

Report of the Experts Group on Trafficking in Human Beings

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All members of the Group contributed as independent experts not representing their governments or organisations. The views expressed in this report are the views of the Experts Group and do not necessarily reflect the views of the European Commission or of the States and the organisations for which the members of the Group work.

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Preamble

This report is the result of a year's work of the Experts Group on Trafficking in Human Beings. The main assignment of the Experts Group is to contribute to the translation of the Brussels Declaration into practice, in particular by submitting a report to the European Commission with concrete proposals on the implementation of the recommendations of the Brussels Declaration.

The report aims to indicate ways to strengthen EU action against trafficking in human beings and, where appropriate, to launch new initiatives, programmes and activities. The Brussels Declaration, however, has been understood as a “platform” and not as a “fence”. We have also taken into account other sources in order to benefit from new developments and findings in particular areas.

The report follows the structure of the Brussels Declaration and consists of three major parts focusing on prevention, on victim assistance and protection and on law enforcement aspects in the broad sense. Apart from these three areas there are a number of overarching issues – we have called them guiding principles and cross cutting themes – that feed into the whole report, such as the need for a human rights based approach, the specific needs of children and the importance of an integrated and multidisciplinary approach. They can be found in Chapter 3. A number of the key issues and proposals discussed in the main body of the report are further elaborated in the Explanatory Papers.

The basis of our report is the definition as contained in the UN Protocol and the EU Framework Decision on trafficking in human beings. The core elements of trafficking, as defined in the Protocol, are coercion, abuse and deceit. The definition covers all forms of trafficking into sexual exploitation, slavery, forced labour and servitude. Furthermore, it makes a clear distinction between trafficking and prostitution as such. Neither instrument implies a specific position on (voluntary, non coerced adult) prostitution as such, leaving it to individual States how to address prostitution in their respective domestic laws. Consequently the question of the definition has to be distinguished from questions about the political or legal approach to prostitution that is followed to tackle the problem of trafficking.

We have followed that approach. It is well known that in particular the issue of prostitution is extremely sensitive and that very different positions exist on this issue, which are also reflected in the Experts Group. Our choice has been to recognise, respect and accept the different positions and not allow them to take over. Rather we have focused on the aim we have in common, notably to reduce trafficking and related forms of violence and abuse in the sex industry and other industries.

In our report we have formulated a number of principles, in particular the need for a human rights based approach. We are, however, fully aware that in translating these principles into

reality, one meets a number of obstacles and practical problems and that is important to be realistic about this.

The discussions in the Group have been guided by both a clear view of the political realities we face as well as by the need to think beyond those realities. Both perspectives are needed and can be mutually inspiring. Without, for example, the NGOs who started to address the issue in the eighties, in a time when no government was really interested, we, as an Experts Group, would probably not have existed today. We also felt it important to be clear about guiding principles and the direction in which policies should be developed to then be able to adapt to the political reality. Moreover, reality can take different shapes, the political reality and the reality of trafficked persons. We have tried to stay close to the reality of trafficked persons. We also considered it our task, as an independent group of experts, to keep governments to their commitments and not to be afraid of saying what *should* be done. We hope that in our report we have managed to strike a constructive balance between idealism and realism as we are convinced that both are equally needed to make a step forwards to successfully address trafficking.

We also hope that the report will not only inform action on the short-term, as a basis for a Communication of the Commission, but will also prove to be of value in guiding the development of EU policies on the long term. Although the report is written for the Commission, we would feel gratified if it would have an impact beyond the Commission and would also prove to be useful for other actors.

Another element of the way we worked as a group is that we wanted to be as open, inclusive and transparent as possible. Therefore we found it important to publish the draft report on the internet and to organise a consultative workshop in order to enable a wide range of other actors to give their input to the report. We felt this would enhance both the quality and the legitimacy of the report and would provide us with an opportunity to assess to what extent the draft report reflected the views and expectations of relevant actors in the field. The interest in the consultative workshop was impressive: about 120 representatives from governmental institutions, international, intergovernmental and non governmental organisations and independent experts came to Brussels and spent the day with us in discussing the draft.¹ Moreover, as we noted with pleasure, the content of the report was widely supported by the participants, though of course there were critical remarks and many valuable comments and additions.

We have used the input of the participants of the consultative workshop in two ways: firstly, we included a considerable part of the comments in our final report. Secondly, a report of the main issues discussed during the consultative workshop is attached to the report. In this way we hope to make the process as transparent as possible and to do justice to all the participants who helped us by sharing with us their expertise, experiences and views on the one hand, and the responsibility of the Group to decide what to take on board and what not on the other hand. In this respect, it is important to stress that the final responsibility for the content of

¹ A number of organisations also submitted written comments on the draft report. These comments can be found at the website of the Commission (http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.htm). A list of persons and organisations that participated in the consultative workshop and/or submitted written comments can be found in Annex 6.

the report lies with the Experts Group.

Given the complexity of the issue, we are aware that much more can be said than we do in this report. However, we decided to concentrate on the identification of key issues, priorities, possible gaps at EU and national level, and on recommendations of central relevance. For the same reasons the Group concentrated on the development in the EU and its Member States, although we hope that the report will also be used outside the EU context.

Finally, I would like to highlight two of the major themes that run throughout the report.

The need to integrate a human rights perspective

The first theme that runs throughout the entire report is the need to integrate a human rights perspective as a normative framework in the further development of policies to address trafficking. This includes the integration of a child rights perspective.

From a human rights perspective, the primary concern is to combat the exploitation of human beings under forced labour or slavery like conditions, no matter whether such exploitation involves a victim of trafficking, a smuggled person, an illegal migrant or a lawful resident. In the application of the UN Trafficking Protocol, policies should therefore focus on the forced labour and slavery like outcomes of trafficking, rather than on the process through which people arrive in such conditions. Such an approach would solve much of the current confusion between smuggling and trafficking and between so called “innocent” and “guilty” victims.

Moreover, under international human rights law States have an obligation to prevent, investigate and punish human rights violations and to provide the victims thereof with adequate remedies.

Up till now, States have concentrated predominantly on measures in the area of crime control and migration policies, rather than on victim assistance and protection. To effectively tackle trafficking, this imbalance needs to be redressed. You will find this reflected in the report, which in particular develops the issues of victim assistance and protection and prevention as we feel that these areas are lagging behind in comparison to the area of law enforcement. We consider this to be a key issue. The neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law. Trafficked persons should have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers. Those trafficked persons who do not wish to make a declaration as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection measures as trafficked persons who are willing and able to testify.

In the field of prevention, a human rights based approach implies that the root causes of trafficking need to be addressed, not only in the countries of origin but also in the countries

of destination. In this context special attention is paid to the potential that the promotion of managed migration, the protection of migrants' rights, the enforcement of labour standards and the formal and informal organisation of workers and other groups affected, can have in reducing trafficking.

Moreover, counter trafficking strategies should not only be in accordance with human rights norms, such as the right to privacy, the freedom of movement and the principle of non-discrimination, but also should not undermine or adversely affect the human rights of the groups affected, such as trafficked persons, (female) migrants, refugees and prostitutes. To this aim a "human rights assessment model" should be developed.

The need for a multi disciplinary and integrated approach

A second theme that runs throughout the report is the need for co-operation and coordination. Given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi levelled and integrated approach is needed. A holistic approach would strive for a balance between empowerment strategies, targeted at the provision of adequate remedies to trafficked persons and the social inclusion and participation of the groups affected, and repressive crime control strategies which are targeted at the prosecution and punishment of the perpetrators, while avoiding unintended and undesirable side effects of repressive policies that might increase vulnerability for trafficking. It should rely on multidisciplinary cooperation and coordination between *all* concerned actors and stakeholders, including law enforcement agencies, non governmental organisations, labour organisations and other relevant civil society actors. One of the elements is the development of national referral mechanisms to ensure the adequate identification and referral of trafficked persons and to harmonise the interests of trafficked persons with those of law enforcement agencies.

Non governmental organisations play a special role, not only in providing assistance to trafficked persons, but also in maintaining and strengthening democratic processes in societies and in monitoring and advocating implementation of human rights commitments by States.

An integrated approach also comprises effective prosecution aimed at the punishment of the perpetrators. In this context, special attention is paid to the need for specialisation and prioritisation, training, the development of instruments in the area of money laundering and the seizure of criminal assets, compensation and restitution mechanisms, and anti corruption strategies as an integral part of anti trafficking strategies.

Finally, we are aware that our mandate is to advise the European Commission on initiatives it may take on combating trafficking. As such the recommendations in this report are recommendations to the European Commission for future actions. We hope, however, that in our future work we will further be able to advise the Commission with regard to suitable instruments and particular activities the Commission may bring forth to bring the recommendations of this report into force.

Marjan Wijers, President of the Experts Group

Executive summary

This report aims to indicate ways to strengthen EU action against trafficking in human beings. Trafficking in human beings should be understood as a complex phenomenon violating the trafficked persons' will and right of self-determination and affecting her or his human dignity. From a human rights perspective, the primary concern is to combat the use of forced labour or services, slavery, slavery like practices and the like, no matter how people arrive in these conditions. In applying the UN Trafficking Protocol, States should therefore focus on the forced labour and slavery like outcomes of trafficking rather than on the mechanisms of trafficking itself, i.e. the process of how the person is brought into the situation of exploitation. Member States should adequately criminalize any exploitation of human beings under forced or slavery like conditions, independent of whether such exploitation concerns a "victim of trafficking", a "smuggled person", an "illegal migrant" or a "lawful resident".

Policies should clearly stress that trafficking in human beings is a serious crime and human rights violation, which needs to be addressed separate and apart from other forms of illegal activities, in particular irregular migration.

A human rights approach should be integrated as a normative framework in the further development of policies and measures against trafficking in human beings. Mechanisms should be established to ensure that anti trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected, in particular trafficked persons but also female migrants, asylum seekers or prostitutes. To this aim a "Human Rights Assessment Model" should be developed, in close cooperation with NGOs and human rights institutions, as an instrument to monitor and evaluate the human rights impact of anti-trafficking laws, policies and practices.

The Commission should take the initiative for the adoption of a legally binding EU instrument covering the status of trafficked persons which clearly goes beyond current Member States commitments and lays down minimum standards of treatment to which all trafficked persons would be entitled, independent of their capacity or willingness to cooperate in criminal proceedings or to give evidence. Special attention should be given to the position, rights and needs of children. All actions taken in relation to trafficked children shall be based on the following principles: the best interest principle, the right to participate and the principle of non-discrimination.

Given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi levelled and integrated approach is needed. Such an approach should rely on multidisciplinary cooperation and coordination between all involved actors and stakeholders, including non-governmental organisations, labour organisations and other relevant civil society actors. Non-governmental organisations play a crucial role not only in providing assistance to trafficked persons but also in maintaining and

strengthening democratic processes in societies and in monitoring and advocating implementation of human rights commitments by States. Co-operation between state authorities and the non-governmental sector should be based on agreements defining the roles and obligations of the parties involved.

Member States should establish clear, comprehensive and gender sensitive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, societies and governments. States policies in promoting immigration restrictions and reducing opportunities for regular migration have not been effective in preventing migration. Rather they have created a market for irregular migration, often as organised serious crime, through trafficking and smuggling of people. The promotion of regular and managed migration based on demand and need, including the need for unskilled labour, the protection of migrants' rights, formal and informal organisation of workers and the application and enforcement of labour standards, on the other hand, have a potential to reduce trafficking by offering migrants and other workers a mechanism which is safer and guarantees their labour and human rights.

Security polices should take into consideration both the protection of national borders and the protection of the individual. Human security should be an integral part of governmental security policies.

Special attention must be paid to the creation of cooperation and coordination mechanisms. Along with the establishment of National Referral Mechanisms, a governmental coordinating structure, consisting of a governmental co-ordinator and a cross-sector and multidisciplinary Round Table, should be established to develop, coordinate, monitor and evaluate national actions plans and policies. National referral mechanisms can ensure the proper identification, referral and assistance of trafficked persons, while at the same time harmonising the interests of trafficked persons and those of law enforcement agencies. In order to facilitate cooperation, contacts and exchange of information as well as the development, monitoring and evaluation of anti-trafficking policies on the European level, a European Anti-Trafficking Network built on the national cooperative structures should be established.

A present problem is the lack of relevant data and/or the fragmented character of available data and the lack of exchange of information at national as well as at European and international level. In order to address this problem, National Rapporteurs or a comparable mechanism should be established in order to systematically collect and analyse information from different sources and actors. To be able to compare data, common guidelines on data collection should be developed. Once national data collection mechanisms are in place, a similar mechanism should be established at the European level.

An extremely sensitive issue concerns data protection. It should be recognised that increased cooperation and data-exchange lead to greater risks of misuse of data. In this context it must be realised that any failure to protect personal data may pose a direct and serious threat to the life, health and safety of trafficked persons. Exchange of personalised data has to be based on strict data protection protocols and regimes. Regulations should be in place to ensure the confidentiality of the client counsellor relationship and to protect counsellors from any obligation to pass on information to third parties without the consent of the trafficked person. Moreover, the need to criminalize the unauthorised use of data should be considered.

The EU as well as Member States should allocate proper resources to the prevention and repression of trafficking in human beings as well as to the provision of adequate remedies to trafficked persons. Rather than merely project based funding, future financial support should be geared to long term sustainable support of organisations, structures and mechanisms that have proven their usefulness but cannot survive without further financial EU input. A balance needs to be found between project-based funding to give room to new and innovative initiatives and long-term, sustainable capacity building.

Prevention of trafficking in human beings is one of the most important lines of action to reduce this crime. Elements are research, awareness raising, training and administrative controls along with addressing the root causes of trafficking and the issue of demand. Prevention is not only an issue for countries of origin, but also for countries of destination. Prevention is primarily the responsibility of States, in cooperation with local authorities, international and non-governmental organisations, the business sector, labour unions and private citizens.

Root causes of trafficking are varied and complex. They range from globalisation, employment, trade and migration policies, humanitarian and environmental disasters and poverty to gender and ethnic discrimination, violence against women, lack of opportunities in countries of origin and the increasing demand for cheap, unskilled and easy to exploit labour and services in countries of destination. To prevent trafficking, the EU and Member States should review policies that may compel people to resort to irregular migration and consider increasing the opportunities for legal labour migration, along with the protection of the human rights of all migrants, regular or irregular, internal or across international borders. Moreover, prevention strategies should counteract discrimination, marginalisation and social exclusion.

Research is a crucial contribution to prevention. Information on the magnitude of trafficking and its trends is still very limited. One of the biggest gaps in the understanding of trafficking is in the area of data collection. This is due to many factors linked with the illegal aspect of trafficking, the use of different definitions, the lack of a data sharing instance and political decisions. Annual assessments of patterns, trends and volume of trafficking, using a unified methodology should be carried out, including the evaluation of the impact of policy measures and programmes. Different subjects connected with trafficking should be further researched in countries of origin, particularly on the root causes and the links between trafficking and poverty and exploitation. In countries of destination, research should be carried out on the demand side and the incentives for trafficking. Moreover, more research is needed on trafficking and forced labour in other sectors than the sex industry.

Raising awareness about the risks and dangers of trafficking and providing information on safe migration are an important form of prevention. Awareness raising activities should be tailor made to the different target groups and should include vulnerable groups, professionals, employers, clients and the public at large. For these purposes, all possible channels of formal and informal communication should be used, in cooperation with all actors, such as intergovernmental organisations, NGOs, labour agencies, State institutions and media in countries of origin, transit and destination.

Strengthening the technical capacity of counter-trafficking institutions through training is another important form of prevention. Training should provide an understanding of the process of human trafficking as well as the tools and skills to address it. It should be based on a human rights approach, raise awareness on anti-discrimination and be gender sensitive as well as underline the special needs of children. The target group for training should include not only law enforcement officials, but also diplomatic staff, labour inspectors, judiciary personnel, international military, and others. To ensure a coordinated and multi-disciplinary approach multi-actor training is an important means.

Administrative controls can support the prevention of trafficking through regulating and monitoring procedures, practices and agencies that may have an influence on trafficking in human beings and/or a potential to combat it. They include a range of mechanisms from repressive to positive enforcement and imply multi agency cooperation, including civil society as well as private sector participation. Cooperation between countries of origin and destination with regard to migration management, document security, visa processing, border controls, regulation of private employment, tourist and adoption agencies as well as the enforcement of labour standards are all contributing to effective prevention.

Any measure aimed at preventing trafficking should entail specific measures to address and prevent violence, abuse and exploitation of children. Best practices on the prevention of child trafficking should be developed, implemented and disseminated. Children represent an increasing vulnerable group and should be guaranteed special attention, protection and opportunities. Existing international instruments dealing with children should be enforced.

Until now States' policies, including EU policy responses to trafficking, have tended to concentrate on measures in the area of crime control and migration policies, but much less on the assistance and human rights protections for trafficked persons. The neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law. Trafficked persons should have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers.

To allow proper identification of trafficked persons all involved actors – governmental agencies, law enforcement, NGOs, local welfare organisations, labour unions, labour inspections and other labour related agencies – should be trained and referral systems should be established.

A reflection delay of not less than three months should be granted to all those who there is reason to suspect are trafficked in order to allow the trafficked person to begin to recover and to make an informed decision about her/his options, including the decision on whether to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims. Following the reflection period a residence permit should be granted to identified trafficked persons for a period of at least six months, irrespective of the capacity and/or willingness of the trafficked person to act as a witness, with the possibility of renewal. Those trafficked persons who do not wish to make a declaration as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection measures as

trafficked persons willing and able to testify. In specially qualified situations a long term permit should be granted, e.g. on humanitarian grounds. Trafficked children should always be allowed a temporary residence permit; they should only be returned if the return is in the best interest of the child, safe and assisted. Any decision to deport or return a trafficked person should be preceded by a risk assessment. Long term assistance programs should be developed in close cooperation with NGOs and IOs and should aim at the empowerment and social inclusion of trafficked persons either in their home country or the country of destination.

All trafficked persons should be entitled to basic social assistance and protection, including safe accommodation, health care, legal assistance, education, training and employment opportunities. All assistance services must be provided on a voluntary and confidential basis. Standards should be developed in order to ensure the quality of the services and that of the providers. Member States should recognise the importance of a variety of service providers working with trafficked persons, including the NGO sector, and should adequately support, cooperate with and timely and transparently fund them. Specialized services should be provided to trafficked children to meet their specific needs.

Trafficked persons should be treated as victims of crime and not be detained, charged or prosecuted for activities they are involved in as a consequence of their situation as trafficked person. Provisions for protection in criminal proceedings should be defined. Victims should be granted the right to information and advice, privacy, compensation and protection. Special court proceedings should be developed to protect victims giving testimony. The Commission should take the initiative for the development of a legally binding instrument covering the standing of trafficked persons in criminal proceedings.

One of the rights of trafficked persons is that to return voluntarily and safely to their countries of origin. Member States should establish appropriate return procedures and long term assistance programs, with due regard to the privacy, safety, dignity and welfare of the trafficked person, in close partnership with NGOs, IOs, IGOs and countries of origin. Return and long term assistance programs should aim at the empowerment and social inclusion of the trafficked person.

An integrated approach to trafficking in human beings comprises effective prosecution aiming at the punishment of the perpetrators. A number of legislative acts have been adopted over the last years in order to strengthen the penal framework combating trafficking in human beings and to improve the standing of victims in criminal proceedings. The main challenge ahead is to make this legislative framework and these structures fully operational. In this context, in particular, the Tampere II process or – more precisely further to the European Council of 4 and 5 November 2004 in Brussels – the Hague Programme is relevant and has led to new multi-annual guidelines approved by the heads of State and governments in the area of justice and home affairs. Moreover, the enlargement of the EU presents new challenges in this context, particularly in relation to countering corruption and sharing data. Increased cooperation and data sharing must be accompanied by strict data protection measures and regimes.

Governments should ensure that law enforcement agencies are structured in a way that enables them to efficiently target trafficking in human beings as a serious form of crime. Appropriate education, formation and training of competent personnel at different levels is required.

The development of investigative techniques without the reliance on the testimony of victims should be further developed and the role of EUROPOL should be enhanced. “Intelligence led” approaches, however, should never be used to legitimate a neglect of the necessity to protection and assistance of trafficked persons.

Since trafficking in human beings generates huge profits and has clear links with the crime of money laundering, Member States should take appropriate measures to identify and trace proceeds of trafficking in human beings, to be subjected to confiscation, freezing and seizing. Confiscated assets should be used for the benefit of victims.

Being the victims of serious crime, trafficked persons should be entitled to compensation by States. Procedures and mechanisms for these compensations should be created.

Corruption is one of the recurring and structural elements of trafficking, targeting government officials and institutions. Therefore, anti-corruption strategies should make up an integral part of any policy to prevent and combat trafficking.

List of recommendations

Chapter 2 – Trafficking in human beings: Definition and current context

2.1 Definition of trafficking

1. All EU Member States should ratify and implement the UN Trafficking Protocol.
2. Though trafficking often occurs across borders and with the involvement of organised crime networks, trafficking also takes place within borders and without the involvement of organised crime. States should therefore ensure that all forms of trafficking, regardless of the crossing of borders and/or the involvement of organised crime, are adequately criminalized.
3. Although – as far as presently known – the majority of trafficking affects women and children, and most attention has been placed on trafficking into sexual exploitation, women, men and children are trafficked for numerous other forced labour purposes. States should ensure that counter trafficking legislation and policies cover all forms of trafficking of women, men and children.
4. For the overall purpose of this report – further development of a comprehensive and coherent EU counter-trafficking policy – the definition has to take into account all relevant aspects, especially the impact on human rights. In this context, trafficking in human beings has to be defined as a complex phenomenon violating the trafficked person's will and right of self-determination and affecting her or his human dignity. With regard to children, a child's right to special protection measures should be considered an overarching principle.
5. From a human rights perspective, the primary concern is to combat the use of forced labour or services, including forced sexual services, slavery, slavery like practices, servitude or the like. It is therefore recommended that States adequately criminalize any exploitation of human beings under forced and/or slavery like conditions, independent of whether such exploitation concerns a trafficked person, a smuggled person, an illegal migrant or a lawful resident.
6. In applying the Trafficking Protocol, States should focus on the outcomes of forced labour or services, slavery or slavery like practices – which are inherently coercive – rather than the movement or coercion elements, which should be seen as preparatory to these outcomes, as opposed to the acts that require criminal sanctions and interventions as human rights violations.

2.2 The current context

7. The EU-context in 2004 provides opportunities for politically and financially strengthening the prevention and combat of trafficking in human beings. In view of the financial perspectives 2007-2013, the Experts Group in particular calls on the Council of the EU and the European Commission – as well as Member States at the national level – to allocate adequate resources to the prevention and repression of trafficking in human beings as well as to the provision of adequate remedies to trafficked persons. Particular attention should be paid to the latter and to the allocation of adequate resources to NGOs in assisting this. Notwithstanding the relevance of the new EU Member States, attention should also be paid to overseas countries of origin.
8. Rather than merely project-based funding, future financial support should also be geared to long term, sustainable support of organisations, structures and mechanisms that successfully have been developed over the last years and that have proven their usefulness, but that are not able to survive without further financial EU input. Consequently, a balance needs to be found between long term, structural financing and project-based funding to give room to new and innovative initiatives.
9. Political papers such as European Council Conclusions or Commission Communications should more clearly stress that trafficking in human beings is not primarily an issue of illegal immigration but that it has to be addressed as a serious crime and human rights violation, underlining the EU commitment to a holistic and integrated, human rights based approach focusing on combating the exploitation of human being under forced labour or slavery like conditions.

Chapter 3 – Guiding principles and cross-cutting themes

3.2 Human rights as a paramount issue

10. A human rights approach, including a child rights approach should be integrated as a normative framework in the further development of policies and measures against the trafficking in human beings, both at national and European level. The Principles and Guidelines on Human Rights and Human Trafficking as elaborated by the UN High Commissioner for Human Rights (UNHCHR) can serve as an important instrument to do so.
11. The European Commission and the Member States should consider the human rights impact when preparing and adopting anti-trafficking measures and establish mechanisms to monitor the human rights impact during the implementation of such measures.
12. To ensure compliance with human rights norms, a “Human Rights Impact Assessment Model” should be developed in close co-operation with NGOs working with trafficked persons and human rights institutions, as an instrument to monitor and evaluate the human rights effects of anti-trafficking laws, policies and practices. Such an instrument should play an important role in ensuring that anti-trafficking measures comply with

respect for and protection of human rights. In addition it should ensure that anti trafficking measures do not create or exacerbate existing situations that cause or contribute to trafficking by instituting policies and practices that further undermine or adversely affect the human rights of individuals, such as the right to privacy, the right to freedom of movement, the right to leave one's country, to migrate legally and to earn an income.

13. The Commission shall take the initiative for the adoption of a legally binding EU instrument covering the standing of trafficked persons in order to protect the human rights of trafficked persons, which clearly goes beyond current Member State commitments.² Such an instrument should lay down minimum standards of treatment to which all trafficked persons are entitled and ensure that trafficked persons are provided with access to adequate and appropriate remedies, independent of their capacity or willingness to cooperate in criminal proceedings or to give evidence. Within such an instrument special attention should be given to the position, rights and needs of children, according to the principles and provisions expressed in the relevant conventions.
14. Member States should give priority to the development of counter trafficking strategies, which aim at the empowerment, social inclusion, participation and self organisation of the groups affected and/or at risk.

3.3 The need for a holistic and integrated approach

15. To effectively address trafficking in human beings a holistic and integrated approach is needed based on respect for and promotion of human rights. In order to realize such an approach multidisciplinary co-operation and co-ordination between all involved actors and stakeholders, including civil society and labour organisations, are crucial. The aim should be to develop an integrated policy covering the different fields and levels on which action is required. To this end governments should establish efficient co-ordination and co-operation structures at the political and operational level.
16. The role of civil society actors, in particular independent NGOs, should be more extensively recognised, not only because of their role in providing assistance to trafficked person but also because of their critical role in maintaining and strengthening democratic processes and in monitoring and advocating implementation of human rights commitments by States.
17. Clear policy choices should be made between the interests of immigration policies in deporting illegal aliens on the one hand and the detection and prosecution of traffickers and the preservation of possible witnesses on the other hand. The lack of such a choice hampers both an effective criminal approach and an adequate protection of trafficked persons.

² See also Chapter 5.

18. Empowering and repressive strategies are both needed and should complement each other. Special care, however, should be taken when employing repressive strategies as they can easily give rise to unintended and undesirable side effects. The consequences of repressive strategies should therefore be taken into account when they are prepared and implemented. On the other hand, empowering strategies are not yet used to their full potential and should be researched further.

3.4 Trafficking in human beings, migration and informalisation of the workplace

19. EU Member States should maintain their commitments made at the Tampere European Council in 1999³ and reiterated in the Hague Programme.⁴
20. Member States should promote regular and managed migration policies based on demand and need, including the demand for unskilled labour, which is gender sensitive and implies the establishment of clear and comprehensive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, society and governments.
21. Member States should provide a standard based approach to trafficking and migration. Such an approach should include, at a minimum:
 - the protection of migrant's rights and international standards of protection for all migrants (both legal and illegal) as key to ensuring safe migration. States should ratify and implement the appropriate conventions, in particular the UN Convention on the Protection of the Rights of All Migrant Workers and their Families 1990;
 - ratification and application of the relevant ILO standards, in particular ILO Convention No. 29 on forced labour and ILO Convention No. 182 on the worst forms of child labour, but also ILO standards regarding non-discrimination, freedom of association, labour inspection, employment agencies, and others. Increasing informalisation has left workers vulnerable to labour abuses. Standards need to be applied in both formal and informal sectors;
 - the application of standards through a combination of education, self-regulation and enforcement;
 - awareness raising and training on labour standards and the connection with trafficking to those responsible for labour policies, including policy makers, employers, Unions and labour inspectors. Inclusion of these actors in counter trafficking initiatives should always be considered;
 - the enforcement of labour standards through labour inspections, and if necessary the use of administrative and criminal sanctions;
 - standards of freedom of association. States, employers, unions and others should pay particular attention to encouraging organisation of workers. Both formal organisation,

³ Presidency Conclusions, Tampere European Council 15 and 16 October 1999: specifically conclusions Nos. 3, 22, 23, 26 and 48 (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm).

⁴ Council Document 14292/04 CONCL 3 (<http://ue.eu.int/uedocs/cmsUpload/EN.pdf>).

- through unionisation, and informal methods of organisation should be developed. This should include the encouragement of self organisation of trafficked persons;
- the enforcement of anti discrimination standards.
22. The EU should continue to move towards implementing those parts of the Thessaloniki, Tampere and The Hague agendas that aim at the promotion of regular and managed migration. Both the needs in countries that people wish to migrate from and the requirements in countries people wish to migrate to should be considered, enabling legal migration and integration of migrants and migrants' rights while addressing the root causes of migratory flows. The policy should to be open and accessible to all and include the following:
- regulation of travel/employment/au pair agencies;
 - provisions criminalizing the retention or possession of passports, visa, work permits or other documents by persons other than the document holder;
 - work permits or visas not linked to a specific employer or type of employment;
 - education and promotion about safe migration possibilities and practices.
23. Women are more vulnerable to trafficking as many of the sectors in which they traditionally are engaged – for example the sex sector⁵ and domestic labour – are less likely to be regulated and more likely to be infiltrated by traffickers. Additionally women are less likely to have information about migration opportunities or have fewer established migration routes and networks. Gender sensitive migration policies need to reflect and address these inequalities. This raises the question as to the extent that largely unrecognised informal sector work or services (such as domestic work, au pair or similar arrangements and the sex sector) should be regulated within migration or employment policies.⁶

3.5 Specific position, rights and needs of children

24. Consistent with the UN Convention on the Rights of the Child and the UN Trafficking Protocol:
- the definition of “child” as any person below the age of 18 should be respected in EU and national legislation and its implementation;
 - “exploitation” in the UN Protocol should be defined in the light of the UNCRC and ILO Convention 182 on the worst forms of child labour and should include at a minimum all forms of sexual exploitation and sexual abuse, economic exploitation, the use of a child for illicit activities, any work that is likely to be hazardous or to interfere with the child’s education or that is likely to be harmful to the child’s health or

⁵ The term “sex sector” comes from Leam Lim, L. (ed.), *The Sex Sector. The Economic Bases of Prostitution in Southeast Asia*, ILO, Geneva, 1998. Prostitution here is defined as “The provision of sexual services for reimbursement or material gain.”

⁶ It should be noted that the answers to this question, in particular in relation to the sex sector, differ widely, also within the Experts Group. This is therefore without prejudice to the different positions that may be taken on the legalisation of the sex industry.

- physical, mental, spiritual, moral or social development, illegal adoption and removal of organs;
- the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation should be defined as “trafficking in children” whether transnational or national, and whether or not involving organised criminal groups.
25. A child rights approach shall be integrated as a normative framework in the further development of policies and measures against trafficking in human beings, both at European and national level.
26. All actions undertaken in relation to trafficked children shall be based on the principles set out in the UN Convention on the Rights of the Child, in particular:
- the “best interests” principle: the best interests of the child should be the primary consideration in all actions concerning children. All considerations related to immigration or crime control should be secondary. Child victims of trafficking should not be criminalized;
 - the right to participate: the views of children should be sought and taken into account, in accordance with their age and maturity, in all matters affecting them;
 - the “non discrimination” principle: trafficked children should be treated as children first and foremost; considerations of their national or other status should be secondary.
27. Policies and measures concerning trafficking in children shall adopt a holistic and integrated approach, aimed at strengthening the effectiveness of specific mandates as well as at co-operation of the different agencies concerned. The different components of the problem as well as their inter-connectedness should be taken into account, such as different kinds of exploitation, phases of the trafficking cycle, phases of intervention, etc.
28. Specific attention, including re sourcing, should be paid by the EU to child trafficking outside Europe (for example child soldiers, child agricultural and domestic workers) in its development co-operation policy and programmes.
29. The European Union should allocate resources to finance actions specifically addressed to combating child trafficking both in the EU external relations and within the EU.

3.6.1 National Referral Mechanisms and institutional anti-trafficking framework⁷

30. Member States should establish National Referral Mechanisms (NRMs) to ensure the proper identification and referral of trafficked persons, including trafficked children, and to ensure that they receive adequate assistance while protecting their human rights. A NRM should incorporate:
- guidelines on the identification and treatment of trafficked persons, including specific

⁷ For more information see Explanatory Paper 5.

- guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights;
 - a system to refer trafficked persons to specialised agencies offering protection and support;
 - the establishment of binding mechanisms to harmonize the assistance of trafficked persons with investigative and crime prosecution efforts.
31. Coupled with a National Referral Mechanism Member States should establish a governmental co-ordination structure consisting of a National Governmental Coordinator and a cross-sector and multidisciplinary Round Table to develop, coordinate, monitor and evaluate national action plans and policies. One of the tasks of the Round Table should be to develop a quick and “light weight” mechanism to address individual complaints with regard to the proper identification and assistance of trafficked persons.
 32. Member States and the EU should ensure adequate and sustainable funding of civil society actors, in particular NGOs providing assistance to trafficked persons and advocating and defending their human rights.

3.6.2 Establishment of a European Anti-Trafficking Network

33. In order to facilitate co-operation, contacts and exchange of information as well as the development, monitoring and evaluation of anti-trafficking policies on the European level, a European Anti-Trafficking Network should be established. The Network should build on the national cooperative structures, in particular the NRMs, and consist of contacts points designated by each Member State as well as a contact point designated by the Commission. It should include both governmental and non-governmental agencies and cover the areas of prevention and victim assistance as well as law enforcement and police and judicial co-operation.

3.7 Individual complaint mechanisms

34. In order to fully incorporate a human rights based approach within anti trafficking strategies, the establishment of an individual complaint mechanism is recommended. The ability of individuals and organisations on behalf of victims, to raise States’ failure to meet international obligations under human rights law, and/or to raise complaints about violations of individual rights, is important in ensuring accountability of States for their actions as well as in providing redress for individuals.

3.8.1 Data collection: National Rapporteurs or similar mechanisms

35. Member States should establish a central place where information from different sources and actors is systematically gathered and analysed. This could be a National Rapporteur or a comparable mechanism. Such a mechanism should meet the following requirements:

- main task should be the collection of data on trafficking in the widest possible sense, including monitoring the effects of implementation of national action plans;
 - an independent status;
 - a clear mandate and adequate competences to have access to, and actively collect, data from all involved agencies, including law enforcement agencies, and to actively seek information from NGOs. The mandate to collect data must be clearly distinguished from executive, operational or policy co-ordinating tasks, which should be fulfilled by other bodies;
 - the competence to directly report to the government and/or the Parliament and to make recommendations on the development of national policies and action plans, without itself being a policy making agency.
36. Once national data collection mechanisms are established, the EU should establish a similar mechanism at the European level, the task of which is to bring together at a European level the information collected at national level, to identify gaps and bottlenecks at European level and to issue recommendations to the Commission and the Council of the EU to address those gaps and bottlenecks. Again, such a European mechanism should also be open to representations from NGOs.
37. In order to make national data comparable common guidelines for the collection of data should be developed, both with regard to the type of data and to the methods used.

3.8.2 Data exchange

38. In particular the exchange of personalised or operational sensitive information should be based upon previously concluded protocols that lay down the information flows between the different agencies in accordance with the legal requirements.
39. In view of the enlargement of the EU and the envisaged greater collection, distribution and synchronisation of data in the framework of the Dublin Declaration, the increased risks of misuse of data and the potential harm this can cause to trafficked persons should be recognised. It should be ensured that any increased co-operation with regard to data sharing is accompanied by strict data protection measures and regimes, including an assessment of the actual and practical capacity for the observance of such regimes.

3.8.3 Balancing data protection, human rights concerns and the interest of law enforcement

40. In order to ensure adequate protection of data of trafficked persons it is recommended:
- to take as a principle that data should only be taken, used and exchanged on a need basis with the presumption that they should not be unless need can be shown;
 - to adopt specific mandatory data protection protocols for trafficked persons, which apply to the use of data within the destination countries as well as in contacts with countries of origin;

- before the exchange of personal data, to ensure that the country of origin concerned guarantees an appropriate level of data protection;
 - to ensure that people who have access to personal data in the course of their work are bound by a duty of confidentiality;
 - to make the unauthorised use of data, breach of confidentiality, etc., a criminal offence;
 - to make use of the practice of “restricted notes” to minimise the danger of the trafficked person’s data to get known;
 - to include in co-operation agreements between law enforcement authorities and counselling agencies/authorised NGOs provisions which guarantee that the identity and other personal data of the trafficked person will not be forwarded without the consent of the trafficked person or the proper authority to do so;
 - to adopt, where they not already exist, regulations that guarantee the confidentiality of the client/counsellor relationship (including people who receive confidential information in their professional capacity such as social workers, medical practitioners, doctors, etc) and that protect counsellors from any obligation to pass on information to third parties against the will and/or without the consent of the trafficked person.
41. In constructing the new SIS II system or other information sharing systems, and to accommodate the information flowing from acceding States, consideration should be given to the drafting of a provision, which would specifically exclude alleged and actual victims of trafficking from the SIS or other relevant databases. At the very least, the Schengen Convention should impose a specific obligation on Member States to notify a trafficked person on her/his request if her/his data are stored in the SIS, putting at least some of the control over the data back into the hands of the trafficked person.
42. In contacts with the media the following principles should be observed: data such as the name, personal history, photograph or any other details, which allow the identity of the trafficked person to be deduced, may not be published; any reporting should be avoided that endangers the trafficked person.

Chapter 4 – Prevention

4.2 Root causes of trafficking

43. The EU and its Member States should review and modify policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effects, in particular on women, of repressive and/or discriminatory nationality, migration and labour migration laws. The exclusion from basic rights and protection of precisely those sectors in which predominantly women work constitutes a discriminatory practice.
44. Member States should ratify and implement the UN Convention on the Rights of Migrant Workers and their families, in order to protect basic human rights of migrants, coupled with the implementation of gender sensitive national programmes based on

these international standards.

45. Member States should consider to increase the opportunities for legal, gainful and non-exploitative labour migration for workers with wide ranges of skills, along with strengthening regulatory and supervisory mechanisms to protect the rights of migrant workers.
46. Prevention of trafficking as well as anti-trafficking law enforcement, prosecution and judiciary elements should be integrated in all relevant EU and Member States co-operation programmes with countries of origin and potential countries of origin. Priority goals should be to combat the root causes in both countries of origin and countries of destination. Impact assessments should be a structural element of all programmes in order to avoid adverse effects.
47. Since trafficking is often related to poverty and low levels of development in origin countries, the EU and Member States should not adopt punitive measures, such as reducing development aid, nor should conditionality clauses be included in co-operation agreements as these could result in harshening the root causes determining trafficking in human beings. Instead, a more positive approach should be taken of working with third countries to address root causes, to invest in capacity building and to raise awareness of safe migration.
48. EU and Member States' financial support for NGOs should be increased in order to ensure their long term and effective complementing of public policies in prevention of trafficking.
49. Within existing programmes, such as Daphne and AGIS, funding should be allocated for research and pilot projects on the influence of demand on trafficking in human beings (in particular in the area of domestic and sexual services) and for the promotion and implementation of gender sensitive sexual and human rights education of children and youth in Member States.
50. Member States should reduce vulnerability for trafficking by adopting measures to:
 - ensure that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons;
 - combat violence and discrimination against women, e.g. by encouraging gender sensitisation and equal respectful relationships between the sexes;
 - ensure women equal access to and control over economic and financial resources, including the promotion of flexible financing and access to credit, including micro-credit with low interest for socially vulnerable women;
 - combat all forms of discrimination against minorities, including the development of programmes that offer livelihood options, basic education, literacy, and reduce barriers to entrepreneurship.

51. Both countries of origin and countries of destination involved in trafficking in human beings, and particularly in child trafficking, shall ensure that specific consideration is given to the root causes that affect children, such as the lack of access to school, the abandonment of children by their families, their living conditions, etc.⁸
52. As organized crime flourishes in areas of low administrative and social infrastructure, anti trafficking measures should be targeted on strengthening local and national capacities and democratic institution building. General measures to strengthen local and national capacities, democratic institution building and to enhance the rule of law are important preventive measures and should be part of any comprehensive response to counter trafficking.

