Press, and Paola Loriggio, The Canadian Press April 29, 2013 10:37 am.

There are increasing concerns within some OSCE participating States that because of the shortage of organs, they are now being offered for sale on the Internet, or that those requiring organs are travelling to other countries in what is described as organ tourism. Whilst not all of these incidents are criminal offences, the donors are potentially vulnerable and those behind the advertisements and tourism could be traffickers.

Case Study: Netherlands

The scale of organ trafficking and organ tourism

Although there is still no clear picture of the scale of organ trafficking and organ tourism in the Netherlands and by Dutch nationals abroad, the situation is coming into sharper relief. Public offers of, and requests for, organs seem to occur increasingly frequently, while doctors also seem to more easily discuss possible cases of organ tourism that they encounter during their work. More research is also being conducted into the scale of trafficking in organs and organ tourism. Some people offer their kidneys on the Internet or in the newspaper. At the beginning of 2011, the *Algemeen Dagblad* reported that at least 24 people had offered their kidneys for sale in advertisements on websites like *Marktplaats* and *Speurders*, although these advertisements are usually removed from the websites after a while. In the advertisements, the donors asked for remuneration and sometimes mentioned a specific amount, e.g. 40,000 or 60,000 EUR. Advertisements are also sometimes placed by kidney patients looking for an organ.¹²²

V.4.4.3 Identified Good Practice

The majority of OSCE participating States have legislation prohibiting trafficking for the purpose of organ removal. In those States that have undertaken investigations and prosecutions there have been no apparent problems with legal definitions and charges have reflected the element of trafficking.

¹²² National Rapporteur on Trafficking in Human Beings Human trafficking for the purpose of the removal of organs and forced commercial surrogacy. (2012) The Hague: BNRM) pp10-11

V.4.4.4 Children

To date there has been no evidence to prove that children have been trafficked for organ removal, despite reports to the contrary. However, it is suspected that children are also victims of this form of exploitation.

V.5 New and Emerging Forms of Exploitation

No systematic and comparable information is available on these forms of trafficking occurring in the OSCE region. The available data is limited and, especially in the case of trafficking for forced begging, they mainly concern child victims.¹²³

The Framework Directive adopts a broader concept of human trafficking to tackle the recent developments in the phenomenon. It includes additional forms of exploitation including forced begging. In Article 2 the directive includes the exploitation of criminal activities, which should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.

There are also other forms of exploitation that are defined within the domestic legislation of participating States. Police investigators need to be aware of these emerging forms of exploitation and be able to recognise them as potential criminal offences, as well as ensure that the victims are afforded proper protection.

Forced drug dealing, burglary, pick-pocketing and selling counterfeit products are also associated with human trafficking. Data for these forms of trafficking is also scarce; however, some police investigations and exploratory studies carried out in a few countries of the OSCE region provide some important information. Most identified victims are children, adolescents and young adults, generally from South Eastern Europe and North Africa. They are forced to perform these illicit activities by family members, acquaintances or criminal organizations. Interrelations between different forms of trafficking have also been detected: for instance, trafficked persons exploited as drug dealers or burglars may also be

¹²³ Annual Report of the Special Representative and Co-ordinator Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security (2010) p16.

coerced into prostitution. Awareness-raising targeting law enforcement agencies, social services and NGO personnel needs to be developed to ensure proper identification and support for victims of these forms of trafficking. Too often, these victims are charged for the criminal acts committed rather than being treated as presumed victims of a crime.¹²⁴

V.6 Illicit and Criminal Activities

V.6.1 Forced Begging

Within the context of the Framework Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning forced or compulsory labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of trafficking in human beings only when all of the elements of forced labour or services occur.

According to the ILO definition, forced begging is a form of forced labour since it is “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily”.¹²⁵

All forced begging cases need to be identified and effectively investigated. However, not all begging is necessarily forced - in some OSCE participating States begging occurs as a family survival strategy, or when families send children to beg to support their parents despite those parents being capable of working and supporting the family themselves. In this context, children are seen as contributors to their family survival and are not necessarily coerced, even though their rights are severely affected.¹²⁶

The Europol Organised Crime Threat Assessment (OCTA) highlighted begging as one of the emerging threats that is prevalent within the OSCE region. This is a criminal offence in which victims, mainly children, are being exploited for profit both by criminal networks and their own families.

¹²⁴ OSCE Annual Report of the Special Representative and Co-ordinator Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security p16.

¹²⁵ International Labour Organization, Forced Labour Convention, C29 (28 June 1930)

¹²⁶ OSCE Annual Report of the Special Representative and Co-ordinator Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security p16.

Europol, The Hague, The Netherlands, 11 January 2011

Children forced into criminal activities, such as organised begging and shoplifting, are being traded as commodities with €20,000 price tags.

Europol has identified an increasing trend in the exploitation of children by mobile organised crime groups in the European Union (EU). These groups of criminals tend to originate from South East Europe and move around the EU with the trafficked children who they trade with other criminal gangs.

The trafficking and exploitation of these children is a lucrative business, with the children being routinely sold between the different criminal gangs, and the 'price' based on the child's money-earning potential. The average price paid for a trafficked child in the UK is €20,000 (source: UK Metropolitan Police). With an estimated annual income of up to €160,000 from a single trafficked child, one can see why there are around 1.2 million children being trafficked worldwide for criminal purposes (source: UNICEF). The number of victims being exploited by just one mobile organised crime gang can range from 10 to 100 minors.

The trafficked children, aged from five years old, are systematically trained and forced into committing criminal activities such as pick-pocketing, organised begging, shoplifting and distraction burglary, as well as other street crimes like robbery and mugging. In addition, minors are also being trafficked for sexual exploitation. The severity of violence and intimidation used by these criminal groups to control and exploit the minors includes extreme forms of violence, such as sexual abuse and torture.

The children often come from impoverished families who are forced to hand over their children to the criminals to pay off debts. Some families are complicit in selling or renting out their children for money.¹²⁷

V.6.1.1 Modus Operandi

Within the OSCE participating States there is both a growing awareness and an increasing number of vulnerable adults and children being exploited by begging. Children are forced to beg by parents who are capable of working but choose to exploit their children. In Ukraine and within the CIS, children are trafficked from orphanages and sold to traffickers in other countries for begging.

¹²⁷ <https://www.europol.europa.eu/content/press/children-trafficked-and-exploited-inside-europe-criminal-gangs-501>

It is not only children who are exploited but also the elderly and infirm. There are reports of victims injured in conflicts who are forced to beg, and also those who are deliberately maimed in order to obtain more money through begging.

Case Study – Ukraine

A supply chain of traffickers forcing disabled Ukrainians to beg abroad was uncovered and dismantled in Dnipropetrovskoblast in Ukraine. Seven disabled Ukrainians were enslaved and forced to beg in the Russian Federation and Poland. The cost of one person was between 500 and 100 USD. Beggars had to bring 300-500 USD per day to the traffickers and failure to meet the plan resulted in additional mutilation.

The female recruiter who selected and enslaved the candidates was detained. The main organizers and customers of trafficked victims are in hiding.¹²⁸

In some OSCE participating States, Roma children are the most vulnerable group for being trafficked and forced to act as beggars, pickpockets and burglars in the main cities and towns of the destination countries. They are forced to work long hours, are beaten and psychologically coerced by their traffickers to perform the required activities. Children can be forced to beg by parents or guardians, family acquaintances, relatives, or criminal networks. In some instances, victims are maimed to be more pitiful beggars in order to collect more money.

V.6.1.2 Indicators

Objective:

- Physical impairments that appear to have been created by mutilation
- Operating in organised gangs
- Gangs of single ethnic group
- Mainly children in gangs
- Appearance of new forms of gang crime
- All gang members living together
- All gang members travel together to the destination country
- Gang members living with people who are not their parents
- Evidence that the person has been involved in a similar crime in another country.

¹²⁸ <http://tsn.ua/article/print/chorna-hronika/ukrayinskih-invalidiv-prodavali-v-rabstvo-do>

V.6.1.3 Identified Good Practice

Joint Investigation Teams (JITs) are held as international good practice.¹²⁹

“Operation Golf” (United Kingdom - Romania)

“Operation Golf” is a UK-Romanian Joint Investigation Team established within the framework of an EU special mechanism that allows law enforcement agencies from different Member States to rapidly co-operate without the need for requests for mutual assistance. Through “Operation Golf”, the UK Metropolitan Police and the Romanian National Police jointly ran anti-trafficking investigations and operations aiming at dismantling child trafficking rings for forced begging and stealing in the UK involving children from very poor Roma communities. Many children are currently in the care of child protection services, and more than a hundred persons have been arrested and charged for trafficking in human beings, child neglect, money laundering, benefit fraud, theft and handling stolen goods, and perverting the course of justice.¹³⁰

V.6.1.4 Children

This is a criminal offence in which victims, mainly children, are exploited for profit. This includes children forced to beg to support their parents and Roma children who are moved between differing States to beg for organised criminal networks. There are organised criminal groups, within OSCE participating States, who recruit women and their children with false promises and then send them to other States where they are forced to beg.

Case Study: Moldova

The Moldovan law-enforcement bodies have broken several rings which forced elderly people, women and children into begging in Ukraine and Poland. A woman and her two children, aged six and ten, were maltreated and forced to beg in Warsaw for two years, earning up to 500 USD a day.

¹²⁹ See International Good Practice (14.4.1).

¹³⁰ Source: Metropolitan Police <<http://cms.met.police.uk>>, accessed November 2010

Good Practice: Kosovo

Child Begging in Kosovo

OSCE Kosovo anti-child begging campaign:

www.osce.org/kosovo/45861

OSCE Kosovo anti-child begging video:

www.youtube.com/playlist?list=PL9A6804DE4BA789A4

V.6.1.5 Victim Risk Factors

As the majority of victims are children it is essential that the protection of the victim is a priority and that the LEAs responsible for investigating these cases are fully conversant with child protection principles.

V.6.2 Cannabis Farms

Cannabis was normally imported into a number of OSCE participating States by drug traffickers from countries where cannabis was easily grown. However, criminal gangs have now started to produce cannabis on a commercial scale in the countries of supply including Hungary, the Czech Republic, the UK and the Republic of Ireland. The cannabis is grown in warehouses or suburban houses by hydroponic methods.

Chinese and Vietnamese criminal gangs are setting up these cannabis factories and recruiting “gardeners” to tend the cannabis plants from within the Chinese and Vietnamese communities. In the UK the percentage of home grown cannabis has increased from 10% in 2000 to 90% in 2012 as a result of these cannabis factories.¹³¹

V.6.2.1 Modus Operandi

Cannabis factories are “set up” in residential houses and warehouse units and the cannabis, which is usually skunk cannabis, is grown using a hydroponic method. The plants are cultivated by a “gardener” who lives on the premises. These gardeners have invariably either been smuggled into the participating countries and then trafficked, or directly trafficked for the

¹³¹ Source Association of Chief Police Officers (ACPO).

purpose of gardening. They are usually young males and a significant number are children.

The victims are recruited in their home countries from vulnerable families and often exploited by “middlemen” purporting to offer a better life. The victims are then charged a significant amount to travel to another country with the promise of employment and a better life. On arrival, victims are controlled through debt bondage, with the debt often enforced against their family’s properties. It can cost a family between \$20,000 to \$60,000 to leave Vietnam or China.

The “gardeners” are forced to live in conditions of forced labour that are also hazardous due to the method of growing the cannabis and the toxicity from the plants. They are paid little or no money, and often the money is used to reduce the significant debts that they owe the traffickers, whilst those responsible for the trafficking make large profits.

Case Study: Europe

Vietnamese migrants enter Hungary or other Eastern European countries illegally or on a short stay visa. From there they can easily travel to other Schengen group countries in Europe, which have no border controls between them.

Traffickers and illegal immigrants were arrested in a Europe-wide day of action. The majority of the arrests took place in Hungary, France and Germany, with the UK being the destination of choice. Many of the victims would have been forced to work in cannabis factories in the UK to pay off the traffickers who arranged their travel.

This operation clearly demonstrates the significance of the threat posed by immigration crime and the strength of the resolve across EU partners to tackle the issue. It is much better to tackle this issue in the source and transit countries. The damage caused by such trafficking is considerable. The facilitators expose the migrants to deplorable and often life-threatening conditions, including sealing them in air-tight bags to try to avoid detection at borders.

Many of the Vietnamese illegal immigrants in the UK are forced to work in cannabis factories to pay off the traffickers who bought them into the country, and so fuel the drug trade and create more harm.¹³²

¹³² Source: Serious Organised Crime Agency (SOCA) (UK June 2010).

V.6.2.2 Indicators

- Residential house or warehouse that is secured
- High electricity usage
- Young adult/child locked in house
- Plastic rubbish bags outside the premises or in rubbish bins (used to obtain the soil)
- Windows obscured

V.6.2.3 Identified Good Practice

Police investigators should treat any "gardeners" that they find in cannabis farms as potential victims who should be afforded protection and not arrested. States must establish effective mechanisms to identify victims of trafficking promptly, so that the victims are not punished for offences committed by them whilst trafficked or as a consequence of having been trafficked.¹³³

V.6.2.4 Children

This is a criminal offence in which victims are exploited for profit. If the victim is a child they should ensure that all child protection policies are adhered to.

The Child Exploitation Online Protection Agency (CEOP) Strategic Threat Assessment: UK

All of the children identified in cannabis factories worked as "gardeners", tending and watering the cannabis plants. As might be expected for a child, this is the "bottom rung" position within a criminal enterprise. Often children were isolated, locked in the property alone and sleeping on the premises. One child stated that he slept on a quilt on the floor. It is unclear if the children were locked in to prevent escape or as a measure of security, as other criminal networks have been known to force entry to disrupt rivals. Many stated that they remained in the residence for the entirety of their exploitation. Those who did venture outside stated that they had to be accompanied by a member of the criminal network.

V.6.3 Benefit Fraud

¹³³ OSCE Policy and legislative recommendations towards effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team. (April 2013) recommendation 5, p33

The practice of trafficking for the commission of welfare benefit fraud is likely to expand because of the large profits. Single trafficking groups can generate as much as 125,000 Euro per month under low levels of perceived risk of detection.¹³⁴

V.6.3.1 Modus Operandi

Victims are usually recruited within their own country by traffickers of the same nationality. They are promised employment in other OSCE participating States, to which they travel, often at their own cost. Upon arrival in the destination State, which are States in which they are entitled to make claim for state benefits, they are also provided with food and accommodation for which the trafficker makes an additional charge. This can increase the debt the victim owes the trafficker and therefore increases the situation of debt bondage.

The victims are commonly single males but families are also recruited, especially to those States where children are entitled to claim state benefits. The traffickers open bank accounts and formally claim benefits on behalf of the victims. The state benefits are paid into bank accounts in their respective names and the money is then withdrawn from the accounts, usually via Automatic Teller Machines (ATM), by those responsible for the trafficking.

Case Study: UK

R v Adamowicz v Bala (2010) (unreported)

Two Polish criminals convicted of human trafficking were sentenced to a total of six years imprisonment in Sheffield after pleading guilty to trafficking offences.

LA and JB were members of a highly organised criminal gang running one of the UK's largest human trafficking operations. They lured workers to the UK from Poland on the promise of paid work and a better life by placing advertisements in Polish-language newspapers and on websites.

In reality, the workers were forced to work up to 12 hours a day and then housed in a derelict property at night, unable to leave.

¹³⁴ Europol Organised Threat Assessment 2011, p28.

When workers responded to the ads, they were asked to pay money up front for accommodation and the necessary documentation they would need to work in the UK (on average between £300 and £500 each).

Upon arrival in the UK, the workers would be picked up from the airport and taken to the Halcar Tavern in Sheffield, where they had to share cramped and squalid conditions. LA and JB would arrange for the workers to be taken to and from work but wouldn't pay them. After a couple of weeks of unpaid work, gang members would turn up at the Halcar Tavern with baseball bats and forcefully evict the migrants under threat of physical violence. The immigration crime team estimates that the pair lured around 130 Polish nationals to the UK in this way over a period of two years.

