

Permanent Mission of the Federal Republic of Germany
to the Organization for Security and Co-operation in Europe

TRAFFICKING IN HUMAN BEINGS

Country report of Germany

Vienna, 2 September 2002

Research/media coverage

What information is available about trafficking? Are there any reliable studies or statistics on the issue? How does the media cover the issue?

Reliable data on trafficking in women - as defined by the United Nations - do not exist for all forms of trafficking in women. With regard to the particular area of trafficking in human beings as defined in the German Criminal Code, i.e. for the purpose of sexual exploitation, the Federal Office for Criminal Investigation keeps annual figures on cases involving proceedings for suspected trafficking in human beings. The Office processes the data and analyses them in order to determine trends. The data are then published in the national "Situation Report" on trafficking in human beings, but they cover only detected cases. It is assumed that there are a large number of undetected cases. There are various studies and publications dealing with the problems, for example,

- A study entitled "*Umfeld und Ausmaß des Menschenhandels mit ausländischen Mädchen und Frauen*" from 1999, commissioned by the Federal Government;
- "*Frauenhandel und Prostitutionstourismus - Eine Bestandsaufnahme*" from 1990, also sponsored by the Federal Government;
- "*Frauenhandel(n) in Deutschland*" by the Bundesweiten Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (KOK), 2001; the Federal Government also made funds available for this;
- Documentation of the Conference "Europe Against Trafficking in Persons", Berlin, 15-16 October 2001, in co-operation with the OSCE Office for Democratic Institutions and Human Rights;
- The Federal Government's Sixth Report on Human Rights Policy devotes a special section to the subject of trafficking in persons.

In addition, non-governmental organizations (NGOs) and also government agencies frequently publish brochures, reports, etc., on trafficking in women.

Reports on trafficking in women appear again and again in the media. The contributions range from somewhat sensationalist articles to serious reports. This applies to both the print media and television and radio broadcasts.

Awareness-raising

Are there any awareness-raising programmes? What issues are most important to stress in your country? Who is the target audience?

There has so far been no government campaign at the national level on trafficking in women, but poster campaigns and other campaigns have been organized by various NGOs. Thus the NGO Terre des Femmes has conducted a campaign entitled “*Männer setzen Zeichen*” in several cities. The target audience, in this case, was primarily men, including those who patronize prostitutes.

The Federal Government supports the preparation and distribution of publications on trafficking in women financially and in terms of their content. These include the book by KOK already mentioned (the target audience is the general public or those interested in the subject) and an information brochure for potential victims of trafficking, published in 13 languages. This brochure is distributed in the countries of origin and also in Germany.

Legal framework/legislative review and reform efforts

How does the current legal framework prevent and address trafficking and related violations? How are victims identified and how are their rights protected? Has your country ratified the UN Convention Against Transnational Organized Crime and its protocols? Is there review and reform of relevant legislation under way?

The relevant penal provisions are § 180b (“Trafficking in Human Beings”) and § 181 (“Serious Trafficking in Human Beings”) of the Criminal Code. Both provisions have been amended by the 26th Criminal Law Reform Act (Trafficking in Human Beings), which came into force on 22 July 1992, in response to the marked increase in the commercial exploitation of human beings and the new forms in which it is manifesting itself. Under these provisions, trafficking in human beings means conduct aimed, usually in pursuit of profit, at bringing another person, through trickery, threats or force or by exploiting a difficult personal situation, to engage in sexual acts, and particularly to take up or continue prostitution in a foreign country. The provisions read as follows:

“§ 180b

Trafficking in Human Beings

(1) Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine. Whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person’s stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person, shall be similarly punished.

- (2) *Whoever exerts influence:*
1. *on another person with knowledge of the helplessness associated with the person's stay in a foreign country; or*
 2. *on a person under twenty-one years of age,*
- to induce the person to take up or continue prostitution or to get the person to take it up or continue it, shall be punished with imprisonment from six months to ten years.*
- (3) *In cases under paragraph 2 an attempt shall be punishable.*

§ 181

Serious Trafficking in Human Beings

- (1) *Whoever:*
1. *with force, threat of appreciable harm or trickery induces another person to take up or continue prostitution;*
 2. *recruits another person through trickery or abducts a person against the person's will by threat of appreciable harm or trickery, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, to allow them to be committed on the person by a third person; or*
 3. *professionally recruits another person, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to induce the person to take up or continue prostitution,*
- shall be punished with imprisonment from one year to ten years.*
- (2) *In less serious cases the punishment shall be imprisonment from six months to five years."*

These penal provisions do not cover other forms of trafficking in women under the United Nations definition. Here the application of other paragraphs of the Criminal Code may be possible - for example, the provisions on coercion (§ 240 of the Code), wrongful deprivation of freedom (§ 239), rape (§ 177), etc.