4.3 Research and evaluation

53. Research on trafficking should:
 - be designed in a non-static way in order to detect and study changes in the trends and patterns of trafficking.⁹ Regular reviews and assessments of the trafficking situation and anti-trafficking responses should be an integral part of research programmes with a view to adapting anti-trafficking measures to the changed circumstances;
 - be oriented towards the production of practical recommendations to curb trafficking and to establish appropriate protection and assistance of trafficked persons;
 - respect the protection of confidential and personal data and information;
 - include elements related to intelligence (participation and activities of criminal groups), socio-economic profiles of perpetrators and victims and of their societies of origin; main causes for trafficking, and the consequences for the individuals involved as well as for the concerned countries;
 - collect data separately for women, men and children;
 - be based on the Palermo Protocol definition in order to facilitate a systematic measurement of the phenomenon and to be able to compare data.
54. The EU and Member States should create the conditions, including appropriate structures, to carry out systematic annual assessments on patterns, trends and volume of trafficking in each country of concern, based on a clear and uniform methodology. Reports should be made public and serve as guidelines for EU assistance.¹⁰
55. The EU should systematically monitor and evaluate policy measures and programmes at the EU, international and national levels to determine the envisaged and real impact of such policies and improve their effectiveness.¹¹ All counter trafficking projects and

⁸ For a detailed discussion on root causes of child trafficking, please see Chapter 4.7.

⁹ See IOM, *The Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, Geneva, 2004.

¹⁰ See also Chapter 3.8.1.

¹¹ UNHCHR, *op. cit.*, Guideline No. 3, “Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one group to another group.”

programmes receiving EC funding should be subject to mandatory evaluations and these evaluations should be made available.

56. A website should be established containing update overviews of research on trafficking in the countries of the EU in order to make results, developed tools, etc., accessible to different private and public users in organisations and institutions.
57. More research should be conducted in the key source countries on the risks of re-trafficking of victims who – either voluntarily or because they were deported – returned to their home country, as well as on root causes of trafficking and the links between trafficking, poverty and exploitation. These links should be articulated to encourage European development agencies to seriously address these issues. At the same time, EU countries, particularly those of destination of trafficked persons, should carry out research on the mechanisms of and incentives for trafficking in their own countries.
58. More research should in particular been carried out in the following areas:
 - trafficking and forced labour in other sectors than the sex industry;
 - the impact of counter trafficking policies in general and on the human rights of trafficked persons, (female) migrants and other groups that might be affected by counter trafficking measures in particular;
 - relations between the regulation of migration and the level of human trafficking, the influence of demand and the role of employers and clients, including their profiles, their awareness level and their participation in the market, as well as the role of labour standards, unions, and the impact of changes in the labour market and the demand for specific labour or services, including sexual and domestic services. Research results, including concrete recommendations, should be disseminated among concerned governments with a view to using them in a practical way to reduce the market demand;
 - effective law enforcement strategies.
59. Quantitative and qualitative research focused on children should be implemented, including the different factors influencing the risks for children and the different kinds of exploitation they suffer (i.e. sexual exploitation, labour exploitation, illegal adoption, removal of organs).
60. The European University Institute as well as other educational institutions officially created for or depending on the European Union, should initiate systematic teaching and research on trafficking issues in the European Union.

4.4 Awareness raising

61. The EU and its Member States should encourage the development of international networks including all relevant actors in order to disseminate information on trafficking, share best practices and design common strategies and partnerships.

62. Awareness-raising campaigns should:
- be tailor made and aimed at clearly identified target groups;
 - use a combination of different methods and activities so that they cover the entire trafficking chain from prevention, through victim identification, prosecution of traffickers, assistance and protection of trafficked persons, to return and social inclusion of trafficked persons.
63. Elements of awareness raising campaigns in countries of origin should include:
- information on safe migration and existing possibilities for labour migration, including information on relevant laws and policies in countries of destination, the rights of migrants and possibilities to get help in case of problems. Such information should be available in the language of the countries concerned and be displayed in the consular and visa sections of the State diplomatic missions. Copies should be enclosed in any postal visa applications;
 - specific activities to make children and young people aware of the risks of trafficking as an essential part of their education, coupled with an education that promotes equality between men and women and that focuses on human rights, self-empowerment and dignity.
64. Other measures in countries of origin, transit as well as destination should include:
- the establishment of telephone hotlines in the countries of origin, transit and destination that can be used as an independent source of information, advice and guidance for potential migrants, as the first point of contact for trafficked persons and as a tool for anonymous reporting of cases of trafficking in human beings. Hotlines should include specialised personnel in child related matters;
 - specific activities aimed at media professionals to promote an adequate presentation of the issue, without reinforcing stereotypes and with respect for the privacy and safety of trafficked persons;
 - specific activities aimed at the relevant market actors, such as employers, clients (including clients of sexual services), co-workers and unions, to reduce demand for unfree labour/services; to promote zero tolerance towards all forms of trafficking and related abuses; to inform them about possible actions they can undertake, including the appropriate referral of (possible) trafficked persons; and to promote the ability of trafficked persons to organise to claim rights;
 - the inclusion of awareness raising components in all anti-trafficking training aimed at strengthening the institutional capacity of relevant agencies, including prosecutors, judges, police, border guards, alien police, labour inspections, NGOs and social workers.¹²

4.5 Training

65. A training component should be included in all counter-trafficking national action plans. Moreover, regional anti-trafficking and European modules should be developed and mainstreamed into the regular curricula of all relevant actors.

¹² See Chapter 4.5.

66. Training should target a wide scope of actors and be delivered by a variety of agencies. All training should contain a general as well as a specific part tailor made for the targeted actors. Multi-actor training is indispensable to ensure a coordinated and multi-disciplinary approach. All training should be delivered by multi-disciplinary teams, especially with the participation of NGOs.
67. It is recommended that all anti-trafficking training programmes contain, within the generalist level, definitions of terms such as trafficking, trafficked persons, traffickers, exploitation; the difference between prostitution and trafficking and between trafficking, smuggling and irregular migration; a general explanation of, the trafficking process, the *modus operandi* of traffickers, control and exploitation of trafficked persons and labour standards; and the psychological, social and economic impact on trafficked persons. Training should have a human rights basis.
68. Additionally, law enforcement training should focus on the following specific target groups:
- law enforcement officials, both at non-specialist level (front-line officers – criminal, traffic, municipal, public order, alien and border police), and specialist level (specialised counter-trafficking police detectives and investigators that hold specific responsibility for the crime, including public prosecutors, as appropriate);
 - labour inspectors;
 - consular staff;
 - judges, prosecutors and attorneys;
 - international military and police peace-keepers and related civilian contractors.
69. Due to the special sensitivities involved there should be separate child specific training for all law enforcement officials, border guards and other officials and NGOs dealing with trafficked children.

4.6 Administrative controls to combat trafficking in human beings

70. Member States should promote the introduction of a broad range of administrative controls in pre-border, border and in-land areas, with due respect to human rights considerations and fundamental rights of the person, including the freedom of movement.
71. Multi-agency co-ordination groups (including law enforcement agencies, labour market institutions/inspectors, immigration officials, other ministry or embassy staff and NGOs) should be functioning actors in the co-ordination and implementation of administrative control measures on both the policy and operational level, as well as in the sharing of intelligence among all actors, especially among labour market inspectors and police investigators, on a local and national level (in close co-ordination with National

Referral Mechanisms), but also at regional/international level (between origin and destination countries).¹³

72. Member States should introduce regimes and practices to regulate and monitor private agencies that frequently appear in the *modus operandi* of traffickers.¹⁴ In order to provide for early identification of those agencies, which act outside of the legal requirements, States should introduce systems to regulate these agencies by way of licensing, and to monitor them. In doing so, states should apply innovative policies such as rating systems. The private sector (private employment agencies and their business associations, but also individual commercial agencies) should be obliged to collaborate with the police as well as be encouraged to introduce self-regulating schemes (codes of conduct). Moreover, administrative measures should be used to monitor and enforce labour standards, in combination with training of the relevant actors and backed by criminal law enforcement.
73. Member States should encourage a pro-active regulating and monitoring of vulnerable sectors such as construction, sweat shops, agriculture and the sex industry by multi-agency groups. This would counter-act the “invisibility of the exploitation” by identifying (possibly) trafficked persons and collecting intelligence, which can be used for large-scale investigation.¹⁵
74. Member States should consider the introduction/expansion of transparent labour admission systems and establish multi-agency and international enforcement mechanisms. Intensified efforts should be taken to ensure that international labour standards are applied and enforced in countries of origin and destination.
75. Member States should enhance their capacity for processing applications for visa, residence and work permits and family reunification, thereby fostering legitimate migration. Support systems should be set up for the verification of documents and statements submitted together with applications. Data on fraudulent and suspect agencies, employers, etc., should be shared among all relevant labour, law enforcement and consular agencies nationally and regionally, in and between countries of origin and destination. The network of liaison officers should be further strengthened in this regard.
76. Measures should be taken to intensify consular co-operation in countries of origin with a view to identifying potential cases of human trafficking; to this end, consular and other frontier staff should be systematically trained in cooperation with NGOs.
77. Document security should be improved and special internal control mechanisms should be introduced in order to prevent the falsification of, or fraudulent use of visa, labour permits and residence permits.

¹³ Whereas the Brussels Declaration (BD) calls for the creation of multi-disciplinary groups that meet regularly and whose role is described as “regular evaluation, monitoring and further improvement in the implementation of national policies”, concrete operational co-operation and co-ordination is also needed in order to render administrative controls effective.

¹⁴ BD, pt. 11.

¹⁵ See also the ILO, *Working Paper on Special Action Programme to Combat Forced Labour*, January 2004.

78. States should establish mechanisms to monitor the Internet as a means to detect and prosecute the potential illegal use of Internet for trafficking purposes, such as escort, adoption and bridal agencies. Public-private partnerships with Internet providers and other businesses (including their self-regulation by means of codes of conduct) should be further enhanced. Special attention should be paid to the identification of child victims and the exploitation and abuse of children via Internet.

4.7 Children

79. Any policy or legislative measure aimed at preventing trafficking should entail specific measures to address and prevent violence, abuse and exploitation of children. Guiding principle for any measures or policies with regard to children should be the UNCRC. Other relevant frameworks are the 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the policies against the sexual exploitation of children as undertaken at the Second World Congress Against the Commercial Sexual Exploitation of Children held in December 2001 in Yokohama. Best practices on the prevention of child trafficking should be developed, implemented and disseminated.
80. Migrant children represent a particularly vulnerable group among the child population and should be guaranteed the same level of protection and opportunities as national children, regardless of their residence status.
81. EU development co-operation programmes should explicitly address the root causes of trafficking in children. Elements of such programmes should be:
- improvement of children's access to school and vocational training and increasing the level of school attendance, in particular of girls and minority groups (e.g. Roma children);¹⁶
 - reduction of the number of children abandoned by their families and promotion of alternative solutions to institutional care, including foster-care and adoption, preferably in the country of origin (consistently with the principle of subsidiary of international adoption) in order to improve their living conditions, along with imposing stricter controls on institutions, foster-families and on international adoption;
 - protection of street children by ensuring the provision of food, health care, informal education and/or shelters, together with protection from exploitation and abuse they may suffer;
 - information to families and children about children's rights, safe migration and the risks of trafficking through interventions in schools and in other settings in order to reach children that are outside the formal educational system;
 - improvement of the system for birth registration;
 - where applicable, addressing the needs of children affected by armed conflict,

¹⁶ Data on school enrolment registration and on child population should be used for the purpose of identifying actual or potential victims of child trafficking.

displacement and other humanitarian crises.

82. In addressing the demand side Member States should take specific measures to address the different kinds of child exploitation: sexual exploitation, with particular attention to child prostitution and child pornography; economic exploitation; illegal adoption; and removal of organs.
83. Member States should take measures to address the disappearance of trafficked and exploited children from accommodation centres where they have been placed, as they risk being re-trafficked and/or exploited.
84. Opportunities for legal labour migration and family reunification should be increased in order to reduce the number of unaccompanied children who often end up being trafficked.
85. Border controls should pay particular attention to unaccompanied minors, children travelling with non-family members, and children without appropriate documentation. Unaccompanied and undocumented children should not be refused entry or returned at ports of entry, but be subject to particular protection and investigation measures. Immigration, border and other law enforcement authorities should immediately refer unaccompanied children to the appropriate child welfare authorities. If the child is accompanied by an adult who is not able to demonstrate through valid documents that she/he has the legal authority, appropriate measures should be taken to protect the child. Staff carrying out interviews on children should be properly trained and NGOs should be involved in this process. In addition, the possession of a proper passport/travel document for children of all ages should be obligatory, as should the establishment of checks on the validity of “relations” between the child and the accompanying adult. Co-operation between border officials, law enforcement officials and child assistance agencies should be improved.
86. Visa application procedures must pay particular attention to children travelling without an immediate family member and photo ID’s must be taken of children and their accompanying adult. The aim of such procedures should be the protection of the child and the promotion of her/his best interests.
87. Registration of children’s biometric data, both in the country of origin and in the destination country, could be useful but should be aimed only at the child’s protection and the promotion of her/his best interests and not for immigration control purposes (e.g. expulsion enforcement). The registration should not be traumatising or criminalizing and child-friendly procedures should be adopted. Moreover, if applied, it should be subjected to strict controls in light of the right to privacy and the use of data.
88. States should adopt national legislation according to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption¹⁷ in

¹⁷ See http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69

order to avoid inappropriate behaviour by adoption agencies and to prevent abusive practices in legal international adoptions.

Chapter 5 – Assistance, protection and social inclusion of trafficked persons

5.1 Introduction

89. In order to effectively address trafficking and to prevent re-trafficking, as well as meeting State's obligations under international human rights law Member States should ensure that trafficked persons have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers.

5.2 Identification

90. To allow proper identification of trafficked persons all involved actors – government actors, law enforcement, NGOs, local social welfare organisations, labour unions, labour inspections and other labour related agencies – should be trained and a system of referral should be in place.

91. In order to establish contacts with presumed trafficked persons and to build the necessary confidence and trust, outreach work, drop-in centres and hotlines should be developed. This is particularly important since research indicates that only a limited number of trafficked persons are identified by law enforcement agencies. The majority of trafficked persons seem to be identified through outreach work of NGOs, local authorities, hotlines, clients, colleagues and other citizens.

92. In light of the little experience that is gained with the identification of trafficked persons in other sectors than the sex industry, specific attention should be paid to information and training of labour unions, labour inspections and other labour related agencies in order to enable them to identify and properly refer trafficked persons. A specific budget line should be created to develop specific methods and information materials, targeted at those sectors where trafficking is likely to take place: such as domestic work, construction, agricultural labour and the garment industry.

93. Agencies (including law enforcement, labour, social service, health and education agencies, outreach workers, hotlines, etc.) should co-operate and share information to ensure that trafficked children are identified and assisted as early as possible. In cases where there is suspicion that the child is a victim of trafficking, the child should be referred to the appropriate child welfare authorities. After placing the child in a safe accommodation, appropriate measures need to be taken to identify and assist the child and, if the child is accompanied, to assess the relationship between the child and the accompanying adult. Where the age of the trafficked person is uncertain, due to the absence of papers or to

false identity papers, and she/he claims to be less than 18 years of age, the presumption should be that she/he is a child and she/he should be provisionally treated as such.

5.3 Reflection period and residence status¹⁸

94. The Council Directive on the residence permit issued to third country nationals victims of trafficking in human beings or to third country nationals who have been subjects of an action to facilitate illegal immigration and who co-operate with the competent authorities, should be adapted to include the following provisions:

Reflection period

If there is the slightest indication to suspect that a person may be trafficked, a reflection period should be granted of no less than three months. Purpose should be to allow the trafficked person to (begin to) recover and to make an informed decision about her/his options, that is, whether to assist in criminal proceedings, to pursue legal proceedings for compensation, to enter a social assistance programme and/or to choose for immediate return home. Part of the reflection period should be the obligation to refer the trafficked person to support agencies, which can provide her/him with appropriate assistance. For the authorities the reflection period enables the identification of the trafficked person including determining whether or not the person indeed is a victim of trafficking. In dealing with the reflection period account should be taken of the fact that, for a number of reasons, severing ties with the criminal circuit often takes the form of a gradual process rather than an immediate decision. In the case of children, there should be the possibility of extending the reflection period.

Temporary residence permit

Following the reflection period, a temporary residence permit should be granted to identified trafficked persons for a period of at least six months, with the possibility of renewal, on one (or more) of the following grounds:¹⁹

- the willingness of the trafficked person to press charges and act as a witness in the criminal case;
- participation of the trafficked person in a social assistance programme aimed at her/his social inclusion either in the country of destination or the country of origin;
- the involvement of the trafficked person in a civil procedure to claim compensation for damages;
- social assistance programmes should be open to all trafficked persons, regardless on which of the above listed grounds a temporary residence permit is granted and should include access to the labour market, vocational training, education and other services aimed at enabling the trafficked person to regain control over her/his life and to build a sustainable future.

¹⁸ See for more information Explanatory Paper 10.

¹⁹ These grounds should qualify for both the granting of the initial granting of a temporary residence permit and the renewal of such a permit.

Long term or permanent residence permit

Following a temporary residence permit, trafficked persons should qualify for a long term or permanent residence permit on one (or more) of the following grounds:

- having successfully completed a social assistance programme and having found employment:²⁰ in this case, her/his temporary residence permit should be transformed into a work permit and thus be subjected to the regulations for migrant workers;
- humanitarian grounds:²¹ criteria should include the risk of retaliation against the trafficked person or her/his family; the risk of prosecution in the country of origin for trafficking related offences; the perspectives for social inclusion and an independent, sustainable and humane life in the country of origin (taking into account risks of stigmatisation and discrimination); the availability of adequate, confidential and non-stigmatising support services in the country of origin; and the presence of children. In addition, applications should be judged in the light of the principle of non-refoulement and of Art. 3 of the European Convention on Human Rights, which holds that no one should be subjected to inhuman or degrading treatment;
- asylum: trafficked persons should be entitled to seek and enjoy asylum in accordance with international refugee law.²²

Family members and children of the trafficked person

- if there are substantial reasons to believe that family members of the trafficked person, including possible children, are at risk in the home country, such family members should be entitled to temporary or permanent residence on the same conditions as the trafficked person;
- if a trafficked person is granted a temporary or permanent residence permit, the trafficked person should be entitled to family reunification with her/his children under the age of 18 and/or her/his spouse, who should be granted a residence permit on the same conditions as the trafficked person.

95. In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom and/or would submit them to inhuman or degrading treatment, any decision to deport or return a trafficked person, including trafficked children, should be preceded by a risk assessment. NGOs and other service agencies that provide assistance to the trafficked person concerned should be actively included in this process.

96. Trafficked children should always be granted a temporary residence permit, with all corresponding rights, in order to allow them adequate assistance. They should only be returned after a risk assessment is done and if the return is in the best interest of the child, safe and assisted. When they reach the age of majority, if no other kind of residence permit can be issued under the conditions laid down in national law (e.g. for

²⁰ Including establishment as a self-employment worker.

²¹ UN Trafficking Protocol (TraffProt), Art. 7.2; UNHCHR, *op. cit.*, Principle 11, “Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety or to the safety of their families.”

²² UNHCHR, *op. cit.*, Guideline No. 1.6.

employment or study reasons), full regard should be given to their vulnerable status and they should be allowed to remain in the host country for humanitarian reasons.

97. In the case of unaccompanied children all steps necessary shall be taken to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of the child with her/his family in the country of origin or destination, where this is deemed to be in her/his best interest. In all cases the view of the child, in particular regarding decisions on her/his possible return to her/his family, should be given due weight in accordance with its age and maturity.²³
98. A solution should be found for the group of trafficked persons who have become victims of trafficking in their own or another country and who are in need of (immediate) protection whereas neither that country nor their own country is able or willing to offer such protection, e.g. by an agreement between the EU Member States to offer residence to a certain number of victims in these situations.

5.4 Social assistance and the development of standards²⁴

99. Member States should establish appropriate structures for providing assistance and protection to trafficked persons. This should include at the minimum safe and appropriate accommodation, counselling, health care, free legal assistance, education, vocational and employment opportunities. All services must be provided on a voluntary and confidential basis, in a non-discriminatory and non-judgmental manner and in compliance with a number of basic principles derived from international human rights norms, in particular the respect for privacy, confidentiality, self-determination and freedom of movement.
100. Member States should recognise the importance of a variety of service providers working with trafficked persons, including the NGO sector, and should adequately support, co-operate with and timely and transparently fund them. Memoranda of understanding and/or contracts between governmental and non governmental agencies should clarify the roles of the different actors.
101. Organisations providing services to trafficked persons should offer multidisciplinary assistance and tailored solutions to trafficked persons through professionals who are specifically trained, amongst others in cross-cultural and gender-sensitive working methods. Working with interpreters and cultural mediators is strongly recommended, as it is the promotion and the support of self-help organisations/groups.
102. Service providers for trafficked persons should develop standards, based on clear and measurable indicators, to regularly monitor and assess the quality and the suitability of their services and their performance. The EU should support the development of such standards as well as transnational co-operation between service providers.

²³ UNHCHR, *op. cit.*, Nos. 8.4; 8.6.

²⁴ For more information see Explanatory Paper 11.

103. Specialised services should be provided to trafficked children to meet their specific needs, including their linguistic and cultural needs, and protect their rights. This includes among others suitable housing preferably in a family environment (e.g. foster families or residential settings specific for children and with appropriate adult support); specialised psychosocial services, etc. Older children should not be treated as *de facto* adults and placed in reception centres without adult support. If a child is found trafficked, a legal guardian should be appointed – temporarily²⁵ or permanently, depending on the circumstances – at the earliest possible stage in order to act in the best interests of the child and follow her/him throughout the whole process of assistance and protection.²⁶

5.5 Witness protection and judicial treatment of trafficked persons

104. It should be ensured that the Framework Decision on the standing of victims in criminal proceedings is fully applicable to victims of trafficking, independent of their legal status in the Member State concerned.²⁷

105. The European Commission should take the initiative for the development of a legally binding EU instrument covering the standing of trafficked persons in criminal proceedings, building on the Framework Decision on the standing of victims in criminal proceedings. Such a framework should include a broad definition to cover all trafficked persons, including children, as victims of crime, regardless of the degree of their participation in criminal proceedings, and include trafficked persons before, during and after criminal proceedings are taking place.

106. Within such an instrument guidelines should be developed with respect to the following aspects:

The right to respect. This requires treating the trafficked person as a victim of crime and holder of rights, rather than a criminal, illegal migrant, prostitute or morally dubious person. Respect for trafficked persons should inform and guide all interventions.

The right to information and advice. This should include immediate access to support organisations and access to translation and free legal advice. Clear, accurate information needs to be given on options available to trafficked persons, including co-operation with police, and the consequences of these options, including victim and witness assistance and protection schemes. Full information should be given at all stages, with access to advice, and time to consider the information and options. Children should be informed in a manner that is understandable to them.

²⁵ A legal guardian should be appointed at least temporarily until the parents are located and it is ensured that the child can safely be returned to them.

²⁶ A distinction should be made between the right that the child victim has to legal representation and the need for someone to act in his/her best interests throughout the entire process. The specific role of the legal guardian could be found in the UNICEF, *Guidelines for Protection of the Rights of Children Victims of Trafficking in South-eastern Europe*, section 3.2, p. 5.

²⁷ Art. 7 of the Framework Decision on combating trafficking in human beings explicitly refers to some articles in the Framework Decision on the standing of victims in criminal proceedings.

The right to privacy: Trafficked persons have the right to privacy and respect for their private and family life.²⁸ Many trafficked persons will suffer stigma from their community or others if details of their trafficking experience are made public. In addition, sharing of personal information of trafficked persons can increase security risks to them and their families. States should ensure privacy is protected by measures, including ensuring that trafficked persons' names and court proceedings are not publicised by the media, and that there are provisions governing the collecting and sharing of information of trafficked person's details between agencies.

The right to protection: Under Articles 2 and 3 of the European Convention of Human Rights States have a positive obligation to protect individuals. Protection offered to trafficked persons should be on the basis of individual risk assessment and need. It should be offered in consultation with the trafficked person. Usually practical forms of protection are more effective, cheaper, and less intrusive for the trafficked person than full scale witness protection programmes. With regard to unaccompanied children, a legal guardian should be appointed to protect her/his interest and ensure adequate protection of the child.

Interrogation and investigation: Guidelines should be developed for non-confrontational, non-judgemental investigative techniques that respect the trafficked persons' rights and recognise their status as a victim. In the case of children, specific child friendly procedures need to be adopted.

Court procedures: Special procedures should be developed that protect trafficked persons' right to privacy, including provisions for giving testimony without confronting the defendant, for example by video, limitation to cross examination on sexual history, and restrictions on media reporting of personal details. These should include special procedures adapted to the needs and rights of trafficked children.

*The right to compensation:*²⁹ The right to compensation should be enforced in both criminal and civil proceedings, as well as any State compensation schemes, and should apply not only for the injuries suffered by the trafficked person as a victim of crime, but also for the loss of wages that would have been earned had the trafficked person been correctly paid for the forced labour she/he undertook. States should put in place provisions, such as access to legal aid, and seizure of criminal assets, that in practice enable trafficked persons to claim compensation.

107. Member States should take appropriate measures to ensure that trafficked persons, including children, are not detained, charged or prosecuted for violations of immigration law or for activities they are involved in as a direct consequence of their situation as trafficked persons.
108. In line with Art. 23 of the Convention on Transnational Organized Crime (criminalization of the obstruction of justice) consideration should be given to establish as a criminal offence the intimidation of witnesses.

²⁸ Article 8 of the European Convention of Human Rights.

²⁹ See for a more extensive treatment of the issue of compensation Chapter 6.5 and Explanatory Paper 15.

5.6 Return and social inclusion

109. Member States should establish appropriate return procedures with due regard to the privacy, safety, dignity and health of the trafficked person, in close partnership with NGOs, IOs and, where applicable, embassies and consulates, e.g. with respect to the provision of identity documents. These procedures should be laid down in protocols for the return of trafficked persons and should apply to all involved agencies. Such protocols/procedures should at least address the following issues: the prompt return of the person on her/his wish; information to the trafficked person on the applicable procedures; information on the laws that are relevant to trafficked persons in her/his home country and the available immediate and long term social assistance programmes; a risk assessment regarding the safety and well-being of the trafficked person and her/his children and family members during and after return; protection of the privacy of the trafficked person; confidentiality of any information relating to the person being trafficked; guarantees that no reference to the status of the person as being trafficked is made in any document related to her/his return (such as stamps in passports); the arrangement of proper identity documents; arrangement for basic necessities during travel.
110. Member States should, in co-operation with countries of origin and in close partnership with local NGOs develop voluntary and safe return programmes in countries of origin to ensure that trafficked persons who return to their home country have access to immediate and long term social assistance programmes in order to secure their safety and well-being, to enable them to find viable means of existence, to prevent re-victimization and to reduce the risk of re-trafficking. NGOs providing these services should be adequately financed and co-operation between NGOs and other civil society organisations in countries of origin, transit and destination should be encouraged and facilitated.³⁰
111. The development of short- and long-term social assistance programmes should make an integral part of development co-operation policies.³¹
112. Return and social assistance programmes should aim at the empowerment and social inclusion of the trafficked person,³² whereby empowerment is defined as the process through which an individual can develop her/his ability to stand independently, make her/his own decisions and show control over her/his life.
113. Return and social assistance programs should rest on the following principles: voluntariness; protection of privacy and safety;³³ strict protection of the confidentiality of the relation between the service provider and the trafficked person; non-stigmatisation; freedom of movement of the trafficked person;³⁴ the treatment of trafficked persons in a respectful, non judgmental and non moralizing or patronizing way; the needs, views and

³⁰ BD, pt. 15; UNHCHR, *op. cit.*, Guidelines Nos. 11 and 12.

³¹ The Hague Declaration, III, 3.4.

³² BD, pt. 15.

³³ The Hague Declaration, III, 3.4.

³⁴ UNHCHR, *op. cit.*, Guideline No. 1.5.

concerns of the trafficked person should be at the centre. Elements of such programmes should be an individual needs assessment; regularization of the documentation status of the person concerned; appropriate housing; health care; psychological assistance; legal aid; assistance in finding viable means of existence; and support of self-organisation.

114. Member States should be obliged to carry out an individual risk assessment prior to the return or deportation of a trafficked person, including children, to his/her home country. Factors that should be taken into account are among others the risk of reprisals by the trafficking network against the trafficked person and/or her/his family; the capacity and willingness of the authorities in the country of origin to provide protection from possible violence or intimidation; the social position of the trafficked person on return; the risk of the trafficked person being arrested, detained or prosecuted by the authorities in the country of origin for offences related to her/his situation as a victim of trafficking, such as prostitution, the use or possession of false documents or illegal exit; the availability of and actual access to social assistance programmes, including safe accommodation, medical, legal and psychological aid; and the opportunities for long term sustainable employment. NGOs and other service agencies working with the trafficked person should have the right to submit information on these aspects, which should be taken into due account in any decision about the return or deportation of the trafficked person.

115. In the case of children, special policies and programmes should be developed to ensure that they will be provided with appropriate physical, psychological, legal and educational assistance, housing and health care.³⁵ Children should only be returned after a risk assessment is done and if the return is in the best interests of the child, safe and assisted.

Chapter 6 – Law enforcement strategies

6.3 Prioritisation, specialisation, co-ordination and co-operation

116. Specialisation of law enforcement must be ensured through necessary organisational structures and adequate education and training of competent personnel. CEPOL should play a central role in this context. New types of specialisation, working methods and co-operation partners – such as agencies responsible for the control of working conditions and financial investigations related to irregular labour – need to be established in order to address forced labour exploitation in other sectors than the sex industry.

117. Specialisation and training should take into account the special needs of children, who need to be considered as a special category that requires special attention.

118. The fight against trafficking in human beings must be clearly defined as a law enforcement priority. Adequate personal and financial resources must be allocated. A certain percentage of these resources should continuously be devoted to the fight of trafficking in human beings. At the lower level police officers should be encouraged

³⁵ UNHCHR, *op. cit.*, Guideline No. 8.7; UN TrafProt Art. 6.4.

and motivated to invest in human trafficking cases.

119. Pro-active, intelligence led investigative techniques without reliance on the testimony of the victims should be further developed. “Intelligence led” approaches, however, should never be used to legitimise a neglect of the necessity for protection and assistance of trafficked persons.
120. At present Europol is not effectively used. This signifies a deficit in the area of exchange of information, the formation and functioning of joint investigative teams and the possibility for law enforcement agencies throughout the EU of benefiting from the information gathered in other Member States. This needs to be addressed. In addition, Europol as well as the Member States need adequate staff and sufficient financial resources for the remuneration of their personnel.
121. Financial incentives, for example through a European budget line, should be used to encourage Member States to regularly cooperate at EU level by involving European institutions such as Europol or Eurojust.

6.4 Anti-corruption strategies

122. Anti-corruption strategies should make an integral part of any policy to prevent and combat trafficking. An efficient policy for fighting corruption should be based on a multidisciplinary and integrated approach, trying to address as many causes of corruption as possible. It should include both preventive and repressive strategies. It must be flexible enough to be applied within different sectors (public and private) and adoptable to different situations.

6.5 Money laundering, seizure of assets, financial investigations

123. It needs to be clearly established in EU legislation that trafficking in human beings is a predicate offence of money laundering and that its proceeds are subjected to money laundering instruments.
124. Member States should be clearly obligated to take the appropriate measures to identify and trace proceeds of trafficking in human beings. These proceeds have to be subjected to confiscation and other measures such as freezing and seizing.
125. Convicted traffickers should have confiscated such property or pecuniary resources that are disproportionate to their present or past known legal income, unless they are able to give a satisfactory explanation in that regard.
126. Confiscated proceeds of trafficking should be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund that could be part of a more general compensation system for crime victims.

6.6 Restitution and compensation of victims

127. The Framework Decision on the standing of victims in criminal proceedings should be evaluated³⁶ and, where necessary, revised with particular attention to the compensation of trafficked persons.
128. Provisions to enable trafficked persons to get compensation, in both civil and criminal proceedings, as well as through State compensation schemes, should include the right to free legal advice and assistance and a stay of deportation while such proceedings are in progress.
129. Trafficked persons have to be considered “victims of a serious crime against the person”³⁷ and “qualified victims of crime” and should have access to compensation schemes for victims of violent intentional crime in general.
130. The compensation concept should include the prompt use of all European instruments to detect, freeze, seize and confiscate the proceeds of the trafficking or the items into which they have been transformed or converted. Such proceeds should be used firstly for the purpose of compensation to trafficked persons.
131. Adequate compensation instruments and procedures, for example national funds or a European Fund for the compensation of trafficked persons (EU citizens, residents in EU Member States and third country nationals), should be established in order to ensure equal and effective compensation to trafficked persons. A funding mechanism for a possible European fund could be based on the contributions of Member States (for instance, a percentage of the proceeds of trafficking confiscated in the criminal proceeding).
132. The discussion on this matter should be opened at the highest political level – including a dialogue with relevant third countries – in order to identify needs and priorities and to encourage the creation of a European instrument and the progressive convergence and consistency of national legislation.

³⁶ The evaluation procedure already started. Nevertheless, it should still be possible to pay specific attention to trafficked person in the ongoing debate.

³⁷ BD, pt. 13, sixth bullet point.

Chapter 1

Background and methodology

1.1 The Brussels Declaration

On 18-20 September 2002, the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century – brought together more than 1,000 participants representing EU Member States, Accession and Candidate Countries, third countries as well as international, inter-governmental and non-governmental organisations (IOs, IGOs, NGOs) and the institutions of the European Union. The Brussels Declaration on Preventing and Combating Trafficking in Human Beings was the final outcome of the conference. Although elaborated outside the institutional decision making structures of the EU, it became another important milestone in the fight against human trafficking. The European Commission announced its intention to make use of the Brussels Declaration (BD) as the main basis of its future work. On 8 May 2003, the Council of the EU adopted Conclusions concerning the Brussels Declaration.³⁸ The European Parliament referred to the Brussels Declaration in a number of documents.³⁹

The Brussels Declaration aimed at further developing European and international co-operation, concrete measures, standards, best practices and mechanisms and got broad support from participants of the conference. In particular, Recommendation 2 of the Brussels Declaration stipulates that, “at European level, an Experts Group, comprising representatives from governments, IGOs, NGOs, international bodies, researchers, the private sector such as the transport sector, and other stakeholders should be set up by the European Commission.”

³⁸ Official Journal of the European Union (OJ) C series 137, 12.6.2003, p. 1.

³⁹ Resolution of the ACP-EU Joint Parliamentary Assembly (ACP countries: Africa, Caribbean and Pacific), adopted on 15 October 2003 in Rome, on children’s rights and child soldiers in particular, OJ C 26, 29.1.2004, p. 17, in particular pp. 18, 25; European Parliament Resolution on Progress in 2002 in implementing an area of freedom, security and justice (Articles 2 and 39 of the EU Treaty), OJ 62E, 11.3.2004, p. 176, in particular p. 178. Furthermore, Opinion of the Committee of the Regions on the ‘Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking in human beings, external borders and the return of illegal residents’, OJ 23, 27.1.2004, p. 33.

1.2 Setting up and mission of the Experts Group on Trafficking in Human Beings

On 25 March 2003, the Commission adopted the Decision setting up a consultative group, to be known as the Experts Group on Trafficking in Human Beings (hereinafter referred to as “the Group”).⁴⁰ By Decision of 27 August 2003, the Commission appointed the members of the Group,⁴¹ establishing the Group’s terms of reference as follows: the Commission may consult the Group on any matter relating to trafficking in human beings. The Group shall issue opinions or reports to the Commission at the latter’s request or on its own initiative, taking into due consideration the recommendations set out in the Brussels Declaration. In particular, a report of the Group based on the recommendations of the Brussels Declaration should be submitted to assist the Commission with a view to launching further concrete proposals at EU level. The Commission, in turn, intends to issue a Communication on trafficking in human beings in the first half of 2005.

1.3 Working method

From September 2003 until November 2004 the Group had eleven meetings.⁴² In the first meeting, the Group elected Ms Marjan Wijers as president and Ms Hana Snajdrova and Mr Marco Gramegna as vice-presidents.

The Group decided to set up the following working parties taking into account the structure of the Brussels Declaration as well as the specific knowledge and interest of individual members: Prevention, Victim Protection and Assistance, Police and Judicial Co-operation. Consequently, most of the Group’s meetings were split into plenary and working party sessions. Regular reports about the development in the working parties kept the plenary updated and on the same level of information.

According to Article 7 of the Commission Decision of 25 March 2003 the Group invited additional experts⁴³ to hearings on 23 February, 18 May 2004 and 28 June 2004, taking into consideration their competence for particular issues as well as the fact that these persons disposed of professional experience and specific information not provided by publicly accessible sources.

A first draft of this report was finalised in September 2004 and has been discussed on 26 October 2004 with a wider audience in a meeting of the Workshop on Trafficking in Human Beings under the auspices of the EU Forum for the Prevention of Organised Crime. Also the

⁴⁰ OJ L 79, 26.3.2003, p. 25.

⁴¹ OJ C 205, 30.8.2003, p. 3. Details about the professional background of the members can be found under: http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_trafficking_expert_group_en.htm

⁴² 29-30 September 2003, 12-13 November 2003, 12-13 January 2004, 23-24 February 2004, 5-6 April 2004, 17-19 May 2004, 28-29 June 2004, 26-27 July 2004, 13-14 September, 25-27 October, 29-30 November.

⁴³ Mr Roger Plant, International Labour Organization; Ms Ruth Morgan Thomas, Network of Sex Work Projects; Mr Piero Luigi Vigna, *Procura Nazionale Antimafia*; Mr Steve Harvey, Europol; Prof. Gert Vermeulen, The Institute for International Research on Criminal Policy of Ghent University; Mr Gérard Stoudman, Geneva Centre for Security Policy.

draft was put on the website of the Commission to enable a wider range of interested parties to comment on it. A final meeting took place on 27 October 2004 in order to conclude the drafting of the report in the light of the workshop meeting and other comments received. On 30 November 2004, the Group adopted the report. On 20 December the Group submitted the report to the Commission.

In accordance with its mandate to issue opinions on its own initiative as set forth in Article 2, paragraph 2 of the Commission Decision of 25 March 2003, the Group adopted three opinions:

- On reflection period and residence permit for victims of trafficking in human beings;
- On measures in the Council of Europe Convention on Action Against Trafficking in Human Beings to establish a Monitoring Mechanism;
- On Trafficking in Human Beings in the context of the Elaboration of a new multi-annual program building an area of freedom, security and justice, the Tampere II-agenda.⁴⁴

1.4 The report

In accordance with the Group's mandate this report shall contribute to the development of further action aiming at the most effective implementation of the Brussels Declaration at EU level and at Member States level. The report aims to indicate ways to strengthen EU action against trafficking in human beings and, where appropriate, to launch new initiatives, programmes and activities. The Brussels Declaration, however, has been understood as a "platform" and not as a "fence". Further means and sources have been taken into consideration, in order to benefit from new developments and findings in particular areas.

Taking into account the current context at international and European level, the report follows the structure of the Brussels Declaration and consists of three major parts focusing on prevention, on victim assistance and protection and on law enforcement aspects. The latter not only includes police and judicial co-operation but also prioritisation, specialisation, coordination and co-operation in the area of law enforcement as well as substantive criminal law and criminal proceedings. The importance of overarching issues, in particular the need for a human rights based approach and the specific needs of children, has been underlined in a separate chapter but also recognised in the entire report and reflected in all parts. Rather than dealing with children in separate sections in every chapter, a child rights' approach is mainstreamed throughout the entire report.

Trafficking in human beings has been understood as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organized Crime and in the Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.⁴⁵ Nevertheless the Group felt the need to look more closely at those elements of the definition

⁴⁴ The opinions can be found as an annex to this report and at the Commission's website (http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm).

⁴⁵ OJ L 203, 1.8.2003, p. 1. The Framework Decision does not cover trafficking in human beings for the removal of organs.

that still might need some clarification in the light of different approaches to trafficking in human beings. Moreover, it needs to be stressed that trafficking can also take place within national borders and without the involvement of organised criminal groups.

The Group is fully aware of the fact that much more could be said about many issues touched upon in the report. Some might for example feel that the report should have addressed the different manifestations of trafficking more in detail. However, given the limited time it was not realistic to draft the report in an encyclopaedic style. Therefore, the Group decided to concentrate on the identification of key questions, priorities, possible gaps at EU and national level and on recommendations of central relevance. A number of concrete proposals, which are linked to these recommendations, are elaborated in the explanatory papers. Moreover, the explanatory papers provide more background information to the recommendations done in the main body of the report. They should therefore be read in conjunction with the corresponding sections in the main body.

For the same reasons the Group concentrated on the development in the EU and its Member States. The wider scope and the impact of trafficking in human beings on third countries, including other European States, have been fully recognised. But in taking into consideration the Group's mandate as well as time constraints the Group decided to look at third countries in the specific light of political, legislative, financial and operational means and instruments of the EU and its Member States. However, the Group firmly believes that the findings of the report have a value that goes beyond the context of the EU in giving direction to future efforts to counter trafficking, to protect the rights of the affected groups and to establish co-operation across EU borders. Moreover, the Group feels that the report could serve as a basis for developing policies as well as for the development of guidelines to monitor their implementation.