V.6.3.2 Children

An increasing number of children are being trafficked throughout the EU. Current reporting indicates that social security, welfare and benefits systems are being targeted by traffickers using trafficked children to support and justify claims linked to family and housing benefits.¹³⁵

The Child Exploitation Online Protection Agency (CEOP) survey¹³⁶ identified 19 children who had potentially been trafficked for benefit fraud in the UK between April 2008 and March 2009. The children were usually recruited and exploited by traffickers from the same State and ethnicity. The survey also suggested that the majority of the children were aged below 12 so that they could be exploited for longer. They were moved from address to address and also from adult to adult. The children were used as commodities by the traffickers to make a number of different fraudulent claims.¹³⁷

V.6.4 Emerging Types of Exploitation

The number of differing forms of exploitation is continually increasing as traffickers strive to make profits and a variety of root causes creates an increased supply of potential victims.

¹³⁵ Europol Organised Threat assessment 2011 p28.

¹³⁶ CEOP, 'The trafficking of children into and within the UK for the benefit fraud purposes' (October, 2010) p4.

¹³⁷ Finch, N. Child Trafficking in the UK in the Context of International Legal Protection in *Human Trafficking Handbook recognising Trafficking and Modern-Day Slavery in the UK* ed. Chandran, P. (LexisNexis 2011) p 212.

V.6.4.1 Drugs

Drug Mules

There is evidence to show that both women and children are being recruited to smuggle drugs. Women are predominantly recruited because they are vulnerable and also as they are often the main carer in a household. They are recruited by coercion and also by the “loverboy” method.¹³⁸ There are reported cases where victims are deceived and then threatened into carrying drugs.¹³⁹

Case Study: Uzbekistan

Two young women from Uzbekistan (N & T) were recruited in their home country with the false promise of gaining work as waitresses in Thailand. On their arrival in Bangkok, the victims were forced into prostitution for 6 months. Later, N and T were sold to a Chinese gang with assurances for their freedom from exploitation upon the condition of carrying "goods" in their suitcases through the Thai border from the third country. Both of the victims accepted the proposal and were transported from Pakistan to Thailand smuggling drugs. In 2000, N and T were arrested at Bangkok Airport, prosecuted and convicted to 32 and 25 years of imprisonment for drug trafficking. In 2012, T was amnestied and repatriated with the help of an international NGO. Despite a petition written to the King of Thailand in 2005 and a constant advocacy campaign, the second young woman is still serving her 32 year prison sentence.¹⁴⁰

Drug Supply and Manufacturing

The ILO definition of the use, procurement or offering of a child for illicit activities, in particular for the production of and trafficking in drugs, corresponds to the definition in international treaties.¹⁴¹

¹³⁸ IOM Global Eye on Human Trafficking Issue 5/May 2009 Straddling the Border: Drug Mules and Human Trafficking.

¹³⁹ bulawayo24.com/index-id-news-sc...byo...article.../index-id-news-sc-...0.

¹⁴⁰ Source: NGO "Istiqbolli Avlod".

¹⁴¹ ILO Tackling Child Labour from Commitment to Action (2012) p4

The Europol Knowledge Report mentions the involvement of trafficked children in the production, manufacture and supply of controlled drugs.

Children have been trafficked into OSCE participating States to work in cannabis farms (see above in V.6.2.4 Children). In the UK the National Society for Prevention of Cruelty to Children's (NSPCC) Child Trafficking Centre's casework experience stated that children are often trafficked for: drug mules, drug deals or as decoys for adult drug dealers.¹⁴²

V.6.4.2 Nail Bars

Within OSCE participating States there is a growing use of nail salons to hide and legitimize human trafficking activities. The salons are mainly owned and run by Vietnamese nationals who recruit Asian women for labour trafficking. The women work in the salons and are paid little or no money. The salons are also used by the criminals for money laundering.

These women may be trafficked to work in the nail salons during the day, and then pulled into sex trafficking at night.¹⁴³

V.6.4.3 Illegal Adoption (or Children for Adoption)

The definition of human trafficking does not refer to illegal adoption as such. Nevertheless, where an illegal adoption amounts to a practice similar to slavery as defined in Article 1 (d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, it falls within the scope of the Convention.¹⁴⁴

Illegal adoption of children as a form of human trafficking has become another highly profitable activity for organised criminal groups, private child adoption firms and state officials around the world, driven partly by demand for international adoption, particularly in Europe and the United States. However, trafficking for illicit adoption can occur not only trans-nationally, but internally as well. Through various means, such as abduction and falsification of adoption permits, criminals take advantage of shortcomings in legislation, law enforcement, birth registration and social welfare systems.¹⁴⁵

¹⁴² NSPCC Stop child trafficking in its tracks. Advice for social workers. (2012)

¹⁴³ www.huffingtonpost.com/phillip-martin/nail-salons-and-human-tra_b_669076.html

¹⁴⁴ Paragraph 94 of the 'Council of Europe Convention' Explanatory Report

¹⁴⁵ Bosco, F & others, Human Trafficking Patterns in Friesland, C. *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) p54.

In some cases, mothers or parents are paid to sell their baby or young child. In others, mothers are told that a baby was stillborn so that hospital staff can traffic the baby. There are numerous cases of birth certificates or similar documents being falsified to show that babies belong to someone other than their birth mother. In some countries intermediaries who appear to be acting legally, such as lawyers and notaries, charge such exorbitant fees that they are profiteering from trafficking and should themselves be considered as accomplices.¹⁴⁶

There is concern that potential victims, when pregnant, are being recruited to another State. When the baby is born, it is then given up for legal adoption within that State. The victims, who are vulnerable, believe that they are giving their babies the possibility of a better life.

Case Study – Cyprus

According to several sources of information and intelligence that have been forwarded to the police, a large number of foreign pregnant women are recruited to go to Cyprus to deliver their babies and give them up for adoption to childless couples. They are falsely promised large payments and a better life for their new born children in warm and loving houses, etc. Traffickers are usually the same nationality as their victims.

Upon arrival, the women are introduced to a lawyer, who will arrange the adoption, and a doctor, who will deliver the baby. In every case, the baby is delivered via a scheduled caesarean section.

The women are offered a room and board, usually by the family that will adopt the baby. The pregnant women do not choose the family. After the birth, the adoption documents are ready and waiting. The women are given a small amount of money and sent back home.

Children from orphanages are also illegally adopted and nationals from one State will travel to another to sell their children in either a semi-legal or illegal situation.

¹⁴⁶ Dottridge, M. Kids as Commodities. Child trafficking and what to do about it (2004) Terre des Hommes.

Case Study – Ukraine

Ukrainian border guards arrested an Italian woman who attempted to illegally transport a 3 month old baby out of Ukraine. The 66 year old woman and her 39 year old son were trying to take the baby out of Ukraine. They didn't have any documents for the baby except the certificate of return to Italy issued in the Embassy of Italy in Ukraine.

It turned out that the baby was born in one of the reproductive technology clinics in Ukraine. The foreigners asserted that they were going to take the child abroad legally. However, they could not provide any documents confirming this. They also failed to explain if such documents existed.

V.6.4.4 Forced Marriages

Forced marriages have been recognised both from a victim protection human rights perspective and as a criminal offence. Some OSCE participating States have specific legislation and protection systems to guard against potential forced marriages and to prevent and protect victims. However, the facts of forced marriage cases show that a significant number of them are human trafficking cases.

Despite being recognised as a human rights violation and being condemned by the United Nations General Assembly (UNGA), the practice of forced marriage still occurs today on a significant scale.¹⁴⁷

What is Forced Marriage?

A forced marriage takes place when the bride, groom or both parties do not consent to be married, but are forced to by others, usually their families. Those victims forced into marriage may be deceived or coerced into going abroad on the pretence of a family holiday. Once out of the country they are informed they are to be married, usually to a partner chosen by the families. If they do not consent they can be physically threatened and/or emotionally blackmailed into the marriage.

Globalisation and the use of the Internet have resulted in an increase in forced marriages and also an increase in intermediaries arranging these marriages. This can include traffickers using commercial introduction services offering "mail-order brides".

¹⁴⁷ Bosco, F & others, Human Trafficking Patterns in Friesland, C. *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) p53.

The trafficking takes place if the “bride”, after arriving in the country of destination, is held in a condition of servitude through the use of force, fraud or coercion for the purposes of forced labour or commercial sexual exploitation.¹⁴⁸

Children

Victims of forced marriage are often children, under 18, who are forced into marriages that they are unable to consent to. Child forced marriages are often a result of cultural practices.

V.6.4.5 Ritual Abuse

Ritual abuse and torture can refer to paedophilic parents, families, guardians and like-minded adults who abuse, torture and traffic their own and other children using violent group gatherings coded as “rituals and ceremonies”.¹⁴⁹ There have been a number of reported cases in participating States where victims, predominantly children, have been trafficked for ritual abuse.

Case Study - UK

"Adam" was the name given to a young Nigerian boy whose torso was discovered in the River Thames, London on 21 September 2001. He is believed to have been between the ages of four and seven. His murder is believed to have been linked to a ritual killing. Despite the use of forensic science, the Metropolitan Police Service has not caught the killer.

The torso was discovered on the afternoon of Friday, 21 September 2001, as it floated past the Tower of London towards Tower Bridge in Central London. A passer-by crossing the bridge had noticed an orange object in the water, and, realising it was a body as it passed under the bridge, alerted the police. The Metropolitan Police sent its marine search unit to the scene, who recovered the torso further downstream. The body was found to be the torso of a young black child, the orange being a pair of shorts around the stumps of the legs.

¹⁴⁸ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach (2011) p71.

¹⁴⁹ Sarsa, J. and McDonald, L Ritual Abuse. Torture in Families. In Jackson, N. A. *Encyclopedia of Domestic Violence* (2007) pp603-611

Police soon realised after recovering only the torso that the circumstances were unusual and atypical of a sex-related murder. It was initially suspected that the murder was a medicine murder. This type of killing involves the removal of body parts such as the ears or genitals. However Adam's genitals had not been removed, and so the police ruled this theory out. A post-mortem was carried out on Adam's remains. This established from the amount of British food in Adam's stomach and pollen in his lungs that he had only been in the United Kingdom for a few days. A potion that contained ingredients used in West African ritual magic was also discovered in his stomach.

V.6.4.6 Child Sex Tourism

This is the abuse of children by those who travel from their own State to another State to engage in the sexual exploitation of children. It is a global problem that is increased by the use of the Internet, global travel and vulnerability of victims.

Good Practice: Europol

Europol Project HAVEN - "Halting Europeans Abusing Victims in Every Nation"

The Project was launched in November 2010 with the aim of detecting and disrupting travelling sex offenders originating from the EU that exploit children both inside and outside Europe.

In January 2012, a second Project HAVEN joint action day was organised with the authorities targeting persons primarily arriving from destinations known for being 'child sex tourism' countries and cities to which European paedophiles travel to engage in child sexual exploitation.

The ultimate objective of Project HAVEN is to establish a permanent and proactive notification system on travelling European sex offenders.¹⁵⁰

¹⁵⁰ EUROPOL Child Sexual Exploitation Fact Sheet 2012

V.6.4.7 Armed Conflict/Child Soldiers

Child soldiering involves the unlawful recruitment or use of children, through force, fraud or coercion, as combatants or for labour or sexual exploitation by armed forces. Perpetrators may be government forces, paramilitary organisations, or rebel groups. Many children are forcibly abducted to be used as combatants. Others are made to work as porters, cooks, guards, servants, messengers or spies. Young girls can be forced to marry or have sex with male combatants. Both male and female child soldiers are often sexually abused.¹⁵¹

V.6.4.8 Sports

There are an estimated 20,000 child players brought illegally into Europe through Africa each year, and taken to unregistered soccer schools. They are then smuggled to European teams who are looking for new talent. Those who do not make the grade are “dumped” onto the streets with no documents and no money. It is estimated that in France alone there are 7,000 boys and men, 98% of whom are illegal immigrants and 70% under the age of 18, who are homeless and on the streets.¹⁵²

These child players, some as young as 13 and vulnerable, are recruited by unscrupulous bogus agents with the promise of the money they could earn as footballers. They and their families are assured that they will be successful and are certain to become professional footballers. Their families often incur large debts, and have to sell their belongings and inheritance, to pay for their transport to Europe. When the bogus agents realise they can make no money they abandon the victims who are then left alone in a foreign country.

They are unable to return home because their families have incurred such large debts and believe that they will be successful.

¹⁵¹ Kinsella, N. Rankin, G. Human Trafficking – The Importance of Knowledge Exchange. in ed. Akhgar, B. Yates, S. *Intelligence Management Knowledge Driven Frameworks for Combating Terrorism and Organized Crime*. (Springer 2011), p166

¹⁵² D'Estree, C. Voices from Victims and Survivors of Human Trafficking in ed Winterdyk, J. Perrin, B. Reichal, P. *Human Trafficking Exploring the International Nature, Concerns, and Complexities* (CRC Press 2012) p96.

V.6.4.9 Fishing Industry

The fishing industry encompasses fishing at sea, which is defined as trafficking that takes place involving seafarers and fishers in the context of at-sea activities (including fishing, transportation, and fish processing, while on vessels, rafts, fishing platforms, or otherwise offshore).

The majority of reported cases of human trafficking within the fishing industry refer to victims from South East Asia. These involve informal recruiting processes where victims are given a “contract” of employment and often they have to go into debt to pay the “brokers fee” to obtain travel and visa arrangements. Once they arrive on the ship they are locked in a cabin, their documents are taken from them and they are forced to work in exploitative conditions.

Whilst the majority of these victims work in South East Asia, the fish they catch enters into the supply chain of OSCE participating States. Recent reports have also raised concerns about the increasing number of immigrant workers being recruited into the fishing industries of participating States.

Similar recruitment methods were used to recruit Ukrainian males into the fishing industry. They were aged between 18 and 71 years old, with age being a possible vulnerability factor; the younger males being too inexperienced and the older males too old for the job market. They were recruited by agencies, which are believed to have been aware of and perhaps complicit, in the trafficking operation. Those that paid a recruitment fee were trafficked to Russia and others were trafficked to Turkey. They worked seven days a week for eighteen to twenty two hours each day in harsh conditions. They were unable to leave the ship and there is evidence that violence was used against them.¹⁵³

Fishermen have also been recruited from the Philippines to Northern Ireland and Scotland through an agency that charged a fee for a job placement. The fishermen stated that when they arrived, their passports were taken and they worked in situations ‘akin to forced or compulsory labour’. This included the fishing boat owners either refusing to repatriate them or abandoning them in foreign ports. They were subjected to excessively onerous working hours as seafarers and their wages were withheld, leaving them without the means to return home. In Northern Ireland, male and female migrants from Eastern Europe were also

¹⁵³ Trafficked at sea. The exploitation of Ukrainian seafarers and fishers. (IOM/Nexus Institute 2012) pp 17-19.

employed in the fish processing industry. They worked long hours, lived in accommodation provided for them, had their documents taken from them and didn't receive the salary they were promised.

Case Study: Northern Ireland

Issues of severe exploitation and forced labour, including poor working conditions, low pay, restricted movements and verbal and physical abuse, among migrants working in the fishing, mushroom and catering industries and among Filipino and Romanian Roma migrants, have been found. In the fishing industry in Northern Ireland there are currently over 160 Filipino workers, working predominantly in Kilkeel, Portavogie and Ardglass.

5.6.4.10 Forced Criminality

Forced criminality covers a range of crimes including the selling of stolen DVDs, ATM theft and bag-snatching. Whilst adults can be trafficked for these purposes, it appears that the traffickers prefer to use children.¹⁵⁴

5.6.4.11 Other Forms of Exploitation

These include:

- Illicit conduct of biomedical research¹⁵⁵
- Ovaries for artificial insemination (Ukraine)
- Surrogate mothers
- Terrorism
- Unwanted pregnancies/forced pregnancies; embryos sold as "youth injections". (Ukraine)

Further and more detailed information on exploitation can be found in the following training guides:

- ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Background Reader in EU Member States and Accession and Candidate Countries (2006) – Chapter 2 p24-26
- OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing approach (2011) pp70-75

¹⁵⁴ Finch, N. Child Trafficking in the UK in the Context of International Legal Protection in *Human Trafficking Handbook recognising Trafficking and Modern-Day Slavery in the UK* ed. Chandran, P. (LexisNexis 2011) p 212.