At the present time, the Federal Government is examining the extent to which German criminal law must be amended in order to implement the Framework Decision of the European Union on Trafficking in Human Beings and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Preparations are at present being made for the ratification of the latter by the Federal Republic of Germany.

The identification of victims of trafficking proves difficult in the context of police raids, for example. The result is that women are often immediately deported, although they are victims of trafficking, because they are in Germany illegally. In one of the Länder of the Federal Republic, indicators for the existence of trafficking in persons, on the basis of which the police can more easily determine whether women are victims of trafficking, are currently being developed.

Under the General Administrative Regulation pertaining to the Aliens Law, victims of trafficking are given a grace period of four weeks before deportation; during this period they can prepare for their departure or consider whether they wish to give evidence in court.

When a woman has decided to make herself available for the giving of evidence, she may, if she is at risk, be covered by a programme of police protection. However, the strict prerequisites for inclusion in such a programme are not satisfied by the majority of victims willing to testify, partly because they are often traumatized. These psychological problems call for a form of assistance that cannot be provided by the police. Measures to build the confidence of traumatized women are also needed because the women are often persuaded by their exploiters that the police are co-operating with the traffickers. The Republic-wide Working Group on Trafficking in Women (see further below for a description) has therefore developed an “Outline Plan for Co-operation between Specialized Advisory Agencies and the Police to Protect Victims of Trafficking in Persons who are to Appear as Witnesses”, which is tailored precisely to this target group. In this outline plan, the different competences of the police and the NGOs that advise and assist victims of trafficking are set out. The principle is that the police are responsible for protection and the advisory agency for assistance. The advisory agency decides, in consultation with the police, where the victims concerned are to be accommodated and ensures appropriate accommodation. It ensures continual psycho-social support and arranges for medical care as well as psychological support for the witness before, during and after initial questioning, interrogation sessions and court hearings. Staff of the advisory agency assist during the interrogation of the witnesses if the latter so desire. The advisory agency identifies training and further education possibilities for the witnesses in order to facilitate reintegration.

The German legal system provides for the possibility for victims of trafficking in human beings and serious trafficking in human beings to bring concurrent actions against the defendants in criminal proceedings. If the witness decides to give evidence against the defendant, she can bring a concurrent action. Such a concurrent action has the advantage that the victim does not participate in the hearing merely as a passive witness but has rights of her own. She can engage her own lawyer. The lawyer sees to it that the victim's rights as a witness are safeguarded and:

- Accompanies his or her client during interrogations by the police and/or judges before trial proceedings begin;
- Explains to the witness her rights (e.g., the right to see the documents relating to the proceedings) and duties;
- Pleads on behalf of the witness. The events are described from the viewpoint of the victim and subjected to a legal analysis.

A victim bringing a concurrent action has the right to take part in the whole of the main proceedings. She can, through her lawyer, make applications, declarations, etc. The costs of the legal assistance are borne by the State.

Government co-ordination

Is there a national co-ordinating body within the government to address this issue? Is there a focal point within the government responsible for co-ordinating a response and serving as a liaison for international contacts?

In the spring of 1997, the Federal Government set up a Republic-wide Working Group on Trafficking in Women which meets approximately every quarter. Its composition takes into account the great complexity of the problems concerning trafficking in women and the different policy fields, target groups and problem levels. Alongside the Federal Ministries dealing with the trafficking in women, the Länder, through various conferences of the competent ministers, the Federal Office for Criminal Investigation and non-governmental organizations that advise and assist victims of trafficking are represented in the Working Group.

The tasks of the Working Group include:

- A continuous exchange of information on the various activities in the Länder and in national and international forums between the competent Federal Ministries, the conferences of competent ministers of the Länder, the Federal Office for Criminal Investigation and NGOs;
- An analysis of the concrete problems arising in the efforts to combat trafficking in women;
- The drafting of recommendations and proposals for joint action, where appropriate, to combat trafficking in women.

Major themes up to now have included the attempt to agree on a common definition of trafficking in women, prevention, awareness-raising material, deportation deadlines and procedures, confiscation of proceeds, protection of witnesses, costs of assistance services for witnesses and legal regulations governing prostitution.