Chapter 2

Trafficking in human beings: Definition and current context

2.1 Definition of trafficking

Until recently, one of the fundamental problems in responding to trafficking in human beings has been the lack of international consensus on the definition of trafficking. Moreover, there has been a persistent confusion about the distinction between trafficking, smuggling and illegal migration. At international level these problems have largely been addressed by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (hereinafter referred to as “UN Trafficking Protocol”), which contains a worldwide recognized definition.⁴⁶

The Protocol provides a clear definition of trafficking in persons. The definition in Art. 3 (a) contains three distinct, but interconnected elements:

1. the recruitment, transport, transfer, harbouring or receipt of a person;
2. by use of threat, force, coercion, abduction, fraud or deception, abuse of power or a position of vulnerability or giving or receiving payments or benefits to achieve the consent of a person having control over another person;
3. for the purpose of the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, practices similar to slavery, servitude or the removal of organs.

Art. 3 (b) stipulates that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means mentioned above is used, whereas Art. 3 (c) states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation should be considered “trafficking in persons” even if this does not involve any of the means mentioned above, meaning that coercion is not required to consider a child as being trafficked.

While on the face of it this definition appears clear, in practice the working and use of the definition has been problematic and raises a number of questions.

⁴⁶ The definition in the UN Protocol formed the basis for the Council Framework Decision of 19 July 2002 on combating trafficking in human beings. See for a discussion of the relation and differences between the UN Protocol and the Framework Decision Annex 1.

The element of movement and the distinction between trafficking and smuggling

Firstly, in relation to the element of movement, a clear distinction is made in the Convention between trafficking of human beings and smuggling of migrants, which is the subject of another Protocol supplementing the above-mentioned Convention.⁴⁷

The purpose of smuggling is the illegal crossing of borders, whereas the aim of trafficking is the exploitation of the trafficked person. In other words, smuggling concerns primarily the protection of the State against illegal migration, while trafficking primarily concerns the protection of the individual person against exploitation and abuse. A distinguishing criterion, therefore, between smuggling and trafficking is the existence of a victim, that is, a person whose individual rights have been violated. The offence of smuggling, on the contrary, as such does not violate individual rights but the political interest of the State whose borders are violated. However, often smuggled persons are themselves victims of human rights violation, for example the right to life.⁴⁸

More problematically, at the time of movement it is often unclear whether a person is trafficked or smuggled. Neither the victims themselves, nor border officials, may know the ultimate purpose for which the person is moving, nor the ultimate conditions they will find themselves in. In addition the movement element of the Trafficking Protocol does not require cross border movement, trafficking can also happen internally within countries.

Unsurprisingly States, in their desire to maintain border controls, have tended to concentrate on the transportation and movement elements of the definition of trafficking, and have attempted to combat trafficking by establishing more restrictive immigration and border control regimes. Yet this is inherently problematic, as at the time of transportation, movement, or border crossing, it is unlikely that the purpose for which the movement is occurring, i.e. exploitation will be clear. Indeed often a person may move between a number of different people and in a number of different situations. People may enter a country legally, but subsequently become trafficked.⁴⁹ It is only at the point of outcome, when the person reaches exploitation, that it can be clear that trafficking has taken place. Until such point, movement may be for other (legitimate or illegitimate) reasons.

Concentration solely or strongly on the movement elements of the Trafficking Protocol is also problematic when trying to address the forced labour or slavery like outcomes of trafficking. Recent International Labour Organization (ILO) research has assessed why migrants have ended up in forced labour situations. The research demonstrates that not in all cases have victims been trafficked as traditionally understood (i.e. through a web of transport, international agents, etc.). In some cases migrants have entered by other means and ended up

⁴⁷ Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.”

⁴⁸ During the last 12 month there have been many poignant examples of migrants found dead, suffocated in containers or in trains, drowned crossing the sea or just killed by their smugglers to avoid police action.

⁴⁹ For example, individuals may legally enter as spouses, students, tourists or domestic workers and then be subjected to forced labour or slavery-like conditions. In this case they often only become illegal when they remove themselves from the power of their husbands or employers.

in forced labour or slavery like conditions. For instance, they might be smuggled into the country or have entered as illegal migrants and only at the other side of the border are they recruited and moved into forced labour situations.

This begs two questions. Firstly, how had the non trafficked forced labourers got into that situation? One could argue that on a legal interpretation of Article 3(a) of the Protocol any transportation, harbouring or receipt, etc. – for example the transportation of a worker from their place of sleep to the work place or the receipt of a worker to exploit his or her forced labour or services⁵⁰ – could be considered as trafficking. And, secondly, what is the use of the Trafficking Protocol if it seemingly makes these distinctions between forced labourers, simply on the basis of elements of movements, harbouring, etc. What this makes clear is that such distinctions are utterly problematic when trying to consider policy interventions to prevent either trafficking or forced labour or services.

Finally, concentration on the movement element and thereby border controls, while understandable, has led to cases of restrictive border controls for those who may otherwise be freely able to move, and to confusion between trafficking, smuggling and illegal immigration. For many migrants, “trafficking” is perceived as an anti migrant framework that hinders, not assists in protection of their rights.

The element of coercion

The second element of the protocol is the presence of coercion, deception, abuse of authority or any other form of abuse. It is important at the outset to note that the question of consent is irrelevant when considering trafficking of children; under Article 3 (c) trafficking of children shall have occurred even if it does not involve the use of any of the coercive means as set forth in paragraph 3 (a) of the Protocol.

The element of coercion makes it clear that, in order to qualify as trafficking, the exploitative outcome must be such that it constitutes forced labour or services, including forced sexual services,⁵¹ slavery or slavery like practices. For the majority of the purposes of forced labour, slavery or slavery like practices listed in the Protocol, this added element to the definition is unnecessary. The fundamental characteristic of slavery is that “it deprives a person of his or her freedom of movement and the ability to make decisions for him or herself as well as many other fundamental freedoms”.⁵² Thus slavery, slavery like practices and forced labour include lack of consent – an individual by the nature of the conditions, cannot legally be deemed to have consented to them. However, the elements of coercion in the definition are useful in highlighting the forced labour or slavery like outcome, and to distinguish it from unpleasant,

⁵⁰ The term “forced labour or services” is used here to indicate the Group’s neutral position on the question whether or not the provision of sexual services can be considered work.

⁵¹ To be understood as the exploitation of prostitution of others or other forms of sexual exploitation with the use of any of the coercive means as set forth in art. 3 (a) of the Protocol.

⁵² UN Doc E/CN.4/Sub.2/1999/--, p. 9. Art. 1(1) of the 1926 Slavery Convention defines slavery as “the status of condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” “Forced labour” is defined 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” (Art. 2(1) of the 1930 ILO Convention No. 29 Concerning Forced Labour).

harmful or exploitative working conditions.⁵³ Especially in relation to the purpose of “exploitation of the prostitution of others or other forms of sexual exploitation”, the element of coercion within the definition is particularly useful to distinguish that it is the coercive conditions which give rise to it falling under the Trafficking Protocol, rather than the type of work or services itself.⁵⁴

However, in many cases the element of coercion of the definition can cause confusion, because where workers may have seemed to consent to what is actually forced labour or slavery like practices, some may consider that they are not trafficked. In this context it is important to look closer at the issue of consent. When considering the relevance of actual or seeming consent the following conclusions must be drawn. Firstly, a free decision such as a freely given consent implies the realistic possibility of not giving the consent or, more precisely, of refusing any individual act the victim shall do or tolerate. The question, whether or not a decision was a free one, has to be asked and answered for each individual act. Secondly, the consent of the victim must have been given with respect to all relevant circumstances of an act. Real consent is only possible and legally recognizable, when all relevant factors are known and a person is free to consent or not. Thirdly, the reasons for which consent is refused cannot matter and it depends on the concerned person’s decision whether or not she/he would like to share these reasons with somebody else.

Thus, although a person may consent to migrate, to carry false papers, to participate in prostitution or to work illegally abroad, this does not imply the person’s consent to the forced labour or slavery like exploitation, including in the sex industry, and, consequently, does not exclude the person being a victim of trafficking. In this context, it is important to note that the inclusion of fraud, deception and the abuse of power or of a position of vulnerability recognises that trafficking can occur without any use of (physical) force. This is also reflected in the *Travaux Préparatoires*⁵⁵ that state that “the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved”. Moreover, it is important to keep in mind that deception can relate to both the nature of the work or services to be performed and the ultimate conditions under which the person is forced to perform this labour or services.

With regard to the purpose of “exploitation of prostitution and other forms of sexual exploitation” it is important to note that both the UN Trafficking Protocol and the EU Council Framework Decision on combating trafficking in human beings make a clear distinction between trafficking and prostitution as such.⁵⁶ Although the Protocol explicitly

⁵³ However, this does not completely solve the question where from a perspective of criminal law the line should be drawn between (extremely) poor working conditions which should be addressed by e.g. labour law, and conditions which qualify as “exploitation” in the sense of the definition of trafficking and which should be addressed by criminal law.

⁵⁴ The same goes for the purpose of “removal of organs” in the Trafficking Protocol definition. The removal or transplant of organs is not inherently coercive but only becomes trafficking if one of the means is used (plus the element of movement).

⁵⁵ The interpretative notes (*Travaux Préparatoires*) (A/55/383/Add.1 Addendum) are to be found at <http://www.odccp.org/crime-cicp-convention-documents.html>

⁵⁶ In the case of the UN Trafficking Protocol the terms “exploitation of the prostitution of others” and “sexual exploitation” were intentionally left undefined to allow all states, independent of their domestic policies

mentions the exploitation of the prostitution of others and other forms of sexual exploitation as one of the purposes, neither instrument, however, implies a specific positive or negative position on (voluntary, non-coerced adult) prostitution as such, leaving it to the discretion of individual States how to address prostitution in their domestic laws.

Against this background, different legal systems, whether decriminalising, legalising, regulating or tolerating (non-coerced adult) prostitution as well as systems criminalizing (the exploitation of) prostitution, prostitutes or the use of the services concerned, comply with the said instruments. Consequently, the question of the definition of trafficking has to be distinguished from questions about the political and/or legal approach to prostitution that is followed or required in order to tackle the problem of trafficking in human beings.⁵⁷

The false distinction between “innocent” and “guilty” victims

Another problem attached to the emphasis on the aspect of movement and coercion (i.e. the process through which a person is brought into the forced labour or slavery like situation), rather than on the forced labour or slavery like outcomes itself, is that it can easily lead to an incorrect distinction between perceived “innocent” and “guilty” victims. This problem is particularly visible in relation to trafficking into forced prostitution and other forms of sexual exploitation, but is relevant to all trafficked illegal migrants.⁵⁸ A common distinction made in this context is the one between “innocent” or “real” victims and “guilty” ones, implying that the latter group is not deserving of protection against forced labour or slavery like practices, as the abuses they undergo are considered to be their own fault.⁵⁹ The “innocent” or “real” victims then are those who can prove that they were forced to become a prostitute, whereas the “guilty” ones are those who were engaged in prostitution before, knew they would be and/or are willing to continue to do so under non-coerced conditions. In this interpretation the element of coercion is falsely understood as to refer solely to the way a woman entered prostitution (as a result of coercion or of her own decision), and not to the coercive or slavery like conditions she may subsequently be subjected to.⁶⁰

The effect of this distinction is that in many cases, instead of the offender standing trial, it is the victim who has to prove her “innocence”, thus shifting the focus from the acts of the trafficker to the morality of the victim. In practice this acts as a serious barrier for women trafficked into the sex industry – no matter whether or not they were previously engaged in

on prostitution, to ratify the Protocol. The interpretative notes to the UN Protocol read that “The *Travaux Préparatoires* should indicate that the Protocol addresses the exploitation of prostitution of others and other forms of the sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” and “sexual exploitation” are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.”

⁵⁷ The Experts Group follows this approach. It wants to recognise that different (legal and social) stances towards prostitution exist without, however, taking a stance itself.

⁵⁸ This analysis is also the case, to a lesser extent, for many in forced labour conditions, who may be perceived to lack the necessary “innocent victim” status as they may well have consented to illegal border crossing, smuggling, and to working in exploitative, but not forced labour, conditions. Consider for example, the migrant cockle pickers in the United Kingdom, or migrant Chinese workers in France.

⁵⁹ It is not for no reason that the typical defence of a trafficker is that the woman concerned knew what she was going or expected to do, thus assuming that prostitutes can be abused with impunity.

⁶⁰ See also the earlier remarks on the issue of consent.

prostitution – to come forward and act as witnesses. Another consequence is that many cases of trafficking involving prostitutes are not prosecuted because the abuses she suffered are considered to be the natural consequences of her willingness to be a prostitute, that is, her own fault.⁶¹

Such a distinction is therefore not only in contradiction with the UN Trafficking Protocol, but also seriously impedes the combat of forced labour and slavery like situations in the sex industry. As a result of the above described problems, many of those engaged in prostitution, including trafficked persons, do not perceive the trafficking framework as helpful in combating violence and abuse in the sex industry and in the protection of their human rights.

Forced labour and slavery like exploitation as the crucial element

The above analysis raises the question as to the purpose of the Trafficking Protocol. Within the context of trafficking there is no need as such to criminalize recruitment, transportation, harbouring, receipt or transfer of a person. While these acts in themselves may be subject to other criminal sanctions, (e.g. immigration violations), these tend to be violations against the State, rather than against the individual.

Similarly, acts of coercion, force, deception, etc., by themselves, do not require criminalizing within the trafficking context. Many acts of force or coercion will already be clearly defined criminal acts in domestic law (for example rape, assault, theft, obtaining goods or services by deception). As individual offences, without the forced labour or slavery like outcome, they add nothing to the trafficking context.

It is only when the purpose,⁶² or outcome of these two elements, the forced labour or slavery like exploitation, including forced prostitution and other forced sexual services, is present that these elements of the Trafficking Protocol are relevant. Thus the key element to the Trafficking Protocol is the forced labour or slavery like outcomes, encompassing forced labour and services, including forced prostitution and other forced sexual services, slavery, slavery like practices and servitude. It is these human rights violations against the individual that the Trafficking Protocol seeks to redress. While in some cases it can be difficult to determine whether conditions are merely illegal and extremely exploitative, rather than forced labour or services, slavery, slavery like practices or servitude, there is a wealth of history of international law, standards and interpretation of these concepts to rely on, which can provide sufficient certainty for criminal law and sanctions.

It is worth noting the variety of elements that are included within forced labour or services (including forced sexual services), slavery, slavery like practices and servitude. While there are clear international standards, much trafficking work, laws and interventions have tended to concentrate exclusively on those trafficked for the purposes of exploitation of prostitution or

⁶¹ See e.g. Doezema, J., “Choice in prostitution”, in *Conference book: Changing Faces of Prostitution*, League of Finnish Feminists, Helsinki, 1996.

⁶² Although, according to the definition of the Protocol, the purpose of trafficking is the exploitation of the prostitution of others, forced labour etc., the ultimate aim of trafficking evidently is financial gain. This aspect will be dealt with in Chapter 6.4.

other forms of sexual exploitation. It is only recently that attention is being paid to those trafficked for all forms of forced labour or services (including forced sexual services), slavery, slavery like practices or servitude, that are clearly encompassed within the definition.⁶³

Elements of movement and force should be seen in the context of acts that enable the forced labour and services, including forced sexual services, slavery and slavery like practices or servitude to occur. Without this end product, although other violations of human rights, domestic or international laws may occur, these are dealt with by other international laws and treaties, and are not, by themselves trafficking, or suitable to be tackled under the Trafficking Protocol. The clear human rights violations which the Trafficking Protocol seeks to redress are the forced labour and services, including forced sexual services, slavery, slavery like practices or servitude, rather than illegal migration or smuggling, or forms of force or coercion, or mere exploitative working practices. Interpretations of the Trafficking Protocol that concentrate on the process of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited. There is serious deficiency in the concept of trafficking if it focuses solely on the process of bringing another person into a situation of exploitation and does not address the use of forced labour or services, including forced sexual services, slavery, practices similar to slavery or servitude as such, where this has not been preceded by the other elements stipulated in the definition. From a human rights perspective, there is no reason to distinguish between forced labour and services involving “illegal migrants”, “smuggled persons” or “victims of trafficking”.

Thus to effectively counter trafficking, policy interventions should focus on the forced labour and services, including forced sexual services, slavery and slavery like outcomes of trafficking – no matter how people arrive in these conditions –, rather than (or in addition to) the mechanisms of trafficking itself.⁶⁴ States should criminalize any exploitation of human beings under forced labour, slavery or slavery like conditions, in line with the major human rights treaties that prohibit the use of forced labour, slavery, servitude, etc.⁶⁵

If such policies were followed, then many of the current confusions of the trafficking definition – whether a case was smuggling or trafficking, whether a case was trafficking or forced labour, whether the victim had seemed to consent to elements of the forced labour or slavery like outcome and whether a victim was perceived as “innocent” or “guilty” would become redundant. By policy makers concentrating primarily on the forced labour or slavery like outcome, the Trafficking Protocol can overcome its current definitional and practical operational difficulties and has the potential of a tool to more effectively tackle the human rights violation of trafficking in human beings.

⁶³ For example, see in particular the work of the ILO “Special Action Programme to Combat Forced Labour.”

⁶⁴ Of course this does not take away that, in order to address forced labour and slavery like conditions, it is also important to look at the mechanisms through which people arrive in such situations.

⁶⁵ The same goes for the removal of organs with the use of one of the coercive means as set forth in para 3 (a) of the Protocol.

The human rights dimension

The Brussels Declaration, like other relevant international or EU documents, addresses the impact of trafficking in human beings on the human rights of the victims. However, while there is agreement concerning the negative impact of trafficking in human beings on the human rights of the victims and while elements of the definition clearly constitute human rights violations,⁶⁶ trafficking in human beings as such is mostly not explicitly characterised as a human rights violation.⁶⁷

According to the Preamble of the UN Trafficking Protocol a comprehensive international approach is required that includes measures “to protect the victims of trafficking, including by protecting their internationally recognized human rights”. Article 2 of the Protocol states that its purposes are “to protect and assist the victims of such trafficking, with full respect for their human rights”. In 2002, the United Nations High Commissioner for Human Rights (UNHCHR) issued the “Recommended Principles and Guidelines on Human Rights and Human Trafficking”. The first principle requires that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.” Guideline No. 1 points out that “violations of human rights are both a cause and consequence of trafficking in persons.”

The 2002 Organisation for Security and Co-operation in Europe (OSCE) Declaration on Trafficking in Human Beings states that the latter constitutes “an abhorrent violation of the dignity and rights of human beings”.

Article 5(3) of the Charter of the Fundamental Rights of the European Union states: “Trafficking in human beings is prohibited”. Recital No. 3 of the Framework Decision on trafficking in human beings stresses that “trafficking in human beings comprises serious violations of fundamental human rights.” Later on it adds that “the dignity and human rights of the victims must be respected at all times.”

All these formulations⁶⁸ reflect a rather traditional concept of human rights. This concept presumes that only States can violate fundamental (human or civil) rights. This concept corresponds with the traditional aim of constitutions and fundamental rights charters to protect people against public infringements.

Another, more recently developed understanding of the concept of fundamental rights acknowledges that also private parties can deprive a human being of the realistic possibility of enjoying his or her civil or human rights. A State, which refuses to take appropriate measures

⁶⁶ For example the purposes of forced labour, slavery and servitude.

⁶⁷ Although the purposes of trafficking, in particular forced labour, slavery, practices similar to slavery and servitude, are recognized as human rights violations.

⁶⁸ An exception is the Hague Ministerial Declaration which explicitly states that “trafficking in women constitutes a flagrant violation of women’s human rights” for which the main responsibility lies with the Member States (The Hague Ministerial on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997). Also the US Trafficking in Persons Report 2004, p. 10, explicitly states: “Trafficking in Persons is a Human Rights Violation. Fundamentally, trafficking in persons violates the universal human right to life, liberty, and freedom from slavery in all its forms.”

in order to provide proper protection against such deprivation, would therefore (indirectly) violate the human rights of the offended person.

Human trafficking is based on a treatment of human beings as private property or even commodity depriving them of the possibility of using their constitutionally guaranteed rights. It therefore substantially affects the human dignity and the right to self-determination of a person. Consequently, a State, which would refuse to appropriately prevent and combat trafficking in human beings would violate the trafficked person's human rights.

One further question is what exactly the State is required to do in order to comply with human rights obligations resulting from national constitutions or international instruments. This aspect will be discussed in more detail in Chapter 3.2.

With regard to the definition of trafficking in human beings another question is more important: should the human rights impact be considered as a necessary element of that definition? The Group has no doubt that this question has to be answered positively and that any counter trafficking policy must be based on an understanding of trafficking in human beings that considers the human rights impact to be a central and primary element of the definition of trafficking in human beings. With regard to children this means that the principles and provisions as set forth by the UN Convention on the Rights of the Child should be taken into full account.

Recommendations

1. All EU Member States should ratify and implement the UN Trafficking Protocol.
2. Though trafficking often occurs across borders and with the involvement of organised crime networks, trafficking also takes place within borders and without the involvement of organised crime. States should therefore ensure that all forms of trafficking, regardless of the crossing of borders and/or the involvement of organised crime, are adequately criminalized.
3. Although – as far as presently known – the majority of trafficking affects women and children, and most attention has been placed on trafficking into sexual exploitation, women, men and children are trafficked for numerous other forced labour purposes. States should ensure that counter trafficking legislation and policies cover all forms of trafficking of women, men and children.
4. For the overall purpose of this report – further development of a comprehensive and coherent EU counter-trafficking policy – the definition has to take into account all relevant aspects, especially the impact on human rights. In this context, trafficking in human beings has to be defined as a complex phenomenon violating the trafficked person's will and right of self-determination and affecting her or his human dignity. With regard to children, a child's right to special protection measures should be considered an overarching principle.

5. From a human rights perspective, the primary concern is to combat the use of forced labour or services, including forced sexual services, slavery, slavery like practices, servitude or the like. It is therefore recommended that States adequately criminalize any exploitation of human beings under forced and/or slavery like conditions, independent of whether such exploitation concerns a trafficked person, a smuggled person, an illegal migrant or a lawful resident.
6. In applying the Trafficking Protocol, States should focus on the outcomes of forced labour or services, slavery or slavery like practices – which are inherently coercive – rather than the movement or coercion elements, which should be seen as preparatory to these outcomes, as opposed to the acts that require criminal sanctions and interventions as human rights violations.

2.2 The current context⁶⁹

At world level a clear progress has been achieved by the UN in recent years, the most of important of which the adoption of the Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. However, only some of the “new” but most of the “old” EU Member States as well as the European Community have not yet ratified the Protocol.⁷⁰

At the EU level, the main milestones are the adoption of the Framework Decision of 19 July 2002 on combating trafficking in human beings⁷¹ approximating the criminal laws of the Member States, the Directive on a temporary residence permit for victims of trafficking who cooperate with the authorities⁷² and – with regard to some aspects of trafficking in human beings – the Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography.⁷³

In addition, the “Social dialogue” at EU level between the social partners, employers and trade union organisations plays a pivotal role in European society. This is reflected in the Commission’s Communication of 12 August 2004 on “Partnership for change in an enlarged Europe – Enhancing the contribution of European Social Dialogue” and should also have an impact on the EU anti-trafficking policy.⁷⁴

However, although a number of political declarations and legally binding instruments are in place, they are often not yet effective or fully implemented. Moreover, additional measures are needed.

⁶⁹ See for a more extensive description of developments Explanatory Paper 2.

⁷⁰ Ratifications as at 10 December 2004: Belgium, Denmark, France, Portugal, Spain, Sweden, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (source: United Nations Office on Drugs and Crime – UNODC website).

⁷¹ OJ L 203, 1.8.2002, p. 1.

⁷² Directive on the residence permit issued to third-country nationals victims of trafficking in human beings or to third-country nationals who have been the subjects of an action to facilitate illegal immigration who cooperate with the competent authorities, Council Document 14994/03 MIGR 101.

⁷³ OJ L 13, 20.1.2004, p. 44.

⁷⁴ For further information: http://europa.eu.int/comm/employment_social/soc-dial/social/index_en.htm

At the same time, the context in which further action should be taken at the EU level presents interesting prospects. Important developments include the enlargement of the European Union with 10 central and eastern European countries; the envisaged new Constitution for the EU; the growing importance which is attached to the justice and home affairs dimension within the financial perspectives for the EU between 2007 and 2013;⁷⁵ the Hague Programme that has been adopted by the European Council at its meeting in Brussels on 4 and 5 November 2004⁷⁶ and evaluated the development further to the conclusions of the Tampere European Council in 1999; and finally the initiative of the Council of Europe for a European Convention on Trafficking in Human Beings (all EU Member States and the Commission are involved in the negotiations) that has been started taking into account current EU/EC legislation and may have, on the other hand, an impact on the further development in the European Union.

The Experts Group has followed this development and issued three opinions in 2004. Especially the opinion on Tampere II, although drafted with a view to the negotiations on the Hague Programme, should be understood in a larger context and be taken into due account for the plan, which the Hague Programme requires for 2005 with a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings.⁷⁷

Although trafficking in human beings is explicitly addressed in the envisaged Constitution,⁷⁸ this happens mostly in the context of combating illegal migration. It should, however, be remembered that the crucial element of trafficking is the forced labour exploitation of the trafficked person rather than the question whether or not that person has illegally crossed the border. Also the Tampere Communication, by addressing “a stronger fight against trafficking in human beings and the development of an effective policy on returns and readmission”⁷⁹ in the same sentence, may give the impression that trafficked persons are above all illegal migrants, who should primarily return to and be readmitted by their countries of origin. Presuming that this is not the Commission’s intention, the Group recommends adapting the language in communications and other political papers in order to undoubtedly underline the Commission’s commitment to a holistic and integrated, human rights-based approach which focuses on combating the exploitation of human beings under forced labour or slavery like conditions rather than on (illegal) migration.

In the context of the new financial perspectives of the EU and the growing importance attached to Justice and Home Affairs matters, the Group notes that this situation offers the opportunity to financially support not only selected innovative projects in the area of

⁷⁵ Communication from the Commission to the Council and the European Parliament, “Building our common future, policy challenges and budgetary means of the enlarged Union 2007-2013”, COM(2004) 101 final/2, 26.2.2004; Communication from the Commission to the Council and the European Parliament, “Area of Freedom, Security and Justice: Assessment of the Tampere programmes and future orientations”, COM(2004) 401, 2.6.2004.

⁷⁶ Council Document 14292/04 CONCL 3 (<http://ue.eu.int/uedocs/cmsUpload/EN.pdf>).

⁷⁷ Chapter III 1.7.1 of the Hague Programme.

⁷⁸ Treaty establishing a Constitution for Europe as set out in Document CIG 87/2/04 of 29 October 2004, see in particular Articles II-5, III-168(2)(d), III-172(1).

⁷⁹ COM(2004) 401, 2.6.2004, p. 10.

trafficking, but also sustainable structures providing protection and assistance for trafficked persons as well as appropriate law enforcement capacities specifically targeting the perpetrators in this area of crime. Whereas in the previous period the development of innovative methods and structures has been central, in the coming period the emphasis should lie with consolidating organisations, structures and mechanisms that have proven their use but that cannot survive without further financial EU input. Efficient allocation of financial resources requires co-operation and co-ordination of donors.

Recommendations

7. The EU-context in 2004 provides opportunities for politically and financially strengthening the prevention and combat of trafficking in human beings. In view of the financial perspectives 2007-2013, the Experts Group in particular calls on the Council of the EU and the European Commission – as well as Member States at the national level – to allocate adequate resources to the prevention and repression of trafficking in human beings as well as to the provision of adequate remedies to trafficked persons. Particular attention should be paid to the latter and to the allocation of adequate resources to NGOs in assisting this. Notwithstanding the relevance of the new EU Member States, attention should also be paid to overseas countries of origin.
8. Rather than merely project-based funding, future financial support should also be geared to long term, sustainable support of organisations, structures and mechanisms that successfully have been developed over the last years and that have proven their usefulness, but that are not able to survive without further financial EU input. Consequently, a balance needs to be found between long term, structural financing and project-based funding to give room to new and innovative initiatives.
9. Political papers such as European Council Conclusions or Commission Communications should more clearly stress that trafficking in human beings is not primarily an issue of illegal immigration but that it has to be addressed as a serious crime and human rights violation, underlining the EU commitment to a holistic and integrated, human rights based approach focusing on combating the exploitation of human being under forced labour or slavery like conditions.

Chapter 3

Guiding principles and cross-cutting themes

3.1 Introduction

This chapter will discuss a number of overarching issues. As the Experts Group considers the integration of a human rights perspective fundamental to any policies and measures addressing trafficking, the chapter will start with a discussion of the meaning of a human rights based approach, its elements and its consequences. Given the complexity of the phenomenon and the interconnectedness of the different factors that feed and maintain trafficking, a holistic and integrated approach is needed. Such an approach contains a number of elements. Firstly, in line with a human rights based approach, policies should concentrate on empowerment strategies as much as on repressive strategies. A first step is to redress the present imbalance between the attention paid to crime control strategies and the provision of adequate remedies to trafficked persons. Moreover, care should be taken with employing repressive strategies as they can easily give rise to unintended and undesirable side effects and may lead to increased vulnerability for trafficking. Secondly, and connected to the latter, a holistic and integrated approach requires looking at the root causes, in particular the relation between migration and labour policies and trafficking. Thirdly, a holistic approach requires action at different levels – local, national, regional and international – and in different fields, including criminal law, labour law, aliens’ law, migration policies, development co-operation, etc. The aim should be to develop an integrated policy covering the different levels and fields that require action. To achieve this, close co-operation between all actors involved is needed, including civil society organisations such as labour unions and NGOs.

Apart from the above-mentioned elements, this chapter will also look into the importance of data collection as the necessary basis for any strategy and the issue of information exchange and data protection. In particular, the issue of data protection requires specific attention, both from a human rights perspective – the right to privacy – and in the light of the very real risks that a lack of security or the misuse of data presents to trafficked persons.

Finally, specific attention is paid to children as they have a specific legal status, different from adults, and specific needs and vulnerabilities. However, in line with a human rights based approach, it must be kept in mind that children are not only victims in need of protection but also subjects to rights.

The last remark concerns the language used in this report with regard to the term “victim.” Although the Experts Group explicitly wants to stress the reality of trafficked persons as victims of a severe crime and human rights abuse, it also shares the concern that the use of the word “victim”, because of its emphasis on vulnerability, passivity and powerlessness fails to recognise the dignity, courage, aims and choices of the individuals concerned. Therefore,

the term “victim” is exclusively used in direct relation to the status of trafficked persons as a victim of crime and human rights abuses. In other instances the term “trafficked person” is used, which is in compliance with international human rights documents, such as the UNHCHR “Recommended Principles and Guidelines on Human Rights and Human Trafficking.”⁸⁰ However, it must be stressed that also when the term “victim” is used, this does not mean that the person concerned should be completely identified with her/his status of victim of a crime or should be patronised in any way.

3.2 Human rights as a paramount issue⁸¹

The Brussels Declaration acknowledges that trafficking in human beings constitutes a serious violation of human rights and expresses the need for a human rights based approach to trafficking. Taking into account the inextricable link between the prevention and eradication of trafficking in human beings and the protection of the human rights of trafficked persons, the Experts Group considers the integration of a human rights perspective fundamental for the analysis of trafficking in human beings and the development of an effective response to it. Integration in this sense means that a human rights perspective should be part and parcel of any strategy, measure and policy to address trafficking.

Under international human rights law States have a duty to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to provide effective remedies to trafficked persons.⁸² The protection of the rights of trafficked persons on the one hand and criminal investigation and prosecution of traffickers on the other hand must be understood as complementing each other. In comparison to the attention paid to the area of law enforcement, the assistance, protection and compensation of trafficked persons is lagging behind. This needs to be redressed.

Essential elements of a human rights based approach are the observance of international human rights norms and the principle of non-discrimination, standard setting and accountability, the recognition of human beings and in particular trafficked persons as subjects and holders of rights, self organisation, participation, empowerment and social inclusion of the groups and communities affected, including trafficked persons, and the integration of a gender, child rights’ and, where applicable, ethnic perspective. Participation includes the involvement of former trafficked persons and other affected groups in the development of strategies to address trafficking. Moreover, it should be ensured that counter-trafficking measures do not undermine, adversely affect or infringe upon the human rights of individuals, e.g. migrants, prostitutes, refugees or asylum seekers.

Although trafficking affects both men and women, it is not a gender neutral phenomenon. Women are affected in different ways than men in terms of the sectors into which they are trafficked, the forms of abuse they suffer and the consequences thereof. Also in other aspects,

⁸⁰ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, New York and Geneva, 2002.

⁸¹ See for a more extensive description of the elements and principles underlying a human rights based approach Explanatory Paper 3.

⁸² UNHCHR, *op. cit.*

trafficking is not a neutral phenomenon, but is closely related to and generated by discriminatory practices and unequal power relationships, including those based on race or ethnic background, both in countries of origin and destination. The integration of a gender and ethnic perspective is therefore essential to the analysis of trafficking, the development of counter policies and the provision of protection and assistance.

All human rights conventions apply equally to children. However, there are differences between children and adults, which have to be taken into account. Of particular importance, in terms of conventions, is the UN Convention on the Rights of the Child, which affirms children's civil, political, economic, social and cultural rights, while recognising children's rights to special protection measures, particularly in cases of trafficking.

As such a human rights based approach offers a conceptual and normative framework that should give direction to the further development of policies in the area of trafficking. At the same time it offers a framework to monitor and evaluate counter-trafficking policies, practices and actions for their real and potential impact on trafficked persons and other groups affected.

Recommendations

10. A human rights approach, including a child rights approach should be integrated as a normative framework in the further development of policies and measures against the trafficking in human beings, both at national and European level. The Principles and Guidelines on Human Rights and Human Trafficking as elaborated by the UN High Commissioner for Human Rights (UNHCHR) can serve as an important instrument to do so.
11. The European Commission and the Member States should consider the human rights impact when preparing and adopting anti-trafficking measures and establish mechanisms to monitor the human rights impact during the implementation of such measures.
12. To ensure compliance with human rights norms, a "Human Rights Impact Assessment Model" should be developed in close co-operation with NGOs working with trafficked persons and human rights institutions, as an instrument to monitor and evaluate the human rights effects of anti-trafficking laws, policies and practices. Such an instrument should play an important role in ensuring that anti-trafficking measures comply with respect for and protection of human rights. In addition it should ensure that anti trafficking measures do not create or exacerbate existing situations that cause or contribute to trafficking by instituting policies and practices that further undermine or adversely affect the human rights of individuals, such as the right to privacy, the right to freedom of movement, the right to leave one's country, to migrate legally and to earn an income.
13. The Commission shall take the initiative for the adoption of a legally binding EU instrument covering the standing of trafficked persons in order to protect the human rights of trafficked persons, which clearly goes beyond current Member State

commitments.⁸³ Such an instrument should lay down minimum standards of treatment to which all trafficked persons are entitled and ensure that trafficked persons are provided with access to adequate and appropriate remedies, independent of their capacity or willingness to cooperate in criminal proceedings or to give evidence. Within such an instrument special attention should be given to the position, rights and needs of children, according to the principles and provisions expressed in the relevant conventions.

14. Member States should give priority to the development of counter trafficking strategies, which aim at the empowerment, social inclusion, participation and self organisation of the groups affected and/or at risk.

3.3 The need for a holistic and integrated approach

Trafficking in human beings is a complex problem, related to different fields and interests: migration, organised crime, labour, prostitution, human rights, unequal international economic relationships, gender issues, violence against women, the feminisation of poverty, etc. All those aspects are reflected in the various strategies employed by non-governmental, inter-governmental and governmental agencies. Depending on how the problem is defined, different solutions – that is measures to prevent or combat trafficking – will be proposed. For example, if trafficking is viewed as a result of poverty or as a human rights problem, other solutions will be proposed than if trafficking is predominantly viewed as a problem of organised crime or illegal migration.

Any analysis and its matching solutions carry their own value. There clearly is not one single solution. Given the complexity of the issue, strategies are necessarily multi-faceted and multi-disciplinary.

Strategies to address trafficking seem to move between two poles. On the one hand repressive strategies, which aim at suppressing those phenomena that are considered to be particularly connected to trafficking in human beings, such as organised crime and (illegal) migration and – depending on ones view – prostitution as such. On the other hand strategies which aim at empowering the persons and communities who are or could be affected by self-organisation, encouraging participation in finding solutions, improving living and working conditions and widening the set of (economic) choices, strengthening rights and increasing possibilities to exercise control over their own lives.

Both empowering and, depending on the target, repressive strategies are of value and both can contribute to an effective approach against human trafficking. Repressive strategies are crucial for protecting individuals against the crime of trafficking and the related exploitation, for the effective investigation of trafficking cases and the prosecution and punishment of traffickers. At the same time, especially repressive strategies beg for caution as they can easily give rise to unintended and undesirable side effects. For instance, more restrictive immigration policies may lead to the creation of a market for irregular migration and increased vulnerability to both trafficking and smuggling. At worst they can cause

⁸³ See also Chapter 5.

repercussions which have repressive rather than emancipative effects on the situation of the groups affected, e.g. by restricting freedom of movement or by using trafficked persons as witnesses without the corresponding protection. The consequences of repressive strategies should therefore be taken into account when they are prepared and implemented. Empowering and repressive strategies should be complementary and not undermine one another.

The Group is convinced that in order to effectively address trafficking, a holistic and integrated approach is needed which builds on the respect and promotion of human rights as its fundament. Such an approach has a number of elements.

In the first place equal attention needs to be paid to the prosecution of the traffickers on the one hand and empowerment, protection and assistance for trafficked persons on the other hand. One of the obstacles in the effective prosecution of traffickers is respectively the unwillingness of trafficked persons to report to the authorities and the absence of the victims in criminal proceedings against the perpetrators as a result of their being deported as illegal aliens under immigration law. Often contradictory interests play a role: the interest of immigration policies to remove illegal aliens versus the interest of internal security policies in the detection and prosecution of traffickers and the preservation of (possible) witnesses. These interests can and do conflict on a regular basis. The result is a lack of adequate identification of possible victims and their summary deportation. This hampers both an effective criminal approach to trafficking and an adequate protection of its victims. To overcome such problems, clear policy choices should be made.

In addition, multidisciplinary co-operation and coordination is needed between all agencies and stakeholders involved. This includes not only law enforcement, border officials and prosecutors, but also local authorities, labour unions, labour inspections, employers, employees, self-organisations, NGOs, international organisations and other relevant sectors of civil society. Without overcoming the present obstacles that prevent an effective co-operation between these parties, which all have a role to play, trafficking in human beings will not be tackled.

Moreover, action is needed at different levels – local, national, regional, European and international – and in different fields: criminal law and judicial measures to prosecute the traffickers and ensure access to justice to the victims; tools for financial investigations to hit traffickers where it hurts most; administrative law and controls to regulate and monitor procedures, practices and agencies that may have an influence on the prevalence of trafficking; aliens law to prevent the deportation of (possible) victims and provide them with a legal residence status; migration law and policies to encourage regular, managed and safe migration based on demand and need; social and labour law and the application of labour standards to ensure the same level of protection for foreign as for native workers in order to reduce the demand for trafficked persons; social policies to ensure the adequate assistance and protection of trafficked persons; and development policies to address the root causes, including gender discrimination and lack of opportunities, in the countries of origin. The aim should be to develop an integrated policy covering the different levels and fields.

Finally, civil society adds an amount of experience to the fight against human trafficking based on their work in human rights protection and grass-root counselling for trafficked

persons. Often they complement State support or fill gaps in providing social protection to trafficked persons. Moreover, in particular independent NGOs play an active role in maintaining and strengthening democratic processes providing checks and balances to government structures, monitoring institution-building processes and advocating for a more thorough fulfilment of international human rights commitments by the State.

The implementation of a holistic and integrated approach requires well-structured capacities and procedures and a variety of instruments, depending on which area is addressed. These instruments may vary from Directives, Framework Decisions and specific budget lines at the EU level to the establishment of national and European anti-trafficking networks, data collection structures, co-operation and coordination mechanisms, guidelines, training programmes and the development of a Human Rights Impact Assessment model. In particular, a holistic and integrated approach should be reflected in the identification and the empowerment of appropriate National Referral Systems⁸⁴ and international co-operation.