¹⁵⁵ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach (2011) p71.

VI. Control Methods

VI.1 Introduction

The purpose of this chapter is to inform police investigators how traffickers control their victims to ensure that they remain within the exploitative environment. Just as it is essential that those investigating human trafficking offences know how to identify victims, they also need to know why and how traffickers control them. The control that traffickers have over their victims is the reason that only a minority of victims try to escape.

Traffickers earn profits from their victims through differing forms of exploitation, however, they have to ensure that victims remain within those exploitative conditions. This is achieved with a variety control methods which ensure that the trafficker has continuous control and that the victim remains within the trafficked situation.

Continuous control over the victim is achieved by the traffickers through many different, partly violent, mechanisms. Each mechanism may be used in isolation from the others, but in the majority of cases, they are implemented together so as to create a condition of actual or psychological imprisonment of the victim.¹⁵⁶

The recognition of these control methods can improve investigations and assist not only in the protection of victims, but in how they can be interviewed successfully. When trafficking cases are prosecuted, these methods of control and how they are employed by the traffickers need to be explained at each stage of the criminal justice system, especially to those empowered to make decisions.

Differing control methods may be used in each separate element of the trafficking process. Children are unable to consent to the means set out in the Palermo Protocol and if the exploitation is a breach of human rights, no victim can consent to that exploitation.

¹⁵⁶ ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Background Reader in EU Member States and Accession and Candidate Countries (2006) p32.

VI.2 Methodology

There has been a discernible change in the control methods adopted by traffickers, especially with regard to victims of sexual exploitation. There is less use of excessive force and in some cases victims are allowed to keep some of the monies they have obtained through their exploitation. Victims have even been allowed to leave the trafficking situation for short periods of time, even returning to their homes. The effect of this change is twofold. Firstly, victims can potentially earn more money as they do not have any injuries. Secondly, it can be more difficult to secure a conviction as the traffickers maintain that they do not control victims.

With a few exceptions (such as Romanian and Albanian speaking groups in Italy), traffickers have considerably reduced the amount of violence used against their victims. Many have sought to adapt their image to that of helpful service providers and indispensable intermediaries between clients and victims.¹⁵⁷

In many trafficking cases there may be initial consent of the trafficked person to (illegally) travel abroad, to work for little salary, to do clandestine work, to work as a prostitute and so on. However, according to the Palermo Protocol, the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the improper means (coercion, deception, etc.) have been used.¹⁵⁸

VI.3 Differing Control Methods

VI.3.1 Debt Bondage

The victim is required to repay debt accrued for being transported to the destination State or region. They are required to work in an exploitative situation to repay the debt, which can increase due to punitive interest charges, charges for accommodation, food and transport. The victim may also be sold on by the original trafficker and the debt can start again as a result of this re-sale. The victim may have accepted debt at the outset but without the knowledge that, in reality, it could never be paid back.

¹⁵⁷ Europol Knowledge Product Trafficking in Human Beings in the European Union (2011) p11.

¹⁵⁸ ICMPD Anti-Trafficking Training Material for Judges and Prosecutors in EU Member States and Accession and Candidate Countries Background Reader 2006 p32.

VI.3.2 Isolation

Isolation can be used to deliberately control victims, in particular to ensure that they do not escape from the trafficking situation. Victims are kept away from others and are not allowed to communicate with anybody, thus compounding the isolation.

Victims cannot usually speak the language of the State that they have been trafficked into, and the trafficker ensures that they are given no opportunity to learn the language. They may be moved from location to location so that they are unable to make any ties within a location. They may not be given a phone or any other communication tools. These methods of enforcing isolation make the victim more reliant on the traffickers.

VI.3.3 Fear/Force/Violence

Violence can be used, in some cases excessively, to control victims, particularly to ensure that they do not escape from the trafficking situation. Violence may also be demonstrated against a victim to ensure that all other victims are compliant, in the belief that if they leave the trafficking situation they will also be subject to such violence.

VI.3.4 Threat of Violence

Victims can be controlled by the threat of violence to themselves and/or members of their family. This is particularly effective when the victim either knows or believes that the trafficker knows their family. Victims remain in the trafficking situation in the belief, genuine or otherwise, that their family will be harmed.

Case Study: Cyprus

“Talking to J, I realised that he raped her too. He told us he would take us to the doctor, but I didn’t want to. So I didn’t go. I got scared because of his threats that he would tell my family what happened to me. I got scared that if they found out what happened, they would kill me, and because of his threats that night I started to go with customers for sex.”

VI.3.5 Ju-Ju

Traffickers use black magic in the form of Ju-Ju by having a witch doctor, who may or may not be involved in the trafficking operation, place a spell on the victim before they are trafficked. This spell ensures that the victim complies with the wishes of the trafficker and does not try to escape. Victims are usually Nigerian females who are trafficked into Europe for sexual exploitation.

Traditionally Ju-Ju has been used by families who either want to know the future or when they want to ensure that no bad luck will befall their family or community. This can result in children being cursed and ostracised from the family, making them vulnerable to traffickers.

Case Study: UK

A man was convicted of trafficking two Nigerian girls who had been controlled with Ju-Ju magic rituals. It was the first case of its kind in Europe. AH, aged 32, imprisoned both girls, aged 14 and 16, at his East London home before attempting to traffic them to Spain and Greece as prostitutes.

It took police two years to persuade the victims to speak openly about their ordeal, such was the fear created by the ritual. One victim fully believed she would die after appearing in court. The girls came from small villages in Edo, Nigeria, and were sold into prostitution with the help of the local Ju-Ju priest.

Girl A was brought up by an uncle who physically and sexually abused her. Girl B was abandoned by a river as a baby and taken in by the man who found her. But she was treated as a "domestic drudge" and frequently beaten.¹⁵⁹

VI.3.6 Removal of Documents

The confiscation or removal of the victim's documents, by the trafficker, makes it almost impossible for them to leave trafficking situation. This is usually done when a victim arrives at the destination. Without documents they have no official identity, making it impossible to escape.

¹⁵⁹ BBC News 7 July 2011

VI.3.7 Renunciation to Authority

Victims are threatened with the relevant authorities being informed, and arrest, if they do not behave as they are told. The victims are made to believe that the work they are doing is illegal, that they are committing a crime or that they are illegally in a country. The traffickers inform victims that they can be arrested even when they are legally in a country or region or the work that they are undertaking is legal (for example when working in prostitution in Holland or working in Schengen States when permissible).

VI.3.8 Renunciation to Family

The traffickers inform the victims that they will tell their families and/or communities that they are either working in prostitution or in a forced labour situation. This can be particularly effective in collectivist cultures¹⁶⁰ when victims know that they will either bring disrespect to or lose face with their family and/or communities. This control method can also be applicable when a victim comes from a religious background.

Case Study: Cyprus

“We were threatened that if we refuse to go with customers for sex, he will tell our families that we are not virgins and that we have sex with clients. I was scared and I had no choice but to do what S said. I come from an Arab country where losing your virginity is a serious moral offence and I may even be killed by my family.”

VI.3.9 Non-payment of Wages

Cases of trafficking for forced labour, where migrants have been trafficked, are generally dealt with by the authorities primarily as smuggling issues and violations of national immigration or labour laws. This is a flawed approach, which puts victims in the position of being criminals. It focuses on the wrong target and is an obstacle to effectively fighting traffickers and trafficking.¹⁶¹

¹⁶⁰ See Clarification of Terms (p11).

¹⁶¹ Council of Europe Parliamentary Assembly. Report.Doc. 13086. 04 January 2013. Trafficking of Migrants for Forced Labour.

Those who exploit victims often do not pay wages, thus making victims too impoverished to leave and fearing that if they do leave they will not receive any of the monies that they are entitled to. Traffickers can also impose fines and administer financial punishments from wages through deductions for food, accommodation and transport. This ensures that the wages that victims earn are so trivial that they are unable to leave the situation of exploitation.

Case Study: Germany

Serbian metalworker trafficked to Germany

A metalworker from Serbia travelled undocumented to Hamburg in a desperate search for a job to support his family and educate his children. His employer required him to work 13 to 14 hours per day, six days a week. He received small payments at irregular intervals. A large part of his salary was withheld for seven years, and by June 2008 this amounted to 50,000 Euros of unpaid contractually agreed wages. In addition, the employer had promised him legal residence documents which he never received. After a serious work accident in which the worker drilled a hole through his hand, the employer refused to help him receive medical treatment fearing that the undeclared employment would be uncovered.

In June 2008, the migrant approached "Migration und Arbeit" (Migr.Ar.), the centre for undocumented migrant workers of Ver.di. The trade union centre and the lawyers of the German national trade union centre DGB sued the employer on behalf of the migrant after he had returned to Serbia.

The metalworker, after a long and tedious legal battle, was finally awarded 25,500 Euros in back wages in a settlement reached in the labour court of Celle, in the German state of Lower Saxony.¹⁶²

VI.3.10 Induced Substance Addiction

Victims are initially forced to take drugs or alcohol, or both, until they become addicted. The traffickers continue to supply the substance to the victims and, thereby, have control.

¹⁶² ITUC Never work alone Trade Unions and NGOs joining forces to combat Forced Labour and Trafficking in Europe (2011) p32.

VI.4 Children

Child trafficking begins when a child is recruited by someone or, in some cases, approaches a recruiter to find out about how to move to find work in the hope of being able to leave the place where they are for opportunities elsewhere. A recruiter may be the person who actually employs the child or an intermediary, part of a chain of people involved in the trafficking.

Recruitment happens in many different ways. Children may be under pressure from their families to find work to help support the family. Often, there is a relationship of trust involved: children may be approached by someone from their own community. Girls are especially at risk of being lured by men who show an interest in them and promise them love, a good job, or even marriage.¹⁶³

For further information and guidance on control methods please refer to the following training guides:

- UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other forms of Exploitation, Textbook 1
- ICMPD Anti-Trafficking Training Material for Judges and Prosecutors in EU Member States and Accession and Candidate Countries Background Reader 2006
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009), Module

¹⁶³ UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other forms of Exploitation Textbook 1: Understanding child trafficking (2009) p27.

VII. Internal Trafficking¹⁶⁴

VII.1 Introduction

The objective of this chapter is to inform police investigators that a significant percentage of human trafficking offences take place within their own State.

Human trafficking is not just a transnational crime; people who are trafficked may be transported internationally, regionally, or as is the case with many trafficked persons, within their own national borders.¹⁶⁵ Victims who are trafficked either regionally or nationally can either be nationals of that State or non-nationals who are within the borders of the State.

The UNODC Global Report quantified the differing and emerging types of trafficking. Between 2007 and 2010, almost half of the victims detected worldwide were trafficked across borders within their region of origin. Some 24 per cent were trafficked inter-regionally (i.e. to a different region). The IOM indicated that 34 per cent of all trafficking is internal trafficking. There has been an increased awareness of the scale of this problem within OSCE participating States. Research carried out in Serbia in 2012 stated that within the country, internal trafficking accounted for 49.58 per cent of the identified victims.¹⁶⁶

The EU Expert Group stated that if the offence is not recognised it will not be investigated or prosecuted, as it is mistakenly believed that trafficking is transnational only. The awareness of internal trafficking within all sectors has been limited and it is now recognised as a significant area of human trafficking, either due to an increase in internal trafficking or a growing awareness of the problem. Unfortunately, it is an area of human trafficking that has been ignored and it is now essential that these cases are properly identified, investigated and prosecuted.¹⁶⁷

Some States have chosen to maintain a clear distinction between legislation prohibiting trafficking in persons, and laws on particular forms of exploitation mentioned in the Palermo Protocol. This has resulted in some victims of internal trafficking not being recognised and thus not provided

¹⁶⁴ This guide does not seek to differentiate between internal trafficking and domestic trafficking and the terms are used inter-changeably.

¹⁶⁵ IOM Caring for Trafficked Persons Guidance for Health Visitors (2009) p8.

¹⁶⁶ Maria Andjelkovic ASTRA Serbia, OSCE Conference Azerbaijan (Dec 2012).

¹⁶⁷ EU Group of Experts on Trafficking in Human Beings Opinion 7/2010 p50.

with the protection or assistance encouraged by the Protocol or by other international instruments.¹⁶⁸

It is therefore important that police investigators ascertain whether their national legislation will permit them to investigate cases on internal human trafficking.

Legislation: Germany

Section 232 of the German Criminal Code: Human trafficking for the purpose of sexual exploitation

Whoever exploits another person's predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person, or to suffer sexual acts on his own person by the offender or a third person, shall be liable to imprisonment from six months to ten years.

The Commonwealth of Independent States (CIS) is rarely reported as a destination country, yet the rate of internal trafficking tends to be quite high.¹⁶⁹ In some OSCE participating States internal trafficking is more prevalent because it is easier for the perpetrators to traffic victims internally than transnationally.

VII.2 Modus Operandi

Potential victims of internal trafficking are trafficked into all forms of exploitation. The perpetrators of victims of sexual exploitation use differing methodologies to recruit potential victims. Common practice is to employ a grooming¹⁷⁰ process which often starts the relationship. The victim is manipulated into thinking of the trafficker as their 'boyfriend'. The relationship can begin via meetings through friends, on the Internet or, as in cases within the UK, where victims have initially met the trafficker (assumed boyfriend) in large shopping centres or even outside school gates.

¹⁶⁸ ICAT Inter-Agency Coordination Group against Trafficking in Persons, The International Legal Frameworks concerning Trafficking in Persons (2012) 2.2.

¹⁶⁹ Bosco, F & others, Human Trafficking Patterns in ed Friesendorf, C. *Strategies Against Human Trafficking: The role of the Security Sector* (2009) p57

¹⁷⁰ See Clarification of Terms (p13).

In the majority of cases where the trafficker poses as a boyfriend, he is noticeably older than the victim. He entices the victim through psychological coercion, pretending to be in love with her and offering temptations such as mobile phones, jewellery, clothes and alcohol. Victims are encouraged to stay out late, which can lead to them not returning home, and the traffickers also endeavour to separate their victims from their family and peer-group.

In the Netherlands this system of grooming has been referred to as “loverboy”¹⁷¹, and often the trafficker has a sexual relationship with the victim. The victim becomes “controlled” by the trafficker and is eventually either coerced or forced into either prostitution or sexual exploitation.

Victims who are trafficked into labour exploitation are often from rural areas. They are trafficked to larger cities and towns with the promise of employment and a better life. This can result in exploitation for forced labour, begging and other criminal activities.

Case Study: Moldova

O (12 years old) lived with her sister and mother in a village in Moldova. In May 2004 one of the family’s acquaintances offered work to their mother in agriculture in Kursk Oblast, Russia. She was promised a nice salary and good board and lodging conditions at the expense of the agricultural enterprise in Russia.

The mother complained that she had nobody to leave her underage daughters with. Her acquaintance answered that she saw no problem with that since summer holidays were close and she would be able to take her children with her. The mother would work, while the children would have a nice time in the country and by the start of the school year they would come back to Moldova. The family desperately needed the money and O’s mother gladly accepted this proposal to work in Russia.

In late May, when the summer holidays came, the family went to Russia where there were 25 other people from Moldova at the workplace. All of the workers were managed by a team leader. He immediately took the family’s documents and declared that the children would have to work as well since he wasn’t going to support them for nothing. The children said they were on holidays and wanted a rest, but they were threatened with a beating if they refused to work.

¹⁷¹ See Clarification of Terms (p11).

As a result, the children had to work on equal terms with adults for many hours a day, without weekends. All workers were constantly supervised and were not paid any money, only given meals. They lived on a campus which had neither a water supply nor toilets. On the few occasions the militia came to inspect, people were afraid of telling the truth about their conditions. When the summer holidays ended the children were not allowed to return to Moldova as planned.

In the summer of 2005, after one of the militia's inspections, the mother was deported from Russia. O and her sister remained alone and decided to flee. When a convenient occasion arose, they fled the workplace without documents. They received help to get to the social service and were referred to a rehabilitation centre. With the assistance of the Embassy of Moldova they returned home. In 2007 they complained to the police, and eventually the team leader was sent to prison for 8 months.¹⁷²

Another methodology used in internal trafficking for forced labour involves the trafficking of vulnerable young males. They are usually between 18 to 25 years of age, have either a drink or drugs problem or have become vulnerable through mental or physical illness, and often lead a chaotic lifestyle. These victims are targeted by traffickers or through a middleman who recruits victims on behalf of the traffickers. They are offered bogus employment, usually by deception, and are then recruited into labour exploitation.