The concrete results include:

- The preparation and publication of information material for women in the countries of origin. The relevant brochure has been published in 13 languages and is distributed through NGOs and the German embassies in the various countries;
- The introduction of specific proposals regarding the administrative regulations concerning the Aliens Law that came into force on 9 October 2000, with regard to the treatment of victims of trafficking (e.g., a minimum grace period of four weeks before deportation takes place);
- The development of a model co-operation plan to ensure special arrangements to protect female witnesses who cannot or do not want to be included in the general

programme for the protection of witnesses. This Outline Plan for Co-operation has already become the basis for corresponding arrangements in individual Länder;

- The drafting of a recommendation for the authorities under the Law on Benefits for Asylum-Seekers and for the welfare agencies, regarding jurisdiction in the case of benefits for victims of trafficking under the Law on Benefits for Asylum-Seekers and the Federal Social Welfare Law;
- The drafting of a recommendation for the Länder on the scope for the application to victims of trafficking of the Law on Compensation for Victims;
- On 29 May 2001, a special order of the Federal Ministry of Labour and Social Affairs was issued to the Federal Employment Office providing for the possibility for victims willing to testify in the framework of the Outline Plan for Co-operation to be given work permits immediately;
- Special further training courses are organized annually by the Federal Office for Criminal Investigation for the benefit of the police, with individual members of the Working Group being involved.

In addition, preparatory work has been and is carried out by the Working Group for German participation in international conferences and for contributions to the drafting of international agreements on trafficking in persons.

With regard to international contacts in the area of police co-operation, the Federal Office for Criminal Investigation has liaison officers in many of the countries from which victims of trafficking come. These officers organize contacts between the countries.

National Plan of Action

Is there a national plan of action to prevent and combat trafficking? If so, what are the main components and who is responsible? What resources and co-operation are necessary to implement the plan?

There is no action plan concerned exclusively with the question of trafficking in women. As part of the "Plan of Action of the Federal Government to Combat Violence against Women", which was adopted in December 1999, several measures against trafficking in women are provided for and have in part already been implemented.

The main objective, along with the continuation of the Republic-wide Working Group on Trafficking in Women, is the establishment of closer links between the advisory agencies that advise and assist victims of trafficking. This aim is pursued through the promotion of the "umbrella organization" for advisory agencies, the KOK, and of contact meetings. Over and above this, the Plan of Action incorporates legal improvements (such as the four-week grace period for victims of trafficking as mentioned above) and particularly recommends co-operation between governmental and non-governmental agencies at all levels of the State.

Co-operation with non-governmental and international organizations

How does the government co-ordinate and co-operate with NGOs and IOs to prevent and combat trafficking, as well as to assist victims?

Co-operation and co-ordination with NGOs and international organizations takes place through the Working Group on Trafficking in Women and also through direct contacts between the agencies concerned. Thus, for example, on the basis of co-operation agreements between the police in some Länder and the NGOs operating there (the guiding principles in this connection are provided by the Outline Plan for Co-operation developed by the Working Group), there is a division of work between the institutions for the benefit of victims of trafficking. Similar to the Working Group on Trafficking in Women at federal level, many “round tables” have been set up at the Länder level which concern themselves particularly with trafficking in women. Co-operation is co-ordinated in these working groups.

There have been and are, for example, working contacts between the Federal Ministry for the Family, Senior Citizens, Women and Youth with the International Organization for Migration and also with the Office for Democratic Institutions and Human Rights.

Training of relevant State authorities

Are there any programmes in place to specifically train State authorities on how to prevent, detect and address this problem? Are there programmes in place to sensitize State authorities to the special needs of trafficked persons and victims of violence?

Special courses of further training are continually offered at the level of the Länder. The Federal Office for Criminal Investigation provides further training annually on the relevant problems for officials of the Offices for Criminal Investigation of the Länder, with experts from NGOs participating.

Aid and development programmes abroad

Does your government support anti-trafficking initiatives in other countries? If so, what strategies and priorities are behind these activities?

In the present year (2002), support was given for an awareness-raising campaign on trafficking in women in Lithuania, as part of preventive anti-trafficking efforts.

Bilateral and multilateral agreements and activities

Has your government signed any relevant bilateral or multilateral agreement to address this issue? Does your government promote and engage in joint projects and activities with other governments with the aim of preventing and combating trafficking? How does your government co-operate with other countries to ensure safe repatriation efforts and what mechanisms are in place to protect witnesses during the process of investigation and prosecution?

Victims of trafficking who do not make themselves available as witnesses for court proceedings in Germany are given the possibility, after being apprehended by the police, to

organize their return to their country within four weeks. German NGOs help them in this task. A safe return is most likely when contacts exist with an NGO in the country of return which can then concern itself with the victims. Financing of travel costs is possible from the resources of the Reintegration and Emigration Programme for Asylum-Seekers in Germany (REAG programme). The Federal Ministry for Technical Co-operation and Development supports a repatriation project of the NGO Solidarity with Women in Distress (SOLWODI), under which women returning to their home countries receive help with travel and removal costs and bridging funds for the first three months, and measures are financed for assisting them in finding jobs and starting a new life.

The Federal Republic of Germany has concluded agreements on extradition and mutual legal assistance with a large number of countries. There are bilateral agreements with many countries covering police co-operation, extending also to the area of procuring and trafficking in persons. Several additional agreements of this kind are about to be ratified.