Recommendations

15. To effectively address trafficking in human beings a holistic and integrated approach is needed based on respect for and promotion of human rights. In order to realize such an approach multidisciplinary co-operation and co-ordination between all involved actors and stakeholders, including civil society and labour organisations, are crucial. The aim should be to develop an integrated policy covering the different fields and levels on which action is required. To this end governments should establish efficient co-ordination and co-operation structures at the political and operational level.
16. The role of civil society actors, in particular independent NGOs, should be more extensively recognised, not only because of their role in providing assistance to trafficked person but also because of their critical role in maintaining and strengthening democratic processes and in monitoring and advocating implementation of human rights commitments by States.
17. Clear policy choices should be made between the interests of immigration policies in deporting illegal aliens on the one hand and the detection and prosecution of traffickers and the preservation of possible witnesses on the other hand. The lack of such a choice hampers both an effective criminal approach and an adequate protection of trafficked persons.
18. Empowering and repressive strategies are both needed and should complement each other. Special care, however, should be taken when employing repressive strategies as they can easily give rise to unintended and undesirable side effects. The consequences of repressive strategies should therefore be taken into account when they are prepared and implemented. On the other hand, empowering strategies are not yet used to their full potential and should be researched further.

⁸⁴ See Chapter 3.7.1.

3.4 Trafficking in human beings, migration and informalisation of the workplace⁸⁵

The vast majority of people who are trafficked are migrants who end up being abused and exploited in the informal and/or unprotected sectors. Increasing inequalities of wealth between and within countries and increasing demand for migrant workers will fuel increased migration in the future.

Formally, the EU has recognised this trend, with the commitments made at Tampere 1999 and reiterated in the Hague Programme to create a common EU policy on asylum and migration. This approach comprises action to counter the root causes and more legal immigration possibilities with full integration of those legally admitted, while countering irregular migration including the readmission of irregular migrants into their countries of origin.

Recently, the European Commission in its June 2004 Communication on Tampere has stated that there must be a realistic approach, taking account of economic and demographic needs, to facilitate the legal admission of migrants to the Union in accordance with a coherent policy respecting the principle of fair treatment of third country nationals. The Communication underlines the need for an integrated approach to combat trafficking in persons.

However, despite these commitments many governments have continued to respond with a restrictive approach to migration and immigration policies. The effect of these has not decreased migration, but rather has left migrants more vulnerable to irregular forms of migration, including smuggling and trafficking for labour and other forms of exploitation.

At the same time, increasing informalisation of the global economy is enabling increased movement of employment and labour. Again, policies have tended to favour deregularisation, resulting in informalisation and opening of markets. However, the vast majority of trafficked persons occur in the informal, unregulated and unprotected sectors, both in prostitution and other traditionally female designated sectors such as domestic labour, and in new previously formal sectors, such as construction or agriculture, where sub contracting or contract work is leading to informalisation. Increasing informalisation of the economy has left informal sector workers more vulnerable to exploitative working practices and trafficking.

The promotion of regular and managed migration and standards based working conditions has the potential to reduce trafficking by offering migrants and other workers a mechanism which is safer and guarantees their human and labour rights.⁸⁶

Regular and managed migration should enable shortages in the workforce and opportunities for migrant workers in countries of destination to be identified and to enable matching of these with the potential of available migrant workers in countries of origin. However it is important that such policies do not deplete the workforce of countries of origin to their

⁸⁵ For more information see Explanatory Paper 4.

⁸⁶ See Anti- Slavery International, *The Migration – Trafficking Nexus*, London, November 2003.

detriment (by for example only taking skilled workers) and that such policies apply to all areas where there is demand for migrant workers, including unskilled and informal sectors, and do not simply operate a quota for skilled workers. Managed migration policies should be used in a way that benefits migrants, countries of origin and destination.

Recommendations

19. EU Member States should maintain their commitments made at the Tampere European Council in 1999⁸⁷ and reiterated in the Hague Programme.⁸⁸
20. Member States should promote regular and managed migration policies based on demand and need, including the demand for unskilled labour, which is gender sensitive and implies the establishment of clear and comprehensive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, society and governments.
21. Member States should provide a standard based approach to trafficking and migration. Such an approach should include, at a minimum:
 - the protection of migrant's rights and international standards of protection for all migrants (both legal and illegal) as key to ensuring safe migration. States should ratify and implement the appropriate conventions, in particular the UN Convention on the Protection of the Rights of All Migrant Workers and their Families 1990;
 - ratification and application of the relevant ILO standards, in particular ILO Convention No. 29 on forced labour and ILO Convention No. 182 on the worst forms of child labour, but also ILO standards regarding non-discrimination, freedom of association, labour inspection, employment agencies, and others. Increasing informalisation has left workers vulnerable to labour abuses. Standards need to be applied in both formal and informal sectors;
 - the application of standards through a combination of education, self-regulation and enforcement;
 - awareness raising and training on labour standards and the connection with trafficking to those responsible for labour policies, including policy makers, employers, Unions and labour inspectors. Inclusion of these actors in counter trafficking initiatives should always be considered;
 - the enforcement of labour standards through labour inspections, and if necessary the use of administrative and criminal sanctions;
 - standards of freedom of association. States, employers, unions and others should pay particular attention to encouraging organisation of workers. Both formal organisation, through unionisation, and informal methods of organisation should be developed. This should include the encouragement of self organisation of trafficked persons;
 - the enforcement of anti discrimination standards.

⁸⁷ Presidency Conclusions, Tampere European Council 15 and 16 October 1999: specifically conclusions Nos. 3, 22, 23, 26 and 48 (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm).

⁸⁸ Council Document 14292/04 CONCL 3 (<http://ue.eu.int/uedocs/cmsUpload/EN.pdf>).

22. The EU should continue to move towards implementing those parts of the Thessaloniki, Tampere and The Hague agendas that aim at the promotion of regular and managed migration. Both the needs in countries that people wish to migrate from and the requirements in countries people wish to migrate to should be considered, enabling legal migration and integration of migrants and migrants' rights while addressing the root causes of migratory flows. The policy should be open and accessible to all and include the following:
- regulation of travel/employment/au pair agencies;
 - provisions criminalizing the retention or possession of passports, visa, work permits or other documents by persons other than the document holder;
 - work permits or visas not linked to a specific employer or type of employment;
 - education and promotion about safe migration possibilities and practices.
23. Women are more vulnerable to trafficking as many of the sectors in which they traditionally are engaged – for example the sex sector⁸⁹ and domestic labour – are less likely to be regulated and more likely to be infiltrated by traffickers. Additionally women are less likely to have information about migration opportunities or have fewer established migration routes and networks. Gender sensitive migration policies need to reflect and address these inequalities. This raises the question as to the extent that largely unrecognised informal sector work or services (such as domestic work, au pair or similar arrangements and the sex sector) should be regulated within migration or employment policies.⁹⁰

3.5 Specific position, rights and needs of children

Children are particularly vulnerable to trafficking – both within and across national borders – as it is easier for traffickers to target them through coercion, deception or manipulation and as they are more dependent on adults and have fewer possibilities to escape an exploitative relationship.

In general children have more limited capacities to understand fully the consequences of their actions. Therefore, even when a child agrees to be trafficked and/or exploited, consent cannot be assumed and should never be used against the child. This is recognised in the Palermo Protocol, where the definition stipulates that in the case of children the use of force, coercion or deception is not required.

Some groups of children – such as street children, children living in institutions, children from minorities and disadvantaged groups, and girls – are particularly vulnerable to being trafficked, because of the lack of opportunities, education, support, etc. At the same time, there is a specific demand for children for sexual exploitation (such as child prostitution

⁸⁹ The term “sex sector” comes from Leam Lim, L. (ed.), *The Sex Sector. The Economic Bases of Prostitution in Southeast Asia*, ILO, Geneva, 1998. Prostitution here is defined as “The provision of sexual services for reimbursement or material gain.”

⁹⁰ It should be noted that the answers to this question, in particular in relation to the sex sector, differ widely, also within the Experts Group. This is therefore without prejudice to the different positions that may be taken on the legalisation of the sex industry.

and child pornography), for economic exploitation (cheap labour, begging, pick pocketing, drug selling, etc.) and for illegal adoption.

Children are more vulnerable to the serious effects of being trafficked and exploited and of being treated under immigration and crime control policies. Child victims are sometimes sold to traffickers by their parents and often face dangerous travels. They may be sexually exploited and/or exploited in illegal activities or other forms of economic exploitation, exposed to violence of the exploiters and the clients. They often live on the streets or in inadequate accommodation, with no adult carers and no access to health, education and social services. These children usually have no legal status and therefore are prevented from seeking protection for fear of being returned. When identified by law enforcement authorities they are often treated as illegal migrants, criminalized, held in detention centres (where some children are abused) and finally deported to their country of origin. Families often do not want the child back because of the stigma attached and in the worst cases children are re-trafficked. All these experiences may have devastating long-term consequences for a child, whose protection needs are much greater than those of adults.

Children are not only victims in need of protection but also have rights, consistent with their status under the UN Convention on the Rights of the Child (UNCRC), capable of decisions and actions, whose view should be taken into account consistent with Article 12 of the UNCRC.⁹¹ Children's empowerment – aimed at increasing their resilience as well as at strengthening the protective factors belonging to their environment – is crucial both for the prevention of trafficking and for their recovery and reintegration.

Legal framework

Children are entitled to specific rights under a number of international instruments. The UN Convention on the Rights of the Child (1989), ratified by all EU Member States, provides the most important legal framework for policy responses concerning children.

The UNCRC specifies the definition of a “child” as a person below the age of 18 years, and provides a number of fundamental principles and rights: the promotion of the best interests of the child (Art. 3), the non-discrimination principle (Art. 2), the right to participate (Art. 12), the right to survival and development (Art. 6). It also contains specific articles (32, 33, 34, 35, 36) dealing with exploitation, abuse and trafficking. Other relevant articles include the right to protection of children deprived of their family (Art. 20) and the non use of detention (Art. 37).

A second relevant convention is the Optional Protocol on the sale of children, child prostitution and child pornography. This goes further than the Palermo Protocol as it includes crimes that are not of a transnational nature and that do not involve organised criminal groups. It also includes the transfer of organs and illegal adoption. Additionally,

⁹¹ Art. 12(1) of the UNCRC assures the right of the child to express her/his own views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

it states that the consent of the child is not relevant as long as the overall objective is the exploitation of the child.

Thirdly, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182 (1999) of the International Labour Organization (ILO) and in particular the definition of the worst forms of child labour⁹² must be taken into account.

Finally, the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption must be mentioned as of primary importance to address trafficking in children for the purpose of international adoption.

Specific provisions on children are also set out in the UN Trafficking Protocol. Nevertheless it is important to point out that the Protocol should be read in the light of the Convention on the Rights of the Child. With regard to the definition of “exploitation” in the UN Trafficking Protocol, the UNCRC should be kept in mind, which states the right of the child to be protected from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” as well as from all forms of sexual exploitation and sexual abuse, in particular the exploitation of children in prostitution or pornography.⁹³

At the EU level, despite the lack of a comprehensive legal base to promote children’s rights in the EU Treaty, there are a number of relevant legal texts. These include Article 24 of the Charter of Fundamental Rights which provides a duty to promote the best interests of the child and is appended to the Treaty, Article 29 of the Amsterdam Treaty concerning offences against children and the draft Constitution that includes two articles concerning the promotion of the rights of the child. If the draft Constitution is ratified there will be a much clearer legal base in the framework of EU legislation to promote the best interests of the child.

⁹² Art. 3: “For the purposes of this Convention, the term ‘the worst forms of child labour’ comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

⁹³ UNCRC, Artt. 32 and 34.

Recommendations

24. Consistent with the UN Convention on the Rights of the Child and the UN Trafficking Protocol:
 - the definition of “child” as any person below the age of 18 should be respected in EU and national legislation and its implementation;
 - “exploitation” in the UN Protocol should be defined in the light of the UNCRC and ILO Convention 182 on the worst forms of child labour and should include at a minimum all forms of sexual exploitation and sexual abuse, economic exploitation, the use of a child for illicit activities, any work that is likely to be hazardous or to interfere with the child’s education or that is likely to be harmful to the child’s health or physical, mental, spiritual, moral or social development, illegal adoption and removal of organs;
 - the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation should be defined as “trafficking in children” whether transnational or national, and whether or not involving organised criminal groups.
25. A child rights approach shall be integrated as a normative framework in the further development of policies and measures against trafficking in human beings, both at European and national level.
26. All actions undertaken in relation to trafficked children shall be based on the principles set out in the UN Convention on the Rights of the Child, in particular:
 - the “best interests” principle: the best interests of the child should be the primary consideration in all actions concerning children. All considerations related to immigration or crime control should be secondary. Child victims of trafficking should not be criminalized;
 - the right to participate: the views of children should be sought and taken into account, in accordance with their age and maturity, in all matters affecting them;
 - the “non discrimination” principle: trafficked children should be treated as children first and foremost; considerations of their national or other status should be secondary.
27. Policies and measures concerning trafficking in children shall adopt a holistic and integrated approach, aimed at strengthening the effectiveness of specific mandates as well as at co-operation of the different agencies concerned. The different components of the problem as well as their inter-connectedness should be taken into account, such as different kinds of exploitation, phases of the trafficking cycle, phases of intervention, etc.
28. Specific attention, including re sourcing, should be paid by the EU to child trafficking outside Europe (for example child soldiers, child agricultural and domestic workers) in its development co-operation policy and programmes.
29. The European Union should allocate resources to finance actions specifically addressed to combating child trafficking both in the EU external relations and within the EU.

3.6 Co-operation and co-ordination mechanisms

Multidisciplinary co-operation between all involved agencies and stakeholders, including civil society organisations is a crucial element of a holistic and integrated approach to trafficking.

The UN Protocol addresses among other things co-operation and other measures. It explicitly refers to co-operation among law enforcement, immigration and other relevant authorities by the exchanging of information in order to identify victims and perpetrators, on the types of travel documents used and on the means and methods used for trafficking by organised criminal groups (Art. 10). The Protocol further mentions co-operation among State parties to control borders (Art. 11). This limited description of co-operation does not cover all the necessary aspects in which the different actors should co-operate in all the phases of counter-trafficking.

Anti-trafficking co-operation in the EU should be seen in a broader context and should be considered the responsibility of all parties implementing initiatives against trafficking; be it governmental agencies (law enforcement, migration, labour, etc.), the judiciary, local authorities, intergovernmental organisations, NGOs, academia and individuals. But also within the Commission coordination and co-operation should be ensured with regard to various Directorate-Generals concerned with trafficking in human beings, for example by using inter-service group meeting and consultations as often as possible.

The most basic co-operation should be in the field of data collection and the exchange of information gathered by the various agencies and institutions, as information is the basis for the development of effective policies.⁹⁴

Secondly, co-operation is needed between governmental and non-governmental agencies at local and national level to ensure the proper identification and referral of trafficked persons and to ensure that they receive adequate assistance while protecting their human rights. Part of such a cooperative framework should be the establishment of cross sector and multidisciplinary teams to (further) develop, monitor and evaluate policies and the establishment of national governmental coordinating structures. Local authorities can be active partners in including trafficking in local action plans against criminality, establishing support services for trafficked persons, raising public awareness and setting up specific programmes for vulnerable groups (in particular illegal minors) to prevent them from falling in the hands of trafficking networks.

Thirdly, a structure is needed to facilitate co-operation, contacts and exchange of information and experience between Member States, between international, national and non-governmental organisations, as well as between Member States and the Commission, other constituent entities of the Council of the EU and groups of experts and networks working in the area of trafficking in human beings. To this aim the establishment of a European Anti-Trafficking Network is proposed. Such Network can build on the co-operative structures established on national level and already existing co-operative structures on European level.

⁹⁴ See Chapter 3.8.1.

3.6.1 National Referral Mechanisms and institutional anti-trafficking framework⁹⁵

The weakness in all anti trafficking measures and policies lies with the lack of a formalized structure capable to respond to a complex and dynamic phenomenon of human trafficking that is highly informal and diametrically organised. Therefore, the creation of a flexible structure has to be ensured in order to rapidly respond to new trends and practices of traffickers, while enabling at the same time the access of all trafficked persons to service providers.

Within the OSCE a practical tool of National Referral Mechanisms (NRM) has been developed for governments and civil society to set up sustainable anti-trafficking structures that put the human rights of the victims first while enabling effective prosecution of perpetrators.

The crucial components of a NRM are tools for identification of trafficked persons, the elaboration of models of identification and the co-operation of law enforcement with civil society. It includes guidelines to set up components of a NRM such as shelters, specialised services, return and social inclusion, data protection, witness protection, confiscation of criminal assets, compensation of victims, and residence regimes.

At the same time methodology has been developed that enables national and local stakeholders to assess, monitor and evaluate existing components of a NRM. Setting up an institutional anti-trafficking framework, including a cross-sectoral Round Table and appointing a national governmental co-ordinator on trafficking, ensures a participatory approach through which monitoring and evaluation exercises lead to reform of legislation, policy and practice.

Role of NGOs

Civil society, as one of the main pillars of democratic development, has a key role in the establishment of successful NRMs. NGOs and other civil actors often bring a vast amount of experience based on their work in traditional fields of human rights protection and victim assistance. In many countries, they complement State support or fill gaps when certain social services are not provided by the State, but most importantly, they play an active role in the process of democracy and democratisation by providing checks and balances to government structures, monitoring institution building process and reform and advocating for a more thorough fulfilment of international human-rights commitments by the State.

Nevertheless, a lot of NGOs in the EU Member States are faced with serious shortcuts of their budget that sometimes lead to closing down of the organisation.

⁹⁵ For more information see Explanatory Paper 5.

The OSCE Action Plan to Combat Trafficking in Human Beings, endorsed at the Maastricht Ministerial Council meeting, recommends that OSCE participating States – these are among others all EU Member States – establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons and establishing cross-sector and multidisciplinary teams to develop and monitor policies.⁹⁶

Governmental coordination structures

Government representatives should adopt a lead role in the establishment and/or strengthening of NRMs, while constructively involving counterparts from the non-governmental sector. As a first step, a national Round Table on trafficking in human beings should be set up, bringing together all major national actors involved in responding to trafficking. The Round Table should include representatives of appropriate federal and/or State ministries, such as Interior, Foreign Affairs (including consular sections), Social Affairs, Labour and Health, as well as any other government offices that have a role in combating trafficking, national and international NGOs, and international organisations.

This national Round Table should be cross-sectoral, involving both governmental actors and civil society. This provides the basis for a multi disciplinary approach and the development of national strategies and action plans. A national coordinator, usually a high-ranking national official and representative of a national level ministry, should chair the Round Table. In addition to other tasks, the national coordinator could be responsible for the regular functioning of the Round Table and for convening meetings on a regular basis. The Round Table will create networks among national, regional and/or international structures that will allow for efficient information dissemination and feedback mechanisms among them. It should be responsible for the development and implementation of national strategies and action plans as well as for monitoring and evaluating their implementation. One of its tasks should be the development of a quick and “light weight” individual complaint mechanism to ensure the proper enforcement of in particular of the policies regarding the identification and assistance of trafficked persons.

Recommendations

30. Member States should establish National Referral Mechanisms (NRMs) to ensure the proper identification and referral of trafficked persons, including trafficked children, and to ensure that they receive adequate assistance while protecting their human rights. A NRM should incorporate:
 - guidelines on the identification and treatment of trafficked persons, including specific guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights;
 - a system to refer trafficked persons to specialised agencies offering protection and support;

⁹⁶ OSCE Ministerial Council Decision No. 2/03, “Combating Trafficking in Human Beings” (December 2003).

- the establishment of binding mechanisms to harmonize the assistance of trafficked persons with investigative and crime prosecution efforts.
31. Coupled with a National Referral Mechanism Member States should establish a governmental co-ordination structure consisting of a National Governmental Coordinator and a cross-sector and multidisciplinary Round Table to develop, coordinate, monitor and evaluate national action plans and policies. One of the tasks of the Round Table should be to develop a quick and “light weight” mechanism to address individual complaints with regard to the proper identification and assistance of trafficked persons.
 32. Member States and the EU should ensure adequate and sustainable funding of civil society actors, in particular NGOs providing assistance to trafficked persons and advocating and defending their human rights.

3.6.2 Establishment of a European Anti-Trafficking Network⁹⁷

Co-operation is not only needed at the national level but also at the European level. To facilitate co-operation, contacts and exchange of information and experience between all involved agencies and stakeholders of Member States – governmental and non-governmental –, as well as between Member States and the Commission, other constituent entities of the Council of the EU and other groups of experts and networks working in the area of trafficking in human beings a European Anti-trafficking Network should be established. Such a Network should build on the cooperative structures established at national level, in particular the NRMs, and should cover prevention, victim protection and assistance as well as law enforcement and police and judicial co-operation. Member States should be responsible to provide the conditions for national representatives, including NGOs, to participate in the European Network, whereas the European Commission shall be responsible for providing the secretariat. The Network secretariat and its activities shall be financed from the general budget of the European Union.

The Network should consist of contacts points designated by each Member State and should include at least one representative from the national authorities, preferably the National Governmental Co-ordinator chairing the National Round Table, as well as a representative from a NGO, which participates in the NRM and the National Round Table. The Commission should also appoint a contact point. Other relevant bodies may be associated with the Network, such as members of the European Parliament and the Committee of Regions.

⁹⁷ See for a draft Council Decision establishing a European Anti-Trafficking Network Explanatory Paper 6.

Recommendation

33. In order to facilitate co-operation, contacts and exchange of information as well as the development, monitoring and evaluation of anti-trafficking policies on the European level, a European Anti-Trafficking Network should be established. The Network should build on the national cooperative structures, in particular the NRMs, and consist of contacts points designated by each Member State as well as a contact point designated by the Commission. It should include both governmental and non-governmental agencies and cover the areas of prevention and victim assistance as well as law enforcement and police and judicial co-operation.

3.7 Individual complaint mechanisms

Currently, a number of complaint mechanisms exist at the international and European level which can be relevant for complaints regarding trafficking in human beings. These include, at the UN level, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), as well the mechanisms of the International Labour Organisation (ILO).⁹⁸ At the European level cases may in some circumstances be taken to the European Court of Human Rights or the European Court of Justice.

However none of these mechanisms specifically addresses trafficking in human beings. Furthermore, due to the complex nature of trafficking and the varying degrees of power of action or enforcement, these mechanisms cannot take fully into account complaints of victims of trafficking in human beings.

Therefore, to fully incorporate a human rights based approach within anti trafficking strategies, the establishment of an individual complaint mechanism is highly recommended. This would acknowledge the right of trafficked persons as victims of human rights violations to raise complaints (directly or through an organisation on behalf of them) against States' violations of their individual rights. Establishment of such a mechanism would ensure the accountability of States for their actions and the fulfilment of international obligations under human rights law. Most of all it would provide redress for trafficked persons.

In this context the Experts Group has issued an opinion (see Annex 3) fully supporting the need to include a monitoring mechanism in the proposed Council of Europe Convention on Action Against Trafficking in Human Beings. Such a mechanism should monitor States' fulfilment of their international commitments and provide avenues for individuals to raise complaints.

Recommendation

34. In order to fully incorporate a human rights based approach within anti trafficking

⁹⁸ See for an overview of the supervisory mechanisms of the ILO: <http://www.ilo.org>

strategies, the establishment of an individual complaint mechanism is recommended. The ability of individuals and organisations on behalf of victims, to raise States' failure to meet international obligations under human rights law, and/or to raise complaints about violations of individual rights, is important in ensuring accountability of States for their actions as well as in providing redress for individuals.

3.8 Data collection, information exchange and data protection

To effectively address trafficking in human beings, both nationally and internationally, insight is needed on present developments, trends, threats, recent methods, *modi operandi*, the number of persons and the amount of money involved, etc. This need for information exists with all actors involved. At the same time most traditional methods of data collection cannot be applied to new forms of crime such as trafficking in human beings.⁹⁹

A present problem is the lack of relevant data and/or the fragmented character of available data, i.e. the lack of exchange of information, at national as well as at European and international level. The first step therefore is to systematically collect relevant data based on common guidelines, to begin at the national level. Only when data gathering is adequately organised at the national level, it becomes useful to collect and compare data at the European level.

In this respect, it is important to distinguish between two different types of data: non-personal, anonymous data, which are open to the public, and personalised data, which are and should be subjected to a strict legal regime.

Although the exchange of personal data is – and should be – subject to strict and solid European regulations that secure the individual right to privacy, it should, however, be acknowledged that in reality these are not always enforced. This is particularly problematic in trafficking cases where it may not only have extreme social consequences for the trafficked person if information gets known, but may directly endanger her or his personal safety. These existing gaps in data protection regulations and their implementation need to be solved. At the same time, the need for strict data protection regimes may pose tensions between law enforcement interests and human rights interests that need to be addressed.

Analysis of available data and scientific research has to fill the gaps in knowledge about the nature, extent and seriousness of the phenomenon of human trafficking and related abuses. The data needed for policy purposes in the areas of prevention, repression and assistance are non-case related, anonymous and non-personal and are provided by national as well as international sources. This does not exclude that personal data concerning perpetrators and victims can provide useful data but, in that case, these data need to be made anonymous.

With regard to children, there is a need for specific information systems both in and between origin and destination countries. Such systems should aim at systematizing qualitative and

⁹⁹ See Kangaspunta, K., *Mapping the Inhuman Trade. Preliminary findings of the database in trafficking in human beings*, UNODC, Vienna, 2003.

quantitative data on child trafficking, as well as sharing experiences and best practices among governmental institutions and non-governmental actors. For this purpose, it would be necessary to identify practicable tools between national and international information systems.

Operational actions, however, require specific and personalised data on perpetrators, victims and related identified persons. Given the explicit international dimension of trafficking in human beings, the exchange of personal and case-related data, not only at national but also at international level, is essential. This goes for law enforcement authorities in the broad sense (police, judicial authorities, customs and labour and social inspection services). However, also NGOs dealing with prevention and especially those taking care of trafficked persons have, in order to fill in their tasks, needs in the field of exchange of information on national as well as on international level. This may concern not only non-personal, anonymous data, but also personalised data. Especially in the case of NGOs working on cases of missing and possibly trafficked persons, including children, personal data play a key role in concrete cases.¹⁰⁰

This section will respectively address mechanisms for the collection of data, the exchange of personalised data and the need to balance data protection and human rights concerns with the interest of law enforcement.

3.8.1 Data collection: National Rapporteurs or similar mechanisms

One of the problems in the development, monitoring and evaluation of counter trafficking policies and their implementation is the lack of reliable data and the fragmented character of available information. Moreover, data are often difficult to compare due to different methods used to collect them and the differences in the legal systems of the Member States.¹⁰¹ To address this problem, in the first place a central place is needed at the national level where information from different sources and actors comes together and can be analysed. This could be a National Rapporteur or a comparable mechanism. The aim should be to bring together existing information/data from different agencies, including law enforcement agencies, intergovernmental organisations and NGOs, identifying gaps and bottlenecks and proposing methods and measures to address these gaps in information. The information thus gathered should serve as a basis for national action plans and policy making, which should fall under the responsibility of national governments. However, the Rapporteur – or a comparable mechanism – should be independent and should not have an executive, operational or policy co-ordinating task. In order to guarantee optimal access to all relevant agencies and sources of information a clear distinction must be made between the mandate to collect information, the coordinating function on a national operational level and the policy making level. Neither should the National Rapporteur or a comparable mechanism act as a kind of “ombudsman”. Such a function is extremely useful, but could easily interfere with the collection of data and the access to different agencies this requires.

¹⁰⁰ See e.g. Vermeulen, G. and H. De Pauw (eds.), *Co-operation between Civil Society Organisation and Law-Enforcement Services in the Area of Missing and Sexually Exploited Children*, Maklu, Antwerp/Apeldoorn, 2004.

¹⁰¹ E.g. the number of criminal investigations or convictions on trafficking are difficult to compare if not all Member States have a specific provision on trafficking in their Criminal Codes or if such provisions differ widely.

Finally, it is important that those who give information also gain benefit from having given that information. One way to achieve this is the publication of public annual reports.

Once a mechanism for national data collection is established, a similar mechanism should be established on the European level. The task of such a European mechanism (this could be a European Rapporteur) should be to bring together the information collected at national levels and to report to the Commission. Important condition for the effectiveness of data collection on the European level is that all the national mechanisms for data collection have a comparable mandate and comparable competences. Moreover, in order to make the data collected by the different Member States comparable, common guidelines for the collection of data should be developed.

Recommendations

35. Member States should establish a central place where information from different sources and actors is systematically gathered and analysed. This could be a National Rapporteur or a comparable mechanism. Such a mechanism should meet the following requirements:
 - main task should be the collection of data on trafficking in the widest possible sense, including monitoring the effects of implementation of national action plans;
 - an independent status;
 - a clear mandate and adequate competences to have access to, and actively collect, data from all involved agencies, including law enforcement agencies, and to actively seek information from NGOs. The mandate to collect data must be clearly distinguished from executive, operational or policy co-ordinating tasks, which should be fulfilled by other bodies;
 - the competence to directly report to the government and/or the Parliament and to make recommendations on the development of national policies and action plans, without itself being a policy making agency.
36. Once national data collection mechanisms are established, the EU should establish a similar mechanism at the European level, the task of which is to bring together at a European level the information collected at national level, to identify gaps and bottlenecks at European level and to issue recommendations to the Commission and the Council of the EU to address those gaps and bottlenecks. Again, such a European mechanism should also be open to representations from NGOs.
37. In order to make national data comparable common guidelines for the collection of data should be developed, both with regard to the type of data and to the methods used.

3.8.2 Data exchange

Two types of information exchange can be distinguished: information exchange at the level of policy development and information exchange at the operational level.

In particular information exchange with regard to personalised or operational sensitive data should be based upon previously concluded protocols that lay down the information flows between the different agencies in accordance with the legal requirements. These can include IOs and NGOs that directly work in the area of missing persons, including missing children, or that are providing assistance to trafficked persons.

The exchange of personalised data is subject to specific regulations. At the international level it is regulated through the traditional international co-operation regimes in criminal matters, including Schengen, Europol and Eurojust.

The present legal framework at international level

The collection, retention, processing and exchange of personal data are subject to strict European regulations that secure every individuals' rights to privacy according to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Co-operation in the field of information exchange between law enforcement and NGOs, private or civil society organisations is subject to the Convention for the Protection of Individuals of the Council of Europe, 28 January 1991, with regard to automatic processing of personal data (Data Protection Convention 108) and its Additional Protocol. The same legal instrument applies to the collection of personal data by civil society organisations. An additional standard is Recommendation R (87) 15 of the Council of Europe regulating the use of personal data in the police sector. The principles of these two European instruments, which have to be implemented in national law, are also embodied in the Convention implementing the Schengen agreement and the Europol Convention. Each Member State of the European Union has implemented the above-mentioned European legal standards on data protection.¹⁰²

Of course, this does not prevent that national legislation can differ and that national privacy law can apply a more stringent regulation, which will have consequences for the international collection and processing of personalised data.

On the other hand, it should be acknowledged that in practice existing data protection regimes are not always strictly enforced. Moreover, it should be acknowledged that increased co-operation and data exchange lead to greater risks of misuse of data. In this context it must be realised that any failure to protect personal data may pose a direct and serious threat to the life, safety and welfare of trafficked persons.

¹⁰² See for a legal analysis of information-related co-operation considering the European standards the research of G. Vermeulen and others, which includes also a European Model Protocol. This Protocol reflects the above-mentioned European legal standards, general quality standards for civil society organisations and general principles of a code of practice for civil society and law-enforcement.

Recommendations

38. In particular the exchange of personalised or operational sensitive information should be based upon previously concluded protocols that lay down the information flows between the different agencies in accordance with the legal requirements.
39. In view of the enlargement of the EU and the envisaged greater collection, distribution and synchronisation of data in the framework of the Dublin Declaration, the increased risks of misuse of data and the potential harm this can cause to trafficked persons should be recognised. It should be ensured that any increased co-operation with regard to data sharing is accompanied by strict data protection measures and regimes, including an assessment of the actual and practical capacity for the observance of such regimes.

3.8.3 Balancing data protection, human rights concerns and the interest of law enforcement¹⁰³

Data protection guarantees the right of the affected person to control the communication and use of their personal data. It is important to note that the definition of personal data includes not only details such as name, address, date of birth, nationality, etc., but also information about personal circumstances, such as conduct and activity, state of health, including HIV status, pregnancy, or hepatitis status.

Protection of a trafficked person's data should apply to the use of data within the destination country as well as in contact with the country of origin. In cases where no data protection protocols exist, such protocols should be instituted. This can be done through a special law regulating the use of data but also through the adoption of appropriate data protection directives for trafficked persons.¹⁰⁴

Protocols that regulate the exchange of personalised information are particularly important in the case of trafficked persons, as the misuse of information may directly endanger the safety and welfare of the person concerned. Apart from endangering the life and safety of the person concerned and her/his family, information such as stamps on passports that label a trafficked person as a prostitute or identify them as having been deported as a victim of trafficking, or information exchanged with embassies or law enforcement agencies in the country of destination, can actually condemn that person to a life as a social outcast or prevent them from legal migration in the future.

Key provisions in general data protection regulation

The objective of data protection regulations should be the right to self-determination over

¹⁰³ This section is a revised version of the Chapter "Fundamental Principles in Data Protection," in Kroeger, T. and J. Malkoc, B.H. Uhl, *National Referral Mechanism. Joining the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, Warsaw, 2004, pp. 93-96.

¹⁰⁴ For example in co-operation agreements, instruction to workers, in victim accommodation institutions, etc.

personal information. Regulations must guarantee that the processing of data (whether in their compilation, storage or transmission, etc.) only occurs in line with legal directives and/or with consent of the affected person. These data should be used exclusively for the fulfilment of the purposes for which they were originally compiled. Moreover, data should only be taken, used and exchanged on a need basis, rather than as a matter of course, with a presumption that it should not be unless need can be shown.

In practice there are exceptions to this, for example cases where the affected person agrees to its alternative use, when there is a danger to public security, when it serves the prosecution of criminals or in cases where its use prevents serious endangerment of another person. These situations can also involve the transmission of data between State agencies, or between State offices and non-governmental organisations. Such transmission should only be cleared when it does not violate any of the affected person's rights to protection, especially where the affected person is prejudiced by its transmission.

Apart from general data protection regulations, use should be made from the practice of so called "restricted notes", meaning that the data of a trafficked person are marked with a number, the identity of which is only known to selected officials.

Furthermore, people who have access to personal data in the course of their work (for example, those working in State authorities) must be bound by a duty of confidentiality.¹⁰⁷

In discussing data protection there are a number of key areas. These include the transmission of data between criminal prosecution authorities and counselling agencies; the transmission of data of the Schengen system; the role of the media, the protection of data in contacts with agencies in the country of origin and the duty of confidentiality, including the right to refuse to give evidence, of counselling professionals.

Especially the Schengen Information System (SIS) poses problems due to the *de facto* practical obstacles for the trafficked person to contest the storage or accuracy of her/his personal data on the SIS. At the same time the storage of information in the SIS, as well as other information systems, can have far reaching consequences for the (alleged) trafficked person, such as a possible refusal of legitimate entry, residence or employment in the EU in the future.

Another important aspect of data protection concerns the relation between the trafficked person and professional counsellors. In order to access help and support, the trafficked person must have a protected space in which she/he can talk about her/his experiences. It is, therefore, crucial that regulations are in place to ensure the confidentiality of the client/counsellor relationship and protect counsellors from any obligation to pass on information to third parties against the will and without the consent of the trafficked person.

¹⁰⁵ See Art. 7 of the EU Data Protection Directive.

¹⁰⁶ See Art. 16 of the EU Data Protection Directive.

Recommendations

40. In order to ensure adequate protection of data of trafficked persons it is recommended:
- to take as a principle that data should only be taken, used and exchanged on a need basis with the presumption that they should not be unless need can be shown;
 - to adopt specific mandatory data protection protocols for trafficked persons, which apply to the use of data within the destination countries as well as in contacts with countries of origin;
 - before the exchange of personal data, to ensure that the country of origin concerned guarantees an appropriate level of data protection;
 - to ensure that people who have access to personal data in the course of their work are bound by a duty of confidentiality;
 - to make the unauthorised use of data, breach of confidentiality, etc., a criminal offence;
 - to make use of the practice of “restricted notes” to minimise the danger of the trafficked person’s data to get known;
 - to include in co-operation agreements between law enforcement authorities and counselling agencies/authorised NGOs provisions which guarantee that the identity and other personal data of the trafficked person will not be forwarded without the consent of the trafficked person or the proper authority to do so;
 - to adopt, where they not already exist, regulations that guarantee the confidentiality of the client/counsellor relationship (including people who receive confidential information in their professional capacity such as social workers, medical practitioners, doctors, etc) and that protect counsellors from any obligation to pass on information to third parties against the will and/or without the consent of the trafficked person.
41. In constructing the new SIS II system or other information sharing systems, and to accommodate the information flowing from acceding States, consideration should be given to the drafting of a provision, which would specifically exclude alleged and actual victims of trafficking from the SIS or other relevant databases. At the very least, the Schengen Convention should impose a specific obligation on Member States to notify a trafficked person on her/his request if her/his data are stored in the SIS, putting at least some of the control over the data back into the hands of the trafficked person.
42. In contacts with the media the following principles should be observed: data such as the name, personal history, photograph or any other details, which allow the identity of the trafficked person to be deduced, may not be published; any reporting should be avoided that endangers the trafficked person.

Chapter 4

Prevention

4.1 Introduction

Prevention of trafficking in human beings comprises a wide range of strategies, which seek to reduce the risk of the crime occurring and its potential harmful effects on individuals and the society. These strategies have to be based on a broad, multidisciplinary knowledge of trafficking in human beings, its causes and counter trafficking best practices. At the same time they have to be gender-sensitive and integrate a human rights perspective.

The approaches to prevention of trafficking in human beings can differ. In this chapter, we will concentrate on those preventive measures that complement criminal justice interventions. Root causes, research, awareness raising, training and administrative control will be the main subjects for discussion in this chapter.

Firstly, it is necessary to put in place and strengthen existing measures to alleviate the circumstances that make individuals and groups of people particularly vulnerable to trafficking in human beings. Prevention strategies should counteract discrimination, marginalisation and social exclusion, both in countries of origin and destination. They should promote the well being of the people in the countries of origin through sustainable development in the social, economic, health and education sectors, with a particular emphasis on women, minorities and children. They should focus on the risk and protective factors associated with trafficking in human beings and victimisation of trafficked persons.¹⁰⁸ In addition, trafficking can also be seen as a security issue, linking the concept of state security and human security, and thus bringing in a human rights perspective.

However, prevention is not only an issue for countries of origin but also for countries of destination. A lack of appropriate rights for trafficked persons and adequate financial resources increase the risk for re-trafficking. These factors appear as secondary root causes.

Apart from concentrating on root causes in countries of origin and secondary root causes in countries of destination, strategies aimed at preventing human trafficking must pay attention to the demand side of the problem in transit and destination countries. In this regard, current restrictive migration policies, i.e. the lack of legal labour migration possibilities in light of abundant demand for cheap and exploitable labour and services in destination countries as well as the corresponding supply of cheap labour and services are among the root causes of human trafficking, which a preventive approach must address.

¹⁰⁸ United Nations, Economic and Social Council, *Revised Draft Guidelines for the Prevention of Crime*, E/CN.15/2002/4, 31 January 2002.

Whereas administrative control measures (pre-border, border and in-land controls) are without doubt essential in the overall counter-trafficking strategy, it needs to be ensured that measures to prevent trafficking in human beings do not inhibit migration possibilities, freedom of travel and mobility consistent with laws, or undercut the protection provided to asylum seekers, refugees and migrants in international law. The rule of law and internationally recognized human rights must be respected in all aspects of the prevention of trafficking in human beings.

In crime prevention strategies trafficking in human beings is predominantly perceived as a form of cross border organised crime. This may not always present the complete picture. While the majority of trafficking may occur across borders, it also takes the form of internal trafficking. Preventive measures should also concentrate on trafficking in human beings within the territory of one country and without the involvement of organised crime groups.

The main responsibility for prevention lies with governments at local, national and international level which should create the conditions and frameworks for sustainable crime prevention, including mechanisms for impact assessment and review. Prevention strategies should be based on existing experiences and accurate information and should be integrated into all relevant policies and programmes.

Networking, co-operation and co-ordination among different sectors of society – State and local authorities, international organisations, non-governmental organisations, the business sector, labour unions and private citizens – are critical to effective prevention. Civil society and community involvement and partnerships represent a crucial element of the whole concept of prevention of trafficking in human beings. Taking into account the transnational character of trafficking there is a need for sustainable regional and international preventive actions and networks addressing the international dimension of the crime.

4.2 Root causes of trafficking

Complex economic, social and cultural conditions, such as globalisation, employment, trade, and migration policies, humanitarian crises, regional conflicts, environmental disasters, gender and ethnic discrimination and, with regard to children, the lack of protective systems increase vulnerabilities and fuel trafficking in human beings. Its most commonly identified push factors are poverty and unemployment in countries of origin, among others as a consequence of social reforms, the disappearance of public sector employment and the decline of industries and agriculture in many transition countries. These factors act, together with gender inequality and discrimination, both in countries of origin and destination, and tolerance of violence against women, as push factors in particular for women to migrate.