VII.3 Indicators

VII.3.1 Sexual Exploitation

- Going missing from home
- Associating with older people, especially older men
- Sexual activity with older men
- Breaking away from family and former friends
- Stop going to school
- Possession of gifts and/or money
- Drug and/or alcohol abuse
- Secrecy about where they are going and who they are associating with

¹⁷² La Strada Trafficking in Persons for Forced Labour Exploitation in the Republic of Moldova Problems and Solutions (2011) p95

VII.3.2 Labour Exploitation

- Live in rural regions
- Poverty
- Unemployed
- Family to support
- Homeless or living in poor conditions
- Young males
- Drug and/or alcohol abuse
- Chaotic lifestyle

VII.4 Identified Good Practice

Police investigators need to ensure that they develop working relationships with all law enforcement agencies within their own States. They also need to ensure that their domestic legislation allows them to investigate these cases and that policies are in place to facilitate effective co-operation and communication.

VII.5 Children

In a number of OSCE participating States, traffickers target young female victims between the ages of 12-16 for sexual exploitation. The preferred method is to groom the children into exploitation and then either keep them in the exploitative situation by force, threats to the victim and/or family, and induced addiction to alcohol and/or drugs.

VIII. Victims of Human Trafficking

VIII.1 Introduction

One of the five priorities of the EU strategy is identifying, protecting and assisting victims of trafficking. It states that it is crucial to identify potential victims, so that anyone who has dealings with a victim of human trafficking can best attend to the “five broad needs of a victim”: respect and recognition, assistance, protection, access to justice and compensation. This also enables police and prosecution authorities to better investigate and punish traffickers.¹⁷³

The aim of this chapter is to ensure that all human trafficking investigations and prosecutions are victim-centred, respecting the human rights and dignity of the victim, and putting the victim’s concerns at the forefront of any investigation. Investigators and prosecutors need to know the issues that confront victims from the trauma of the trafficking situation, why they need protection, how to identify victims, why victims may be unable or unwilling to give evidence, how they should be interviewed, and how they should be afforded victim protection.

In practice this means that all victims of human trafficking are entitled, as a minimum, to the following standards:

- respect for their human rights
- protection and safety
- individualised care
- the right to self-determination
- full information and consent
- the right to non-discrimination and confidentiality.

¹⁷³ The EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016). Priority A

VIII.2 Gender

We cannot afford to underestimate the gravity of discrimination and exploitation as cross-cutting components of trafficking, seriously undermining the core values of the OSCE. Trafficking is a gross violation of human rights, fundamental freedoms and human dignity, and is often a form of violence against women.¹⁷⁴

The combination of discrimination and other cultural practices based on gender means that girls are more available to be trafficked than boys, as well as being in greater demand. Human trafficking is consequently a major gender issue, whether it affects children or adults.¹⁷⁵

The Framework Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, gender and support measures should also be gender-specific where appropriate. Police investigators need to take into account gender, culture and the age of the victim when investigating human trafficking cases.¹⁷⁶

VIII.3 Definition of a Victim

Article 4(e) of the COE states that for the purposes of the Convention ““victim” shall mean any natural person who is subject to trafficking in human beings as defined in this article”.

Concern has been expressed at the use of the term “victim”, as it is an unfair representation of a person who has been subjected to human trafficking. The word “survivor” or “sufferer” is now being used by an increasing number of agencies. In the context of gender-based violence, there are those who argue that the term “victim” carries connotations that blame and degrade the victim. The term “survivor” is often preferred, as it seems more empowering for those who survive the crime they have experienced.¹⁷⁷

¹⁷⁴ OSCE Factsheet Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

¹⁷⁵ Dottridge, M. Kids as Commodities Child trafficking and what to do about it (2004) Terre des Hommes p39.

¹⁷⁶ 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 replacing Council Framework Decision 2002/629/JHA, L 101/1 (3)

¹⁷⁷ UNODC Training Manual for Law Enforcement and Prosecutors: Combating Trafficking in Persons (June 2006) p75.

This is no defined profile of a victim and it can depend on the type of exploitation. Police investigating human trafficking cases and trying to identify victims may find that they have no common characteristics. Investigators should have an open mind and look for potential trafficking situations rather than rely on stereotypical images of victims and types of human trafficking.

VIII.4 Victim Identification

Precise and careful identification of presumed victims of trafficking in human beings is above all necessary to protect their physical safety and their rights to ensure that they receive access to vital services. It should also ensure access to justice for those who are victims of crime. Proper identification of trafficked persons can also lead to more criminal investigations and may help to disclose other crimes.¹⁷⁸

It is important that potential victims of human trafficking are identified, even though there is no known profile of a victim. The profile is dependent on exploitative end use or demand and it is important to understand how a victim can be identified. This is essential both for the protection of victims and, also, to identify the characteristic elements of the differing types of human trafficking and to ensure that they are identified as victims of human trafficking and not smuggled migrants. Victim identification is still the main method of identification of a criminal offence of human trafficking.

Police investigators need to be aware of the indicators and related processes available to identify potential victims of trafficking. They need to know the importance of operational indicators and how they are used within investigations and prosecutions. The identification of trafficked persons is often time consuming because of the complexity of the crime and the networks of individuals involved. The most common and obvious challenge in identifying victims of human trafficking is the hidden nature of the crime.¹⁷⁹

Investigators can refer to the operational indicators of trafficking, provided by the “Delphi Methodology”, which can be used to assess if a victim is in a situation of exploitation.¹⁸⁰ The results of the surveys that underpin the methodology consist of four sets of operational indicators for adult and child victims of trafficking, and for labour and sexual exploitation.

¹⁷⁸ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A community Policing approach (2011) p21.

¹⁷⁹ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A community Policing approach (2011) p48.

¹⁸⁰ See Sexual Exploitation (5.4.1).

Each set is a structured list of indicators relevant to the following dimensions of the trafficking definition:

- Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators
- Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
- Recruitment by abuse of vulnerability: 16 indicators
- Exploitative conditions of work: 9 indicators
- Coercion at destination: 15 indicators
- Abuse of vulnerability at destination: 7 indicators

VIII.5 Impact on Victims

VIII.5.1 Trauma

The impact of human trafficking can have severe consequences for the victims, many of whom, especially victims of sexual exploitation, may have been raped and physically beaten. These adverse effects can affect victims both physically and psychologically. Victims can also be suffering from substance misuse and the effects of isolation.

The physical impact of exploitation includes:

- Trauma
- Health Symptoms
 - HIV/Aids
 - Sexual
 - Physical
 - Fatigue
 - Weight Loss
- Violence
- Stress
- Marginalisation

The psychological impact of exploitation includes:

- Mental Health
 - Depression
 - Anxiety
 - Hostility
- Post-Traumatic Stress Disorder (PTSD)

The impact of violence, trauma and emotional abuse on victims can cause victims to exhibit the following:

- Hyper-arousal
- Dissociation and de-personalisation
- Altered sense of time
- Memory impairment
- Acute indifference and apathy
- Fragmentation of perception, feeling, consciousness and memory
- Flashbacks

Victims can adopt survival strategies in response to systemic abuse, which can include adapting their behaviour to reduce the abuse, or as a response to being in a coercive relationship.

The three key survival strategies:

- Avoidance
- Identification with the trafficker: “Stockholm Syndrome”
- Numbing

Victims can also go through a number of stages of recovery after being removed from the trafficking situation.

These stages of recovery are:

- “Hostile victim”
- Loss of orientation
- Reconstruction and remembering
- Social reintegration

Investigators need to be able to manage the implications of trauma, and the following will assist them in this process:

- Recognising the trauma condition
- Ensuring no re-victimisation or criminalisation
- Apply the “Do no harm” principle
- Provide specialist support from the outset
- Aim for stabilisation before interview
- Expert psychologist evidence
- Limited but focused training

Police investigators need to be aware of why victims are either unable or unwilling to co-operate and the impact this can have on the provision of

victim protection, the investigation, and any interview with the victim. There are numerous reasons why a victim may not co-operate.

The obstacles to victim co-operation include the following:

- Personal characteristics
- Lack of knowledge
- Lack of trust
- Timeframe issues
- Fear of reprisal – self and loved ones
- Shame and stigmatisation
- Fear of seeing and being by seen by the accused traffickers

VIII.5.2 Culture

It is important for those investigating or prosecuting human trafficking cases to understand the victim's own cultural framework. An important dimension is whether the culture of the victim is individualistic or collectivist. In individualistic cultures, the developmental stage is psychological separation and development of a unique autonomous identity. In collectivist cultures such as Africa, Asia, the Middle East, and some Eastern European countries, personal development is not viewed in the same way. The group or family identity remains the focus and the individual is embedded in a collective identity. The shame of the individual is the shame of the family and group.

These cultural implications impact on all victim issues from protection to interview; for example trauma can be influenced significantly by the victim's culture and how they view their experiences. In collectivist cultures trafficked victims can fear being rejected and shunned by their families or community. This has consequences that impact on the risk assessment of an investigation as well as repatriation. There is an increased risk to the victim if their family or community become aware that they have been trafficked in a collectivist culture.

Investigators need to be aware of these cultural differences when dealing with victims. It is possible that they could alienate a victim or fail to build any trust, because they either fail to recognise or misinterpret information, due to not understanding the victim's culture. It may mean that a victim will not engage with an investigator because of their culture. They may believe they have brought shame on their family and that it is their fault. Alternatively, the victim may feel more threatened because of potential family or community reprisals.

Case Study: Cyprus

“My family’s religion is Islam and that means we live by certain Islamic rules. For example, sex before marriage is forbidden. I was a virgin before coming to Cyprus. Certain professions are also prohibited by Islam.

One of my brothers is a fanatic Muslim and a member of the movement “Brotherhood of Muslims”. He is very devoted to Islam and always gave me and my sisters guidelines on how to behave. Me and my sisters respect my brother and would never do anything to disgrace him. My brother is very strict, he would kill me. It is a matter of honour for him and is very common in my country to punish women who do things contrary to Islam.”

VIII.5.3 Victim Interviewing

Investigators must be aware of the implications of interviewing victims; they need to be able to manage the interview and set out clear objectives for the interview and acknowledge all potential obstacles. Only experienced investigators, who have received training, should conduct interviews. If a potential interviewer has not received training they should not undertake the interview. Interviewers also need to be aware of the different forms of trafficking and be able to differentiate between the exploitative types.

Interview practice differs within each OSCE participating State, from those States where only police investigators attend the interview to those States where NGOs can be present as well as other experts.

Good Practice:

Cyprus – forensic psychologists can be present in the interview.

Poland – NGOs can be present in the interview.

The objective of an interview is to obtain a truthful account of what has happened to the victim, however, the process of interviewing victims of human trafficking can be difficult. Interviewers must take the impact that trafficking has had on the victims into consideration, that what they say

may not be credible, that they may be unwilling or unable to be interviewed and that they may either mistrust or be afraid of the interviewer.

Police investigators should ensure that they are properly prepared for the interview and are aware of the factors, listed below, which can either assist or obstruct an interview.

Interview preparation:

- Most challenging interview of all
- Analytical preparation required
- Apply a partnership approach to the process
- Method of recording
- Video recorded interviews

Interviewing Victims:

- “Do No Harm”
- Know the victim
- Do not make promises
- Use correct and vetted interpreters
- Ensure anonymity and confidentiality
- Consent of victim
- Listen and respect
- Do not re-traumatise
- Put information to good use

Victim Credibility:

- Victims may lie
- Symptoms of trauma
- Fear of consequences
- Fear of reprisals
- Fear of deportation and/or detention and/or prosecution
- May seek to protect others (suspects and/or victims)
- May seek to please the interviewer

Managing Victim Credibility:

- Do assume its presence
- Do not assume it is fatal to the case
- Confront it head-on
- Accurate records of all interviews

- Specific interview on each point of inconsistency
- Assess available corroboration
- Inconsistency versus corroboration

Victim Implications:

- Denial of involvement
- Impaired decision-making powers
- Difficulty in providing coherent and consistent account
- Risk of plausible invention and evidential contradiction

VIII.5.4 Children

Interviewing child victims of trafficking is different from interviewing adults and should only be undertaken by investigators who have had specialist training. Investigators should also consider including specialist child agencies, and/or let a parent or guardian to attend the interview, legislation permitting, to support and protect the victims. It is essential that the interview is kept informal and that all of the questions are phrased and explained in a manner that a child can understand. The interview should take place in a child-friendly location and should be videoed if possible. The child should be reassured at all stages of the interview.

VIII.5.5 Victim Risks

If the interview presents the risk of re-traumatising the victim and it is not in the interests of the victim it should be stopped. The rights of the victim have priority over any interview.

VIII.5.6 Victim Protection

The objective of victim protection is to provide assistance to victims of human trafficking, ranging from the need for translation, interpretation, travel documents, and other assistance, to a referral to specialised service providers. Victims may need protection or social, medical, physical, psychological and legal support, that may help with recovery and empowerment for victims. Victims also need protection throughout the criminal justice system and in extreme cases may require witness protection.

Article 11 (4) of the Framework Directive states that Member States shall take all necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in co-operation with relevant support agencies.

VIII.5.6.1 National Referral Mechanisms

The OSCE Action Plan to Combat Trafficking in Human Beings recommends that OSCE participating States establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multi-disciplinary teams to monitor and develop policies.¹⁸¹

The COE places obligations on participating States within the EU that have ratified the Convention. It states that human trafficking is an affront to human dignity and a violation of human rights. It provides for a proper balance between respect for human rights and prosecution by setting out obligations that include a comprehensive scope of application both nationally and transnationally, and irrespective of any links to organised crime. There is a comprehensive legal framework for the protection of and assistance to victims and witnesses; an efficient and independent monitoring mechanism that mainstreams gender equality in its provisions.

Not all OSCE participating States have implemented NRMs or equivalent mechanisms. However, a human rights based approach recognises that human trafficking is not just a criminal activity, but one that has profound human rights implications for victims, governments and non-governmental organisations (NGOs). The creation of an effective NRM can be a vital step in ensuring the human rights of trafficked persons are protected.

The ICMPD have introduced a Transnational Referral Mechanism which is a co-operative agreement for cross-border assistance. It provides for identification of victims, assistance and protection, long term assistance and social inclusion, and builds on NRMs.¹⁸²

Victim Protection: Italy

Since 1998, Italy has been at the forefront of the fight against trafficking in human beings and the protection of both child and adult victims. The Italian model, which is still considered a best practice in this field, was built upon the principle that an effective anti-trafficking strategy should be based on a victim rights centred approach.

¹⁸¹ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

¹⁸² ICMPD Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU (2010).

The main legal provisions regulating the national response to trafficking in persons were drafted on the basis of such principle:

1. Article 18 of the National Law on Migration (Legislative Decree n° 286 of 1998)

2. Article 13 of the National Law against trafficking in human beings (Law n° 228 of 2003)

A composite structure for assistance to trafficked persons was then built upon the aforementioned laws and is in place at national level, functioning throughout three main tools:

- Programmes for temporary assistance (implemented on the basis of the art. 13 of L. 228/2003);
- Programmes for long term assistance and social inclusion (implemented on the basis of art. 18 of Legislative Decree 286/98);
- National anti-trafficking Toll-Free Helpline (“system action” foreseen by the Ministerial Decree of 23 November 1999 – art. 2, regulating the implementation of art. 18 of Legislative Decree 286/98). Italy – Art 18.¹⁸³

VIII.5.6.2 Victim Protection in Criminal Justice System (CJS)

Article 4.1 of the OSCE Action Plan mandates the assistance and protection of witnesses and victims in the criminal justice system.¹⁸⁴

It is important in any human trafficking investigation that victims are supported throughout all stages of the CJS. Victim’s rights are paramount, and their human rights must be respected. One of these rights is the right to protection. Investigators have the responsibility and must have the ability to be able to protect victims.

The stages of the CJS at which victims need protection are:

- Initial contact
- Interview
- Pre court
- At court
- Post court

¹⁸³ ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/index_en.htm

¹⁸⁴ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

The protection that can be afforded to victims at initial contact includes:

- Information
- Communication
- Emotional support
- Physical support

Pre-trial protection measures include:

- Special measures¹⁸⁵
- Pre-court visits
- Testimony options
- Ongoing protection

Post-trial protection measures:

- Court support measures
- NGO support
- Evidence options
 - video
 - screens
- Reporting restrictions
- Protection measures
 - panic alarm
 - telephone link

Post-trial protection measures:

- Reintegration
 - medical
 - financial
 - legal
- Repatriation
- Ongoing responsibilities
- Acute risk factors
- Ongoing protective measures

VIII.5.6.3 Witness Protection

Witness protection is the protection of a threatened witness or any person involved in the justice system, including defendants, before, during and after a trial, usually by police. While a witness may only require protection until the conclusion of a trial, some witnesses are provided with a new

¹⁸⁵ See Clarification of Terms (p12).

identity and may live out the rest of their lives under government protection.

Witness protection is usually required in trials against organized crime, where law enforcement foresees a risk to witnesses of being intimidated by the defendants or their associates. Witness protection should be available for victims of human trafficking within OSCE participating States. It is usually supervised by police officers who have received specialist training but may not have any knowledge of human trafficking.

VIII.5.6.4 Good Practice Options

Investigators should always consider the best interests of the victim, what the best available options for interviewing a victim are and also the best available options for giving evidence. These considerations are always subject to the legal, governmental and policy considerations of participating States.

Police investigators should be aware of the differing victim testimony options, subject to the legislation of each participating State. These options can influence when, where and how a victim gives evidence. It may be possible for victims to return to their home State before they give evidence and then give an evidential statement by means of mutual legal assistance. Alternatively, it may be possible for the victim to give an evidential statement and then return home and give evidence at trial from their home State, for example, by video-link.

VIII.6 Victim Rights

Strengthening access to justice for victims of trafficking in human beings is one of the main programmatic objectives of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), and the right to compensation is an important aspect of this work.¹⁸⁶

VIII.6.1 Compensation

Access to justice for trafficked persons is crucial to effectively combating trafficking. Next to the importance of having a sense of justice and

¹⁸⁶ Compensation for Trafficked and Exploited Persons in the OSCE Region OSCE/ODIHR (2008).

acknowledgement of the violations that happened, compensation also plays a vital role in the rehabilitation of trafficked victims.¹⁸⁷

The Framework Directive states that the use of seized and confiscated instrumentalities and proceeds from the offences referred to in the Directive should be used to support victim assistance and protection, including compensation for victims.

Compensation mechanisms exist in the majority of participating States, however, for a variety of reasons only a minority of victims receive the compensation that they are entitled to. Subject to their national legislation, police investigators should assist victims to make the appropriate applications for compensation.

There have been reported instances of victims declining compensation due to being frightened of the trafficker or concerned that the compensation comes from the proceeds of human trafficking. There are only a limited number of States where the victim can claim restitution from the State automatically as part of the criminal proceedings.

Good Practice: United States of America

The Trafficking Victims Protection Act (2000) makes restitution mandatory for all trafficking victims. 18 U.S.C. S 1593 provides that, in addition to any other civil or criminal penalties authorised by law, “the court shall order restitution for any offence under this chapter.” The restitution order shall be for “the full amount of the victim’s losses.” This means that even if the trafficking offence did not involve a crime of violence, and would not fall under the provisions of the mandatory restitution statute, trafficking victims must nonetheless be awarded restitution.¹⁸⁸

VIII.6.2 Non Punishment

Victims of human trafficking may be forced to commit criminal offences as a consequence of their trafficking and exploitation. That they ought to be offered protection against their criminalisation for committing such acts is

¹⁸⁷ Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK ASI (2009) p3.

¹⁸⁸ Compensation for Trafficked and Exploited Persons in the OSCE Region OSCE/ODIHR (2008) p135.

well recognised in international and domestic law and guides.¹⁸⁹ The principle of non-punishment of victims is affirmed in a number of international standards, including legally and politically-binding instruments. In the OSCE region, participating States are committed to endorsing a human rights-based and victim-centred approach to anti-trafficking action; an approach that respects the dignity and human rights of trafficking victims at all times.¹⁹⁰

The increasing global prevalence of human trafficking for enforced criminality can expose victims of trafficking to committing a multitude of offences such as, but not limited to, theft, pick-pocketing, drug trafficking, cannabis cultivation and fraud. It is often a deliberate strategy of the traffickers to expose victims to the risk of criminalization and to manipulate and exploit them for criminal activities. It is therefore not uncommon that victims of trafficking commit criminal offences or other violations of the law directly connected with, or arising out of, their trafficking situation. In these situations they often come to the attention of the authorities primarily as offenders, and they may not be easily recognized as actual victims of a serious crime.

States should therefore be fully aware of these developments in order to enable accurate victim identification and effective investigation of the trafficking crime, as well as to ensure effective protection of victims' rights, including non-punishment of victims for offences caused or directly linked with their being trafficked.¹⁹¹

The Framework Directive (14) states that victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subjected to trafficking. The aim of such protection is to safeguard the human rights of the victim, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

¹⁸⁹ Carter, P & Chandron, P. Protecting against the Criminalisation of Victims of Trafficking: Representing the Rights Of Victims of Trafficking as defendants in the Criminal Justice System in *Human Trafficking Handbook recognising Trafficking and Modern-Day Slavery in the UK* ed.Chandran, P. (LexisNexis 2011) p403.

¹⁹⁰ Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the *Alliance against Trafficking in Persons* Expert Co-ordination Team (April 2013) p3.

¹⁹¹ Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the *Alliance against Trafficking in Persons* Expert Co-ordination Team (April 2013) p3.

Case Study: Belgium

Trafficked person forced to use false passport

A young Nigerian woman was exploited in prostitution in Belgium; she was forced by her trafficker to use a false passport in order to receive a residence permit. Despite being recognized as a victim, she was prosecuted and convicted in her absence for the use of a false passport. Later, her case was appealed on the grounds that a justification existed, i.e. that the victim was not free to act and the trafficker coerced her into using a false passport. The judge ruled that she was not liable because she was constrained by force to commit the offence.¹⁹²

Police investigators need to ensure that when they identify potential victims they should take a victim-centred approach and start with the premise that the person in the exploitative situation is a potential victim and not a criminal. Even when a criminal offence has been committed, police investigators need to ascertain whether the offence was committed as a consequence of being trafficked.

Good Practice: UK

Prosecuting suspects who might be trafficked victims

Our guidance advises prosecutors that when reviewing a case in which there are suspicions that the suspect might be a victim of trafficking, they should cause enquiries to be made and obtain further information about the circumstances in which the suspect was apprehended. Information may also be considered from other sources, such as a non-government organisation that supports trafficked victims. If new information or evidence supports the fact that the suspect has been trafficked and has committed the offence whilst in a coerced situation, there is a strong public interest to stop the prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds.¹⁹³

¹⁹² Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the *Alliance against Trafficking in Persons* Expert Co-ordination Team (April 2013) p7.

¹⁹³ Crown Prosecution Service Policy for Prosecuting Cases of Human Trafficking (2011) p30.

VIII.6.3 Children

OSCE Decision No. 13/04 reaffirms the general principles of, *inter alia*, the best interests of the child, non-discrimination, participation and survival and development. It provides the framework for all actions concerning children. It is also aware of the need for an effective child assistance and protection framework, as well as awareness-raising to counter the demand that fosters all forms of exploitation of persons, especially women and children, and which makes children more vulnerable to being trafficked.¹⁹⁴

Government agencies should be urged to refrain from summarily deporting any child who might have been trafficked, just as they should refrain from treating children as criminals on account of offences they have committed as a result of being trafficked, whether this involves an offence committed under pressure, such as a theft, begging or prostitution, or an immigration offence.¹⁹⁵

Further and more detailed information on victims of human trafficking can be found in the following guides:

- COMP.ACT Toolkit On Compensation For Trafficked Persons Findings and Results of the European Action for Compensation (2012)
- FRONTEX Anti-trafficking training for border guards Trainer's manual - Chapters 2 & 3
- ICMPD Regional Standard for Anti-Trafficking Training for Judges and Prosecutors (2004) - Chapter 4
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) – Units 4 & 8
- ICMPD Anti-Trafficking Training Material for Frontline Enforcement Officers (2006) – Chapter 4
- ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Curriculum Training Guide in EU Member States and Accession Countries (2006) - Chapters 2, 4 & 5
- IOM Counter Trafficking Training Module Victim Identification & Interviewing Techniques (2006)
- OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach (2011)
- OSCE Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the *Alliance against Trafficking in Persons* Expert Co-ordination Team (April 2013)
- UNODC Toolkit to Combat TIP 2nd Edition (2008) - 6, 7 & 8

¹⁹⁴ The Special Needs for Child Victims of Trafficking for Protection and Assistance

¹⁹⁵ M, Dottridge Kids as Commodities? Child Trafficking and What to do about it' *Terre des Hommes* (May 2004) p10

- UNODC First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking (2008) – Leaflet 5
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009) - Modules 8, 9 11 & 12
- UNODC Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking (2010) - iv, v, vi & viii
- UNODC First Aid Kit for Use by Law Enforcement First aid Responders in addressing Human Trafficking (2011) Leaflet 5 & 8
- Child Trafficking in the European Union Challenges, perspectives and good practices FRA (2009) - Chapters 2 & 3
- Dottridge, M. Kids as Commodities? Child trafficking and what to do about it Terre des Hommes (2004) - Chapter 8
- ILO/UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other Forms of Exploitation (2009) Textbook 2 2.5 & 2.8

IX. Corruption

IX.1 Introduction

Corruption has been grossly underestimated as a driver of trafficking in human beings. There is a strong correlation between trafficking and corruption and the trafficking of persons flourishes in part through the corruption of public officials.¹⁹⁶ In addition to breaking the law, such officials are at risk of being blackmailed and persuaded to engage in other types of smuggling and trafficking, such as narcotics or arms. These officers of the state could then become involved in a broad variety of crimes. For example, if corruption occurs in the criminal justice chain, it can lead to the obstruction of investigation or criminal proceedings, and the revealing or selling of investigative information in order to help the traffickers to escape prosecution. It is obvious that this constitutes a serious security threat. Today, breaking the links between trafficking and corruption has become a crucial aspect of the struggle against modern-day slavery.

Experts have placed corruption as the most significant indicator of human trafficking. Though there are relatively few reports or investigations into corruption offences relating to trafficking, with virtually no cases leading to convictions, it is obvious that opportunities for corruption are many.

The OSCE Istanbul Summit Declaration 6 stated: “We underline the importance of respect for the rule of law and of vigorous efforts to fight organised crime and corruption, which constitute a great threat to economic reform and prosperity.”¹⁹⁷

The OSCE Action Plan to Combat Trafficking in Human Beings recommends that law enforcement should build capacity in the anti-corruption field and that they should target corruption of local law enforcement as a matter of priority, and ensure that appropriate disciplinary and criminal proceedings are undertaken against law enforcement authorities found engaged in corrupt practices related to trafficking in human beings.¹⁹⁸

In numerous investigated cases state officials were found to be involved in corrupt practices relating to trafficking in human beings. In addition to breaking the law, such officials are at risk of being blackmailed and

¹⁹⁶ Holmes, L. Human Rights and Corruption: Triple Victimization? in Friesendorf, C. Ed Strategies Against Human Trafficking: the Role of the Security Sector (2009 p83).

¹⁹⁷ Istanbul Document (summit of Heads of State or Government) *Istanbul 1999*.

¹⁹⁸ OSCE, Ministerial Council Decision No. 2/03, Combating Trafficking in Human Beings, 2.3 and 2.9, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.)

persuaded to engage in other types of smuggling and trafficking, such as narcotics or arms. These officers of the state could then become involved in a broad variety of crimes.

Trafficking in human beings is largely a business of organized crime, which has reached a massive scale and generates huge profits. Trafficking therefore thrives upon and feeds corruption, and undermines the rule of law and economic stability. It constitutes a real threat to the lives and well-being of citizens and society at large. As a consequence, trafficking is now a serious transnational threat to the security of the OSCE region and beyond.¹⁹⁹

There is no question that human trafficking could not occur on the scale that it does, were it not for the complicity and collusion of corrupt officials with criminal gangs. One important aspect of the issue that is usually overlooked is that trafficking-related corruption can subject those trafficked to double or even triple victimisation and abuse of human rights. All too often, they are victims not only of criminal gangs, but also of officials who cannot be trusted to help them counter the first form of victimisation. And if States turn a blind eye to their own officers' corrupt involvement in trafficking and/or treat trafficked persons as criminals rather than victims, there is a third form of victimisation.²⁰⁰

Police investigators need to ensure that corruption is properly investigated at all stages of the trafficking process. As well as protecting potential victims of trafficking, investigators need to investigate the following:

- Bribery
 - active
 - passive
- Embezzlement
- Trading in influence

Further and more detailed information on corruption can be found in the following guide:

- UNODC Corruption Compendium of International Legal Instruments on Corruption second edition (New York 2005)

¹⁹⁹ OSCE Factsheet Special Representative and Co-ordinator for Combating Trafficking in Human Beings p2.

²⁰⁰ Homes, L. Human Rights and Corruption: Triple Victimisation?, in Friesendorf, C. Ed Strategies Against Human Trafficking: the Role of the Security Sector.(2009).p84-85.

X. Investigating Human Trafficking Cases

X.1 Introduction

The OSCE Action Plan to Combat Trafficking in Human Beings (12.1) states; “The ODIHR and OSCE Strategic Police Matters Unit will continue to develop training materials targeted at law enforcement authorities on trafficking and sex crimes investigation...”²⁰¹

The objective of this chapter is to provide good practice in relation to the investigation of human trafficking offences. This guide seeks to complement, not replicate, existing training guidance by providing information on emerging trends, instructive investigative techniques and alternative and updated methods of investigation, especially in relation to OSCE priority areas.

The UNODC estimates that some twenty other serious crimes may be related to trafficking in human beings at various stages of the trafficking process. THB violates the whole spectrum of human rights and fundamental freedoms, affects the global economy, hampers economic growth, fuels corruption, and undermines the rule of law.²⁰²

The numbers of reported criminal proceedings for trafficking in human beings are still very modest. The criminal justice response is not comparable with the scale of the crime, and moreover only final exploiters are usually targeted, while those who really organise and manage the trade remain undetected. Until recently, the majority of prosecutions referred only to sexual exploitation, as there is still little experience in dealing with THB for the purpose of labour exploitation.

The level of penalties in general is low compared to the gravity of the crime. In addition, in the vast majority of cases no seizure or confiscation of the proceeds of crime is carried out.

At present, the criminal justice system faces the following challenges:

- The massive scale of the crime, especially in the area of labour exploitation;
- The international nature of criminal networks;
- The increasing trend towards reinvestment of proceeds of crime and money laundering.²⁰³

²⁰¹ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

²⁰² OSCE Transnational Threat Paper p1.

²⁰³ OSCE Transnational Threat Paper p2.

X.2 Investigations

X.2.1 The Challenges of Investigating Human Trafficking

There are significant complexities in investigating human trafficking cases, which include the differing issues relating to victims who are often either unable or unwilling to co-operate with police investigators and are often reluctant to report potential offences. A high proportion of investigations are transnational crimes that require information to be acquired and evidence obtained from different States, which necessitates informed investigative techniques, international co-operation and mutual legal assistance. Investigations within States and regions can also be problematic as they require co-operation and coordination between different LEAs, and potentially, non-LEAs.

It is also a changing environment that presents particular problems and new challenges, and investigators need to adapt techniques to meet the increasing number of exploitative human trafficking situations and the emerging trends. It is a specialist area and, therefore, requires specialist and advanced investigation techniques to overcome the potential barriers and to provide a platform for successful investigations. However, the identification of victims of human trafficking needs to be the responsibility of all LEAs and their officers.