Pull factors, such as images drawn from the media and stories from returning migrants, aspirations for a better life with more opportunities, the expectation of employment and financial rewards, and, more generally, of an improved social position and treatment in richer destination countries, entice many persons into migrating under ill-informed and risky circumstances. In search of better jobs and lives abroad, migrants may fall prey to fraudulent

employment offers and find themselves back in coercive or exploitative conditions. Among these migrants, a large proportion of women, young girls and children end up under slavery like conditions in the traditionally female designated, most vulnerable sectors of domestic work and the sex industry. Comparable to women, some traditionally vulnerable groups, such as ethnic minorities, tend to have limited access to social services, reinforcing their vulnerability to trafficking. The same root causes apply to internal trafficking.

Similar effects of macro-economic and social development have impacted countries of destination. Increasing demand for cheap, un-skilled labour in construction and manufacturing jobs, as well as for domestic and sexual services create strong pull factors for legal or illegal migrants. With little research done in this area, little attention has been directed towards addressing the pull factor of demand as a root cause of trafficking. New research on the influence of demand¹⁰⁹ on trafficking in human beings suggests that the unregulated nature of some parts of the labour market, the abundant supply of exploitable labour, together with the power and malleability of social norms regulating the behaviour of employers and clients, including clients of sexual services, are key factors in explaining the nature of the demand which fuels trafficking in human beings.¹¹⁰

In addition, trafficking is usually connected with the shift towards investment in informal – often clandestine or illegal and largely invisible – sectors, where workers are not able to organise or demand their rights and where, therefore, labour is cheaper and workers easily exploitable.¹¹¹

This raises questions with regard to the sectors to which women predominantly are trafficked. For example, domestic work is largely unregulated and unprotected and partly even not recognised as work, leaving very few channels for legal migration, whereas on the other hand the demand for this type of work (domestic services, childcare and taking care of the old) will further increase if only due to demographic developments (increased labour participation of women; the general ageing of the population). With few options available for legal migration,

¹⁰⁹ Anderson, B. and J. O’Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, IOM, Geneva, 2003, p. 44.

¹¹⁰ As pointed out by Anderson and O’Connell Davidson, the notion of demand for a trafficked person’s labour or services is highly problematic as there is no reason to assume that trafficking meets a special demand for *trafficked* persons, rather than for e.g. a smuggled person or an illegal immigrant. It makes more sense to assume that these type of legal distinctions as well as the way in which a person arrived in a situation of forced labour or slavery like exploitation are irrelevant to those who exploit or consume their labour/services”. This makes the question of demand for “trafficked persons” inseparable from more general questions about the demand for labour/ services of all those who are unable to freely leave the exploitative situation because they are tied to their exploiter through some form of non-economic compulsion, e.g. through the confiscation of their passport, the withholding of wages, the use or threat of physical force, debt bondage or the fear of arrest and deportation. However, one might expect “that the rapid expansion of a market that is poorly regulated, widely stigmatised and partially criminalized will be associated with an increase in the incidence of abusive practices”. This goes for the market for sexual services, but similar points could be raised for the market for domestic services, pp. 9-11.

¹¹¹ “Where labour standards are rigorously adhered to, workers are well organised and labour laws are monitored and enforced – for all workers, indigenous or migrant – the demand for trafficked people and services is likely to be low (although in two sectors into which women especially are trafficked – prostitution and domestic service – the closed and “invisible” nature of the activities will be a challenge to the enforcement of human rights and protection), in ILO, *Trafficking in Human Beings. New Approaches to Combating the Problem*, Geneva, p. 6.

irregular migration channels become the only alternative. In such context strict immigration laws may be counterproductive and by themselves become a contributing factor to trafficking in human beings.¹¹²

In the context of a human rights based approach human security is of central importance. Trafficking in human beings is related to human security in a number of ways. Trafficking in human beings often flourishes in areas of low social and administrative infrastructures, such as post armed conflict areas and countries in transition. Violations of individual security and the lack of economic development belong to the root causes of human trafficking.

Security policy in its traditional perception articulates the protection of national State borders by military and diplomatic strategies. National security used to deal with the preservation of the State's independence and sovereignty, territorial integrity, constitutional order and public safety, along with the defense of the country from external armed aggressions.

The Group wants to highlight a concept of security and policies to go with it, that addresses the need for personal security and economic development that has an influence on individual prosperity, thus concentrating on people and not only on States.¹¹³

Recommendations

43. The EU and its Member States should review and modify policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effects, in particular on women, of repressive and/or discriminatory nationality, migration and labour migration laws. The exclusion from basic rights and protection of precisely those sectors in which predominantly women work constitutes a discriminatory practice.
44. Member States should ratify and implement the UN Convention on the Rights of Migrant Workers and their families, in order to protect basic human rights of migrants, coupled with the implementation of gender sensitive national programmes based on these international standards.
45. Member States should consider to increase the opportunities for legal, gainful and non-exploitative labour migration for workers with wide ranges of skills, along with

¹¹² See also Chapter 3.4.

¹¹³ An example is the 1990 UNDP *Human Development Report* (HDR) which argues that “development must be focused on people (even though grouped by countries) rather than the security of their national boundaries, and on advancing health, education, and political freedom in addition to economic well-being” (King G. and C. Murray, “Rethinking Human Security”, in *Political Science Quarterly*, Volume 116, Number 4, 2001-2002, p. 587. Also see UNDP *Human Development Report* 2003). The UNDP Report explains: “Human development is about much more than the rise or fall of national incomes. It is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. People are the real wealth of nations. Development is thus about expanding the choices people have to lead lives that they value. And it is thus about much more than economic growth, which is only a means - if a very important one - of enlarging people's choices”. According to the *Human Development Report*, threats to human security are collected in seven categories: economic, food, health, environment, personal, community, and political.

strengthening regulatory and supervisory mechanisms to protect the rights of migrant workers.

46. Prevention of trafficking as well as anti-trafficking law enforcement, prosecution and judiciary elements should be integrated in all relevant EU and Member States co-operation programmes with countries of origin and potential countries of origin. Priority goals should be to combat the root causes in both countries of origin and countries of destination. Impact assessments should be a structural element of all programmes in order to avoid adverse effects.
47. Since trafficking is often related to poverty and low levels of development in origin countries, the EU and Member States should not adopt punitive measures, such as reducing development aid, nor should conditionality clauses be included in co-operation agreements as these could result in harshening the root causes determining trafficking in human beings. Instead, a more positive approach should be taken of working with third countries to address root causes, to invest in capacity building and to raise awareness of safe migration.
48. EU and Member States' financial support for NGOs should be increased in order to ensure their long term and effective complementing of public policies in prevention of trafficking.
49. Within existing programmes, such as Daphne and AGIS, funding should be allocated for research and pilot projects on the influence of demand on trafficking in human beings (in particular in the area of domestic and sexual services) and for the promotion and implementation of gender sensitive sexual and human rights education of children and youth in Member States.
50. Member States should reduce vulnerability for trafficking by adopting measures to:
 - ensure that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons;
 - combat violence and discrimination against women, e.g. by encouraging gender sensitisation and equal respectful relationships between the sexes;
 - ensure women equal access to and control over economic and financial resources, including the promotion of flexible financing and access to credit, including micro-credit with low interest for socially vulnerable women;
 - combat all forms of discrimination against minorities, including the development of programmes that offer livelihood options, basic education, literacy, and reduce barriers to entrepreneurship.
51. Both countries of origin and countries of destination involved in trafficking in human beings, and particularly in child trafficking, shall ensure that specific consideration is given to the root causes that affect children, such as the lack of access to school, the abandonment of children by their families, their living conditions, etc.¹¹⁴

¹¹⁴ For a detailed discussion on root causes of child trafficking, please see Chapter 4.7.

52. As organized crime flourishes in areas of low administrative and social infrastructure, anti trafficking measures should be targeted on strengthening local and national capacities and democratic institution building. General measures to strengthen local and national capacities, democratic institution building and to enhance the rule of law are important preventive measures and should be part of any comprehensive response to counter trafficking.

4.3 Research and evaluation

Although combating human trafficking has increasingly become a political priority for many governments around the world, information about the magnitude of the problem and current trends remains very limited. One of the biggest gaps in the understanding of trafficking is in the area of statistics and data collection.

Although there is a rapid increase in research,¹¹⁵ there is little synthesis of the key findings of these studies. Given the fairly recent introduction of the new international definitions of trafficking and smuggling, it is perhaps unsurprising that few governments systematically collect trafficking data. In fact, many countries mix data related to trafficking, smuggling, and irregular migration, meaning that figures are often little more than estimates. Furthermore, the available data usually concern only the trafficking of women and children for sexual exploitation and not other forms of trafficking.¹¹⁶

There are many other reasons for the scarcity of data: trafficking cases tend to remain unreported because the victims fear reprisals by the traffickers and/or government penalties because of their status as undocumented migrants and those brave enough to testify against traffickers may simply find themselves deported. Other factors are a lack of common definitions among existing data sources and the unwillingness of some countries and agencies to share data. But, most importantly, it is a clandestine activity making the collection of data very difficult.

Lack of data can also be attributed to the low priority placed on fighting trafficking by law enforcement officers; due to lacking, inadequate or inadequately implemented legislation for prosecution and victim protection and the likeliness of the witnesses being deported. The net result is that the police often prefer not to go after traffickers at all, knowing that a great deal of effort only rarely results in a conviction.

It is evident that trafficking is an evolving phenomenon. Traffickers change their mechanisms and *modus operandi* according to the changing conditions they find in the field. A comparable mechanism for the ongoing adjustment of anti-trafficking policies is lacking at national and regional levels. Furthermore, counter-trafficking policies are not evaluated with respect of their impact.

¹¹⁵ In addition to published studies, many organisations have conducted research in relation to their operational programmes that have not been published. e.g. any awareness raising programmes has a research component.

¹¹⁶ Also here figures about trafficking are often mixed with figures about the number of (migrant) prostitutes in general.

There is no major comparative European study on trafficking based on extensive fieldwork and common research design. Most of the research has been short-term.

Moreover, there is little research on the influence of demand on trafficking and the role of clients and employers, including their profiles, awareness level and participation in the market. Such research could form the basis for awareness raising campaigns targeting clients and employers in order to reduce their participation in the trafficking chain.

A final consideration has to be done in terms of child trafficking. Although there is a clear consensus that trafficking in children is growing it is yet difficult to quantify. Children are often invisible in data and statistics, which usually use adults as a unit of analysis.

Recommendations

53. Research on trafficking should:

- be designed in a non-static way in order to detect and study changes in the trends and patterns of trafficking.¹¹⁷ Regular reviews and assessments of the trafficking situation and anti-trafficking responses should be an integral part of research programmes with a view to adapting anti-trafficking measures to the changed circumstances;
- be oriented towards the production of practical recommendations to curb trafficking and to establish appropriate protection and assistance of trafficked persons;
- respect the protection of confidential and personal data and information;
- include elements related to intelligence (participation and activities of criminal groups), socio-economic profiles of perpetrators and victims and of their societies of origin; main causes for trafficking, and the consequences for the individuals involved as well as for the concerned countries;
- collect data separately for women, men and children;
- be based on the Palermo Protocol definition in order to facilitate a systematic measurement of the phenomenon and to be able to compare data.

54. The EU and Member States should create the conditions, including appropriate structures, to carry out systematic annual assessments on patterns, trends and volume of trafficking in each country of concern, based on a clear and uniform methodology. Reports should be made public and serve as guidelines for EU assistance.¹¹⁸

55. The EU should systematically monitor and evaluate policy measures and programmes at the EU, international and national levels to determine the envisaged and real impact of such policies and improve their effectiveness.¹¹⁹ All counter trafficking projects and

¹¹⁷ See IOM, *The Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, Geneva, 2004.

¹¹⁸ See also Chapter 3.8.1.

¹¹⁹ UNHCHR, *op. cit.*, Guideline No. 3, “Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one group to another group.”

programmes receiving EC funding should be subject to mandatory evaluations and these evaluations should be made available.

56. A website should be established containing update overviews of research on trafficking in the countries of the EU in order to make results, developed tools, etc., accessible to different private and public users in organisations and institutions.
57. More research should be conducted in the key source countries on the risks of re-trafficking of victims who – either voluntarily or because they were deported – returned to their home country, as well as on root causes of trafficking and the links between trafficking, poverty and exploitation. These links should be articulated to encourage European development agencies to seriously address these issues. At the same time, EU countries, particularly those of destination of trafficked persons, should carry out research on the mechanisms of and incentives for trafficking in their own countries.
58. More research should in particular been carried out in the following areas:
 - trafficking and forced labour in other sectors than the sex industry;
 - the impact of counter trafficking policies in general and on the human rights of trafficked persons, (female) migrants and other groups that might be affected by counter trafficking measures in particular;
 - relations between the regulation of migration and the level of human trafficking, the influence of demand and the role of employers and clients, including their profiles, their awareness level and their participation in the market, as well as the role of labour standards, unions, and the impact of changes in the labour market and the demand for specific labour or services, including sexual and domestic services. Research results, including concrete recommendations, should be disseminated among concerned governments with a view to using them in a practical way to reduce the market demand;
 - effective law enforcement strategies.
59. Quantitative and qualitative research focused on children should be implemented, including the different factors influencing the risks for children and the different kinds of exploitation they suffer (i.e. sexual exploitation, labour exploitation, illegal adoption, removal of organs).
60. The European University Institute as well as other educational institutions officially created for or depending on the European Union, should initiate systematic teaching and research on trafficking issues in the European Union.

4.4 Awareness raising

Awareness-raising activities in the area of trafficking in human beings aim in particular at preventing trafficking in human beings through information with a particular focus on vulnerable groups; to influence public opinion; at increasing the readiness of institutions, organisations, groups and individuals to address trafficking in human beings adequately; and at disseminating information on the assistance and services available for trafficked persons.

Awareness raising campaigns should be embedded in a comprehensive strategy, complementary to advocacy for human rights, gender equality, self-empowerment and human dignity. They should be educative, convey empowering and gender-sensitive messages, with aspects of interactivity, and be based on an assessment of the interests of the respective target groups.

Awareness-raising activities should make use of various channels of formal and informal communication and rely on co-operation with other relevant actors, including NGOs, in countries of origin, transit and destination. They should be preceded by an initial research phase in order to comprehensively understand the phenomenon, identify potential target groups and design effective interventions tailored to the needs of specific groups. Important elements are:

- information about safe migration and employment opportunities abroad, including information on relevant laws and policies in countries of destination and the rights of migrants;
- information on the risks and consequences of trafficking and how to protect oneself, in particular aimed at women, minority groups, children and young people to enable them to make informed decisions about migration;
- information on differences between prostitution and trafficking and between trafficking, smuggling and illegal migration;
- information on the rights of trafficked persons and existing assistance mechanisms in the countries of transit and destination.

Recommendations

61. The EU and its Member States should encourage the development of international networks including all relevant actors in order to disseminate information on trafficking, share best practices and design common strategies and partnerships.
62. Awareness-raising campaigns should:
 - be tailor made and aimed at clearly identified target groups;
 - use a combination of different methods and activities so that they cover the entire trafficking chain from prevention, through victim identification, prosecution of traffickers, assistance and protection of trafficked persons, to return and social inclusion of trafficked persons.
63. Elements of awareness raising campaigns in countries of origin should include:
 - information on safe migration and existing possibilities for labour migration, including information on relevant laws and policies in countries of destination, the rights of migrants and possibilities to get help in case of problems. Such information should be available in the language of the countries concerned and be displayed in the consular and visa sections of the State diplomatic missions. Copies should be enclosed in any postal visa applications;
 - specific activities to make children and young people aware of the risks of trafficking

as an essential part of their education, coupled with an education that promotes equality between men and women and that focuses on human rights, self-empowerment and dignity.

64. Other measures in countries of origin, transit as well as destination should include:

- the establishment of telephone hotlines in the countries of origin, transit and destination that can be used as an independent source of information, advice and guidance for potential migrants, as the first point of contact for trafficked persons and as a tool for anonymous reporting of cases of trafficking in human beings. Hotlines should include specialised personnel in child related matters;
- specific activities aimed at media professionals to promote an adequate presentation of the issue, without reinforcing stereotypes and with respect for the privacy and safety of trafficked persons;
- specific activities aimed at the relevant market actors, such as employers, clients (including clients of sexual services), co-workers and unions, to reduce demand for unfree labour/services; to promote zero tolerance towards all forms of trafficking and related abuses; to inform them about possible actions they can undertake, including the appropriate referral of (possible) trafficked persons; and to promote the ability of trafficked persons to organise to claim rights;
- the inclusion of awareness raising components in all anti-trafficking training aimed at strengthening the institutional capacity of relevant agencies, including prosecutors, judges, police, border guards, alien police, labour inspections, NGOs and social workers.¹²⁰

4.5 Training¹²¹

Training is recognised as a key element for any strategy or action plan against trafficking in human beings. Its objective is to strengthen the technical capacity of all concerned actors for implementing this strategy. Training in support of national strategies and the establishment of recurrent training schemes for all relevant actors should be included in national action plans.

By contrast to awareness raising activities, which address a wider audience with the aim of acquainting them with the phenomenon of human trafficking and the related risks, training measures should aim at both enhancing the understanding of human trafficking as a crime and human rights violation as well as providing the actors with the tools and skills to adequately respond to it. Therefore, all training should contain a general part, designed as awareness raising and comprising a comprehensive description of the phenomenon, definitions, modus operandi, etc., as well as a specific part, tailor-made for the actors targeted by the training and giving detailed instructions on the interventions and measures to be taken by these actors.

All training should be based on a human rights approach and raise awareness on anti-discrimination measures, gender equality, as well as the special needs and rights of

¹²⁰ See Chapter 4.5.

¹²¹ See for more information Explanatory Paper 8.

children. A multi-disciplinary approach should be adopted to strengthen the understanding of the necessity of co-operation of the various actors and especially between the competent State authorities, non-governmental and intergovernmental organisations. This requires a wide scope of actors to be targeted, such as judges, public prosecutors, police investigators, front-line police and frontier personnel, migration personnel, labour inspectors, trade unions, journalists, psychologists and physicians, school and university teachers, IOs, IGOs, NGOs, international military and police peacekeepers, social workers, consular personnel, and public administration officials. To this end training should also be delivered by a variety of agencies, and especially have the involvement of NGOs.

Training should promote a new understanding of law enforcement as a public service to society at large and should encompass the principle of democratic policing, the rights and needs of victims as well as the concern for the conviction of perpetrators. Similarly, training for judges, prosecutors and other juridical staff should enhance a new understanding of the criminal justice system where the State recognizes its dual responsibility to both prosecute and convict the perpetrators, while also protecting the victims of crime, restoring their human rights and avoiding any further damage to the victim.

Training should target individual national actors' as well international military and police peacekeepers and related civilian contractors, where present. Such single-actor training should, however, be designed and delivered by a multi-disciplinary team, in particular with the participation of NGOs.

In addition, joint training targeting several actors together is crucial. Although at present rarely employed, such multi-actor training is indispensable in order to ensure a co-ordinated and multi-disciplinary approach. Joint trainings for all parties involved in addressing trafficking and assisting victims (police, prosecutors, victim assistance agencies, etc.) will result in an improved understanding of each other's roles and enhanced co-operation. This would increase both effective prosecution and effective assistance and protection of trafficked persons.

A regional and European harmonised approach to training, based on the UN definitions and norms and best practices, will facilitate the concrete co-operation in anti-trafficking measures. To this end, regional and European anti-trafficking training modules should be developed and sustainable training structures established, i.e. training programmes be mainstreamed into the regular curricula of all relevant actors thus becoming a recurrent feature.

In addition to formal training (seminars or workshops), new training techniques should be implemented, such as study visits, exchange of officials and peer training.

Recommendations¹²²

65. A training component should be included in all counter-trafficking national action plans. Moreover, regional anti-trafficking and European modules should be developed and mainstreamed into the regular curricula of all relevant actors.
66. Training should target a wide scope of actors and be delivered by a variety of agencies. All training should contain a general as well as a specific part tailor made for the targeted actors. Multi-actor training is indispensable to ensure a coordinated and multi-disciplinary approach. All training should be delivered by multi-disciplinary teams, especially with the participation of NGOs.
67. It is recommended that all anti-trafficking training programmes contain, within the generalist level, definitions of terms such as trafficking, trafficked persons, traffickers, exploitation; the difference between prostitution and trafficking and between trafficking, smuggling and irregular migration; a general explanation of, the trafficking process, the *modus operandi* of traffickers, control and exploitation of trafficked persons and labour standards; and the psychological, social and economic impact on trafficked persons. Training should have a human rights basis.
68. Additionally, law enforcement training should focus on the following specific target groups:
 - law enforcement officials, both at non-specialist level (front-line officers – criminal, traffic, municipal, public order, alien and border police), and specialist level (specialised counter-trafficking police detectives and investigators that hold specific responsibility for the crime, including public prosecutors, as appropriate);
 - labour inspectors;
 - consular staff;
 - judges, prosecutors and attorneys;
 - international military and police peace-keepers and related civilian contractors.
69. Due to the special sensitivities involved there should be separate child specific training for all law enforcement officials, border guards and other officials and NGOs dealing with trafficked children.

4.6 Administrative controls to combat trafficking in human beings

Administrative controls are geared to regulate and monitor procedures, practices and agencies that may have an influence on the prevalence of trafficking in human beings. They have a potential to combat human trafficking and to support prevention, protection and prosecution alike, which is not yet fully used. It includes accessing a range of mechanisms, from repressive to positive enforcement, and implies multi-agency co-operation, including civil society as well as private sector participation. Use can be made of both sanctions and incentive schemes.

¹²² See Explanatory Paper 8 for a comprehensive description of needs and recommended types of training per target group.

Condition is that they are implemented in a transparent and accountable way. Moreover, administrative controls should be guided by an emphasis on human rights obligations. Respect and concern for human rights is an overriding principle when addressing all forms of trafficking.

Administrative control measures can support the prevention of trafficking by way of enhancing co-operation between countries of origin and destination with regard to a better management of international migration flows, especially schemes for legal labour exchanges. In addition, enhanced document security as well as strengthened systems for visa processing and border controls, including the verification and identification of persons, can facilitate legitimate migration while preventing trafficking in persons. Administrative measures should further the enforcement of more generous and relaxed immigration regimes and regulations and prevent their abuse by traffickers. At the same time they should be carefully planned and evaluated to control for unintended consequences of even stronger dependency by prospective migrants on traffickers and smugglers.

Additional preventive measures are the regulation and monitoring of private employment, marriage, tourist and adoption agencies appearing in the *modus operandi* of traffickers, as well as the sex industry and other sectors where trafficking is likely to take place. Moreover, administrative measures can be used to monitor and enforce labour standards in combination with training of the relevant actors and backed by criminal law enforcement.

Administrative controls are enhanced through multi-agency co-operation, which should include representatives from official labour, immigration and consular agencies, as well as NGOs, human rights organisations and the private sector, and need to take place at local, national and international levels.

They can contribute to the reduction of the invisibility of trafficking and the related exploitation, the identification of trafficked persons and the collection of evidence and can help to reduce the opportunities for traffickers to make use of the proceeds of crime in lawful markets. Where lack of evidence does not allow for criminal prosecution, administrative control measures may at least lead to the disruption of exploitative situations. They can also be used to enforce application of labour standards and to monitor the Internet for illegal use. In that regard, they offer a full range of innovative policy measures to ensure the participation and contribution of the private sector, i.e. through promoting the self-regulation of the private sector as well as by the introduction of rating systems by the authorities.

Recommendations

70. Member States should promote the introduction of a broad range of administrative controls in pre-border, border and in-land areas, with due respect to human rights considerations and fundamental rights of the person, including the freedom of movement.
71. Multi-agency co-ordination groups (including law enforcement agencies, labour market institutions/inspectors, immigration officials, other ministry or embassy staff and NGOs) should be functioning actors in the co-ordination and implementation of administrative

control measures on both the policy and operational level, as well as in the sharing of intelligence among all actors, especially among labour market inspectors and police investigators, on a local and national level (in close co-ordination with National Referral Mechanisms), but also at regional/international level (between origin and destination countries).¹²³

72. Member States should introduce regimes and practices to regulate and monitor private agencies that frequently appear in the *modus operandi* of traffickers.¹²⁴ In order to provide for early identification of those agencies, which act outside of the legal requirements, States should introduce systems to regulate these agencies by way of licensing, and to monitor them. In doing so, states should apply innovative policies such as rating systems. The private sector (private employment agencies and their business associations, but also individual commercial agencies) should be obliged to collaborate with the police as well as be encouraged to introduce self-regulating schemes (codes of conduct). Moreover, administrative measures should be used to monitor and enforce labour standards, in combination with training of the relevant actors and backed by criminal law enforcement.
73. Member States should encourage a pro-active regulating and monitoring of vulnerable sectors such as construction, sweat shops, agriculture and the sex industry by multi-agency groups. This would counter-act the “invisibility of the exploitation” by identifying (possibly) trafficked persons and collecting intelligence, which can be used for large-scale investigation.¹²⁵
74. Member States should consider the introduction/expansion of transparent labour admission systems and establish multi-agency and international enforcement mechanisms. Intensified efforts should be taken to ensure that international labour standards are applied and enforced in countries of origin and destination.
75. Member States should enhance their capacity for processing applications for visa, residence and work permits and family reunification, thereby fostering legitimate migration. Support systems should be set up for the verification of documents and statements submitted together with applications. Data on fraudulent and suspect agencies, employers, etc., should be shared among all relevant labour, law enforcement and consular agencies nationally and regionally, in and between countries of origin and destination. The network of liaison officers should be further strengthened in this regard.
76. Measures should be taken to intensify consular co-operation in countries of origin with a view to identifying potential cases of human trafficking; to this end, consular and other frontier staff should be systematically trained in cooperation with NGOs.

¹²³ Whereas the Brussels Declaration (BD) calls for the creation of multi-disciplinary groups that meet regularly and whose role is described as “regular evaluation, monitoring and further improvement in the implementation of national policies,” concrete operational co-operation and co-ordination is also needed in order to render administrative controls effective.

¹²⁴ BD, pt. 11.

¹²⁵ See also the ILO, *Working Paper on Special Action Programme to Combat Forced Labour*, January 2004.

77. Document security should be improved and special internal control mechanisms should be introduced in order to prevent the falsification of, or fraudulent use of visa, labour permits and residence permits.
78. States should establish mechanisms to monitor the Internet as a means to detect and prosecute the potential illegal use of Internet for trafficking purposes, such as escort, adoption and bridal agencies. Public-private partnerships with Internet providers and other businesses (including their self-regulation by means of codes of conduct) should be further enhanced. Special attention should be paid to the identification of child victims and the exploitation and abuse of children via Internet.

4.7 Children

Any comprehensive prevention strategy aimed at protecting children from becoming victims of trafficking and the related exploitation should be in line with the principles and provisions of the UNCRC as well as with domestic child related legislation, whereby the latter should be in accordance with the former.

The level of vulnerability of children and the opportunities for exploitation, violence and abuse are directly related to the level of protection and opportunities which States are able and willing to guarantee to any child present in its territory. This guarantee of protection is particularly relevant for the most vulnerable groups of children, such as foreign or migrant children who, in violation with the UNCRC principles and provisions, often can not benefit from the same opportunities guaranteed to children with national citizenship.

One of the root causes of trafficking is poverty. Children who are trafficked often come from poor families in the least developed regions of the world where poverty is widespread. One in seven children worldwide is without education, 70% of them girls. The low social status of girls makes them especially vulnerable and in some instances they are simply sold by their parents. Some children come from families that are unstable or unable to provide care for them. Other children have become *de facto* street children or have been placed in institutions where they suffer abuse and neglect and thus become vulnerable to approaches from exploiters.

This indicates that prevention mechanisms have to be both long term and short-term. Long-term prevention measures include EU aid and support measures to build properly functioning child protection systems within countries of origin, improve access to education particularly for girls and raise the socio economic conditions within countries of origin.

Children are also trafficked as a direct result of organised crime and families being forced to sell their children to traffickers. Therefore, greater efforts to combat organised crime would also have a preventive effect, although targeted measures on one or two countries could simply move the problem to elsewhere.

Raising awareness amongst children and their families is also essential – campaigns need to be targeted on specific at risk groups. It is also essential to raise awareness aimed at the demand

side of trafficking as well as awareness of the rights of the child. It is, therefore, necessary to open up legal migration opportunities for families and children who are above the minimum age for work.

Recommendations

79. Any policy or legislative measure aimed at preventing trafficking should entail specific measures to address and prevent violence, abuse and exploitation of children. Guiding principle for any measures or policies with regard to children should be the UNCRC. Other relevant frameworks are the 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the policies against the sexual exploitation of children as undertaken at the Second World Congress Against the Commercial Sexual Exploitation of Children held in December 2001 in Yokohama. Best practices on the prevention of child trafficking should be developed, implemented and disseminated.
80. Migrant children represent a particularly vulnerable group among the child population and should be guaranteed the same level of protection and opportunities as national children, regardless of their residence status.
81. EU development co-operation programmes should explicitly address the root causes of trafficking in children. Elements of such programmes should be:
 - improvement of children's access to school and vocational training and increasing the level of school attendance, in particular of girls and minority groups (e.g. Roma children);¹²⁶
 - reduction of the number of children abandoned by their families and promotion of alternative solutions to institutional care, including foster-care and adoption, preferably in the country of origin (consistently with the principle of subsidiary of international adoption) in order to improve their living conditions, along with imposing stricter controls on institutions, foster-families and on international adoption;
 - protection of street children by ensuring the provision of food, health care, informal education and/or shelters, together with protection from exploitation and abuse they may suffer;
 - information to families and children about children's rights, safe migration and the risks of trafficking through interventions in schools and in other settings in order to reach children that are outside the formal educational system;
 - improvement of the system for birth registration;
 - where applicable, addressing the needs of children affected by armed conflict, displacement and other humanitarian crises.
82. In addressing the demand side Member States should take specific measures to address the different kinds of child exploitation: sexual exploitation, with particular attention to

¹²⁶ Data on school enrolment registration and on child population should be used for the purpose of identifying actual or potential victims of child trafficking.

child prostitution and child pornography; economic exploitation; illegal adoption; and removal of organs.

83. Member States should take measures to address the disappearance of trafficked and exploited children from accommodation centres where they have been placed, as they risk being re-trafficked and/or exploited.
84. Opportunities for legal labour migration and family reunification should be increased in order to reduce the number of unaccompanied children who often end up being trafficked.
85. Border controls should pay particular attention to unaccompanied minors, children travelling with non-family members, and children without appropriate documentation. Unaccompanied and undocumented children should not be refused entry or returned at ports of entry, but be subject to particular protection and investigation measures. Immigration, border and other law enforcement authorities should immediately refer unaccompanied children to the appropriate child welfare authorities. If the child is accompanied by an adult who is not able to demonstrate through valid documents that she/he has the legal authority, appropriate measures should be taken to protect the child. Staff carrying out interviews on children should be properly trained and NGOs should be involved in this process. In addition, the possession of a proper passport/travel document for children of all ages should be obligatory, as should the establishment of checks on the validity of “relations” between the child and the accompanying adult. Co-operation between border officials, law enforcement officials and child assistance agencies should be improved.
86. Visa application procedures must pay particular attention to children travelling without an immediate family member and photo ID’s must be taken of children and their accompanying adult. The aim of such procedures should be the protection of the child and the promotion of her/his best interests.
87. Registration of children’s biometric data, both in the country of origin and in the destination country, could be useful but should be aimed only at the child’s protection and the promotion of her/his best interests and not for immigration control purposes (e.g. expulsion enforcement). The registration should not be traumatising or criminalizing and child-friendly procedures should be adopted. Moreover, if applied, it should be subjected to strict controls in light of the right to privacy and the use of data.
88. States should adopt national legislation according to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption¹²⁷ in order to avoid inappropriate behaviour by adoption agencies and to prevent abusive practices in legal international adoptions.

¹²⁷ See http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69

Chapter 5

Assistance, protection and social inclusion of trafficked persons

5.1 Introduction

Until now States' policies, including EU policy responses to trafficking, have tended to concentrate on measures in the area of crime control and migration policies, but much less on assistance and human rights protections for trafficked persons. Yet, as recognised in the Brussels Declaration, to effectively combat trafficking the whole spectrum from prevention and prosecution through to assistance and protection of its victims needs to be addressed.

In fact, it could be stated that the neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law to provide victims of human rights violations with effective remedies. It forms an obstacle because the level of assistance and protection is directly related to the trafficked person's confidence in the State and its ability to protect her/his interests and thus directly influencing her/his decision to co-operate with authorities in the prosecution of traffickers. The absence of adequate procedural safeguards and assistance may prevent trafficked persons from reporting to the authorities and inadvertently expose them to further trauma and the risk of reprisals by traffickers, including the risk of being re-trafficked. Moreover, research shows that one of the main obstacles in the prosecution of traffickers is the absence of the victims, often as a result of the deportation of (possible) trafficked persons as illegal aliens under immigration laws.¹²⁸

It falls short of States obligations because under international human rights law trafficked persons – as victims of a human rights violation – have a right to protection, assistance and redress in itself, separate and apart from their value as witnesses in the context of the prosecution of the perpetrators.

More attention to the assistance and protection of trafficked persons is thus required, both on the EU-level and on the level of national States.

To do justice to both aspects – the position of the trafficked person as a victim of a crime and a human rights violation and the position of the trafficked person as a witness in the framework of criminal proceedings – the term “trafficked persons” is used as the more general term referring to those who have been trafficked and are entitled to assistance and protection on the very basis of that fact, whereas the term “victims of trafficking” is used in

¹²⁸ See e.g. Rijken, C., *Trafficking in Persons. Prosecution from a European Perspective*, T.M.C. Asser Press, The Hague, 2003.

its judicial meaning and specifically refers to those who are recognized in criminal proceedings as victims in a specific case of trafficking in relation to identified perpetrators.¹²⁹ Whereas “trafficked persons” as such are entitled to a certain standard of assistance and protection, additional protective measures are needed in the context of criminal law to protect those who testify against the perpetrators.

This chapter will first discuss the issue of identification of trafficked persons, the prevention from immediate expulsion and the issue of residence status. Consequently it will deal, in accordance with the above stated distinction, with the assistance and protection of all trafficked persons as victims of a human rights violation, followed by the issue of specific witness protection for those trafficked persons who decide to testify against the perpetrators. Finally, the last paragraph will deal with the conditions for return of trafficked persons to their country of origin and the related questions of safety and social inclusion¹³⁰ in their home communities.

Recommendation

89. In order to effectively address trafficking and to prevent re-trafficking, as well as meeting State’s obligations under international human rights law Member States should ensure that trafficked persons have access to adequate remedies, including assistance, protection and compensation, regardless of their willingness or capacity to testify against their traffickers.

5.2 Identification¹³¹

Identifying trafficked persons is a fundamental problem in all anti-trafficking strategies. For a variety of reasons, those caught up in human trafficking often do not want to reveal their status or experiences to State authorities. They may harbour deep feelings of mistrust towards official bodies, stemming from experiences in their country of origin, but also in the country of destination. Frequently, trafficked persons fear violent retaliation by traffickers against themselves and/or children and family members at home, and arrest and deportation by the authorities because of their illegal status. For these reasons trafficking in human beings is too often an invisible phenomenon.

Because trafficked persons initially are often reluctant to identify themselves as such, the term “presumed trafficked person” is generally used to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti-

¹²⁹ See also Chapter 3.1.

¹³⁰ Defined as the process “which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in economic, social and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live. It ensures that they have greater participation in decision-making which affects their lives and access to their fundamental rights”, taken from the Joint Report by the Commission and the Council on social inclusion (2003) (cf. http://europa.eu.int/comm/employment_social/soc-prot/soc-ncl/final_joint_inclusion_report_2003_en.pdf).

¹³¹ See also Explanatory Paper 9.

trafficking programmes and services.

Trafficked persons are only rarely able to extricate themselves independently from their situation. Usually, if they come to the attention of authorities at all, it is as a result of checks by the police, border officials or other State authorities or through contacts with NGOs. Official bodies likely to come into contact with trafficked persons should be aware of the special circumstances they face and show sensitivity in dealing with them and affording them access to existing protective mechanisms. It is important for official bodies to remember not only that trafficked persons are victims of a crime who are entitled to compassion and human rights, but also that winning their goodwill and co-operation can help combat organised crime. There are a variety of means that can be used to help encourage presumed trafficked persons to come forward. These include hotlines, outreach work and drop-in centres.

The identification of a trafficked person can be a complex and time consuming process requiring professional guidance and support structures to create a safe space for the person concerned. Sometimes it is a question of weeks or months before a trafficked person overcomes post-traumatic stress syndrome and develops enough trust to be able to speak out.

According to research in Italy, more than 40 per cent of all trafficked persons in the sex industry are now identified through outreach work from non-governmental organisations, local authorities, and hotlines. Clients of prostitutes and other citizens identify more than 22 per cent of trafficked persons. Only 13.9 per cent of trafficked persons qualified for assistance are being identified and referred by the police.¹³²

Identification of trafficked persons can take time because of the complexity of the crime and the networks of individuals involved. The interaction between the trafficker and the victim is multifaceted, since the perpetrator is often also “protecting” the victim in their illegal status from the authorities. The victim can feel dependent on, and bound to, the traffickers, e.g. by debts.¹³³ Moreover individual members of the criminal network can adopt different roles in relation to the victim, varying from abuse and control to support and “protection”. Therefore, severing ties with the criminal circuit often takes the form of a process rather than that of an immediate action.

The complexity and variety of relationships in the crime of trafficking complicates the identification of the victim by external actors, including social workers and the police.

Moreover, little experience has as yet been gained in the identification of trafficked persons in other sectors than the sex industry, such as domestic work, construction, agricultural labour or the garment industry.¹³⁴

¹³² Regione Emilia-Romagna, Associazione On the Road, *Article 18: Protection of Victims of Trafficking and the Fight against Crime (Italy and the European Scenarios)*. Research Report, On the Road Edizioni, Martinsicuro, 2002, p. 88 f.

¹³³ See research by F. Carchedi, who developed several models of interaction in order to present the complexity of relationships between trafficked persons and other actors, including clients, social workers, and police. Cf. F. Carchedi, *Voluntary and Involuntary Prostitution Deriving from Trafficking of Women. Some Structural Characteristics*, paper presented in Prague, 2003.

¹³⁴ This Chapter is therefore mostly based on the experience gained with trafficking in the sex industry.

Main channels for identification¹³⁵

Trafficked persons may be identified either by government actors and law enforcement or by NGOs, local social-welfare organisations, labour unions, labour inspections and other labour-related agencies, particularly if they are trained and if a system of referral is in place. Moreover, they may be identified by colleagues, clients, neighbours and others who might come in contact with trafficked persons.

In order to build confidence and trust, and to establish contacts with presumed trafficked persons, outreach work, drop-in centres and hotlines should be developed within support systems. An effective way of building trust is working with peer educators: that is persons coming from the same group as the target group. In addition, public awareness raising campaigns can have a role in alerting and educating civil society actors that might come into contact with trafficked persons, such as colleagues and (potential) clients, and therefore provide another means of identification.

Outreach work and drop-in centres are crucial elements in supporting presumed trafficked persons in the environment in which they are forced to work. Apart from the existing forms of outreach work and drop-in centres, which are mostly linked to the sex industry, new forms of outreach work need to be developed by unions and other labour related organisations targeted at the specific sectors in which trafficking is likely to take place: such as construction sites, agricultural labour and the garment industry.

In addition hotlines¹³⁶ and different types of tailor made information materials (e.g. leaflets, stickers, info guides, etc.) with basic information on support structures and hotline numbers play an important role in the process of (self) identification.

Finally, trafficked person may be identified by law-enforcement agencies. It might usually be expected that front line officers and border guards, are the first to identify trafficked persons, however, research indicates that only a limited number of trafficked persons are identified in this way.¹³⁷ Additional measures and training are needed here.

One of the instruments is the development of lists of indicators and related questionnaires as a tool to help identification of trafficked persons. It should, however, be kept in mind that, although useful, such lists are just one tool among others and can never be the sole instrument on which the identification of trafficked persons is based.

Little experience has been gained with the role that labour inspections and other labour related authorities can play in the identification of trafficked persons in other sectors than the sex industry. There is a clear need for training and the development of new methods and

¹³⁵ See for a more extensive description of the channels and instruments for identification Explanatory Paper 9.

¹³⁶ See for a more extensive description of hotlines Explanatory Paper 11.

¹³⁷ Limanowska, B., *Trafficking in Human Beings in South-Eastern Europe: Current situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova, Romania*, ODIHR/UNICEF/UNOHCHC, 2002, p. 152.

materials here.

Identification of trafficked children

In particular in relation to children co-operation and sharing of information is needed between all involved agencies to ensure that trafficked children are identified and assisted as early as possible. Guidelines and lists of indicators, used e.g. by border officials or police officers, should take into account the specificities of child trafficking. Moreover, agencies that could come into contact with trafficked children should be trained in child sensitive and child friendly methods of working. In cases where there is a suspicion that the child is a victim of trafficking, the child should be immediately referred to the appropriate child welfare authorities. Where the age of the trafficked person is uncertain, the presumption should be that she/he is a child and she/he should be provisionally treated as such. A legal guardian should be appointed as soon as the victim is identified as a child: that is a person under the age of 18.

Recommendations

90. To allow proper identification of trafficked persons all involved actors – government actors, law enforcement, NGOs, local social welfare organisations, labour unions, labour inspections and other labour related agencies – should be trained and a system of referral should be in place.
91. In order to establish contacts with presumed trafficked persons and to build the necessary confidence and trust, outreach work, drop-in centres and hotlines should be developed. This is particularly important since research indicates that only a limited number of trafficked persons are identified by law enforcement agencies. The majority of trafficked persons seem to be identified through outreach work of NGOs, local authorities, hotlines, clients, colleagues and other citizens.
92. In light of the little experience that is gained with the identification of trafficked persons in other sectors than the sex industry, specific attention should be paid to information and training of labour unions, labour inspections and other labour related agencies in order to enable them to identify and properly refer trafficked persons. A specific budget line should be created to develop specific methods and information materials, targeted at those sectors where trafficking is likely to take place: such as domestic work, construction, agricultural labour and the garment industry.
93. Agencies (including law enforcement, labour, social service, health and education agencies, outreach workers, hotlines, etc.) should co-operate and share information to ensure that trafficked children are identified and assisted as early as possible. In cases where there is suspicion that the child is a victim of trafficking, the child should be referred to the appropriate child welfare authorities. After placing the child in a safe accommodation, appropriate measures need to be taken to identify and assist the child and, if the child is accompanied, to assess the relationship between the child and the

accompanying adult. Where the age of the trafficked person is uncertain, due to the absence of papers or to false identity papers, and she/he claims to be less than 18 years of age, the presumption should be that she/he is a child and she/he should be provisionally treated as such.

5.3 Reflection period and residence status¹³⁸

Granting a reflection period, followed by a residence permit, including all corresponding rights, to trafficked persons – regardless of whether or not they are willing and/or able to give evidence as a witness – assists Member States in their obligation to protect the human rights of trafficked persons and not to treat trafficked persons exclusively as an instrument for the prosecution.¹³⁹ Categorical protection of basic rights also serves to raise the trafficked person's confidence in the State and its ability to protect her/his interests. Once recovered, a trafficked person with confidence in the State would be more likely to make an informed decision and to co-operate with the authorities in the prosecution of traffickers.

Moreover, in order to effectively encourage trafficked persons to come forward and/or to act as witnesses, they must know beforehand that they can rely on the State to provide them assistance and protection. If States are not willing to provide assistance and protection as a right rather than a favour, it will not have the effect intended. Protection should include the possibility of a permanent or long-term residence permit.

In dealing with the reflection period account should be taken of the fact that, for a number of reasons, severing ties with the criminal circuit often takes the form of a gradual process rather than an immediate decision. Those reasons include dependency of the criminal network, division of roles within the network (“good guy, bad guy”), considerations with regard to safety of family and/or children, future perspectives, the power of the criminal network over family members or friends, other victims in the same network they feel responsible for, debts, etc. It is therefore not realistic to demand from a trafficked person to immediately sever all ties in order to qualify for assistance or to presume that a person is not trafficked because of continuing ties with the criminal circuit.

Following a reflection period of not less than three months, a residence permit as set forth in Article 8 of the EU Council Directive on a temporary residence permit for victims of trafficking¹⁴⁰ should be granted to identified trafficked persons, independent of their willingness to co-operate as a witness and regardless of whether or not the perpetrators are prosecuted. Those trafficked persons who do not wish to testify as witnesses – or are not required as witnesses, because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally

¹³⁸ See for more information Explanatory Paper 10.

¹³⁹ International Covenant on Civil and Political Rights Art. 7; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention against Transnational Organized Crime, Art. 7.

¹⁴⁰ Council Directive of 29 April 2004 on the residence permit issued to third country nationals victims of trafficking in human beings or to third country nationals who have been subjects of an action to facilitate illegal immigration and who cooperate with the competent authorities. OJ L 261, 6.8.2004, p. 19.

adequate protection and assistance as victim-witnesses.¹⁴¹

In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom or that submits them to inhuman or degrading treatment, States should be obliged to make an individual risk/security assessment¹⁴² before deporting or returning a trafficked person at any stage of the process: from the identification of a (suspected) trafficked person up till the possible application for a long term residence permit.

Special attention should be paid to trafficked children, i.e. persons below the age of 18, in that their best interests should be a paramount consideration in all policies and procedures involving them.

Finally, there is a group of trafficked persons who have become victims of trafficking either in their own country or in another country whereas neither that country nor their home country is able or willing to offer protection.¹⁴³ For this group a solution should be found at the European level, e.g. by an agreement between the EU Member States to offer residence to a certain number of trafficked persons who are in need of immediate protection, whereas such protection can neither be offered by their home country nor by the country they were trafficked to.

Recommendations

94. The Council Directive on the residence permit issued to third country nationals victims of trafficking in human beings or to third country nationals who have been subjects of an action to facilitate illegal immigration and who co-operate with the competent authorities, should be adapted to include the following provisions:

Reflection period

If there is the slightest indication to suspect that a person may be trafficked, a reflection period should be granted of no less than three months. Purpose should be to allow the trafficked person to (begin to) recover and to make an informed decision about her/his options, that is, whether to assist in criminal proceedings, to pursue legal proceedings for compensation, to enter a social assistance programme and/or to choose for immediate return home. Part of the reflection period should be the obligation to refer the trafficked person to support agencies, which can provide her/him with appropriate assistance. For the authorities the reflection period enables the identification of the trafficked person including determining whether or not the person indeed is a victim of trafficking. In dealing with the reflection period account should be taken of the fact that, for a number of reasons, severing ties with the criminal circuit often takes the form of a gradual process rather than an immediate decision. In the case of children, there should be the possibility of extending the reflection period.

¹⁴¹ UNHCHR, *op. cit.*, Guideline No. 6.

¹⁴² See for a description of the elements that such risk assessment should include Explanatory Paper 13.

¹⁴³ This could be either EU countries or third countries, e.g. Kosovo. International organisations could play a mediating role in this.

Temporary residence permit

Following the reflection period, a temporary residence permit should be granted to identified trafficked persons for a period of at least six months, with the possibility of renewal, on one (or more) of the following grounds:¹⁴⁴

- the willingness of the trafficked person to press charges and act as a witness in the criminal case;
- participation of the trafficked person in a social assistance programme aimed at her/his social inclusion either in the country of destination or the country of origin;
- the involvement of the trafficked person in a civil procedure to claim compensation for damages;
- social assistance programmes should be open to all trafficked persons, regardless on which of the above listed grounds a temporary residence permit is granted and should include access to the labour market, vocational training, education and other services aimed at enabling the trafficked person to regain control over her/his life and to build a sustainable future.

Long term or permanent residence permit

Following a temporary residence permit, trafficked persons should qualify for a long term or permanent residence permit on one (or more) of the following grounds:

- having successfully completed a social assistance programme and having found employment:¹⁴⁵ in this case, her/his temporary residence permit should be transformed into a work permit and thus be subjected to the regulations for migrant workers;
- humanitarian grounds:¹⁴⁶ criteria should include the risk of retaliation against the trafficked person or her/his family; the risk of prosecution in the country of origin for trafficking related offences; the perspectives for social inclusion and an independent, sustainable and humane life in the country of origin (taking into account risks of stigmatisation and discrimination); the availability of adequate, confidential and non-stigmatising support services in the country of origin; and the presence of children. In addition, applications should be judged in the light of the principle of non-refoulement and of Art. 3 of the European Convention on Human Rights, which holds that no one should be subjected to inhuman or degrading treatment;
- asylum: trafficked persons should be entitled to seek and enjoy asylum in accordance with international refugee law.¹⁴⁷

Family members and children of the trafficked person

- If there are substantial reasons to believe that family members of the trafficked person, including possible children, are at risk in the home country, such family

¹⁴⁴ These grounds should qualify for both the granting of the initial granting of a temporary residence permit and the renewal of such a permit.

¹⁴⁵ Including establishment as a self-employment worker.

¹⁴⁶ UN Trafficking Protocol (TraffProt), Art. 7.2; UNHCHR, *op. cit.*, Principle 11, “Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety or to the safety of their families.”

¹⁴⁷ UNHCHR, *op. cit.*, Guideline No. 1.6.

- members should be entitled to temporary or permanent residence on the same conditions as the trafficked person;
- if a trafficked person is granted a temporary or permanent residence permit, the trafficked person should be entitled to family reunification with her/his children under the age of 18 and/or her/his spouse, who should be granted a residence permit on the same conditions as the trafficked person.
95. In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom and/or would submit them to inhuman or degrading treatment, any decision to deport or return a trafficked person, including trafficked children, should be preceded by a risk assessment. NGOs and other service agencies that provide assistance to the trafficked person concerned should be actively included in this process.
96. Trafficked children should always be granted a temporary residence permit, with all corresponding rights, in order to allow them adequate assistance. They should only be returned after a risk assessment is done and if the return is in the best interest of the child, safe and assisted. When they reach the age of majority, if no other kind of residence permit can be issued under the conditions laid down in national law (e.g. for employment or study reasons), full regard should be given to their vulnerable status and they should be allowed to remain in the host country for humanitarian reasons.
97. In the case of unaccompanied children all steps necessary shall be taken to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of the child with her/his family in the country of origin or destination, where this is deemed to be in her/his best interest. In all cases the view of the child, in particular regarding decisions on her/his possible return to her/his family, should be given due weight in accordance with its age and maturity.¹⁴⁸
98. A solution should be found for the group of trafficked persons who have become victims of trafficking in their own or another country and who are in need of (immediate) protection whereas neither that country nor their own country is able or willing to offer such protection, e.g. by an agreement between the EU Member States to offer residence to a certain number of victims in these situations.

5.4 Social assistance and the development of standards¹⁴⁹

Human trafficking is a multifaceted phenomenon that involves people with different personal, cultural, social and national backgrounds who have experienced several forms of deception and abuse during the various stages of the trafficking process. Acknowledging the individual characteristics and prospects of a trafficked person, through an individual needs assessment, must thus be the starting point of any support and assistance service to properly meet her/his specific needs.

¹⁴⁸ UNHCHR, *op. cit.*, Nos. 8.4; 8.6.

¹⁴⁹ For more information see Explanatory Paper 11.

In the context of this report the term social assistance has two interrelated phases: in the first place the immediate needs of the trafficked person need to be met, such as safe accommodation and means of existence. Secondly, long term assistance programmes are needed. Such structured and tailor made programmes should aim at the empowerment and social inclusion of the trafficked person either in the country of destination or the country of origin or any other country where the trafficked person might settle down. For the development of long term perspectives access to education, training and employment is conditional.

Trafficked persons – both adults and children under the age of 18 – should be entitled to social assistance and protection regardless of their willingness or capacity to press charges and/or give testimony against their traffickers. States should establish appropriate structures for providing social assistance and protection. This should include at the minimum safe and appropriate accommodation, health care (physical and psychological) on voluntary basis,¹⁵⁰ free legal assistance, education, and training and employment opportunities. All services must be provided on a voluntary and confidential basis, in a non discriminatory and non judgemental manner and in compliance with a number of basic principles derived from international human rights norms, in particular respect for the right to privacy, confidentiality, self-determination and freedom of movement. This includes among other things that trafficked person should never be locked up in “shelters” or detention centres, also not “for their own best will”. Furthermore, a human rights based and a gender and cultural sensitive approach are *conditiones sine qua non* service providers must take into account in order to effectively guarantee the protection and empowerment of trafficked persons.

NGOs, local authorities, intergovernmental organisations and international organisations are the main actors that may grant assistance and support to trafficked persons. The services provided must offer a real and viable opportunity for trafficked persons to escape trafficking, violence and exploitation. They should enable trafficked persons to fully acquire their self-reliance and to become regular migrants and fully-fledged citizens. This goal of full social and labour inclusion can be achieved through specific programmes that supply multiple specialised services managed by a multi-disciplinary team of trained professionals.

In order to ensure, on the one hand, the quality of the services provided and, on the other hand, the quality of the service providers, standards should be developed. Elements of such standards should be: gender sensitivity; cross-cultural sensitivity and appropriate working methods; non judgemental attitude; tailor-made services in order to address individual needs and potentials; a multidisciplinary approach; co-operation with other organisations, including the law enforcement and judicial authorities; regular training and supervision sessions; mechanism for monitoring and evaluation (*ex-ante*, *in itinere*, and *ex-post*) based on transparency and accountability to assess the performance of the activities, the work of the professionals, the efficacy of the strategies implemented and, most of all, the “client’s satisfaction”, that is the fulfilment of the needs of the person assisted.

¹⁵⁰ This includes among other things no testing for HIV or Aids without the permission of the person concerned.

Recommendations

99. Member States should establish appropriate structures for providing assistance and protection to trafficked persons. This should include at the minimum safe and appropriate accommodation, counselling, health care, free legal assistance, education, vocational and employment opportunities. All services must be provided on a voluntary and confidential basis, in a non-discriminatory and non-judgmental manner and in compliance with a number of basic principles derived from international human rights norms, in particular the respect for privacy, confidentiality, self-determination and freedom of movement.
100. Member States should recognise the importance of a variety of service providers working with trafficked persons, including the NGO sector, and should adequately support, co-operate with and timely and transparently fund them. Memoranda of understanding and/or contracts between governmental and non governmental agencies should clarify the roles of the different actors.
101. Organisations providing services to trafficked persons should offer multidisciplinary assistance and tailored solutions to trafficked persons through professionals who are specifically trained, amongst others in cross-cultural and gender-sensitive working methods. Working with interpreters and cultural mediators is strongly recommended, as it is the promotion and the support of self-help organisations/groups.
102. Service providers for trafficked persons should develop standards, based on clear and measurable indicators, to regularly monitor and assess the quality and the suitability of their services and their performance. The EU should support the development of such standards as well as transnational co-operation between service providers.
103. Specialised services should be provided to trafficked children to meet their specific needs, including their linguistic and cultural needs, and protect their rights. This includes among others suitable housing preferably in a family environment (e.g. foster families or residential settings specific for children and with appropriate adult support); specialised psychosocial services, etc. Older children should not be treated as *de facto* adults and placed in reception centres without adult support. If a child is found trafficked, a legal guardian should be appointed – temporarily¹⁵¹ or permanently, depending on the circumstances – at the earliest possible stage in order to act in the best interests of the child and follow her/him throughout the whole process of assistance and protection.¹⁵²

¹⁵¹ A legal guardian should be appointed at least temporarily until the parents are located and it is ensured that the child can safely be returned to them.

¹⁵² A distinction should be made between the right that the child victim has to legal representation and the need for someone to act in his/her best interests throughout the entire process. The specific role of the legal guardian could be found in the UNICEF *Guidelines for Protection of the Rights of Children Victims of Trafficking in South-Eastern Europe*, Section 3.2, p. 5.

5.5 Witness protection and judicial treatment of trafficked persons¹⁵³

The EU Council has recognised the importance of the protection of victim's rights in the Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings. This decision states that:

- the provisions of the Framework Decision are “not confined to attending to the victim’s interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which may mitigate the effect of the crime”;
- “the rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at various stages of the procedure and the right to have allowance for the disadvantage of living in a different Member State from the one in which the crime was committed”.

Also the UN Convention on Transnational Organised Crime contains a number of provisions regarding protection of witnesses, which also apply to the Trafficking Protocol.

Trafficked persons, because of their particular situation and vulnerabilities are often less likely to be treated with respect and accorded the rights due to victims of crime, but are rather treated as criminals or illegal migrants. Particular attention needs to be given to the rights of trafficked persons as victims of crime.

Moreover, it needs to ensure that trafficked persons are not detained, charged or prosecuted for violations of immigration law or for activities they are involved in as a direct consequence of their situation as trafficked persons, such as prostitution, the possession or use of fraudulent documents, etc.¹⁵⁴

Given the specific characteristics of the crime of which they have become victim, it is important to distinguish between the protection of witnesses in general and the protection of victims giving testimony in trafficking cases. For the latter group additional measures will be needed, particularly in the light of protection against potential retaliation or intimidation before, during or after criminal proceedings.

Underlying principles

The following are the underlying principles as regards witness protection and judicial treatment of trafficked persons:

- trafficked persons should be treated as victims of crime, with accompanying rights;
- trafficked person should not be criminalized, re-victimised or re-traumatised as a result of contact with law enforcement and judicial authorities, or of activities committed as a direct consequence of their being trafficked;

¹⁵³ For more information see Explanatory Paper 12.

¹⁵⁴ UNHCHR, *op. cit.*, Guideline No. 2.5.

- the safety of the trafficked person, and their family¹⁵⁵ is paramount;
- provisions for protection of trafficked persons as victims in criminal proceedings, or as witnesses of crime, should be broadly defined to include all trafficked persons, regardless of their degree of co-operation with police or judicial authorities, or the extent of their involvement in criminal proceedings.

Children

The above principles apply to all trafficked persons, including children (i.e. persons below the age of 18). In addition, legal proceedings should be specifically adapted to meet the needs and interests of trafficked children and to avoid re-traumatisation, whereby the best interests of the child should be a primary consideration. Child friendly procedures should be provided especially with regard to the length and scope of questioning, exposure to the suspected trafficker, etc.¹⁵⁶ Children should be questioned by specially trained officers in accordance to their age and stage of development at an appropriate time, in a safe and child friendly setting and in the presence of a parent or a legal guardian to protect their interests. The guardian should have the right to refuse to have the child give testimony if it is not in the child's best interests to do so.

Recommendations

104. It should be ensured that the Framework Decision on the standing of victims in criminal proceedings is fully applicable to victims of trafficking, independent of their legal status in the Member State concerned.¹⁵⁷
105. The European Commission should take the initiative for the development of a legally binding EU instrument covering the standing of trafficked persons in criminal proceedings, building on the Framework Decision on the standing of victims in criminal proceedings. Such a framework should include a broad definition to cover all trafficked persons, including children, as victims of crime, regardless of the degree of their participation in criminal proceedings, and include trafficked persons before, during and after criminal proceedings are taking place.
106. Within such an instrument guidelines should be developed with respect to the following aspects:
- The right to respect:* This requires treating the trafficked person as a victim of crime and

¹⁵⁵ Family should include those who the trafficked person has a close relationship with, for example partners, that may not include members of their immediate family.

¹⁵⁶ See e.g. the UNICEF Guidelines, which cover among others access to justice, protection of the child as a victim and potential witness, etc. See also Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography which states that "children should be questioned according to their age and stage of development for the purpose of investigation and prosecution of offences falling under this Framework Decision."

¹⁵⁷ Art. 7 of the Framework Decision on combating trafficking in human beings explicitly refers to some articles in the Framework Decision on the standing of victims in criminal proceedings.

holder of rights, rather than a criminal, illegal migrant, prostitute or morally dubious person. Respect for trafficked persons should inform and guide all interventions.

The right to information and advice. This should include immediate access to support organisations and access to translation and free legal advice. Clear, accurate information needs to be given on options available to trafficked persons, including co-operation with police, and the consequences of these options, including victim and witness assistance and protection schemes. Full information should be given at all stages, with access to advice, and time to consider the information and options. Children should be informed in a manner that is understandable to them.

The right to privacy. Trafficked persons have the right to privacy and respect for their private and family life.¹⁵⁸ Many trafficked persons will suffer stigma from their community or others if details of their trafficking experience are made public. In addition, sharing of personal information of trafficked persons can increase security risks to them and their families. States should ensure privacy is protected by measures, including ensuring that trafficked persons' names and court proceedings are not publicised by the media, and that there are provisions governing the collecting and sharing of information of trafficked person's details between agencies.

The right to protection. Under Articles 2 and 3 of the European Convention of Human Rights States have a positive obligation to protect individuals. Protection offered to trafficked persons should be on the basis of individual risk assessment and need. It should be offered in consultation with the trafficked person. Usually practical forms of protection are more effective, cheaper, and less intrusive for the trafficked person than full scale witness protection programmes. With regard to unaccompanied children, a legal guardian should be appointed to protect her/his interest and ensure adequate protection of the child.

Interrogation and investigation. Guidelines should be developed for non-confrontational, non-judgemental investigative techniques that respect the trafficked persons' rights and recognise their status as a victim. In the case of children, specific child friendly procedures need to be adopted.

Court procedures. Special procedures should be developed that protect trafficked persons' right to privacy, including provisions for giving testimony without confronting the defendant, for example by video, limitation to cross examination on sexual history, and restrictions on media reporting of personal details. These should include special procedures adapted to the needs and rights of trafficked children.

*The right to compensation.*¹⁵⁹ The right to compensation should be enforced in both criminal and civil proceedings, as well as any State compensation schemes, and should apply not only for the injuries suffered by the trafficked person as a victim of crime, but also for the loss of wages that would have been earned had the trafficked person been correctly paid for the forced labour she/he undertook. States should put in place provisions, such as access to legal aid, and seizure of criminal assets, that in practice enable trafficked persons to claim compensation.

¹⁵⁸ Article 8 of the European Convention of Human Rights.

¹⁵⁹ See for a more extensive treatment of the issue of compensation Chapter 6.5 and Explanatory Paper 16.

107. Member States should take appropriate measures to ensure that trafficked persons, including children, are not detained, charged or prosecuted for violations of immigration law or for activities they are involved in as a direct consequence of their situation as trafficked persons.
108. In line with Art. 23 of the Convention on Transnational Organized Crime (criminalization of the obstruction of justice) consideration should be given to establish as a criminal offence the intimidation of witnesses.

5.6 Return and social inclusion¹⁶⁰

Trafficking does not end with the escape of the trafficked persons from the coercive situation or with their return to their home country. Apart from the risk of reprisals and/or of being arrested, detained or prosecuted themselves; for example the use of false papers or prostitution, trafficked persons may face a number of other problems on their return. In particular when individuals have been trafficked for prostitution, they may risk stigmatisation and discrimination, as well as rejection by their families and social exclusion when their predicament gets known in their community.

All trafficked persons face the problem of finding viable means of existence, a problem that is aggravated if they have children or a family to take care of or when they or their families are still in debt to their traffickers. In addition, many trafficked persons do not dispose anymore of their identity papers, as these were confiscated by the traffickers, or they have been travelling on false identity papers. Moreover, they may face medical or psychological problems resulting from their having been trafficked. This means that the majority of the trafficked persons who return to their home country find themselves back in even worse conditions than the ones they originally started from.

As a result, trafficked persons run a considerable risk to not only get re-victimised but also to get re-trafficked on return to their home country. There are numerous reports of trafficked persons who on their arrival were met by the criminal network that originally trafficked them, only to be re-trafficked, either to the country they were originally trafficked to or to another country. Other trafficked persons end up being re-trafficked due to the lack of protection from intimidation from traffickers by the authorities in their home country, the lack of means to sustain themselves in their country, the impossibility to repay their debts or as a result of the stigmatisation and discrimination they face on return.

Authorities in the destination countries should, therefore, be well aware that by deporting or returning trafficked persons to their home countries, in many cases, they may send them straight back into the hands of the traffickers or again place them at risk.

Still a great number of victims want to return. Others are forced to return because they do not qualify for a temporary residence permit or because the temporary residence permit has

¹⁶⁰ See for a more extensive description of the principles and elements of return procedures and long term assistance programmes aimed at the social inclusion of trafficked persons Explanatory Paper 13.

expired and they do not qualify for a permanent residence status or asylum.

At the same time, many countries of origin have difficulties in providing victims of trafficking with appropriate support and assistance. Both in countries of destination and in countries of origin, as far as assistance programmes are available, they are mostly short-term and do not provide sustainable social and economic alternatives.

In order to prevent trafficked persons from being re-victimised and/or re-trafficked and to protect their safety it is essential to establish risk assessment procedures. The purpose of such risk assessment is to assess the safety of the trafficked person on her/his return, the perspectives of her/his social and professional inclusion and the risks of re trafficking.¹⁶¹ Return should be preferably voluntarily. In no case, however, may a trafficked person be returned to her/his home country if there is reason to believe that there is a real risk that his/her life may be endangered or that s/he may be subjected to inhuman or degrading treatment upon return (principle of non-refoulement). In the case of children any decision to return the child should be based on her/his best interest.

Member States should establish appropriate return procedures with due regard to the privacy, safety, dignity and health of the trafficked person. In cooperation with countries of origin and in close partnership with local NGOs long term assistance programmes – including access education, vocational training, employment opportunities etc. – should be developed to enable trafficked persons to regain control over their lives and build a sustainable future.

NGOs in the countries of origin and international networks of NGOs, covering both countries of origin and destination, play an indispensable role in preparing the return of trafficked persons, organising immediate assistance as well as long term social assistance programmes, advocating the interests of trafficked persons and preventing trafficking person from being re-trafficked.

In the case of trafficked children (i.e. persons under the age of 18), prior to her/his return, contact between the child and her/his family should be facilitated and a social assistance programme should be proposed to the child and the family. Trafficked children should never be forcibly returned to their country of origin if their family has not been traced, does not agree or is not able to provide the child immediate and long-term care; other suitable caregivers different from the family may be considered only if the child agrees.

Return and social assistance programmes should start in the country to which the person was trafficked¹⁶² and continue after the return of the trafficked person to her/his home country. They should aim at the empowerment and social inclusion of trafficked persons and support them in taking back control over their lives and finding viable and sustainable means of livelihood. Throughout the process of return and re-integration the trafficked person should be properly accompanied and their well-being should be effectively monitored.

As stated in the Brussels Declaration, the range of assistance measures should be made

¹⁶¹ See Explanatory Paper 13 for an overview of the factors that should be taken into account in making a risk assessment.

¹⁶² See Chapter 5.4.

available to trafficked persons irrespective of whether they are being returned to their home country or are provided with a long term residency status in the country of destination.¹⁶³ In addition, they should be accessible independent of the trafficked person's capacity and willingness to co-operate as a witness. In order to develop social assistance programmes, networking and co-operation should be intensified between NGOs, IOs, IGOs and other involved agencies in countries of origin, transit and destination.

The importance of developing appropriate return procedures and long term support programmes is recognized in a variety of international documents, among which the Brussels Declaration, the Hague Ministerial Declaration on EU Guidelines for anti-trafficking measures (26 April 1997), the OSCE Ministerial Council Decision No. 1 (28 November 2000), the OSCE Action Plan (24 July 2003), the Council of Europe Recommendation No. 11, the UNHCHR Principles and Guidelines on Human Rights and Human Trafficking (2002) and the UN Trafficking Protocol.

Recommendations

109. Member States should establish appropriate return procedures with due regard to the privacy, safety, dignity and health of the trafficked person, in close partnership with NGOs, IOs and, where applicable, embassies and consulates, e.g. with respect to the provision of identity documents. These procedures should be laid down in protocols for the return of trafficked persons and should apply to all involved agencies. Such protocols/procedures should at least address the following issues: the prompt return of the person on her/his wish; information to the trafficked person on the applicable procedures; information on the laws that are relevant to trafficked persons in her/his home country and the available immediate and long term social assistance programmes; a risk assessment regarding the safety and well-being of the trafficked person and her/his children and family members during and after return; protection of the privacy of the trafficked person; confidentiality of any information relating to the person being trafficked; guarantees that no reference to the status of the person as being trafficked is made in any document related to her/his return (such as stamps in passports); the arrangement of proper identity documents; arrangement for basic necessities during travel.
110. Member States should, in co-operation with countries of origin and in close partnership with local NGOs develop voluntary and safe return programmes in countries of origin to ensure that trafficked persons who return to their home country have access to immediate and long term social assistance programmes in order to secure their safety and well-being, to enable them to find viable means of existence, to prevent re-victimization and to reduce the risk of re-trafficking. NGOs providing these services should be adequately financed and co-operation between NGOs and other civil society organisations in countries of origin, transit and destination should be encouraged and facilitated.¹⁶⁴

¹⁶³ BD, pt. 15. See also Chapter 5.3.

¹⁶⁴ BD, pt. 15; UNHCHR, *op. cit.*, Guidelines Nos. 11 and 12.

111. The development of short- and long-term social assistance programmes should make an integral part of development co-operation policies.¹⁶⁵
112. Return and social assistance programmes should aim at the empowerment and social inclusion of the trafficked person,¹⁶⁶ whereby empowerment is defined as the process through which an individual can develop her/his ability to stand independently, make her/his own decisions and show control over her/his life.
113. Return and social assistance programs should rest on the following principles: voluntariness; protection of privacy and safety;¹⁶⁷ strict protection of the confidentiality of the relation between the service provider and the trafficked person; non-stigmatisation; freedom of movement of the trafficked person;¹⁶⁸ the treatment of trafficked persons in a respectful, non judgmental and non moralizing or patronizing way; the needs, views and concerns of the trafficked person should be at the centre. Elements of such programmes should be an individual needs assessment; regularization of the documentation status of the person concerned; appropriate housing; health care; psychological assistance; legal aid; assistance in finding viable means of existence; and support of self-organisation.
114. Member States should be obliged to carry out an individual risk assessment prior to the return or deportation of a trafficked person, including children, to his/her home country. Factors that should be taken into account are among others the risk of reprisals by the trafficking network against the trafficked person and/or her/his family; the capacity and willingness of the authorities in the country of origin to provide protection from possible violence or intimidation; the social position of the trafficked person on return; the risk of the trafficked person being arrested, detained or prosecuted by the authorities in the country of origin for offences related to her/his situation as a victim of trafficking, such as prostitution, the use or possession of false documents or illegal exit; the availability of and actual access to social assistance programmes, including safe accommodation, medical, legal and psychological aid; and the opportunities for long term sustainable employment. NGOs and other service agencies working with the trafficked person should have the right to submit information on these aspects, which should be taken into due account in any decision about the return or deportation of the trafficked person.
115. In the case of children, special policies and programmes should be developed to ensure that they will be provided with appropriate physical, psychological, legal and educational assistance, housing and health care.¹⁶⁹ Children should only be returned after a risk assessment is done and if the return is in the best interests of the child, safe and assisted.

¹⁶⁵ The Hague Declaration, III, 3.4.

¹⁶⁶ BD, pt. 15.

¹⁶⁷ The Hague Declaration, III, 3.4.

¹⁶⁸ UNHCHR, *op. cit.*, Guideline No. 1.5.

¹⁶⁹ UNHCHR, *op. cit.*, Guideline No. 8.7; UN TrafProt Art. 6.4.

Chapter 6

Law enforcement strategies

6.1 Introduction

An integrated approach to trafficking in human beings comprises effective prosecution aiming at adequate punishment of the perpetrators. It necessarily includes criminal law deterrent provisions, appropriate proceedings as well as instruments depriving the offence of any economic advantage in order to confirm the determination to defend the values that are enshrined in fundamental constitutional and legal traditions in Europe. These traditions include the clear belief in human rights as recognised in national constitutions of all EU Member States, in the Charter of Fundamental Rights of the European Union, in the European Convention on Human Rights and Fundamental Freedoms and in international human rights instruments. These rights constitute – together with rules on the system of government – the very basis of all Member States of the European Union. Inviolable human dignity and the integrity of the person¹⁷⁰ are at the centre of these rights. Where these values are threatened criminal law instruments and law enforcement authorities are needed to defend the ethical basis of our societies.

Article 5(3) of the Charter of Fundamental Rights of the European Union addresses trafficking in human beings in its first chapter and lays down that trafficking in human beings is prohibited. This means that the Charter, certainly reflecting the common position of EU Member States on fundamental rights, considers trafficking in human beings as an attack on human dignity.

At the same time individual damages and suffering, the undermining of core ethical values supporting a modern democratic society, the serious consequences for public health (HIV/Aids) and last but not least huge economic profits for the perpetrators constitute a situation that makes a major internal security concern of trafficking in human beings. Although the underlying assumptions of figures at world level are often unclear and these figures should be considered carefully, estimations at the national level seem to confirm the general trend. For example, the estimated illegal profits in 2003 in Germany only amounted to almost 12.5 million EUR.¹⁷¹ This amount has been estimated on the basis of only 21% of the registered human trafficking investigations in that State.

Both the need to defend the respect of human dignity, which is at the centre of human rights and constitutes the very basis of our society, and the necessity of repulsing serious attacks on internal security force law enforcement agencies to consider the fight against

¹⁷⁰ Articles 1 and 3 of the Charter of Fundamental Rights of the European Union.

¹⁷¹ BKA, *Lagebild Menschenhandel*, 2003 (<http://www.bka.de/lageberichte/mh/2003/mh2003.pdf>).

trafficking in human beings as a primary concern. The protection of the human rights of trafficked persons on the one hand and law enforcement investigations in trafficking cases on the other hand must be understood as complementing one another and not as contradictory strategies. The crucial role of law enforcement investigations in trafficking cases for maintaining the respect of human dignity in a secure society must be taken into account for the preparation, adoption, implementation and evaluation of counter-trafficking legislation relating to law enforcement activities, for the allocation of personal and financial resource to the competent authorities as well as for the preparation and implementation of specific operations.

The protection of the victim forms an integral part of an effective prosecution. Giving victims of trafficking social protection and assistance, offering them the possibility to be free and secure from forced labour or slavery like exploitation and to find legal ways to change their situation is not only a human rights obligation, but it is also of strategic value as a starting point for the collection of evidence in the trial against the perpetrators. The challenge is to find ways to have victims give testimony while ensuring their safety and without exposing them to further risks. Victims of trafficking are an especially vulnerable group. They are fragile in relation to the criminal influence of the perpetrators and their vulnerability continues beyond the time of the discovery of the offence and the start of the process of assistance. From the perspective of the perpetrators the victims are just “goods” or commodities, which they could control, exploit and keep silent through the use of threats, force, blackmail and other forms of coercion. Once the crime is discovered, these “human goods” become dangerous, as through their testimony victims can provide evidence leading to the conviction of the offenders. In order to avoid being sentenced, in particular, organised criminal groups will not only use intimidation and violence against the victim’s relatives still living in the country of origin, but will also be prepared to commit the offences as listed in Art. 23 of the Palermo Convention under “Obstruction of Justice”.¹⁷² This makes the adequate assistance and protection of victims even more important.

Although it could also have been addressed in the present Chapter, given its relevance within the framework of law enforcement, the issue of witness protection and the judicial treatment of trafficked persons has been addressed in Chapter 5.5, which covers all victim related aspects.

¹⁷² Art. 23 of the Convention Against Transnational Crime reads: „Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats of intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention: (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.”

6.2 State of the-art

As referred to above,¹⁷³ a number of legislative acts have been adopted at EU level over the last few years in order to strengthen the penal framework in combating trafficking in human beings and to improve the standing of victims in criminal proceedings. Currently, this legislation is being evaluated¹⁷⁴ or will be subjected to an evaluation procedure.¹⁷⁵

Police and judicial co-operation within the EU have, since the entry into force of the Amsterdam Treaty in May 1999, undergone significant progress through the development of its legislative framework and co-operation structures, e.g. Europol.

The main challenge ahead is to make this legislative framework and these structures fully operational. The focus, therefore, should be put on implementation and on concrete operative measures rather than the development of new initiatives with a major impact on national legislation and national structures. This approach also includes work on supporting measures and policies such as crime statistics, vulnerability studies of specific sectors, crime proofing and research. Indeed, the current policy context will provide prospects for the strengthening and further enhancement of police and judicial co-operation generally speaking.

As regards policy development and future orientations for legislative programmes and operative measures, the Experts Group would in particular point to the process that led to new guidelines laid down by the heads of State and government in the Hague Programme at the European Council on 4-5 November 2004, but the process can, in many ways, be said to have begun already in the spring 2003. In November 2003, the conference on tackling organised crime in partnership took place in Dublin.¹⁷⁶ The outcome of the conference, the Dublin Declaration is orientated to the future and addresses several crucial issues for strengthening the fight against organised crime. Besides private-public partnerships, the Declaration provides positive recommendations in several fields. This includes issues concerning the synchronisation of criminal intelligence systems and the collection, storage, analysis and exchange of information. The Declaration also provides recommendations on supporting measures such as crime statistics, crime and product proofing etc. On 29 April 2004, the Council agreed on a Resolution on a model protocol for the establishment in Member States of partnerships between the public and private sectors to reduce the harm from organised crime.¹⁷⁷ Furthermore, the Commission has since the spring 2003 been active in developing future oriented policies through various communications that will, *inter alia*, contribute to the development of state-of-the-art high-tech solutions to support law enforcement and criminal justice responses to the threats from organised crime and terrorism.¹⁷⁸ At the same time Member States have also been active to further strengthen and

¹⁷³ See Chapter 2.2.

¹⁷⁴ Framework Decision on the standing of victims in criminal proceedings, deadline for implementation: 22 March 2002, except for Artt. 5 and 6 (March 2004) and Art. 10 (22 March 2006).

¹⁷⁵ Framework Decision on combating trafficking in human beings; deadline for implementation: 1 August 2004.

¹⁷⁶ <http://www.tocpartnership.org/orgcrime2003/website.asp?page=dublin>

¹⁷⁷ Council Documents 8502/04 CRIMORG 31, 6627/3/04 REV 3 CRIMORG 10.

¹⁷⁸ Communication of 29 March 2004 on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information (COM (2004) 221 final); Communication of 16 April 2004 on the prevention and fight against organised crime in the financial sector (COM (2004) 262 final);

develop police and judicial co-operation.

The potential that lies in the development of the Union's external relations must be taken note of. The enlargement took place and the logic of organised crime and terrorism see no obstacles in the fact that we have national borders and jurisdictions. In particular relations with the neighbouring countries eastbound and southbound should be at the forefront of enhanced co-operation, i.e. countries of origin and transit.

The enlargement of the EU and greater co-operation, however, also brings considerable challenges, particularly in relation to countering corruption, data sharing (and above all ensuring that such data sharing is safe) and developing effective working methods and training. In particular data sharing is extremely sensitive in the context of trafficking and calls for caution in light of the harm that misuse of data or the failure to adequately protect data can cause to the life, safety and welfare of trafficked persons. In the same way it needs to be recognised that greater collection, distribution and synchronisation of material in the framework of the Dublin Declaration leads to greater risks of misuse. These risks require a critical attitude towards the ability of the actors involved to meet these challenges and should be reason enough to ensure that any increased co-operation and data sharing is accompanied by strict data protection measures and regimes, including an assessment of the actual and practical capacity for the observance of such regimes.¹⁷⁹

Finally, despite the potential positive effects of increased attention for trafficking as a form of (transnational) organised crime, it should not be forgotten that trafficking also occurs outside the context of organised crime and within national borders.

In conclusion, the Experts Group welcomes the potential that is currently present for addressing generally the phenomena of serious, especially organised crime (that is also present in the context of trafficking in human beings). However, there is an obvious need, besides the clear requirement to go from lip service to action, to address some more specific issues on trafficking in human beings in the field of law enforcement and judicial co-operation. Areas that should be reviewed and further developed concern – apart from the issue of data protection – the scope and the implementation of the Framework Decisions on combating trafficking in human beings and on the standing of victims in criminal proceedings, adequate procedures tackling money laundering in the context of trafficking cases, the compensation of victims, the role of corruption, the specific needs of children and finally specialisation, prioritisation, co-ordination and co-operation at EU and at national level with regard to law enforcement activities.

Witness protection and the judicial treatment of trafficked persons, including the need for a legally binding instrument covering the standing of trafficked persons in criminal proceedings, are discussed in Chapter 5.5, which covers the whole area of protection and assistance of

Communication of 2 June 2004 on Enhancing police and customs co-operation in the European Union (COM (2004) 376 final); Communication of 16 June 2004 "Towards enhancing access to information by law enforcement agencies" (COM (2004) 429 final); Communication on the implementation of the Preparatory Action on the enhancement of the European industrial potential in the field of Security research (COM (2004) 72 final).

¹⁷⁹ See also Chapter 3.8.3.

trafficked persons, including the specific rights and needs of children. With regard to children it should be stressed that they need to be considered as an extra-vulnerable category in the framework of law enforcement activities for whom special measures are required regarding their representation and protection during investigations, criminal proceedings and afterwards.¹⁸⁰ The other issues mentioned are discussed in this Chapter.