X.2.2 Victim-Centred Investigations

The OSCE Action Plan 2003 encourages participating States to explore “alternative investigation strategies to preclude the need for victims to be required to testify at court”. This is reinforced by the OSCE Ministerial Council Decision No 14/06, adopted 5 December 2006, which encourages participating States to develop and use “advanced investigative methodology in particular to allow cases of trafficking to be identified and prosecuted without relying on victim testimony”.²⁰⁴

All investigations need to be victim-centred with the human rights of the victim respected at all times. In practice this can cause difficulties and can impede investigative techniques. No action should be taken that could put a victim at risk and it is for this reason that new investigative techniques are required. Investigators and prosecutors need to consider the possibility

²⁰⁴ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

of victimless prosecutions and validity of disruption as an investigative strategy if it is in the best interests of the victim.²⁰⁵

It is not possible to effectively investigate or prosecute a human trafficking case if victim and/or witness protection is not the primary concern.²⁰⁶ The human rights and dignity of the victim should be respected and paramount in any human trafficking investigation. In practice this means that in any investigation the rights of the victim have primacy and their basic and practical needs are met; they are given protection and they do not have to give evidence or engage with the CJS unless they want to.

Inadequate or limited victim protection, and the victim's fear of limited or no security, can affect their demeanour and influence if or how they give evidence in any subsequent prosecution.²⁰⁷

The needs and rights of victims should be considered at every stage in proceedings. Law enforcement officers have an obligation to ensure that measures adopted for the purpose of preventing and combating human trafficking do not have an adverse impact on the rights and dignity of trafficking victims, even in cases where they do not become witnesses in criminal proceedings.²⁰⁸

The past decade has allowed law enforcement officials in different States to learn different lessons about what is and is not effective when collecting evidence and prosecuting suspected traffickers. Unfortunately these lessons have not become common practice across jurisdictions. Some of the most important lessons relate to the way that victims of trafficking, who are potential witnesses, are treated. These lessons suggest that it is not effective to prosecute traffickers without placing the protection and assistance of victims at the heart of the intervention.²⁰⁹

Human trafficking investigations should be continually reviewed to consider if the outcomes at all stages of investigation and/or prosecution could have any possible adverse outcomes or risks for the victim. These could relate to the victim giving evidence at court, the impact of a financial investigation, or mutual legal assistance upon the victim.

²⁰⁵ OSCE Trafficking in Human Beings: Identification of Potential and Presumed Victims A community Policing approach (2011) p25.

²⁰⁶ See Victim Protection (5.5.6).

²⁰⁷ NGO ASTRA Serbia Research into Court Trials (2012).

²⁰⁸ Bosco, F & others, Human Trafficking Patterns in Friesendorf, C. *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) p79.

²⁰⁹ ICAT Inter-Agency Coordination Group against Trafficking in Persons *The International Legal Frameworks concerning Trafficking in Persons* (2012) p8.

X.2.3 Risk Assessment

It is the responsibility of LEAs investigating human trafficking cases to assess the potential risks to victims at all stages of the investigation. If a risk exists that threatens the security or safety of a victim then there is a legal duty of care to mitigate that risk by identifying and initiating the appropriate response.

X.2.4 Investigative Planning

Planning is an essential prerequisite in all human trafficking investigations and, at the outset, it should be decided if an investigation is necessary, essential and can be justified. The initial planning process should determine which LEA or other agency is best placed to investigate and/or prosecute, and in which jurisdiction, region or State should it take place. It should also determine if an investigation and/or prosecution is the best option or whether alternative options, including disruption, are preferable. At the outset, all options should be considered prior to any decisions being made, and all factors taken into account, primarily those relating to the victim.

Cognisance must be given to the legislation within each OSCE participating State when planning an investigation. Can an investigation legally take place, what procedures must legally be followed and what can realistically be achieved within the legal framework? The role of the prosecutor must also be considered, especially in those participating States where any investigation and the scope of that investigation are the responsibility of the prosecutor.

It is important that throughout the investigation and any potential prosecution, those investigating and prosecuting work closely together. To secure this objective within the criminal justice system requires commitment on the part of the police and the prosecutors. The first point to note is the inherent inter-dependency of the dual structure of police and prosecutors; police investigators cannot achieve investigative success against the traffickers without the efforts of the prosecutors. Likewise, the prosecutors cannot achieve prosecutorial success against them without the evidence-gathering efforts of the police investigators.²¹⁰

Police investigators need a knowledge and awareness of how and when to investigate. This includes knowing what options are available to them, the

²¹⁰ ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Curriculum Training Guide in EU Member States and Accession Countries (2006) p104.

barriers to a successful investigation and potential solutions, and the ability to identify the objectives of the investigation. At the outset of any investigation, unless it is totally reactive, careful planning and prioritising is required. Decisions need to be made on what type of investigation and why; does intelligence need to be obtained; is a proactive investigation required or will disruption be a preferable alternative. The types of investigation are not mutually exclusive and a combination of approaches may be required. A reactive investigation may lead to a proactive investigation or vice versa.

The strategic aims in the planning of investigations are as follows:

- Prioritise
- Victim/witness management
- Investigate or disrupt
- Whose jurisdiction
- Protection of both investigators & victims
- Interpreters
- Resources - both staffing & budget
- Media
- Best interests of the victim

These may necessitate allocation of financial and human resources to implement the investigation, securing international co-operation and utilising co-operation platforms, for example Europol and Eurojust.²¹¹

Throughout the investigation the case should be continuously reviewed and options and techniques reconsidered if circumstances should change, especially those relating to the victim.

X.2.5 Types of Investigations

The type of investigation may be informed by the trafficking situation, the potential risk to victims and the legal duty of care. In certain OSCE participating States it may also be decided by the legislative or policy decisions that dictate what type of investigation should take place. These factors may determine which type of investigation has either precedence or preference.

X.2.5.1 Intelligence

²¹¹ See International Platforms (14.4.2).

The OSCE Action Plan (2.6) mandates the OSCE to provide the resources and training for developing intelligence-led policing for the management and analysis of crime and criminal information, but also other advanced skills and equipment necessary for law enforcement bodies to carry out their anti-trafficking tasks.²¹²

Intelligence methodology is used to collect information and knowledge on the perpetrators of trafficking and also how they operate. This information is collated, analysed and evaluated to identify and inform operational decisions in selecting which perpetrators and their networks should be investigated and what the best methods are to investigate them.

Intelligence led policing (ILP) can be defined as “a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both the strategic management and effective enforcement strategies that target serious and prolific offenders.”²¹³

Identified good practice is to refer to Interpol and/or Europol the intelligence obtained during an investigation and the information obtained during any subsequent court proceedings.²¹⁴

X.2.5.2 Re-active

Whether an investigation is reactive or proactive influences the type of investigative measures used. When victims are in immediate danger or if children are involved, the correct response is to focus on rescuing the victims rather than building a strong evidentiary foundation for a later prosecution.²¹⁵

A reactive response is required following the receipt of information, and after a risk assessment, that either an offence has been committed or that there is a requirement to rescue a victim. There is a clear legal duty on participating States in these situations, especially if the potential victim is a child. ECHR case law can also place a duty on the State to investigate human trafficking cases and provide protection for victims.

²¹² OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

²¹³ Schrier, F. Human Trafficking, Organized Crime & Intelligence in Friesendorf, C. *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) p220.

²¹⁴ See International Platforms (14.4.2).

²¹⁵ Jernow, A. Human Trafficking, Prosecutors & Judges in Friesendorf, C. *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) p340.

Case Study: Rantsev v Cyprus and Russia (2010)²¹⁶

The applicant was the father of a young woman who died in Cyprus where she had gone to work in March 2001. He complained that the Cypriot police had not done everything possible to protect his daughter from trafficking while she had been alive and to punish those responsible for her death. He also complained about the failure of the Russian authorities to investigate his daughter's trafficking and subsequent death and to take steps to protect her from the risk of trafficking.

The Court noted that, like slavery, trafficking in people treated human beings as commodities to be bought and sold and put to forced labour; accordingly, trafficking itself was prohibited by Article 4. The Court found that Cyprus had violated Article 4 because it had failed to put in place an appropriate legal and administrative framework to combat trafficking, and the police had failed to protect Ms. Rantseva despite circumstances suggesting a credible suspicion that she might have been a victim of trafficking.

There had also been a violation of Article 4 by Russia on account of its failure to investigate how and where Ms. Rantseva had been recruited and, in particular, to take steps to identify those involved in her recruitment or the methods of recruitment used.²¹⁷

Reactive investigations can include: obtaining corroborative evidence, interviewing victims and witnesses, obtaining witness statements and preparing a case for trial.

X.2.5.3 Pro-active

Proactive investigations can be initiated as a result of intelligence obtained - that has provided knowledge about traffickers - that needs further investigation. The objective of the investigation is to rescue victims and/or to obtain evidence that will enable the arrest and prosecute those responsible for the trafficking. The strategies and tactics used in the investigation may include specialist investigation techniques if they are the most effective method of concluding an investigation.

The use of proactive tactics is most successful against, but not limited to, offences of trafficking for sexual exploitation. The techniques and tactics

²¹⁶ Application 26965/04 (2010) 28 BHRC 313.

²¹⁷ ECHR Factsheet Forced labour and trafficking (November 2012).

can equally be applied to trafficking for labour exploitation or other forms of trafficking.

Proactive investigations are effective because they enable police investigators to focus on the perpetrators who are committing the offences of human trafficking. It is also predominantly a visible crime in that the victims, perpetrators and the location of the exploitation can be identified. The modus operandi of the crime also involves potential activity within five component areas or the five commercial processes of human trafficking: advertising, transport, communications, financial transactions and premises. Some, if not all, of these components are present in all trafficking cases and can therefore be traced.

Case Study: Belarus

In 2010 the law enforcement authorities of Belarus detained a citizen of Lithuania who was engaged in human trafficking from Belarus to Western Europe. Living in the city of Vitebsk, he sought women who were in a difficult financial situation and wanted to go abroad in search of better working and living conditions. Under the pretext of well-paid employment that was not related to rendering any sexual services, he received the victim's consent, by deception, to travel abroad and then trafficked the women to his accomplices in Lithuania. From there the victims were transported by various means to the UK where they were forced to work as prostitutes in illegal brothels. The women did not receive any compensation for their services and underwent physical and psychological violence.

During preliminary investigations and thanks to the joint efforts of the Belarusian, Lithuanian and British law enforcement agencies, the premises where the women were kept were established and the criminals, who were engaged in human trafficking, the sexual exploitation of victims and illegal arms and drug trafficking, were identified.

A Belarusian trafficker was sentenced to five and a half years imprisonment with confiscation of property. British and Lithuanian law enforcement agencies conducted separate investigations to bring the perpetrators to justice.

The basic foundations of human trafficking can always be identified, particularly when it comes to the recruitment and/or public exploitation of the victims. For law enforcement, this means that if an investigator can

locate the victim, the traffickers can be located as well.²¹⁸ This is because the exploitation of trafficking is visible, traffickers will leave evidential traces, and this enables proactive investigations to be successful.

X.2.5.4 Disruption

Disruption is an important tactic in circumstances where there may be insufficient evidence for an investigation, and other non-police agencies may be either in a better position or better able to stop the human trafficking activity. It can also be a useful tactic where other, non-police agencies, are better placed to penalise the trafficker; for example tax authorities. Disruption should also be considered as a victim-centred approach when it is in the best interests of the trafficked victim to consider a non-prosecution solution.

X.2.6 Specialist investigative techniques

The OSCE Action Plan (2.7) mandates the OSCE to encourage investigators and prosecutors to carry out investigations without relying solely and exclusively on witness testimony.²¹⁹ In other words, it means exploring alternative investigative strategies to preclude the need for victims to be required to testify in court.

Article 20 of the UNTOCC places an obligation on States to use specialist techniques to investigate human trafficking cases. Specialist evidence gathering techniques are an essential part of proactive investigations and are designed to produce high quality evidence to achieve the investigative objectives. They can be used to identify victims, perpetrators and their modus operandi, as well as the location of exploitation.

Specialist investigative techniques must be implemented in strict compliance with the legislative, regulatory and procedural practices of each OSCE participating State. They are intrusive and must only be undertaken when necessary and proportionate, and should only be carried out by trained law enforcement officers. They can be used individually or in a combination depending on the objective of the investigation.

²¹⁸ ICMPD Anti-Trafficking Training Material for Judges and Prosecutors Curriculum Training Guide in EU Member States and Accession Countries (2006) p104.

²¹⁹ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

X.2.6.1 Surveillance

The objective of surveillance is to obtain private information about a person either by following that person or by obtaining information from their place of residence.

X.2.6.2 Undercover Law Enforcement Officer

The objective is to use an undercover police officer who poses as a criminal for the purposes of obtaining intelligence and information about criminal offending.

X.2.6.3 Covert Human Intelligence Source

A person who, under the direction of a specialist police investigator, covertly establishes or maintains a relationship with another person for the purpose of using that relationship to either obtain intelligence or information or to access intelligence or information about criminal offending.

X.2.6.4 Test Purchase

A law enforcement officer obtains intelligence or information by presenting themselves as a potential buyer of services or as an employee. Their objective is to ascertain whether the situation is one where victims are being exploited.

X.2.6.5 Controlled Delivery

When in receipt of information that a human trafficking operation is to involve the movement of victims, it is allowed to continue subject to safeguards instead of being incepted by police investigators. The victims and perpetrators are kept under surveillance and ongoing risk assessment is undertaken. The objective is to obtain intelligence and information about all those involved in the trafficking operation from those who recruit to those responsible for the transportation and exploitation.

X.2.6.6 Telephone intercept/use communications data

The lawful interception of communications to obtain data that can provide intelligence or information that can be used in an investigation.

X.2.7 Evolving Techniques

The majority of human trafficking investigations are reliant on the evidence of the victims to arrest and prosecute the perpetrators. There is an impetus from both the EU²²⁰, intergovernmental organisations and others, including the OSCE, that investigators should develop investigative techniques that do not rely on victim evidence. One of the main techniques used is telephone intercept evidence which, when corroborated, and if a victim is unwilling or unable to give evidence, can enable a case to continue.

X.2.7.1 Innovative Techniques

The Dutch authorities have grouped the types of investigation techniques they use to gather evidence in human trafficking cases. They are the “classic” methods, “in-between methods” and “new and innovative methods”. They accept that the classic methods are not sufficient to effectively prosecute human trafficking cases, especially if a victim withdraws their testimony. The “in-between” methods involve the use of undercover officers and infiltrators and other forms of infiltration. These techniques can be limited because the victim is still in the exploitative situation and they are not easy to use. It is for these reasons that the Dutch advocate that “new and innovative” techniques are required and many of those techniques are used to prosecute offences such as cybercrime.²²¹

Case Study: Netherlands

“New and innovative” techniques were used to close down an escort website associated with human trafficking. All the website clients received a message that the agency was associated with human trafficking. As a consequence, many of the clients contacted the police to deny having used the agency and provided useful information.

X.2.7.2 Specialist Teams

The EU strategy towards the Eradication of Trafficking in Human Beings 2012-2016 at priority C (1) calls for the establishment of national multi-disciplinary law enforcement units. The 2010 US Trafficking in Persons

²²⁰ See Article 9 (1) 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.

²²¹ Source Mr Warner ten Kate, National Public Prosecutor for Trafficking in Human Beings.

Report commended the UK Metropolitan Police specialist anti-human trafficking team as a good practice model. Therefore, OSCE participating States without a specialist police and/or a multi-disciplinary response to human trafficking could consider forming a specialist team.

X.2.7.3 Joint Investigation Teams

Article 19 of the UNTOCC called for States to consider Joint Investigation Teams (JITs). They are recommended good practice within the COE and Framework Decision. A JIT is an investigation team with two or more parties that has a specific purpose and a limited duration. It enables cross border investigations into human trafficking cases.²²²

X.2.8 Recommendations

- Decide best interests of victim
- Continual review
- Best practice re: victim care
- Prosecutor involvement at the outset
- Decide best jurisdiction
- Is investigation the correct action?
- Is MLA required, is it achievable and alternative options
- Don't judge the victim; judge the crime
- International Co-operation, with who, when and if possible

X.2.9 Identified Good Practice

Enabling offenders assist police investigations by giving evidence against others involved in the criminal enterprise. A legal undertaking is given that offenders may not be prosecuted or may have their sentence reduced in return for giving evidence against others. This can enable investigators and prosecutors to target those responsible for organising the trafficking operations and not just the conduits in the criminality.

²²² See Joint Investigation Teams (14.4.1)

Good Practice: UK

Legislation

Sections 71 – 74 of the Serious Organised Crime and Police Act 2005 (England and Wales) provide a legislative framework to allow offenders to assist investigations and prosecutions. They can be given immunity from prosecution or a sentence reduction by assisting in criminal proceedings.

Lithuanian Case Study

Using the powers under section 73 of the Serious Organised Crime and Policing Act, which provides for a reduction in sentence for co-operating defendants, Crown Prosecution Service (CPS) prosecutors and the Serious and Organised Crime Agency (SOCA) collaborated with authorities in Lithuania to take a defendant, convicted in Cardiff Crown Court and sentenced to 7 years imprisonment for human trafficking, to Lithuania to give evidence against 15 traffickers who were responsible for recruiting victims to traffic to the UK for sexual exploitation. As a result of his evidence, the 15 traffickers were convicted in Lithuania. The CPS made representations at Cardiff Crown Court on behalf of the convicted trafficker, to have his sentence reduced for his co-operation.²²³

X.2.10 Victim Risks²²⁴

Police investigators in human trafficking cases should identify and assess the risks to the victim at all stages of the investigation. If the risk is too great, the investigation should not proceed. Specialist investigative techniques can provide information that victims are at risk and this can necessitate a reactive intervention. It is also possible that the use of specialist techniques could put victims at risk, especially if discovered by the perpetrators. An ongoing risk assessment must be undertaken and this is essential if it is believed that the victim could be a child.

²²³ Report on the Internal Review of Human Trafficking Legislation UK Government (May 2012) p11.

²²⁴ See Risk Assessment (10.2.3).

Further and more detailed information on investigating human trafficking can be found in the following guides:

- ICPMD Regional Standard for Anti-Trafficking Training for Judges and Prosecutors in SEE (2004) - Chapter 7
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) – Unit 7
- ICMPD Anti-Trafficking Training Material for Frontline Enforcement Officers (2006) – Chapter 3
- UNODC Toolkit to Combat TIP 2nd Edition (2008) - 5
- UNODC First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking (2008) – Leaflet 5
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009) – Restricted Modules
- UNODC Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking (2010) iii
- UNODC First Aid Kit for Use by Law Enforcement First aid Responders in addressing Human Trafficking (2011) - Leaflet 4
- ILO/UNICEF Training Manual to Fight Trafficking in Children for Labour, Sexual and other Forms of Exploitation (2009) Textbook 2 2.6

XI. Financial Investigations

XI.1 Introduction

The mandate to OSCE structures relating to investigation, law enforcement and prosecution at 10.2 of the OSCE Action Plan to Combat Trafficking in Human Beings states: The Strategic Police Matters Unit and the Office of the OSCE Co-ordinator of Economic and Environmental Activities (OCEEA) will facilitate the exchange of information between participating States on best practices to be used by relevant investigating units to check the possible criminal and trafficking-related origin of suspicious assets.²²⁵

The purpose of this chapter is to provide guidance and good practice on how to provide effective financial investigations and to identify how to seize the illegally obtained assets of the traffickers through criminal and civil procedures.

Although much attention has been paid to both human trafficking and the smuggling of migrants, awareness of the money laundering schemes related to these crimes remains limited. There is a persistent belief among law enforcement authorities that predicate that offences should take priority and investigations often do not pursue the laundering aspects of these crimes.²²⁶

XI.2 The Importance of Financial Investigations

We are opening a new page in the fight against modern-day slavery, by addressing its final stage, crucial for the criminals, actually targeting to undermine the ultimate aim of the crime – its illicit profit, which (allegedly) amounts to USD 32 billion per year.²²⁷

A financial investigation is one that traces the funds that support and the profits that are derived from human trafficking and enables LEAs to seize, confiscate, forfeit, restrain or freeze the proceeds of crime.

The responsibility for financial investigations rests with all OSCE participating States, not just those in destination countries. The profits of human trafficking are often returned to source countries by the traffickers.

²²⁵ OSCE, Ministerial Council Decision No. 2/03, *Combating Trafficking in Human Beings*, Annex, MC.DEC/2/03, Maastricht, 1 and 2 December 2003.

²²⁶ OSCE Training Seminar on the Identification, Seizure and Confiscation of Criminal assets arising in Different Forms of Human Trafficking (Prague 18-20 July 2012).

²²⁷ OSCE SR/CHTB at 12th alliance against Trafficking in Persons Conference (Vienna, 11 October 2012).

All OSCE participating States should take responsibility for financial investigations and assist other States in tracking and confiscating the profits of crime.

Human trafficking is perceived as a low risk, high profit crime and the significant profits that can be realised are attracting both organised crime networks (OCN) and individual traffickers alike. This growth in criminal involvement can be responsible for an increase in human trafficking and also creates a threat to the security of participating States. These are some of the reasons why it is important for all States to undertake financial investigations.

According to the Financial Action Task Force (FATF) there is growing evidence that criminals are turning to trafficking in human beings (THB) and the smuggling of migrants (SOM) to a greater extent, as these crimes are seen as highly profitable.²²⁸ OSCE participating States have continually emphasised that money laundering is a threat to security and reaffirmed their commitment to combating the problem. Based on OSCE Ministerial and Permanent Council decisions, the OSCE has intensified its efforts to combat both money laundering and the financing of terrorism over the past few years.

All police investigators should, legislation permitting, automatically commence a financial investigation (FI) into human trafficking cases at the same time that the criminal investigation commences. The main motivation of all traffickers is to make substantial profits from their criminal enterprise as a result of the exploitation of victims. FI can target the financial gains acquired by the traffickers and provide effective remedies to sequestrating these gains through a number of differing solutions.

The benefits of FI include the investigation and potential recovery of the profits of human trafficking and that the evidence collected during the financial investigation can corroborate the evidence obtained in the criminal investigation. Those undertaking FI will need to prove that human trafficking offences have been committed and the profit is a result of this criminality. Once it can be established that the assets that the perpetrators possess are a result of criminal activity then an application can be made for the appropriate financial remedies.

²²⁸ Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants (July 2011) FATF Executive Summary.

XI.3 The Financial Investigation Process

XI.3.1 How do Traffickers Dispose of Profits?

It is important to obtain knowledge of how traffickers dispose of the profits of human trafficking, where they dispose of these profits and what methods they use to dispose of them, as this is the basis of an informed investigation. Investigators need to be aware of the financial benefits accrued by traffickers and how they dispose of their illegal profits.

The following are some of the different methods used by traffickers to dispose of the profits:

- Money is returned to the country of origin of the trafficker and is reinvested in both legitimate and criminal activities;
- Money is returned to the country of origin of the trafficker where it is used to create symbols of wealth and/or to show the power of the trafficker. This is particularly significant in certain cultures, for example Roma criminals investing in large homes to show their power;
- Money supports lifestyle - more prevalent in individual traffickers;
- Money remains in destination country and is reinvested in both legitimate and criminal activities;
- Terrorist activities.

XI.3.2 How do Traffickers Launder Money?

- Through cash intensive businesses
- By using money service businesses
- Through informal banking networks which can be alternative banking systems (ABS) or Hawala banking systems²²⁹
- By using cash couriers to move the profits mainly back to the countries of origin of the traffickers
- By using front companies predominantly to launder money
- The co-mingling of profits with legitimate funds
- Investment in property and/or cars and other realisable assets

²²⁹ See Clarification of Terms (p11).

XI.3.3 The Benefits of Financial Investigations

The Framework Directive states that in combating trafficking in human beings, full use should be made of the existing instruments on seizure and confiscation of the proceeds of crime. It is important that FI are commenced as they can be the cornerstone of all human trafficking cases and the earlier an investigation starts the greater the benefits that can be accrued.

The benefits are as follows:

- The provision of advice and/or tactical options
- The development of investigative opportunities
- A more efficient investigation
- The identification of evidence of value
- Financial investigation supports and/or corroborates other evidence
- The provision of opportunities for disruption

XI.3.4 Financial Investigative Tools

FI use the same investigative methods and specialist techniques as criminal investigations. The difference is that those involved in the FI use them to prove that the money was obtained illegally through the exploitation of victims. They then track where the money has been sent and that it is all a result of criminal activity. This information enables applications for financial remedies to retrieve the profits of the crimes to be made, some of which can be used even if there is insufficient evidence for a criminal prosecution.

Financial investigators can use the following tools:

- Financial Intelligence from open sources; literature review; police sources; intelligence sources; evidential sources including documents and paper exhibits; computers; bank details.
- International co-operation either informally and/or informally

- International and regional platforms, for example Interpol, Egmont²³⁰, the UNODC
- Inter-agency co-operation between LEAs and Financial Investigation Units (FIU)

XI.3.5 Investigative Challenges

There are a number of challenges in FI that need to be considered and which may have differing degrees of impact in each participating State.

These include:

- Does domestic legislation allow FI?
- Is there sufficient expertise to commence a FI?
- What is preferable - civil and/or criminal recovery?
- How do you obtain evidence of wire transfers?
- The problem with financial centres
- The problems of emerging economies (money invested in economies and no questions asked about the source)

XI.3.6 Practical Problems

FI face a number of problems, especially when trying to seize or trace the criminal assets of traffickers.

These can include:

- Jurisdiction, the money has been traced overseas and if formal mutual legal assistance (MLA) is required it is important to ascertain if it is possible.
- Difficulties with MLA
- Traffickers can be from emerging economies and the money cannot be traced
- The money has been traced and the State of origin of the trafficker is a State with either no banking system or an ABS system
- An individual trafficker and the money is spent
- The difficulty in tracing the money due to the complexity of OCN systems

²³⁰ An informal network of FIU whose objective is to facilitate international co-operation, shared expertise, information exchange and training.

XI.4 Financial Remedies

XI.4.1 Money Laundering

The process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into other criminal enterprises.

XI.4.2 Civil Seizure

The seizure of cash where there is reasonable cause to believe that it is from a criminal activity or to be used in crime. The cash seized can be kept if a subsequent criminal case fails.

XI.4.3 Confiscation

The removal of assets from a criminal, following conviction for a criminal offence.

XI.4.4 Forfeiture

The seizure of items used in the commission of a crime, for example land, vehicles, ships and airplanes, which can then be sold and the assets raised could potentially benefit victims.

XI.4.5 Restrain/Freeze Assets

An application to restrain or freeze the assets of an alleged trafficker that prohibits dealings within any "realisable" property.

XI.4.6 Non-LEA/Tax Authorities

Each OSCE participating State may have authorities or agencies that have the authority to make an application to obtain the profits of potential or real criminal activity. These can range from agencies with responsibility for collecting taxes to labour inspectorates. They may have the authority to make an application for criminal and/or civil seizure.

XI.5 Identified Good Practice

- Provide a monetary incentive to set up a FI
- Monies recovered go to the victim and/or anti-human trafficking activities
- Obtain financial intelligence
- Engage with the private sector
- Train and accredit financial investigators to give them credibility and enable them access to banks and other financial institutions with an enhanced reputation
- Post-confiscation financial action
- Use of international financial platforms, for example Egmont
- Mutual Legal Assistance
- FI International Co-operation
- Compensation and/or restitution to the victim

Financial investigators need to widen the scope of any human trafficking investigation to address the business models of the crime groups that they are investigating, not just the human trafficking offence that is being investigated.

XI.6 Victim Issues

In common with any investigation into human trafficking, if there is any potential risk of harm to the victim or potential human cost of any financial investigation then either other options should be considered or the investigation should not be commenced. Potential risks could include informing the traffickers of the victim's identity or informing a victim's family that they have been trafficked, thus putting them at risk or a potential risk of re-trafficking. A full risk assessment should be completed prior to any financial investigation being instigated.

Further and more detailed information on Financial Investigations can be found in the following training guides:

- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009)

XII. Investigating Internet Crime

XII.1 Introduction

The use of the Internet is rapidly expanding, both for the recruitment of victims and for advertising their services. Meetings between victims and clients are organised through dedicated websites. Victims are rapidly rotated, remaining in the same city for no more than one or two days. The perceived anonymity and mass audience of online services increases both the discretion and profitability of these services, making it very hard to identify criminals using just traditional police techniques.²³¹

Case Study: Sweden

In 2008 the Swedish Police's IT crime division investigated six websites advertising women for prostitution in Sweden. None of the websites could be localized to a server in Sweden; rather, most of them were located in the United States, Germany, the Netherlands, Denmark and Russia.

The six websites that were examined had a total of 417 advertisements for female prostitutes. The age span of the women offering sexual services was 18 to 64 years of age; however, most of the adverts were for women between 22 and 35 years of age. The women came from all over the world, and most of the adverts were in either Swedish or English. Countrywide, 222 women were sold in Stockholm County, 51 in Vastra County and 39 in Skane County.²³²

Europol has set out the following trends in child sexual abuse online that are in evidence at the present time.²³³

- After the observed decrease, since 2010 the involvement of worldwide criminal networks in offering pay-per-view websites is slightly on the rise. Commercial distribution of child abuse material on the Internet is currently executed through the use of several, in some cases less conventional, payment systems such as money remitters and electronic money;
- Criminals are now focusing on hidden channels where private access is granted only to 'selected' users. The selection is performed by the

²³¹ Europol OCTA 2011 p18.

²³² Claude, K. Targeting The Sex Buyer. The Swedish Example: stopping Prostitution and trafficking Where it all begins (2010) p39

²³³ Europol Child Sexual Exploitation Fact Sheet (2012) p5.

channel's owner or managers based on the amount, nature and quality of images that can be shared, and even based on respect and trust;

- Child sex offenders and their networks make more and more use of sophisticated software in order to try to protect their anonymity, to make use of online storage and hosting services, hi-jack servers and to use advanced encryption techniques to counteract digital forensic examination by police;
- Child sex offenders are travelling to specific countries where children are offered by their families or others acting as facilitators in order to be sexually exploited and to produce illegal material that is distributed through the Internet;
- Illegal material is increasingly self-produced by teenagers or children who underestimate the risks of distributing their images or movie files mainly through social media or video-enabled instant messaging;
- In some other cases, children are persuaded or coerced by child sex predators into producing the material through online grooming;
- Online grooming and the solicitation of sexual messages through mobile phones and multimedia devices ('sexting') are dangerous realities which need constant attention from a responsible society.

Europol also states that to tackle these crimes serious consideration should be given to:

- Enhancing awareness and providing appropriate tools, equipment and human resources to carry out investigations;
- Reducing any duplication of efforts in activities by consulting international police co-operation agencies and spreading knowledge and proposals;
- Developing closer operational coordination of ongoing investigations at national, European and worldwide levels;
- Enhancing close co-operation with Internet Service Providers and the Internet private sector;
- Enhancing close co-operation with academia and non-governmental organisations.

Good Practice: Moldova

The President of the International Centre "La Strada" reported that about 80% of children in cities and 70% of children in rural areas now have access to the Internet. A recent study conducted by the Centre revealed that 13.4% of cases in children aged 12 years received indecent Internet proposals from unknown persons, and 29.3% of cases in teenagers aged 16 years received direct proposals of a sexual nature. She reiterated that in this study, many children expressed interest in learning more about how to safely navigate the Internet.

These facts have fuelled the idea of the "La Strada" team to initiate an interactive portal (www.SigurOnline.md), in partnership with the Ministry of Information and Communication Technology and State Agency *MoldData*.

The portal's goal is to provide children with access to the widest information about Internet advantages and how to use the virtual space safely, as well as about what dangers may lurk. Designed as a child-friendly portal, it is not only informative but also interactive. It will give young users access to useful information about how to protect themselves from abusive content and actions online, how to develop a responsible attitude for the content posted, and how to report any abuse happening online.²³⁴

XII.2 Investigations

Dutch investigators and prosecutors state that it is necessary to use "new and innovative" techniques to combat human trafficking. This is equally applicable to offences committed on the Internet. As well as new techniques, the legislation within participating States needs to be reviewed and possibly updated to ensure that these crimes can be investigated and prosecuted successfully.

Police investigators will have to work with specialists who have knowledge of how to investigate cybercrime. Ideally, teams containing specialists in human trafficking and cybercrime would be formed, allowing them to work together and use their complementary skills.