6.3 Prioritisation, specialisation, co-ordination and co-operation

The Brussels Declaration, as many other documents on the subject, highlights the need of prioritisation, specialisation, co-ordination and co-operation in order to ensure efficient and successful law enforcement.¹⁸¹

Specialisation and prioritisation

Governments should ensure that law enforcement agencies are structured in a way that enables them to efficiently target trafficking in human beings as a serious form of crime. Reference could be made to the Italian *Direzione Investigativa Antimafia*, which concentrates on investigations in the area of organised crime, including trafficking in human beings or to the French OCRTEH.¹⁸²

Appropriate education and training of competent personnel at different levels is required, taking into account the concrete task assigned to police officers, labour inspectors, prosecutors, judges or ministerial staff. Although the focus of specialised training may differ depending on somebody's specific role in the law enforcement sector, the various push and pull factors facilitating human trafficking (root causes, demand, and migration context) as well as the huge personal, social and economic impact and damages should always play a central role in relevant courses. Given the fact that many victims are not nationals of the country where they are found by law enforcement personnel, some kind of "inter-cultural competence" should also be an integral part of education, formation and training. Furthermore, the relationship between trafficking in human beings and smuggling of migrants has to be taken into account. From a legal point of view both forms of crime have to be distinguished from each other. In practice, however, it seems to be difficult, at least at a rather early stage of investigations, to define a case as trafficking in human beings or smuggling of migrants. What appears to be a smuggling case at the beginning may become step by step or even abruptly an example of trafficking. This problem can at least partly be solved by retaining a focus on the aspect of forced labour exploitation rather than on the question whether a particular case in a particular stage of the investigation should be qualified as a case of trafficking or of smuggling. Finally, it has to be noticed that criminal infrastructures that are developed in the area of trafficking could also be used for migrant smuggling and vice versa (transportation, false documents, corrupting officials).

¹⁸⁰ See Chapter 5.5 and Chapter 3. 6. Both sections are relevant in the framework of law enforcement.

¹⁸¹ BD, pt. 17.

¹⁸² *Office central pour la répression de la traite des êtres humains.*

The European Police College (CEPOL) already organises courses regarding trafficking in human beings and should, therefore, be involved in order to ensure the same high level of knowledge and information in all EU Member States and to promote a harmonised approach to trafficking in human beings.

Despite the long list of international and European declarations, resolutions, guidelines and action plans that should, at least politically, obligate State parties or EU Member States to intensify their law enforcement activities, it seems that adequate personal and financial resources are often lacking. Moreover, police officers who may be confronted with a wider range of crimes including trafficking in human beings as well as drug related offences are likely to concentrate their work on investigations that promise a relatively successful result in a relatively short time. It might be easier to prove that somebody possessed a certain quantity of cocaine or had no legal residence status than to find clear, reliable evidence proving that somebody acted as a trafficker in human beings. Surprisingly, the number of investigations in one EU Member State decreased between 1995 and 1999.¹⁸³ Currently, the reasons for that development are being analysed in a research project¹⁸⁴. It should be examined to what extent conclusions could be drawn from this not only in a specific national context but also for further steps at the European level.

Law enforcement activities have until now concentrated predominantly on trafficking in the sex industry. The broadening of the definition of trafficking will require the development of new working methods and new types of specialisation to address forced labour exploitation in other sectors.

The Group reiterates the necessity of pro-active, intelligence led investigative techniques without reliance on the testimony of the victims. These techniques should be used to make the victim's role as a witness less burdensome and the criminal proceedings more effective and successful. The aim of such techniques should not be misinterpreted: these techniques do not aim at a quick expulsion of the victim (that would not be needed any more for the criminal proceedings), but are intended to gather additional evidence in order to make adequate punishment of the offender more likely. "Intelligence led" approaches should never be used to legitimise a neglect of the necessity of protection and assistance of trafficked persons and may never be detrimental to the right of the victim to stand up in criminal or civil proceedings and ask for compensation for the damage occurred. "Intelligence led" approaches only encompass that it should be avoided to merely base the criminal proceedings on the testimony of the victims.

Co-ordination and co-operation

The transnational character of trafficking in human beings is regularly underlined in documents at political and working level. Consequently, European institutions, especially Europol, have been equipped with specific competencies, specialised personnel and instruments in order to support EU Member States in their fight against human trafficking.

¹⁸³ Bundeskriminalamt, *op. cit.*, p. 4.

¹⁸⁴ <http://www.iuscrim.mpg.de/forsch/krim/herz.html>

Europol shall, *inter alia*, act to prevent and combat smuggling and trade in human beings.¹⁸⁵ It can provide access to intelligence databases and investigations from all EU Member States. It offers assistance for training, operational support in order to share information and evidence. At international level Interpol offers similar services.¹⁸⁶ At the same time the general competence of Eurojust covers trafficking in human beings.¹⁸⁷ The role of Europol is particularly important as it shall not only facilitate the exchange of information but also provide operational analysis in support of Member States' operations and generate strategic reports and crime analysis on the basis of information and intelligence supplied by Member States, generated by Europol or gathered from other sources. However, it seems that the information flow from Member States to Europol is still under the desired level and that joint investigations are more based on spontaneous bi or multilateral co-operation than in regular structures and mechanisms. A more regular involvement of Europol is desirable.

Co-operation at EU level also means that all institutions involved work on the basis of the same definition of trafficking in human beings. This requires that the competence of Europol for the trafficking in human beings would be brought in line with the broader definition of the Framework Decision on trafficking in human beings.¹⁸⁸

While strengthening the role of Europol it should be taken into account that gathering information about and investigations in cases of trafficking in human beings for the purposes of labour exploitation might require a type of specialisation and knowledge that is different from the one necessary in the context of trafficking in human beings in the sex industry. Agencies responsible for the control of working conditions and financial investigations related to black labour are highly relevant in this regard. Consequently, they have to be made more sensitive and to be mobilised for the fight against trafficking in human beings.

Although Member States should do so in their own as well as the EU interest, specific financial incentives could encourage the competent authorities to co-operate more closely with Europol. The Group supports the general idea of a European budget line that could overcome some of the obstacles in operational law enforcement and judicial co-operation. The discussion concerning the financial perspectives might be an option to examine the idea of such a budget line in more detail.

Recommendations

116. Specialisation of law enforcement must be ensured through necessary organisational structures and adequate education and training of competent personnel. CEPOL should play a central role in this context. New types of specialisation, working methods and co-

¹⁸⁵ Art. 2(2) of the Europol Convention.

¹⁸⁶ <http://www.interpol.int/Public/THB/default.asp>

¹⁸⁷ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, Article 4(1); OJ L 63, 6.3.2002, p. 1.

¹⁸⁸ See Annex referred to in Article 2 of the Europol Convention: 'traffic in human beings' means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. (<http://www.europol.eu.int/index.asp?page=legalconv#ANNEX>).

operation partners – such as agencies responsible for the control of working conditions and financial investigations related to irregular labour – need to be established in order to address forced labour exploitation in other sectors than the sex industry.

117. Specialisation and training should take into account the special needs of children, who need to be considered as a special category that requires special attention.
118. The fight against trafficking in human beings must be clearly defined as a law enforcement priority. Adequate personal and financial resources must be allocated. A certain percentage of these resources should continuously be devoted to the fight of trafficking in human beings. At the lower level police officers should be encouraged and motivated to invest in human trafficking cases.
119. Pro-active, intelligence led investigative techniques without reliance on the testimony of the victims should be further developed. “Intelligence led” approaches, however, should never be used to legitimise a neglect of the necessity for protection and assistance of trafficked persons.
120. At present Europol is not effectively used. This signifies a deficit in the area of exchange of information, the formation and functioning of joint investigative teams and the possibility for law enforcement agencies throughout the EU of benefiting from the information gathered in other Member States. This needs to be addressed. In addition, Europol as well as the Member States need adequate staff and sufficient financial resources for the remuneration of their personnel.
121. Financial incentives, for example through a European budget line, should be used to encourage Member States to regularly cooperate at EU level by involving European institutions such as Europol or Eurojust.

6.4 Anti-corruption strategies¹⁸⁹

The international trafficking in human beings is highly controlled by criminal organisations that meet the criteria of organised crime. It is an illegal trade that can be characterised by “low risks and high profits”. The *modus operandi* reoccurring in all definitions of organised crime is influencing by means of intimidation and/or corruption. Research also shows corruption as one of the recurring and structural elements of trafficking.¹⁹⁰

Next to the *modus operandi* of the criminal organisations controlling the trafficking in human beings powerful push and pull factors characterise the phenomenon of human trafficking as well.

All of this results in law enforcement, customs, social and labour inspection services, but also

¹⁸⁹ See for more information Explanatory Paper 14.

¹⁹⁰ See e.g. Wijers, M. and L. Lap Chew, *Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*, STV/Global Alliance Against Trafficking in Women, Utrecht/Bangkok, 1999 (rev. ed.).

NGOs that care about the relief of trafficking persons, being put under pressure to turn a blind eye to human trafficking or to situations of exploitation of trafficked persons in the sex industry or to other illicit forms of employment.

One can not be blind to the fact that in a lot of countries great pressure is put on civil servants that are scantily paid for their job and are confronted with the enormous financial means the human traffickers have at their disposal.

Efficient anti-corruption strategies require simultaneous activity at micro, meso and macro level, a multi disciplinary approach and preventive as well as repressive measures. Elements include *inter alia* a general policy that clearly determines its objectives, the correct functioning and transparency of the administration, coherence and transparency of laws and regulations, selection and training of personnel, the optimisation of organisational structures, the elaboration of lines of conduct, criminal law enforcement and the establishment of internal and external control.¹⁹¹

Finally, the promotion of a vibrant civil society to enable accountability and scrutiny of public policy and officials is important in any anti-corruption strategy.

Recommendation

122. Anti-corruption strategies should make an integral part of any policy to prevent and combat trafficking. An efficient policy for fighting corruption should be based on a multidisciplinary and integrated approach, trying to address as many causes of corruption as possible. It should include both preventive and repressive strategies. It must be flexible enough to be applied within different sectors (public and private) and adoptable to different situations.

6.5 Money laundering, seizure of assets, financial investigations¹⁹²

Trafficking in human beings is noted as a growing source of illegal income, especially in relation to cash transactions and money laundering efforts.

EU legislation has been put in place with regard to trafficking in human beings as well as in order to combat money laundering. In principle, Member States agreed to make serious offences predicate offences for the purpose of the criminalization of money laundering. Furthermore, there has been a trend towards a wider definition of money laundering based on a broader range of predicate or underlying offences in order to facilitate the international co-operation in prosecuting organised criminal activities and confiscating the proceeds of crimes.

An interpretative analysis of the relevant EU legislation shows that trafficking in human beings can be considered as a predicate offence of money laundering. However, the relevant

¹⁹¹ See for a more detailed description of anti corruption strategies Explanatory Paper 14.

¹⁹² See also Explanatory Paper 15.

instruments do not provide a homogenous list of crimes to be considered as predicate offences of money laundering.¹⁹³ A *clear* reference to human trafficking is needed in this context and attention has to be drawn to the possibility of using the established prevention system for money laundering in order to combat human trafficking.

Finally, some national laws have introduced confiscation provisions requiring a less challenging evidentiary basis with regard to certain serious crimes. Persons convicted of such crimes should have confiscated property or pecuniary resources that are disproportionate to their present or past known income unless they are able to give a satisfactory explanation in that regard. Such a procedure may be considered as well with regard to trafficking in human beings.

Confiscated assets should be used to the benefit of victims of trafficking, e.g. in payment of court orders for compensation, restitution and recovery due to trafficked persons. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such fund that could be part of a more general compensation system for crime victims.¹⁹⁴

Recommendations

123. It needs to be clearly established in EU legislation that trafficking in human beings is a predicate offence of money laundering and that its proceeds are subjected to money laundering instruments.
124. Member States should be clearly obligated to take the appropriate measures to identify and trace proceeds of trafficking in human beings. These proceeds have to be subjected to confiscation and other measures such as freezing and seizing.
125. Convicted traffickers should have confiscated such property or pecuniary resources that are disproportionate to their present or past known legal income, unless they are able to give a satisfactory explanation in that regard.
126. Confiscated proceeds of trafficking should be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund that could be part of a more general compensation system for crime victims.

¹⁹³ See for more information on the instruments EU legislation as well as other background information Explanatory Paper 15.

¹⁹⁴ UNHCHR, *op. cit.*, Guideline No. 4.4. See also Chapter 6.5.

6.6 Restitution and compensation of victims¹⁹⁵

Trafficked persons are victims of serious crimes. Many of them have been seriously violated and suffered physical harm and/or economic damages or loss. Compensation for the harm, damage and/or loss they have suffered is an important element of restitution and recovery. Compensation and restitution are not only an essential aspect from the perspective of the victims to have justice done, but are also an essential step for the social re-integration of the victims.

Significant financial sums are made from the forced labour exacted from trafficked persons. Through rigorous seizure of assets and similar provisions these proceeds should be recovered from the criminals involved. However, retention of these assets by the State can be morally problematic, as it can be perceived that the State is benefiting from the forced labour exacted from trafficked persons. It is, therefore, the more important that seized assets and proceeds of crime are applied to the restitution and compensation of the victims.

Nevertheless, the possibility for trafficked persons of getting adequate compensation is not well developed at the European level.¹⁹⁶ A joint European effort could express particular solidarity with trafficked persons without prejudice to existing national systems on compensation to victims of crime.

The right to compensation should be enforced in both criminal and civil proceedings, as well as any State compensation schemes and should apply not only for the injuries suffered but also economic loss.

Recommendations

127. The Framework Decision on the standing of victims in criminal proceedings should be evaluated¹⁹⁷ and, where necessary, revised with particular attention to the compensation of trafficked persons.
128. Provisions to enable trafficked persons to get compensation, in both civil and criminal proceedings, as well as through State compensation schemes, should include the right to free legal advice and assistance and a stay of deportation while such proceedings are in progress.
129. Trafficked persons have to be considered “victims of a serious crime against the person”¹⁹⁸ and “qualified victims of crime” and should have access to compensation schemes for victims of violent intentional crime in general.

¹⁹⁵ See for a description of the current European situation regarding compensation Explanatory Paper 16. See also Chapter 5.5.

¹⁹⁶ See for a description of the current situation Explanatory Paper 16.

¹⁹⁷ The evaluation procedure already started. Nevertheless, it should still be possible to pay specific attention to trafficked person in the ongoing debate.

¹⁹⁸ BD, pt. 13, sixth bullet point.

130. The compensation concept should include the prompt use of all European instruments to detect, freeze, seize and confiscate the proceeds of the trafficking or the items into which they have been transformed or converted. Such proceeds should be used firstly for the purpose of compensation to trafficked persons.
131. Adequate compensation instruments and procedures, for example national funds or a European Fund for the compensation of trafficked persons (EU citizens, residents in EU Member States and third country nationals), should be established in order to ensure equal and effective compensation to trafficked persons. A funding mechanism for a possible European fund could be based on the contributions of Member States (for instance, a percentage of the proceeds of trafficking confiscated in the criminal proceeding).
132. The discussion on this matter should be opened at the highest political level – including a dialogue with relevant third countries – in order to identify needs and priorities and to encourage the creation of a European instrument and the progressive convergence and consistency of national legislation.

Explanatory Paper 1

Definition of trafficking: Relation and differences between UN and EU definitions, the concept of exploitation

Relation/differences between UN and EU definitions

The definition in the UN Trafficking Protocol formed the basis for the Council Framework Decision on combating trafficking in human beings of 19 July 2002. The definitions that have been agreed at EU level include largely the same elements. Like the UN, the EU distinguishes between trafficking in human beings and facilitating illegal entry into a country (smuggling of migrants).¹⁹⁹

On the other hand, the Framework Decision on trafficking in human beings does not include all elements of the UN definition. In particular, the Framework Decision does not apply to trafficking in human beings for the purpose of the removal of organs. Other parts of the EU definition are more precise²⁰⁰ and reflect the character of this legislative instrument in that the Framework Decision is a legally binding instrument, forcing EU Member States to adapt their national legislation in order to comply with obligations at EU level in the area of criminal law harmonisation.²⁰¹

A last difference is that the UN Protocols address trafficking in human beings and smuggling of migrants in a comprehensive way. They cover aspects of protection, assistance and repatriation of victims as well as prevention, co-operation (including information exchange and training), border measures and security of documents. The above-mentioned EU instruments, on the contrary, are mainly acts of EU legislation in the areas of criminal law and criminal proceedings.

Both the UN Trafficking Protocol and the EU Council Framework Decision on combating trafficking in human beings make a clear distinction between trafficking and prostitution. Neither instrument implies a specific positive or negative position on (non-coerced adult) prostitution, leaving it to the discretion of individual States how to address prostitution as

¹⁹⁹ Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1) on the one hand; Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17) and Council Framework Decision of the same day on the strengthening of the penal framework to prevent such facilitation (OJ L 328, 5.12.2002, p. 1) on the other hand.

²⁰⁰ For example the lack of a real and acceptable alternative to the victim except to submit to the abuse involved in cases, where authority or a position of vulnerability is abused, Article 1(1)(c) of the FD on THB.

²⁰¹ So far the Europol definition of trafficking in human beings differs from the one in the Framework Decision on combating trafficking in human beings and has to be adapted. See Chapter 6.

such in their domestic laws. Consequently, the question of the definition of trafficking has to be distinguished from questions about the political and/or legal approach to prostitution that is followed or required in order to tackle the problem of trafficking in human beings.

Forced or compulsory labour or services, slavery, practices similar to slavery, servitude

Neither the UN Trafficking Protocol nor the Framework Decision on trafficking in human beings clarify what they consider being exploitation of another persons labour or services for the purposes of these instruments. On the other hand, terms such as ‘compulsory or forced labour or services’, ‘slavery’, ‘practices similar to slavery’ or – in the UN Trafficking Protocol – ‘servitude’ include qualifying characteristics distinguishing them from “ordinary” bad working conditions, even when a person might be socially or economically exploited.

Moreover, most of the terms involved have been used in previous international instruments such as the 1948 Universal Declaration on Human Rights. Article 4 states: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” Article 1(1) of the 1926 Slavery Convention as amended by the 1953 Protocol defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Section I, Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 does not contain a general definition of the latter. However, it refers to debt bondage, serfdom, forced marriage, furthermore practices whereby a woman is transferred to another person for a value received or inherited by another person. These practices can be considered as the most relevant examples of practices similar to slavery, which the contracting State parties agreed to address.²⁰²

Article 8 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and Article 4 of the European Convention on Human Rights state that no one shall be held in slavery or servitude or be required to perform forced or compulsory labour. In the context of these instruments slavery is not only understood to mean the exercise of all or any powers attached to ownership, but also the actual *de facto* destruction of the legal personality of a person. Nonetheless, the concept of slavery is generally interpreted as to refer to slavery in its classic sense.

Servitude represents a broader concept, covering conditions of work or service, which the individual cannot change or from which she/he cannot escape. It thus refers to a more general idea, covering all possible forms of one person’s dominance over another person.²⁰³

Article 2(1) of the ILO Convention (No. 29) Concerning Forced Labour of 1930 defines

²⁰² Weisbrodt D. and Anti Slavery International, *Abolishing Slavery and its Contemporary Forms*, Office of the High Commissioner for Human Rights U.N. Doc. HR/PUB/02/4 (2002).

²⁰³ Wijers, M., *The prohibitions on slavery and related practices and their relevance to the development of a contemporary definition of trafficking in persons*, Paper International Protection of Human Rights, May 2000.

forced or compulsory 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.” According to a working definition which has been used within the ILO such penalty does not need to be a form of penal sanction but might take the form of a loss of rights or privileges.

The 1930 Convention outlines the general concept of forced or compulsory labour “for the purposes of this Convention”, which is to suppress the use of such labour. This might be adequate to develop an appropriate policy instrument but is insufficient in order to apply a criminal law instrument aimed at combating trafficking in human beings. The ILO identifies six elements that might indicate a forced labour situation and which are likely to be a criminal offence within existing criminal law of most countries: the threat and/or application of physical or sexual violence, restriction of movement, debt bondage/bonded labour, withholding of wages or no payment at all, retention of passport and identity documents and the threat of denunciation to the authorities.

In the case of children, the UN Convention on the Rights of the Child provides for further specification in Article 32: “State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. Also, ILO Convention 182 on the Worst Forms of Child Labour provides for further specification.

Explanatory Paper 2

The current context

At world level a clear progress, manifested in several resolutions and project funding, has been achieved by the UN in recent years. Above all, the UN has made possible the Convention Against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Protocol entered into force on 25 December 2003 and can be considered a landmark in the global endeavours to fight trafficking in coming years. However, only some of the “new” but most of the “old” EU Member States as well as the European Community have not yet ratified the Protocol.²⁰⁴

The UN Commission of Human Rights in its 60th session of April 2004 adopted a resolution to nominate a Special Rapporteur on Trafficking in Persons, especially women and children.²⁰⁵ The mandate should focus on the human rights of the victims, and the Rapporteur would submit an annual report to the UN Commission of Human Rights, including the necessary recommendations on actions to be taken.

Other organisations and forums that have addressed trafficking include, for instance, the OSCE²⁰⁶, NATO²⁰⁷ and ASEM (Asian European Meeting).²⁰⁸ Currently, negotiations within the Council of Europe are under way on a Convention against trafficking in human beings.²⁰⁹

In the European Union trafficking in human beings has politically been at the core of the agenda in the field of justice and home affairs since 1996 when the Commission launched its first Communication²¹⁰ on the subject. Since then a series of policy developments, legislative acts and funding schemes have addressed the issue, among others the 1997 The Hague Ministerial Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation.²¹¹

The main EU milestones in the field of counter-trafficking legislation are the adoption of the

²⁰⁴ State of play on 10 December 2004: Belgium, Denmark, France, Portugal, Spain, Sweden, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (source: UNODC website).

²⁰⁵ [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2004.L.10.Add.12.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2004.L.10.Add.12.En?Opendocument) and <http://www.un.org/News/Press/docs/ecosoc6113.doc.htm>

²⁰⁶ Decision No. 2/03 of 2 December 2003 on Combating Trafficking in Human Beings, adopted by OSCE Ministerial Council in Maastricht. Furthermore, in May 2003 Ms Helga Konrad has been appointed OSCE Special Representative on Trafficking in Human Beings.

²⁰⁷ <http://www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm>

²⁰⁸ For more information: <http://asem.inter.net.th/>

²⁰⁹ For more information: http://www.coe.int/T/E/human_rights/Trafficking/2_Cahteh/

²¹⁰ COM(96) 567 final.

²¹¹ Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997.

Framework Decision of 19 July 2002 on combating trafficking in human beings²¹² approximating the criminal laws of the Member States, the Directive of 29 April 2004 on a temporary residence permit for victims of trafficking who co-operate with the authorities²¹³ and – with regard to some aspects of trafficking in human beings – the Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography.²¹⁴ Other acts such as the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings²¹⁵ and the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States²¹⁶ are relevant as well and demonstrate the attention to be paid to trafficking in human beings in a more horizontal context of extradition or surrender procedures.

A series of programmes (in particular, STOP, AGIS, DAPHNE, PHARE, TACIS, CARDS, AENEAS)²¹⁷ managed by the European Commission and providing funding opportunities for projects have been and are aiming at improving the prevention of and the fight against trafficking in human beings.

Organisations such as Europol²¹⁸ and Eurojust²¹⁹ have been set up and equipped with competencies in area of trafficking in human beings. New co-operation structures such as CEPOL²²⁰ and the European Crime Prevention Network²²¹ are to some extent addressing the issue. Moreover, trafficking in human beings is a subject of co-operation not only between EU Member States, but also a permanent topic in EU relations with third countries in Eastern and South-Eastern Europe, Central Asia and the Mediterranean region. Consequently, trafficking in human beings has been addressed in the framework of the Stabilisation and Association Process,²²² the European Neighbourhood Policy,²²³ the Euro-Mediterranean Partnership²²⁴ and the EU-Africa Dialogue.²²⁵ As regards policy developments,

²¹² OJ L 203, 1.8.2002, p. 1.

²¹³ Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004, p. 19.

²¹⁴ OJ L 13, 20.1.2004, p. 44.

²¹⁵ OJ L 82, 22.3.2001, p. 1.

²¹⁶ OJ L 190, 18.7.2002, p. 1 (see Art. 2 (2)) of the act.

²¹⁷ For more information about:

AGIS: http://europa.eu.int/comm/justice_home/funding/agis/funding_agis_en.htm

STOP (expired): http://europa.eu.int/comm/justice_home/funding/stop/funding_stop_en.htm

DAPHNE II: http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm

PHARE: http://europa.eu.int/comm/enlargement/financial_assistance.htm

TACIS: http://europa.eu.int/comm/europeaid/projects/tacis/index_en.htm

CARDS: http://europa.eu.int/comm/europeaid/projects/cards/index_en.htm

AENEAS: http://europa.eu.int/comm/europeaid/projects/eidhr/themes-migration_en.htm

²¹⁸ Europol Convention, Art. 2(2), OJ C 358, 13.12.2000, p. 1.

²¹⁹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against organised crime, Art. 4(1)(a), OJ L 63, 6.3.2002, p. 1.

²²⁰ OJ L 336, 30.12.2000, p. 1.

²²¹ OJ L 153, 8.6.2001, p. 1.

²²² European Commission, *The Stabilisation and Association Process in South East Europe, Third Annual Report*, COM(2002)202/2final, 30.3.2004, in particular pp. 20, 34, 35.

²²³ Communication from the Commission, *European Neighbourhood Policy, Strategy Paper*, COM(2004)373 final, 12.5.2004, in particular pp. 6, 16, 21.

²²⁴ Euro-Mediterranean Partnership, MEDA, *Regional Indicative Programme 2005-2006*, in particular pp. 21, 24.

²²⁵ Council Document 15197/02 PESC 553 COAFR 98 MED 48 ACP 165 DEVGEN 187, Africa-Europe

the Brussels Declaration has set the agenda for future action against trafficking in human beings at the level of the European Union. The setting up of the Experts Group is one element in the implementation of the Brussels Declaration.

However, although a number of political declarations and legally binding instruments are in place, they are often not yet effective or fully implemented. This requires that the political commitments made over the past years must be turned into action. Moreover, a number of additional measures are needed. At the same time, the context in which further action should be taken at the EU-level presents interesting prospects.

First, a first wave of enlargement bringing ten central and eastern European countries into the Union took place on 1 May 2004. All these countries have been and are affected by trafficking in human beings, some of them not only as countries of destination or transit but also to a considerable extent as countries of origin. The specific impact of trafficking in human beings on these countries might influence their sensitivity to the problem and their commitment to counter-trafficking measures. As a consequence the EU approach to trafficking in human beings and the EU relations with countries outside the EU may also change, not least as regards Eastern and South Eastern Europe.

Secondly, as regards the EU institutions, elections to the European Parliament were held in June 2004. Among the new members of the European Parliament are again at least some stakeholders in the fight against trafficking in human beings. In November a new Commission took up its term in office. Both institutions, the EP and the Commission, are now established with full participation from the new Member States.

Thirdly, the new Constitution for the EU, signed by the Heads of State or Government of the 25 Member States and 3 candidate countries on 29 October 2004, but still to be ratified, and in some Member States, approved in coming referenda provides a series of novelties as regards decision making, instruments, etc., in the field of justice and home affairs. Trafficking in human beings is explicitly addressed in a number of provisions of the Constitution.²²⁶ According to Article III-168(1) the Union shall develop a common immigration policy aiming at, *inter alia*, “the prevention of, and enhanced measures to combat illegal immigration and trafficking in human beings.” Article III-168(2)(d) demands framework laws establishing measures in the area of “combating trafficking in persons.” However, “smuggling of migrants” might be the more appropriate term in this context as the crucial element of trafficking in human beings is the exploitation of the trafficked person for forced labour or services, slavery or slavery like practices and not the question whether or not that trafficked person illegally crossed a border.

Fourthly, the financial perspectives for the EU between 2007 and 2013 began to be discussed during the spring 2004.²²⁷ Under the heading “Giving full content to European Citizenship”,

Dialogue (Follow-up to the Cairo Summit) – Second Ministerial Meeting Ouagadougou, Burkina Faso, 28 November 2002, Annex 2, Draft Action Plan to Combat Trafficking in Human Beings, especially Women and Children.

²²⁶ Treaty establishing a Constitution for Europe as set out in Document CIG 87/2/04 of 29 October 2004, see in particular Articles II-5, III-168(2)(d), III-172(1).

²²⁷ Communication from the Commission to the Council and the European Parliament. Building our

migration and security issues are taken into account as priorities for the enlarged EU.²²⁸ The Commission also touched upon the issue in its Communication “Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations”.²²⁹ The Communication stresses the justice and home affairs dimension as one of the Union’s priority policies.²³⁰ Furthermore, the Commission points out that the new financial perspective also reflects the growing importance of Justice and Home Affairs matters, as the establishment of the area of freedom, security and justice is the central element of the new heading “European Citizenship.”²³¹ “Future financial instruments will be of a significant total amount and will complement the existing and future legal instruments, notably by strengthening the operational aspect of the policies in the field of freedom, security and justice.”²³²

This situation offers the opportunity to financially support not only selected innovative projects indicating improved methods to prevent and combat trafficking in human beings, but also sustainable structures providing protection and assistance for trafficked persons as well as appropriate law enforcement capacities specifically targeting the perpetrators in this area of crime. Whereas, logically, in the previous period the emphasis lay on the development of new institutions, structures and mechanisms and the identification of best practices, the challenge now is to consolidate identified successful initiatives and structures. Adequate funding should, therefore, be made available in order to strengthen the instruments and mechanisms that have been created over the last few years but would not be able to survive without further financial EU input. Particular attention should thereby be paid to civil society organisations that provide protection and assistance to trafficked persons.

Fifthly, the conclusions of the Tampere European Council of 15-16 October 1999 on the agenda for justice and home affairs have been evaluated and further developed in the Hague Programme in November 2004. The Tampere Communication addresses trafficking in human beings in the context of a “genuine common policy of management of migratory flows”²³³ as well as “action to prevent and combat terrorism and specific forms of crime.”²³⁴ The Commission is right in pointing out that “with regard to trafficking in human beings, particularly women and children, preventive and enforcement action must continue to be combined.”²³⁵ On the other hand, by addressing “a stronger fight against trafficking in human beings and the development of an effective policy on returns and re-admission”²³⁶ in the same sentence the impression may be given that trafficked persons are above all illegal migrants, who should primarily return to and be re-admitted by their countries of origin. Presuming that this is not the Commission’s intention, the Group recommends adapting the language in communications and other political papers in order to undoubtedly underline the Commission’s commitment to a holistic and integrated, human rights-based approach.

common Future. Policy challenges and Budgetary means of the Enlarged Union 2007-2013, COM(2004) 101 final/2, 26.2.2004.

²²⁸ COM(2004)101final/2, p. 19.

²²⁹ COM(2004) 401, 2.6.2004.

²³⁰ COM(2004) 401, 2.6.2004, p. 4.

²³¹ COM(2004)101, 10.2.2004, pp. 4, 7.

²³² COM(2004) 401, 2.6.2004, p. 16.

²³³ COM(2004) 401, 2.6.2004, Chapter 2.4.

²³⁴ COM(2004) 401, 2.6.2004, Chapter 2.10.

²³⁵ COM(2004) 401, 2.6.2004, p. 15.

²³⁶ COM(2004) 401, 2.6.2004, p. 10.

Explanatory Paper 3

Human rights as a paramount issue: Meaning and consequences of a human rights based approach

The meaning of a human rights based approach

The Brussels Declaration acknowledges that trafficking in human beings constitutes a serious violation of human rights and expresses the need for a human rights based approach to trafficking.

An important instrument in the development of such an approach is the Principles and Guidelines on Human Rights and Human Trafficking developed by the UN High Commissioner on Human Rights.²³⁷

Underlying a human rights based approach is the recognition that trafficking in human beings is both a cause and a consequence of human rights violations. Taking into account the inextricable link between the prevention and eradication of trafficking in human beings and the protection of the human rights of trafficked persons, as well as to ensure that trafficking is not simply reduced to a problem of migration, public order or organised crime, the Experts Group considers the integration of a human rights perspective fundamental for the analysis of the phenomenon of trafficking and the development of an effective response to it.²³⁸

²³⁷ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, New York and Geneva, 2002.

²³⁸ For an extensive discussion of the relation between human rights protections and the repression of trafficking in persons see also: Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, report submitted in accordance with Commission on Human Rights Resolution 1997/44, ECOSOC, Commission on Human Rights, Fifty-sixth session, 29 February 2000 (E/CN.4/2000/68); Special Rapporteur on Violence Against Women, its causes and consequences, *Position paper on the draft protocol to Prevent, Suppress and Punish Trafficking in Women and Children*, report submitted to the Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, 20 May 1999 (A/AC.254/CRP.13); Special Rapporteur on Violence Against Women, its causes and consequences, *Remarks by the Special Rapporteur on Violence Against Women, Ms Radhika Coomaraswamy to the Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, Fourth session, Vienna, 7 July 1999; *Message from the UN High Commissioner for Human Rights, Mary Robinson to the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime*, Fourth session, Vienna 28 June-9 July, 1999; *Informal Note by the United Nations High Commissioner for Human Rights to the Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, 1 June 1999 (A/AC.254/16); *Note by the International Labour Organization for the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the additional legal instrument against trafficking in women and children to the Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, Fourth session, Vienna 28 June-9 July 1999, 16 June 1999 (A/AC.254/CRP.14); *Note by the Office of the United Nations High Commissioner for Human Rights, The United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant*

Essentially, a human rights approach integrates the norms, standards and principles of the international human rights system into legislation, policies, programmes and processes. Essential elements of a human rights based approach are the observance of human rights norms, including the principle of non-discrimination, standard setting and accountability, recognition of human beings as subjects and holders of rights, including the right to security, participation, empowerment and the integration of a gender, child rights' and where applicable, ethnic perspective. More generally, it could be said that a human rights approach places people and their human rights at the centre of the agenda.

As such a human rights based approach offers a conceptual and normative framework that should give direction to the further development of policies in the area of trafficking. This is in line with the emphasis put in the EU on the respect for and the protection and promotion of human rights, democracy and the principle of non-discrimination. At the same time it offers a framework to monitor and evaluate anti-trafficking policies, practices and actions for their real and potential impact upon trafficked persons and other affected groups.

Observance of human rights norms

It is a recognised principle of international human rights law that States have a duty to respect and protect the rights of individuals to exercise their human rights. This obligation includes the duty to investigate alleged violations of human rights, to punish violators of human rights and to provide effective remedies to victims of human rights violations.²³⁹ All elements carry equal value and are pre-requisites in order to achieve a balanced and effective approach to trafficking.

In addition, measures should comply with existing obligations of States under international and European human rights law as set forth in the major human rights instruments – in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination of Women, the Convention on the Rights of the Child and the European Convention on the Protection of Human Rights –, the EU Charter on Fundamental Rights and other standard setting documents, including respect for the principle of non-refoulement.²⁴⁰ At a minimum measures must not conflict with or otherwise undermine human rights law.

smuggling and trafficking in persons to the Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eighth session, Vienna, 21 February-3 March 2000, 8 February 2000 (A/AC.254/27).

²³⁹ See *inter alia* Art. 2 of the International Covenant on Civil and Political Rights (ICCPR) and Artt. 2 and 3 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

²⁴⁰ Also relevant in this context are: the *International Convention on the Protection of the Rights of All Migrant Workers and their Families*; the *Slavery Convention*; the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery*; the *Forced Labour Convention*; and the *Abolition of Forced Labour Convention*. See also: the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly Resolution 40/34 of 29 November 1985; and *Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice*, adopted by General Assembly Resolution 52/86, 2 February 1998.

The guiding principle is that anti-trafficking instruments should not only be consistent with the respect for and the protection of human rights but should also not create or exacerbate existing situations that cause or contribute to trafficking by instituting policies and practices that further undermine or adversely affect the human rights of persons, in particular the rights of trafficked persons, women, migrants, internally displaced persons, refugees and asylum-seekers. As stated by the UN High Commissioner on Human Rights, Mary Robinson: “That [...] is the only way to retain focus on the trafficked person: to ensure that trafficking is not simply reduced to a problem of migration, a problem of public order or a problem of organised crime. It is also the only way to ensure that well intentioned anti-trafficking initiatives do not compound discrimination against female migrants or further endanger the precariously held rights of individuals working in prostitution”.²⁴¹

Principle of non-discrimination

A fundamental rule of international human rights law which is of particular importance to the situation of irregular or illegal migrants and other vulnerable or marginalised groups (including prostitutes), is respect for the principle of non-discrimination.²⁴²

Following this principle, it should be ensured that anti-trafficking measures, especially, but not only, those aiming at prevention, cannot be used to directly or indirectly discriminate against women or other groups, or adversely affect the human rights of individuals as set forth in the major international human rights instruments, such as the freedom of movement, the right to leave one’s country, the right to migrate legally or to earn an income.

Moreover, it must be ensured that trafficked persons are not subjected to discriminatory treatment in practice or law and that protections for trafficked person are applied without discrimination, particularly with respect to gender, ethnicity, immigration status, and/or the fact of a trafficked person’s having been trafficked formerly or having participated in the sex industry.

Standard setting and accountability

Accountability means that it is not only a duty of governments, intergovernmental bodies and other relevant actors to make every effort to fulfil their human rights obligations, but also that mechanisms should be in place to ensure accountability. Human rights commitments that are relevant in the context of trafficking include the (positive) obligation to prevent and combat trafficking and to protect, assist and provide redress to the victims, as well as the (negative) obligation to ensure that measures do not adversely affect or infringe upon the human rights of the groups affected. Moreover, it includes the duty to remedy the underlying human rights

²⁴¹ *Message from the UN High Commissioner for Human Rights, Mary Robinson, to the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime, Fourth session, Vienna 28 June- 9 July 1999.*

²⁴² See *inter alia* Artt. 2 and 7 of the Universal Declaration of Human Rights (UDHR), Artt. 2 and 26 of the ICCPR and Art. 2 of the International Covenant on Economic, Social and Cultural Rights (ICESR), but also the Statute of the International Criminal Court, Art. 21(3).

abuses that create the conditions for trafficking.

Accountability can more easily be determined by the translation of human rights commitments into concrete standards and by setting out goals and specific targets and benchmarks, along with indicators by which progress can be measured. Important aspects are the allocation of adequate resources and the gathering of comprehensive and accurate data which can form the basis for more effective policies and which can be used to formulate benchmarks and indicators of progress. Another important aspect is the establishment of mechanisms to monitor and evaluate the human rights impact of anti-trafficking laws, policies and programmes. NGOs and grass root organisations play an important role in this process.

Recognition of human beings as subjects and holders of rights

Within a human rights approach human beings are seen as subjects and holders of rights, including the right to protection from criminal exploitation. This recognition implies the identification of the human rights claims of right-holders along with the corresponding human rights obligations of duty-bearers, as well as the identification of immediate, underlying and structural causes of human rights violations. Corresponding strategies, while respecting the vulnerable position of trafficked persons, aim for empowerment, participation and self-organisation of the people concerned.

In the context of trafficking this principle implies that:

- trafficked persons are seen as subjects accorded with rights. This includes the identification of minimum standards of treatment to which all trafficked persons are entitled as well as the identification of the corresponding responsibilities of State bodies;
- trafficked persons are seen as active actors seeking to change their situation as well as victims of a crime and a serious human rights violation who are entitled to effective remedies;
- assistance and support should go together with strategies which aim for empowerment, emancipation, social inclusion and participation of trafficked persons and other affected groups;
- strategies aim to remedy the underlying human rights abuses that create the conditions for trafficking.

Trafficked persons as holders of rights

A human rights approach opposes the instrumentalising of trafficked persons. The right to protection, assistance and redress of trafficked persons as victims of a serious human rights violation is considered a right in its own based on international human rights law, and is not made contingent upon the willingness or capacity of the trafficked person to co-operate in legal proceedings and/or to give evidence. Such recognition implies the identification of minimum standards of protection and assistance to which *all* trafficked persons are entitled, regardless of their assistance to or value for the prosecution. One of the basic elements of such a standard is the non-criminalization of trafficked persons for crimes due to their being trafficked.

Moreover, the absence of adequate protection and assistance may prevent trafficked persons from reporting to the authorities and may inadvertently expose trafficked persons to further trauma and the risk of reprisals by traffickers, including the risk of being re-trafficked. A neglect of victim issues is therefore not only not in accordance with international human rights law, which clearly provides that victims of human rights violations such as trafficking should be provided with access to adequate and appropriate remedies,²⁴³ but may also compromise the effective implementation of anti-trafficking legislation.

Recognition and protection of the rights of trafficked persons, on the other hand, provide an important incentive to trafficked persons to report to the authorities and act as witnesses and thus contribute significantly to achieving law enforcement objectives.

A critical component in the effective detection, investigation and prosecution of traffickers is the willingness of trafficked persons to assist in prosecutions. This willingness is strongly related to the protection of the safety and respect for the privacy of trafficked persons, the availability of assistance, their general treatment by the police and judicial authorities and the risk they incur of being deported and/or arrested, detained or prosecuted for offences arising out of their status of being trafficked, such as illegal border crossing, involvement in the sex industry or the use of false documents.