²³⁴ www.lastrada.md/en.html

Criminal offences involving the use of the Internet are increasing and affect a wide range of human trafficking cases.²³⁵

Case Study: Belarus

In 2008 the Interior Ministry of the Republic of Belarus stopped the activity of an organized criminal group consisting of citizens of Russia and Belarus (6 persons were identified) who established a network of brothels for prostitution, and over the period 2005-2008 were engaged in the production and distribution of child pornography on the Internet. Their income reached USD 40,000 per week. Documents confirm the legalisation of at least USD 350,000 by using offshore companies. In spring 2009 the criminals were sentenced to prison terms ranging from 3 to 7 years.

Further and more detailed information on Internet Investigations can be found in the following training guides:

- Europol Child Sexual Exploitation Fact Sheet (2012)

²³⁵ See Forced Marriages (5.6.4.4.1); Ritual Abuse (5.6.4.5); The modus operandi of Internal Trafficking (7.2).

XIII. The Traffickers

XIII.1 Introduction

The purpose of the UNTOCC is to promote co-operation to prevent and combat transnational organised crime more effectively. It would be a mistake to think that all criminals involved in trafficking in human beings are members of a transnational organised crime network.

Trafficking organisations can vary from single individuals or soloists to complex networks involving numerous individuals. Trafficking may be facilitated by legitimate businesses or individuals working for or with trafficking enterprises along or during the trafficking process.²³⁶

The criminal groups operate within family networks and/or ethnic communities. They use the contacts of these networks to recruit women from the same background for brothels or street prostitution. They usually have widespread contacts in Europe and the victims are exploited in more than one country. The victims can be transported from the origin country directly to the country of destination using low cost airlines, with tickets purchased by the traffickers, or transported on land routes through several transit countries. Once in the country of destination the victims are provided with accommodation and transportation to the workplace where they are forced to engage in prostitution. The victims are offered “protection” while practicing prostitution in brothels, bars, private flats or on the street, and they are closely monitored by the members of the OCN.

XIII.2 Emerging Trends

The Europol OCTA 2011 outlined the following emerging trends being undertaken by traffickers:

- Air travel using counterfeit, forged or fraudulently obtained documents as the preferred method of transportation;
- Key role of the Internet in recruiting victims and advertising their services;
- Prominence of Chinese, Nigerian, Bulgarian and Romanian (Roma) criminal groups;
- Chinese and Nigerian criminal groups proficient in the production of counterfeit or falsified documents to facilitate trafficking;

²³⁶ OSCE Analysing the Business Model of Trafficking in Human Beings to better Prevent the Crime (2010) p9.

- Trafficking of children by Roma criminals groups for exploitation in petty crime, and adults for the commission of benefit fraud;
- Trafficking within the EU of victims from South East Europe;
- Exploitation in a range of sectors: agricultural, construction, textile, healthcare, domestic service and the sex industry.

XIII.3 The Business of Trafficking

Whoever traffics human beings does it for the profit that can be made from the exploitation of the victim; the sale of the victim to other traffickers or from the service that can be obtained from the victim. There is a continual supply of victims and an increasing demand in all forms of exploitation.

As a business, human trafficking is seen as presenting many opportunities: there are low entry costs, there is a ready supply of victims, and human trafficking is perceived as a low risk and high profit criminal enterprise.

XIII.3.1 Trafficking as a Business Model

There are different models of human trafficking which relate to the modus operandi of the traffickers and also to geographic locations:

- Natural Resource Model – victims are trafficked from CIS to the US
- Trade and Development Model – victims are trafficked from China
- Supermarket Model – victims are trafficked from Mexico to the US
- Violent Entrepreneur Model – Balkan crime groups trafficking women for sexual exploitation
- Traditional Slavery with Modern Technology – victims are trafficked from Africa²³⁷

XIII.3.2 Trafficking Networks

Those responsible for trafficking can be classified into four main crime typologies:²³⁸

²³⁷ Aronowitz, A.A. Human Trafficking: The Involvement of Criminal Organizations and Prevention Measures OSCE (September 15-15 2009).

²³⁸ OSCE Analysing the Business Model of Trafficking in Human Beings to better Prevent the Crime (2010).

- Individual Traffickers exploit victims in different markets and are responsible for trafficking for domestic servitude and “loverboy” cases.
- Criminal Groups are flat/fluid networks; they are flexible, adaptable, segmented and specialised criminal entrepreneurs
- Organised Criminal Networks are horizontal/hierarchical, comprising of sub-units (exploiting unit/recruitment office/re-escort unit/document office/management unit), they control the entire process, offer a full set of services, co-operate with other criminal groups, are involved in other criminality and adapt to differing markets
- Criminal Distribution Networks that recruit in one country and sell in another; they control the local infrastructure and are akin to market traders (wholesalers/distributors)

The representation of female traffickers is greater than in other crimes, which could be because of their ability to control victims or the fact that they themselves could previously have been victims.

Differing criminals and criminal networks can be involved at differing stages of the trafficking process and not necessarily at each stage of the process.

Domestic servitude can involve individuals or members of a family from a variety of social backgrounds. In most cases, the person who recruits the victim is the one who exploits them. Research and NGO experience indicate that ruthless placement agencies may also act as recruiters or intermediaries. Evidence of this exists in some OSCE participating States.²³⁹

XIII.3.3 Emerging Trends in the Process of THB

The criminals responsible for human trafficking, in common with other criminals, change and adapt the methods they use to recruit, transfer and exploit the victims. It is important that those investigating are aware of the changing trends in relation to the differing phases/elements of the human trafficking process.

XIII.3.4 Use of Recruitment Agencies

This is especially prevalent in cases of forced labour where victims are recruited, usually through advertisements in the media or online, within

²³⁹ OSCE Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (Vienna, 2010) p11.

their own country. Victims are promised employment in either destination countries, or in towns/cities within their own country, and are even given contracts that are inevitably worthless.²⁴⁰

Further and more detailed information on traffickers can be found in the following guides:

- OSCE Analysing the Business Model of Trafficking in Human Beings to Better Prevent Crime (2010).

²⁴⁰ See Labour Exploitation (5.4.2).

XIV. International Co-operation

XIV.1 Introduction

One of the primary aims of the UNTOCC was to promote international co-operation to combat transnational organised crime. The purpose of Article 2 of the Palermo Protocol was to promote co-operation among State Parties in order to meet the objectives of the Protocol.

The aim of this chapter is to provide guidance and good practice in the investigation and prosecution of human trafficking cases with a transnational dimension. However, with the growing awareness of internal trafficking the importance of increased regional co-operation cannot be underestimated. The objective is also to provide information about the ways and methods available to obtain and comply with international co-operation.

One of the main challenges in investigating cases of human trafficking is the transnational nature of the crime when often victims, witnesses and defendants can all, potentially, be from different States. This can be further complicated by the fact that the offence may have taken place in another State. Traffickers may also have been arrested outside the jurisdiction and this could necessitate extradition proceedings, possibly following an international arrest warrant.

In the course of a proactive investigation, and/or as a result of prior intelligence, police investigators may need to obtain information from other jurisdictions. Evidence can be obtained through formal and informal channels. The guide provides information on these channels and also on the international platforms and how they can be used to the investigators' best advantage. Formal, and to some extent informal, international co-operation is predicated on OSCE participating States being either signatories to the relevant International Conventions and/or bi-lateral/multi-lateral agreements.

Prior to any investigation, or in certain OSCE participating States, after the start of an investigation depending on domestic legislation, victims and/or witnesses may have to, or want to, be returned to their own States. This then necessitates evidence being obtained from that State. Additionally, the recruitment and transportation of victims may have taken place in differing jurisdictions, as well as other criminal offences, and evidence may have to be obtained from these jurisdictions.

If a victim-centred approach is taken, and legislation allows, victims and/or witnesses who have returned to their country of origin may be permitted to give evidence from their own country by means of video.

Case study: UK

A 24-year-old man was found guilty of trafficking two Brazilian women into the UK to make them work in a brothel. HFZ tricked the pair with the promise of restaurant work in the UK. Once they were in the country he took away their passports and sold them to a brothel in Portsmouth.

The women - aged 19 and 21 at the time - had met HFZ in Brazil. He told them he had a restaurant in the UK and offered them work, saying they would earn six times more than they could in Brazil. In May 2005, both women flew from Sao Paulo to London. HFZ met them and took away their passports and return air tickets. He told them there was no restaurant work available. The women were then bought underwear and taken to the brothel in Portsmouth, where they were pressured to work as prostitutes. In fear of what might happen if she said no, the 21-year-old woman agreed to work in the brothel.

He was found guilty of four charges of human trafficking and jailed for eight years, at the end of his trial at Portsmouth Crown Court. The women returned to Brazil before the trial and gave their evidence by video link from Brazil.

Investigators and prosecutors need to understand the legal process to secure formal international co-operation and how informal co-operation can assist and expedite investigations. Whilst international co-operation can be challenging due to legal, cultural, political and language issues, there are legal rules and procedures to facilitate co-operation and the tools required to prosecute the traffickers.

XIV.2 Regional Co-operation

While not all human trafficking cases are transnational, they may still necessitate evidence being obtained from different regions and different LEAs within the same country. The guidance on good practice is equally applicable to investigators in determining which region is best placed to investigate a human trafficking case and hold the subsequent criminal proceedings. The interests of the victim will always be a primary consideration in any decision.

XIV.3 International Legal Co-operation

XIV.3.1 Jurisdiction

Investigative good practice dictates that jurisdiction should be decided at the outset of any investigation. In consultation with the prosecutor, it should be decided which jurisdiction is best placed to undertake the investigation. This decision should be based on what is in the best interests of the victim, where the best evidence is available to prosecute the traffickers and what position those who can be prosecuted have within the criminal hierarchy.

The decision is often made to investigate lesser offences and/or perpetrators because the evidence is readily available within national borders. Police investigators should consider which State has the best evidence to investigate the offence and whether any other jurisdiction is better placed to investigate and/or prosecute the senior members of the trafficking hierarchy, not forgetting the best interests of the victim.

The international legal rules on jurisdiction in trafficking situations are set out in major international and regional treaties. Their objective is to eliminate jurisdictional safe havens of the traffickers by ensuring that all parts of the crime can be punished wherever it took place. Another concern is to ensure that coordination mechanisms are effective in cases where more than one State has grounds to assert jurisdiction.²⁴¹

XIV.3.2 Mutual Legal Assistance

Mutual Legal Assistance is a process States use to provide and obtain formal government to government assistance in criminal investigations and prosecutions. The exact type of mutual legal assistance that States provide to one another is subject to national law and international arrangements.²⁴²

XIV.3.2.1 Practical Guidance

Evidence can be obtained by informal means; the extent to which this evidence can be obtained is dependent on two factors: to what extent does the domestic legislation of the OSCE participating State allow informal requests for evidence, and how good is your State's relationship with the other State or States you are seeking to obtain evidence from. The better the working relationship between States, the greater the likelihood of a successful informal application.

²⁴¹ ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (2009) p20.

²⁴² ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (2009) p33.

Identified good practice is, if it is possible, to either make personal relationships with police investigators and prosecutors in other States, or to obtain their details and approach them informally. This can improve the prospects of obtaining both informal and formal evidence and also expedite proceedings.

Whilst it is not possible to list what evidence can be obtained informally, as a general guideline, if the evidence is a matter of public record it can probably be obtained informally. However, if it relates to covert activities then it is almost certain that a formal application will be necessary. Informal applications can also be considered to ascertain whether witnesses are willing to give evidence or have a written evidential statement taken where they are a voluntary witness. When requesting informal evidence, if an investigator or prosecutor has any doubts that the evidence may be excluded from any subsequent court hearing then they should always make a formal request for the evidence.

Evidence that usually requires a formal application includes statements from non-voluntary witnesses, financial records from banks and other institutions and evidence relating to coercive specialist investigation techniques. OSCE participating States are bound by the international conventions they have ratified and their respective domestic legislation on how they can obtain evidence. Investigators and prosecutors should ensure that if they request formal evidence, conventions and legislation must be complied with. If they request non-evidential material - for example intelligence - then mutual legal assistance is not always applicable.

Investigators and prosecutors need to determine, prior to making a request, what the probability of obtaining the evidence they are requesting either by formal or informal means is. If the State they are requesting the information from does not normally comply with requests, or cannot comply, due to either their own domestic legislation or the domestic legislation of the requesting State, then other options need to be considered as it is unlikely that the evidence required will be obtained. Before any request for evidence is made, investigators and prosecutors should consider whether a request for evidence is necessary, as they may be able to obtain the evidence in their own country through the Internet or other media.

Whenever possible, formal applications for evidence should only be used for essential evidence that cannot be obtained informally, or in any other way. Improving relationships with counterparts in other participating States can be beneficial in seeking informal assistance prior to making a formal request and also by providing them with a copy of the request in advance.

This can expedite proceedings and determine if the request can be complied with legally or otherwise.

Finally, it must be remembered that a formal request for evidence is a legal document and must comply with international conventions and the domestic legislation of the countries involved.

XIV.3.2.2 Potential Risks

Police investigators should assess all risks before making any formal or informal applications for mutual legal assistance. They need to ascertain that the State they are requesting the information and/or evidence from is trustworthy and that the request will be treated in confidence. Secondly, they need to legally ensure that the information provided in the request will not be disclosed by the State they are requesting information and/or evidence from. In certain States they are legally obligated to disclose the information and/or evidence received in a request for mutual legal assistance.

These risks can not only put the investigation and/or prosecution in jeopardy, but they can also put the victim at considerable risk. If the risk to the victim is so great, consideration should be given to not making the application, even if this means abandoning the investigation or prosecution.

XIV.3.3 Extradition

Extradition is the formal name given to the process whereby one State (the Requesting State) asks another State (the Requested State) to return an individual to face criminal charges or punishment in the Requesting State. Extradition is an important component of an effective criminal justice response to trafficking in persons.²⁴³ Because of the transnational nature of human trafficking, extradition is essential for successful investigations.

²⁴³ ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases. 2009 p109.

XIV.4 International Good Practice

XIV.4.1 Joint Investigation Teams²⁴⁴

Article 19 of the UNTOCC states that States should consider joint investigations. Within the EU, JITs were legislated for under Article 13 of the MLA Convention 2000 and the Framework Decision on Joint Investigation Teams 2002. They are recommended as good practice within the COE and Framework Directive.

A JIT is an investigation team consisting of two or more parties with a specific purpose and a limited duration. The advantages are as follows:

- Information sharing – no formal request
- Platform for investigation/prosecution strategies
- Direct investigative measures - no need for Letters Rogatory
- Presence – interviews, searches etc.
- Informal knowledge exchange

XIV.4.2 International Platforms

Police investigators should always consider using appropriate international platforms to expedite cases, to obtain MLA and to decide jurisdiction, as well as obtaining evidence, intelligence and expertise on joint investigations.

International platforms:

- Interpol
- Europol
- Eurojust
- Frontex
- Sebam (Sepag)

XIV.4.3 International Networking/Networks

Whilst international co-operation platforms provide formal and informal advice and assistance, there are other channels of communication that can also assist in both trafficking investigations and victim protection. Several are listed below but there may be others that can assist:

²⁴⁴ See Joint Investigation Teams (10.2.7.3).

- Embassy staff (see CBSS handbook)²⁴⁵
- Diplomatic staff
- Liaison Officers
- Informal contacts

Further and more detailed information on investigating human trafficking can be found in the following guides:

- ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases. 2009
- ICMPD Law Enforcement Manual to Combat Trafficking in Human Beings (2006) – Unit 6
- ICMPD Anti-Trafficking Training Material for Frontline Enforcement Officers (2006) – Chapter 3 p44
- ICMPD Anti-Trafficking Training Manual for Judges and Prosecutors Curriculum – Training Guide in EU Member States and Accession and Candidate Countries (2006) - Chapter 6
- UNODC Toolkit to Combat TIP 2nd Edition (2008) -4
- UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners (2009) – Module 6
- UNODC Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking (2010) ix
- UNODC First Aid Kit for Use by Law Enforcement First aid Responders in addressing Human Trafficking (2011) - Leaflet 4

²⁴⁵ Council of the Black Sea States Handbook for Diplomatic and Consular Personnel on How to Assist and protect Victims of Human Trafficking (Stockholm 2011).

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