Of special importance is the issue of confidentiality of legal proceedings relating to trafficking in persons. The right to privacy is enshrined in international human rights law. Its protection is particularly important in trafficking situations where the continued safety of the trafficked person must be a paramount consideration.

Areas of victim assistance and protection include the right to pursue criminal, civil or other actions against traffickers/exploiters; procedural protections in court cases; availability of witness protection and legal assistance; access to fair and adequate remedies, including compensation; the provision of temporary and, if necessary, permanent residence status; access to safe and adequate shelter; the availability of social, psychological and health care on a voluntary and confidential basis; and their safe and, to the extent possible, voluntary return to their country of origin.²⁴⁴ Important to note is that the right to a safe return includes the right *not* to be repatriated if such repatriation would expose the trafficked person to a real risk of further human rights abuses, such as the risk of reprisals by the traffickers, of being re-trafficked, of oppressive or discriminatory measures from the authorities and/or of being subjected to inhuman or degrading treatment.

In the case of child victims of trafficking full account needs to be taken of their specific needs, rights and vulnerabilities, in accordance with the relevant conventions.²⁴⁵ Their best

²⁴³ See e.g. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly Resolution 40/34 of 29 November 1985; Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, adopted by General Assembly Resolution 52/86, 2 February 1998.

²⁴⁴ See for a comprehensive survey of the necessary safeguards: UNHCHR, *op. cit.*; and Global Alliance Against Trafficking in Women (GAATW), Foundation against Trafficking in Women (STV) and the International Human Rights Law Group (IHRIG), *Human Rights Standards for the Treatment of Trafficked Persons*, 1999 (<http://www.inet.co.th/org/gaatw/|SMR99.htm>).

²⁴⁵ Convention on the Rights of the Child; the Optional Protocol to the Convention of the Rights of the

interests should be considered paramount at all times.

Trafficked persons as subjects

Trafficked persons are seen as subjects and active actors seeking to change their situation. Strategies aim at giving them the power, capacities and access needed to take back control of their lives and towards facilitating their speaking up for their own rights. Participation of the groups affected is seen as conditional to the development of effective change strategies. Essential questions are how do they define the problem, what are their problems, motives and needs and in what do they want to be protected?

Prevention

Within a human rights based approach preventive measures should primarily aim at strengthening the position of the affected groups, in particular women and including persons engaged in the sex industry, and at providing them with the legal instruments to defend themselves against human rights abuses along with the right to be defended by the State against coercion and exploitation. Measures that can add to the marginalisation or stigmatisation of the concerned groups must be avoided as they can easily be at odds with the protection of human rights and may create or exacerbate existing situations that cause or contribute to trafficking in persons.

Preventive strategies are based on an analysis of the factors that increase vulnerability to trafficking. These include economic factors such as poverty, unemployment and indebtedness; social and cultural factors such as violence against women, gender discrimination and other forms of discrimination, both in countries of origin and destination; legal factors such as a lack of appropriate legislation and corruption in the public sector; and international factors such as the growing feminisation of labour migration on the one hand and the increasingly restrictive immigration policies of recipient countries on the other hand in combination with a demand for cheap, unprotected and exploitable migrant labour and services.

Participation

A human rights approach requires a high degree of participation and co-operation of all actors involved, including relevant sectors of civil society, in particular national human rights institutions and NGOs dealing with trafficked persons, as well as the relevant groups in the target industries for trafficking, including those being exploited, directly, through their advocates and through civil society organisations. An important aspect of participation is accessibility, including access to policymaking processes, information, resources and redress

Child on the Sale of Children, Child Prostitution and Child Pornography; and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. C 182 (1999).

or complaint mechanisms. Building links and partnerships between governmental agencies, relevant sectors of civil society and international organisations forms an essential part of the development, implementation and evaluation of anti-trafficking measures.

Integration of a gender and ethnic perspective

Although trafficking affects both men and women, it is not a gender neutral phenomenon. Women are affected in different ways than men in terms of the sectors into which they are trafficked, the forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are affected, trafficking should be placed in the perspective of gender inequality, traditional female roles, a gendered labour market and the worldwide feminisation of poverty and of labour migration. Also in other aspects, trafficking is not a “neutral” phenomenon, but is closely related to and generated by discriminatory practices and unequal power relations, including those based on race or ethnic background. The integration of a gender and ethnic perspective is, therefore, essential to the analysis of trafficking, the development of counter policies and the provision of protection and assistance.

In connection to the need to include a gender and ethnic perspective, it must be noted that current counter trafficking policies have tended to exclusively address the trafficking of women into the sex industry, thus neglecting trafficking affecting men and trafficking into other sectors. This has resulted in a serious lack of knowledge, legislation and appropriate services for men and women trafficked into other industries and for interventions to concentrate on social assistance rather than positively claimed rights. From a human rights perspective it is imperative to overcome these limitations.

Explanatory Paper 4

Trafficking in human beings, migration and informalisation of the workplace: Combating trafficking through protection of migrants' human rights

In the conclusions of the European Council Meeting in Tampere EU-Member States in regard to the establishment of an area of freedom security and justice stated that there is a requirement to develop common policies on asylum and migration. "These common policies must be based on the principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union" (Conclusion 3). The need for a "more efficient management of migration flows at all their stages" (Conclusion 22) as well as the necessity to secure "the rights of the victims (...) with special emphasis on the problems of women and children" (Conclusion 23) were expressed on this occasion.

The European Commission, in its Communication on immigration, integration and employment of June 2003 predicts the necessity of labour migration to the EU as part of a response to fill economic and demographic gaps and in order to meet the objectives of the Lisbon European Council of making the EU the most competitive and dynamic knowledge based economy in the world, but also to deal with growing irregular migration pressures on the EU and the alarming involvement of organised smuggling and trafficking crime networks. It also calls for comprehensive integration policies towards legally admitted migrants.

The European Thessaloniki Council (June 2003) stressed the need for exploring legal means for third country nationals to migrate to the Union, taking into account the reception capacity of the Member States, within the framework of enhanced co-operation with the countries of origin. It also called for an analysis of the labour markets in the EU, especially the relationship between the legal and illegal labour markets and the possibility of establishing quotas for entry of third country nationals. A set of measures relating to the control of irregular migration and the countering of traffickers and smugglers were also decided upon.

Most recently the European Commission, in its communication on Tampere June 2004, has reiterated the importance of a managed migration policy allowing regular migration, and an integrated approach to combating trafficking.

However, in reality States' and European policy responses to trafficking have tended to concentrate on identifying trafficking as a crime and to apprehend, disrupt and punish traffickers (Tampere Conclusion 48). Hence the Palermo Protocol provides for the mandatory criminalization of trafficking and the provision of penalties, with discretionary provision for assistance and protection of witnesses. European response has reflected this, most recently with the Directive for Short-Term Residence Permits, which has been

established within a migration framework and only applies to those who assist in criminal proceedings.

Yet to effectively combat trafficking, as the Brussels Declaration recognises,²⁴⁶ the whole spectrum from prevention to prosecution and protection needs to be addressed. Thus, the underlying factors, including the undeniable increasing demand for (labour) migration, must be addressed. Strategies that only focus on law enforcement are unlikely to be effective without addressing the requirement for migrant labour.

In parallel to this the exploitation that is the end result of trafficking, also needs to be addressed. The majority of trafficked persons work in the informal sectors, which with globalisation and trade deregularisation is growing. Policies to prevent exploitation in the workplace, both formal and informal, need to be addressed in combating trafficking.

Migration a solution for those seeking for a better life

There are estimated to be over 120 million migrant workers and family members in the world today,²⁴⁷ with an increase in recent years.²⁴⁸

The growing inequality of wealth within and between countries is increasing, leading more people to make the decision to migrate in order to seek a better life abroad. Instead of tackling xenophobic reactions to the issue of migration, many governments have sought political advantage by promoting more restrictive immigration policies. Such policies only reduce the opportunities for regular migration, thereby providing greater opportunities for traffickers to operate. With the increasing informalisation of the global economy there is greater flexibility of labour markets, both in movement and in deskilling of labour. Yet governments in developed countries are generally reluctant to publicly recognise their dependency on both skilled and unskilled migrant labour.

Ageing population in the EU – Increasing demand for migrant workers

Low fertility rates and longer life expectancy means that most developed countries have an ageing population. This will lead to labour shortages, skills shortages and an increased tax burden on the working population in order to support and provide social benefits to the wider

²⁴⁶ Brussels Declaration “The comprehensive European policy against human trafficking needs to address the entire trafficking chain, comprising countries of origin, transit and destination alike, targeting recruiters, people who transport the victims, exploiters, other intermediaries, clients, and beneficiaries. Also the development of a broader policy on migration management can offer a substantial contribution in reducing and preventing trafficking in human beings. Furthermore, root causes of trafficking, not least including unemployment, poverty, gender inequalities, including the status of girls, social and cultural attitudes, and the demand for sexual services, cheap labour and other forms of exploitation must continue to be at the forefront of the long-term efforts to fight human trafficking effectively. A global approach to trafficking must address all forms of exploitation, including sexual exploitation, labour exploitation, in particular child labour, and begging.”

²⁴⁷ ILO, *Facts on Migrant Labour*, Geneva, 2003.

²⁴⁸ The number of people residing outside their home country has increased from 105 million in 1985 to 175 million in 2000 (IOM, *World Migration*, Geneva, 2003, p. 7).

population. Old age dependency ratios, already at breaking point in many Organisation for Economic Co-operation and Development (OECD) countries at a ratio of five to one, will fall to three to one over the next 15 years.²⁴⁹ The proportion of adults over 60 in high-income countries is expected to increase from eight per cent to 19 per cent by 2050, while the number of children will drop by one third.²⁵⁰

Even if European governments rigorously promote policies to put more people into the job market (e.g. discouraging early retirement or improving child care facilities) this will not change the fact that their economies will become increasingly dependent on migrant workers in the coming years.

Increasing informalisation generates increased vulnerability

The demand for workers is not only in the skilled sector, but also in the unskilled and often unregulated sector. In the skilled sector shortages are more likely to be met through managed migration (quota entry systems for doctors, professionals, etc.). As skilled, regulated migrants, these workers are in a strong legal position to negotiate their terms and conditions, and unlikely to face exploitation. Governments are likely to welcome their managed migration as a means to meet skill shortages, with little risk of public perception of a drain on countries resources.

However the demand for workers in unskilled occupations such as domestic service, agriculture or entertainment sectors is increasingly likely to be met by migrant workers, as available national workers leave these usually unskilled and low paid occupations for work with better terms and conditions. The resulting shortage is thus filled by migrant workers. In these unskilled sectors, there is often little regulation or organisation and often occupations that are by their nature isolated and not conducive to organisation and collective negotiation (for example home workers or domestic workers who are isolated in the house).

Globalisation, and increasing deregularisation of the work force, increases this vulnerability of the unskilled migrant worker. Many previously formal sectors, such as construction, agriculture or transport are becoming increasingly informalised. Some sectors are moving to where labour conditions provide least protection for employees. Other sectors are becoming informal through the use of contractors or sub contractors. In all these scenarios organisation of workers and enforcement or claiming of labour standards is increasingly difficult. Labour is cheap, expendable and exploitable and so vulnerable to trafficking.

²⁴⁹ There are 32 developed states in the Organization for Economic Co-operation and Development (OECD) (IOM, *op. cit.*, p. 68).

²⁵⁰ United Nations Populations Division 2002, *World Population Aging 1950-2050*, New York. Quoted in McKinley, B., *International Migration and Development – The Potential for a Win-Win-Situation*, presentation at G77 Panel for Migration and Development, New York, 20 June 2003, p. 7.

Feminisation of migration

Traditionally women have had less access to education and skilled labour markets, and women's work has been down graded and labelled as 'unskilled.' With the opening up of traditional societies women have become more aware of opportunities and want to seek positive improvements to their situation, often through migration. At the same time it appears that shrinking traditional labour markets (for example with the break up of the CIS countries) have disproportionately affected employment opportunities for women.²⁵¹ The break down of traditional society roles has seen increasing numbers of women becoming responsible for the family income and seeking to maintain this through remittances from migration.²⁵² IOM estimates that 50% of migrants are female. Yet migration policies and opportunities are male orientated. Female migrants are less likely to have access to established migration routes with the accompanying knowledge and networks.

Women are more likely to migrate into unskilled, unregulated sectors, in particular sex work and services and domestic service. These two sectors are often not seen as 'work' and have minimal protection or regulation, with workers often physically isolated. As Anderson and O'Connell Davison²⁵³ note "(...) we need to recognise that trafficked/not free persons are very often exploited in contexts that are socially imagined to involve non-market relations, or that are viewed as occupying some twilight zone between market and non-market relations. Thus domestic work is not fully understood as 'work' when it takes place in private households (...). Meanwhile, 'prostitute' is often taken to refer to a category of person (a sub-person) rather than a category of 'worker', and as such cannot be imagined as a rights-holder. This returns us to the immensity of political problems that surround questions about 'trafficking', for there is no international consensus as to how, if at all, the various areas of social and economic life in which trafficking and related abuses occur should be regulated by the State, or whether market relations should apply in these areas".

Thus in particular women's inability to access regulated migration and their propensity to work in unregulated unskilled sectors leaves them more vulnerable to trafficking and exploitation. However when we talk about the need for gender sensitive migration policies, as a response to trafficking, we need to consider the extent to which States see the acceptance of informal sectors such as sex work and services, or domestic work, as part of the market economy that requires regulation, and protection.

²⁵¹ Scanlan, S., *Combating Trafficking through Migration*, cited in Taran, P., *Getting at the Roots. Stopping Exploitation of Migrant Workers by Organized Crime*, ILO, Paper, Turin, February 2002.

²⁵² "Odyssee nach Schengenland", in *Die Zeit*, No. 3, 8 January 2004. In the year 2001 the estimated amount of remittances of regular and undocumented migrants to the developing countries was 60 billions US \$, 20% more than the development aid of the developed countries.

²⁵³ Anderson, B. and J. O'Connell Davidson, *Trafficking. A Demand Led Problem? A Multi-Country Pilot Study*, IOM, Geneva, 2003, p. 54.

Managed migration as a contribution to economic and social development

The demand for migrant workers will be filled by irregular migration unless policy makers recognise that it is in their national interest to facilitate and manage this process. Countries of destination benefit from the contribution migrants make to the economy through their work, their innovation and their tax contributions. If channels for regular migration were opened up, migrants would not have to put themselves in the hands of smugglers and traffickers and would also be in a better position to defend their labour rights in the receiving country. Governments in countries of origin could also better manage the migration process in order to make sure it contributes to, rather than undermines, their own country's economic and social development.

Uncontrolled migration can have a negative impact on developing countries, particularly those that already have significant problems in terms of education, adult literacy, nutrition, child mortality and loss of social cohesion and social relationships. These countries can ill afford to lose their most skilled professionals to satisfy recruitment shortages in developed countries and must try to ensure that migration is planned and contributes to sustainable development.

Jointly developed migration programmes between countries of origin and destination can maximise the positive impact of migration on development while limiting depletion of skilled labour in countries of origin ("brain drain"). Such programmes would include the option of short-term migration and of return to the country of origin. They may also include training to enhance the migrants' skills base while abroad and to facilitate the sharing of information, contacts and expertise with local staff when they return. They may also contain agreements on how to maximise the impact of remittances in order to promote long term development in the country of origin.

Managed migration policies also need to consider how to manage long term migration for countries of destination. Short-term migration can often be unsatisfactory, in removing workers who have developed appropriate skills and settled in countries of destination. For both the migrant and employer, countries should recognise the possibility for long term migration for those who have settled in countries of destination.

The effect of restrictive migration policies on trafficking

As noted above, States policies in promoting immigration controls and reducing opportunities for regular migration have not been effective in preventing migration. Rather they have had the effect of creating a market for irregular migration, often as organised serious crime, through trafficking and smuggling of people. Fewer opportunities for legal migration, in combination with strong push-pull factors, have led people to use ever desperate means to migrate and to being vulnerable to both smuggling and trafficking.

It is important to understand the difference between smuggling and trafficking, although on the ground they can often be difficult to distinguish and smuggling can change into trafficking. In accordance with the UN Trafficking Protocol trafficking goes beyond the simple facilitation of illegal border crossing that occurs with smuggling, to involve human

rights abuses (such as forced labour, exploitation, with the use of threats, force, etc.). As such trafficked persons are victims of crime.

In his symposium “Getting at the Roots”²⁵⁴ Patrick Taran examines vulnerability to trafficking rather than smuggling. Research seems to show that there is a greater vulnerability to trafficking where there is lack of access to regularized migration routes, lack of experience of migration between countries and lack of regulation of the labour market. Thus in Europe a large proportion of trafficking is reported from Eastern European Countries such as Moldova, Romania and Albania. Prior to the opening of borders to accession countries large numbers of trafficked persons were reported from Poland, Ukraine and similar countries. With opportunities for more formalised migration from these countries numbers of trafficked persons from these countries appear to have decreased.²⁵⁵

As the ILO states “ultimately labour trafficking would not take place if job seekers had more freedom of geographical movement and freedom of access to employment. Smuggling occurs because borders have become barriers between job seekers and offers. Trafficking occurs not only when borders are barriers to labour supplies meeting demands, but when no knowledge is available about proper migration channels, when employment is itself illegal and/or underground, and where conditions of work much worse than legal minimums are tolerated or ignored”.²⁵⁶

The need for transparent regulated migration policies

Legal migration schemes can also increase vulnerability to trafficking and forced labour when restrictive conditions are attached. For example, Israel provides a visa scheme for migrant workers. It is illegal to charge migrant workers for job placement in Israel and the work permit is bound to a specific employer. The reality of this scheme is that most workers pay between \$2,000 and \$15,000 to employment agencies for a permit. They are bound to remain with their employer, and so cannot complain about exploitative labour practice. If they leave the employment, they are deported. An estimated 90% of employers in agriculture and construction retain the employees’ passport.²⁵⁷ However, the visa requires the worker to stay with the original employer. Similar provisions in the Gulf States effectively bind domestic workers to their employers.

Legal migration schemes need to be open and accessible to all and avoid situations of dependency. Agencies facilitating migration should be regulated. Visas should not tie an employee to a particular employer or type of employment. Fees for providing work permits or visas should be clear and reasonable. Travel, visa and work permit documents should remain the property of the employee and legislation should make retention of these documents by others illegal.

Safe migration needs to be promoted in origin countries. For many migration is a survival

²⁵⁴ Taran, P., *op. cit.*

²⁵⁵ Scanlan, S., *op. cit.*

²⁵⁶ ILO, *Stopping Forced Labour: Global Report*, Geneva, 2001.

²⁵⁷ Ka. LaOved, *Tel Aviv*, Presentation to Stability Pact, Belgrade, 23.03.04.

strategy, for others it is an opportunity to improve their lives, for still others it is part of traditional migratory routes (for example young people leaving home to seek jobs). In this context, awareness raising campaigns of the dangers of migration and trafficking have limited impact. Trafficking and exploitation are less likely to occur where established migration routes exist, with accompanying knowledge and contacts. States should therefore promote information about safe migration, for example through education, youth exchange programmes, clear processes to facilitate migration and regulated employment/travel agencies.

Trafficking isn't just about border control, labour standards need to be enforced

Policy responses to trafficking have tended to concentrate on the movement aspects of the crime. However, the true abuses that occur in trafficking are not the movement across borders, but the exploitative work conditions that trafficked person end up in. Thus while addressing the issue of managed migration can attack vulnerability to trafficking and the very clear opportunities for trafficking that these policies create, the exploitation of abusive labour practices also need to be tackled by regulation of sectors into which people are vulnerable to being trafficked.

Although illegal migrants are more likely to be vulnerable to trafficking and face more severe exploitation, all irregular migrant workers, even if they have initially willingly or legally crossed borders, are vulnerable to forced labour exploitation. ILO research initial findings are showing vulnerability to forced labour for persons trafficked within the Balkans, the CIS and Germany. They estimate as many as 20% of irregular migrants in the CIS has at some stage been locked up or exposed to some form of physical constraint.

The effect of the increasingly globalised economy is that both employment and labour, can and will easily move with market forces. While some sectors are tied to a particular location because of demand factors, others will move to locations that provide the best economic opportunity. Often this will be where there is least regulation. In particular in the unskilled sector the migrant worker will follow: for many migrant workers their principle skill, that which makes them attractive to employers or indeed enables them to survive, is their ability to migrate to labour markets. Trafficking is most common in the unregulated sector.

In protecting migrant labour from trafficking, therefore, it is not only necessary to enable safe, formalised migration. Accompanying this must be the enforcement of labour standards, with supporting inspections. This is most important in the irregular, unorganised or informal sectors, such as domestic work, in which work, and abuses are often hidden.

Support of labour standards need to occur on a multi-dimensional level. Organisation of workers should be encouraged. Trafficked persons are often isolated, with limited access to either their own peer groups (for example in the case of domestic workers), or external groups (for example Chinese trafficked or smuggled migrants). Such isolation makes organisation difficult and exploitation easier. Through organisation workers can become aware of the rights they are entitled to and seek to claim them.

Both formal organisation, for example through unionisation, and informal organisation, e.g. through church, community or outreach group, are important. Many European trade unions have been slow to organise in the informal sector or for unregulated migrant workers. In other countries, unions are accessible to informal and migrant workers.²⁵⁸ European unions are now beginning to look at these issues.²⁵⁹ Access and organisation of trafficked persons at informal levels is also important. Often this can occur through community or church based links.²⁶⁰

Enforcement of labour standards is increasingly difficult to ensure. Increasing movement of labour and use of contractors and sub-contractors make the labour and supply chain harder to regulate. Policies to encourage companies to take responsibility for their supply chain throughout should be developed. However it remains the responsibility of States to ratify and ensure appropriate labour standards, including the ILO core standards.

²⁵⁸ For example, the General Nepalese Federation of Trade Unions (GEFONT) has 15 affiliated unions in sectors as diverse as agriculture, trekking and independent workers. It has three levels of membership – paid up, associate and signature, creating a total membership of over 670,000.

²⁵⁹ For example German unions are working closely with Polish counterparts in the construction industry to provide advice to Polish workers on rights before they migrate, Dutch unions have opened their membership to sex workers and migrant workers to help them establish their rights, and in the UK the British collective of sex workers has become affiliated to the Trade Unions Congress (TUC).

²⁶⁰ In the UK, Kalaayan, an organisation of migrant domestic workers, offers a drop in centre facility. Migrant domestic workers from the Philippines come into contact from a variety of sources, the church, local citizen advice bureaus, solicitors referrals, information given by the foreign office to all new migrant arrival, or contacts from other migrant domestics to name but a few. Once at the centre Kalaayan offers a variety of services including legal advice, and advocate organisation through unionisation. In the Philippines, Visayan Forum Foundation makes contact with domestic workers through outreach in the park on Sunday, where most domestic workers congregate. Former migrant domestic workers carry out the majority of initial outreach work.

Explanatory Paper 5

National Referral Mechanisms

Definition of a National Referral Mechanism²⁶¹

A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons and co-ordinate their efforts in a strategic partnership with civil society.

The basic aims of a NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policies and procedures on a broad range of victim related issues such as residence and repatriation regulations, victim compensation and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met.

The structure of a NRM will vary in each country. However, NRMs should be designed to formalize co-operation among government agencies and non-governmental groups dealing with trafficked persons. A NRM usually includes a national co-ordinator, who is often a high-level government official, and a roundtable made up of senior representatives of government agencies and civil society who develop recommendations for national policies and procedures regarding victims of trafficking. NRMs can include ad hoc working groups that deal with specific issues relating to victims. NRMs are likely to be most effective if they are founded on a formal co-operation agreement among the participants, for example a memorandum of understanding which sets out the specific role and duties of each participant.

An initial country assessment usually is the first step in establishing a NRM. Such an assessment can help determine which agencies and civil society organisations are the key stakeholders in anti trafficking activities, which of them should participate in an NRM, what structure might be most effective for the NRM in a particular country and what issues require most attention. The assessment may be initiated and carried out either by a government agency or a non-governmental organisation. Based on the results of the assessment, an appropriate NRM structure, membership and programme of action can be designed and implemented. If a country already has a national council against trafficking or another body or focal point dedicated to combating trafficking this should also be taken into account when establishing a NRM.

²⁶¹ The definition of the NRM has been extracted from: Kroeger, T. and J. Malkoc, B.H. Uhl, *National Referral Mechanism. Joining the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, Warsaw, 2004, pp. 15-16.

Effective NRMs require good co-operation between government agencies and civil society. Often, victims of trafficking are first identified by law-enforcement personnel, but it is civil society organisations that provide shelter and other services to the victims. Thus, an NRM can be an essential structure for referring trafficked persons. NRMs should develop a dynamic process to ensure participation of civil society.

Internal monitoring, evaluation, and feedback should be a continuing part of NRM activities. Achieving these ends requires the involvement of a wide range of government agencies and non-governmental groups. A NRM should therefore seek to be as inclusive as possible in its membership and participation. Establishing NRMs in countries of destination, transit and origin can help ensure a comprehensive and inclusive system of support targeted at, and accessible to, all trafficked persons.

A NRM should incorporate:

- guidance on how to identify and appropriately treat trafficked persons while respecting their rights and giving them power over decisions that affect their lives;
- a system to refer trafficked persons to specialised agencies offering shelter and protection from physical and psychological harm, as well as support services. Such support services entail medical, social, and psychological support; legal services; assistance in acquiring identification documents; as well as the facilitation of voluntary repatriation or resettlement;
- the establishment of appropriate officially binding mechanisms designed to harmonize victim assistance with investigative and crime prosecution efforts;
- an institutional anti-trafficking framework of multidisciplinary and cross sector participation that enables an appropriate response to the complex nature of human trafficking and allows its monitoring and evaluation.

Responsibilities and competencies of all actors involved in the NRM should be defined in such a way as to ensure protection and promotion of the human rights of all trafficked persons in all circumstances. When dealing with victims of trafficking it is important to remember that all persons within the jurisdiction of a State are entitled to the protection of their human rights regardless of their background, nationality, activities they may have been involved in or their willingness to co-operate with law enforcement authorities.

NRMs are not rigid structures, but flexible mechanisms that are tailor made to fit each country's patterns of trafficking cases and its social, political, economic and legal environment. That is why an NRM is not built from a single general blueprint, but is instead founded on a careful assessment of country specific needs and conditions.

Explanatory Paper 6

Establishment of a European Anti-Trafficking Network: A model

In order to enhance co-operation on the European level and to facilitate contacts as well as exchange of information and experience between Member States and the Commission the Experts Group proposes the establishment of a European Anti-trafficking Network. Such Network should build on the cooperative structures established on national level, in particular National Referral Mechanisms, and should cover prevention, victim protection and assistance as well as law enforcement and police and judicial co-operation. A Council Decision setting up such a Network could be drafted taking into account the example of the European Crime Prevention Network (EUCPN).²⁶²

²⁶² Council Decision of 28 May 2001 setting up a European Crime Prevention Network, OJ L 154, 8.6.2001, p. 1.

DRAFT COUNCIL DECISION...../.....JHA

of

On the setting up of a European Anti Trafficking Network

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1), 31 and 34(2)(c) thereof,

Having regard to the initiative of...,

Having regard to the Opinion of the European Parliament,

Whereas:

(...)

HAS DECIDED AS FOLLOWS:

Article 1

1. A European Anti Trafficking Network, hereinafter referred to as the "Network" is hereby set up.
2. Network national representatives and a Secretariat shall ensure the proper functioning of the Network in accordance with this Decision.
3. Measures against trafficking in human beings cover all measures that are intended to or contributing to reduce and combat trafficking in human beings. It include work by government competent authorities, criminal justice and law enforcement agencies as well as other public agencies concerned, regional and local authorities, international organisations, the voluntary and non governmental sector, academia, and the public supported by the media. The work includes prevention of trafficking in human beings, support and assistance to victims of trafficking and law enforcement and judicial co-operation.

Article 2

1. The Network shall consist of contact points designated by each Member State.
2. Each Member State shall designate not more than three contact points.
3. These contact points shall include at least one representative from the national authorities competent for the prevention of and the fight against trafficking in human beings, preferably the Governmental Coordinator chairing the National Round Table, and one representative from non-governmental organisations involved in the assistance and protection of trafficked persons.
4. Researchers, academics or representatives of the voluntary and non-governmental sector specializing in this field, as well as other actors involved in work against trafficking in human beings, may be designated as contact points. Their respective status shall be clarified in accordance with national arrangements. In all instances Member States should ensure that a broad spectrum of actors involved in work against trafficking in human beings are involved through the appointed contact points.
5. The Commission shall also designate a contact point. Europol and Eurojust are associated with the work in matters with which they are concerned. Other relevant bodies may be associated with the work.
6. Each Member State shall ensure that its contact points have sufficient knowledge of at least one other official language of the Union to enable them to communicate with the contact points in the other Member States.

Article 3

1. The Network shall contribute to developing the various aspects of working against trafficking in human beings at Union level and shall support anti trafficking activities at local and national level.
2. On the basis of the Union's acquis, so far developed in the field of trafficking in human beings, and the Brussels Declaration taken note of by the Council on 8 May 2002, the Network shall in particular:
 - (a) facilitate co-operation, contacts and exchanges of information and experience between Member States and between international, national and non-governmental organisations, as well as between Member States and the Commission, other constituent entities of the Council of the EU and other groups of experts and networks specialising in work against trafficking in human beings;
 - (b) develop a set of minimum standards and benchmarks in the fields referred to in Article 1 to be endorsed by the Council;
 - (c) prepare and implement regular rounds of evaluation, if necessary including visits, of

- the Member States' prevention and fight against trafficking in human beings as referred to in Article 1(3);
- (d) in co-operation with the National Rapporteurs and the European Rapporteur on Trafficking in Human Beings, where applicable, collect and analyse information on existing anti-trafficking activities, the evaluation thereof, including human rights impact assessments, and best practices, and collect and analyse existing data on criminality and on its development in the Member States, in order to contribute to considerations on future national and European measures;
 - (e) contribute to identifying and developing the main areas for research and training on trafficking in human beings;
 - (f) organise conferences, seminars, meetings and other activities designed to promote consideration of specific matters relating to trafficking in human beings and to disseminate the results thereof;
 - (g) organise activities that stimulate and improve the exchange of experiences and best practices;
 - (h) develop co-operation with candidate and applicant countries, third countries and international organisations and bodies;
 - (i) provide its expertise to the Council and to the Commission, where necessary and upon request, with a view to assisting them in all matters concerning trafficking in human beings;
 - (j) report to the Council on its activities each year, through the competent working bodies, and indicate the areas for priority action in its work programme for the following year. The Council shall take note of and endorse the report and forward it to the European Parliament.

Article 4

To accomplish its tasks, the Network shall:

- (a) favour a multidisciplinary and human rights based approach;
- (b) be in close contact, through the contact points, with anti-trafficking bodies, local authorities, local partnerships and civil society as well as with research institutions and non-governmental organisations in the Member States;
- (c) set up and operate a website, containing its regular reports and any other useful information, particularly a compendium of best practices and an overview of relevant reports and materials;
- (d) endeavour to use and promote the results of projects, relevant for the prevention of

and fighting of trafficking in human beings, funded through Union programmes.

Article 5

1. The Network shall hold its first meeting on...
2. The Network shall meet at least once every six months on the invitation of the Presidency of the Council at that time.
3. In conjunction with meetings of the Network, the Network National representatives, made up of one representative from each Member State designated in accordance with Article 2(3), shall meet to decide on the matters referred to under Article 5(4).
4. The Network national representatives shall decide on the Network's annual programme including a financial plan. They shall, in particular, determine:
 - the priority fields to be examined;
 - the main specific actions to be carried out (seminars and conferences, studies and research, training programmes...);
 - the structure of the website.

They shall also draw up the annual report on the activities of the Network.

The decisions of the Network national representatives shall be adopted by unanimity.

The Network national representatives' meeting shall be chaired by the representative of the Member State, which is holding the Presidency of the Council at the time. They shall draw up their Rules of Procedure, to be adopted by unanimity.

5. The Secretariat for the Network shall be provided by the Commission.
6. The Network Secretariat and its activities shall be financed from the general budget of the European Union.
7. The Secretariat shall be responsible for drafting the Network's annual programme and the annual report on the Network's activities. It shall carry out everyday Network activities involving collating, analysing and disseminating information in liaison with the national contact points. It shall assist the Network members in devising, formulating and implementing projects. It shall establish and maintain the website of the Network. When performing its functions the Secretariat shall work closely together with the Network National representatives.

Article 6

The Council shall evaluate the activities of the Network in the three years following the adoption of this Decision.

Article 7

This Decision shall take effect on the day of its adoption.

Done at Brussels,

For the Council
The President

Explanatory Paper 7

Balancing data protection, human rights concerns and the interest of law enforcement²⁶³

The use of “restricted notices”

The practice of so called ‘restricted notices’ protects endangered trafficked persons. Over and above general data protection regulations ‘restricted notices’ guarantee that data are not transmitted to external third parties.

This practice entails that inside State authorities the data of the endangered person are used, but marked only with an anonymous number the identity of which is known only to a specialist official who treats it as classified information. Where applications are made by external third parties or other authorities the specialist officer informs the relevant police or witness protection office. They will then examine the compatibility of the application with the interest of protecting the endangered person.²⁶⁴

Transmission of data between criminal prosecution authorities and counselling agencies

Co-operation agreements must include regulations guaranteeing that the identity of the trafficked person will not be forwarded by the criminal prosecution authorities to counselling agencies without the trafficked person’s agreement. In the same way counselling agencies must not be pressured to divulge the identity of their clients, or other information relating to them, to the criminal prosecution authorities without the proper authority to do so.

Transmission of data in the Schengen Information System (SIS)

The SIS has the capacity to store personal data on persons convicted or ‘suspected’ of involvement in offences.²⁶⁵ The lack of control over the data by trafficked persons finding herself/himself in the system is caused by the *de facto* practical obstacles in contesting the storage or accuracy of her personal data on the SIS.

²⁶³ This section is a revised version of the Chapter “Fundamental Principles on Data Protection” in Kroeger, T. and J. Malkoc, B.H. Uhl, *National Referral Mechanism. Joining the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, Warsaw, 2004, p. 93.

²⁶⁴ On this issue see § 4 of the German Law for Harmonising Witness Data Protection – Use of data of Persons in Police Witness Protection programmes.

²⁶⁵ In accordance with limitations set out in Art. 102 of the Schengen Convention, 1990.

It is possible to obtain access to data stored on the SIS, however, this may only be done upon request and in accordance with the law of the Member State in which the claim is raised.²⁶⁶ Member States are given wide discretion in assessing the need for such access. This proves a practical impossibility for a trafficked person already repatriated to her country of origin and often unaware that her/his data is stored on the SIS. Also, deletion of factually inaccurate or unlawfully stored data is possible on appeal before the relevant court or authority in a Member State, again providing only a legal possibility of appeal, but not a practical one where the trafficked person has already been repatriated or deported.²⁶⁷

Information on an actual or alleged trafficked person could lead to a possible refusal of legitimate entry, residence or employment in the EU in the future. Without a real and not just technical possibility of appeal against the information the trafficked person may in this regard be exposed to long term consequences, especially in light of the fact that the length of time for which data are stored may vary anywhere from 1 year to 10 years.

In constructing the new SIS II system and to accommodate the information flowing from acceding States, consideration should be given to the drafting of a provision which would specifically exclude alleged and actual trafficked persons from the SIS database. At the very least the Schengen Convention should impose a specific obligation on Member States to notify a trafficked person upon request if her/his data are stored in the SIS, putting at least some of the control over the data back into the hands of the trafficked person.

Data protection and the media

While not integral to co-operation agreements data protection in regard to the media is extremely important. Cases of human trafficking arouse avid media interest. This demands careful evaluation of press freedom on the one hand and the right of the victim to control over their own personal data on the other.

The victim/witness is regularly endangered and this call for the principles observance of the following rules:

- data such as the personal history, name and photograph of the affected person may not be published;
- the media must not publish details that allow the identity of the trafficked person to be deduced and must avoid any reporting that endangers the trafficked person (such as information as to where the trafficked person is staying, etc.).

Data protection in contact with institutions in the country of origin

In all cases of contact with institutions from the trafficked person's country of origin (for example embassies for the purpose of acquiring new documents or with the police or public prosecutors in the course of bilateral or international criminal prosecution treaties) it must be borne in

²⁶⁶ Art. 109 of the Schengen Convention, 1990.

²⁶⁷ Art. 112 and 113 of the Schengen Convention, 1990.

mind that there is not always a guarantee that information will not be forwarded (including to associates of the perpetrators) to the country of origin.

Moreover, making it known that a person has been the victim of human trafficking and that they have testified as a witness can have serious consequences for the victim, for example:

- stigmatisation;
- endangerment from perpetrators in their homeland;
- criminal prosecution of the victim in the countries where prostitution is illegal.

It is, therefore, important to be sure that the country of origin in question guarantees an appropriate level of protection in processing of personal data.

Protection of the confidentiality of the client counsellor relationship

An important component in data protection legislation is the trafficked person's trust in the discretion of expert counsellors. This can lead to conflicts, especially between counsellors and the police. While the priority for the counsellor is the stabilisation of the trafficked person the mandate of the police is criminal prosecution. This may result in the police attempting to access information given by the client in confidence via counsellors. Regulations are needed to protect counsellors and the affected persons from any obligation to pass on information against the will of the trafficked person.

In order to access help and support the trafficked person must have a protected space in which they can talk about their experiences. The particular situation of trafficked persons makes the establishment of a relationship of trust extremely difficult, since it is precisely through the abuse of trust that the human trafficker operates.

Given these experiences, and threats from the perpetrators, trafficked persons are highly mistrustful. They are often traumatized and fear reprisals, whether against themselves or their family members, if they trust other people and divulge information about perpetrators. In addition, they fear the consequences of revealing their own illegal status. However, if the counsellor is to be able to assess the client's situation and offer the necessary help, the counsellor must have the full details of the client's story. This means that often the presumed trafficked person will first have to admit to punishable offences (illegal entry to the country, illegal work). This is a pre-requisite for explaining resolutions to the client for the situation into which she/he has been forced, as well as the possibility of testifying against the perpetrators.

Psychological stabilization can only be successful where the victim has been fully able to recount her/his story including highly personal details (for example: prostitution, rape). Given her/his fear of stigmatisation this may happen in the counselling agency where the victim trusts the discretion of the counsellor.

In order for protection measures to be effective and tailored to meet the trafficked persons' needs, the client may need to give details of the perpetrators and the threats they received.

All these points require a special relationship of trust between the counsellor and the client. Without the assurance of confidentiality the client is left only with a choice between accepting the consequences of telling her/his story or going without help. In revealing the details of her/his story the client will fear the result of the illegal status becoming known, consequent arrest and expulsion and the reprisals threatened by the perpetrators. Faced with this predicament, trafficked persons remain silent as a rule or else recount their experiences only very selectively.

Experience has shown repeatedly that in these situations the full range of support cannot be made available and from the perspective of the authorities responsible for criminal prosecution important witnesses are lost.

This can be avoided where the affected persons alone are in charge of the divulgence of their information, in order to give them control over the possible consequences, especially the degree to which they and their families in the country of origin are endangered.

This requires counselling professionals to have a duty of confidentiality and a right to refuse to give evidence.

Explanatory Paper 8

Training: Recommended types of training

Training needs

At present, there is a range of training material developed and published at the international level through the work of UN Development Programme (UNDP) Romania and the Stability Pact via the International Centre for Migration Police Development (ICMPD) in Vienna.²⁶⁸ However comprehensive these materials are they focus mainly on law enforcement and partly on the justice systems (awareness raising). Further, while in the law enforcement part there is a clear distinction between generalist (basic) and specialist levels, there is no such distinction as far as the judiciary is concerned, where these levels should also be recognised – for instance in child protection matters.

Another important aspect is training of all other actors in combating trafficking, such as migration, frontier and consular personnel, labour inspection personnel, international peacekeepers, IOs, IGOs, NGOs, etc. That is the core of the so-called “inter-agency” or “multidisciplinary” approach, which is the direction in which training efforts should be pointed.

In particular the following needs can be identified:

- Training for multi-agency and national anti-trafficking co-ordination teams at the policy level with a view to fostering the development and implementation of comprehensive, coordinated and multi-disciplinary national counter trafficking strategies and action plans and the establishment and support of comprehensive national mechanisms for the identification, referral and assistance of victims.²⁶⁹ There must also be specific training modules focused on child trafficking;
- Counter-trafficking operations training and the appropriate use/management of proactive intelligence led investigative tactics;
- Joint training of all actors involved in the specific measures concerned; i.e. for police and prosecutors in anti-trafficking criminal investigations techniques; for prosecutors and judges on the court procedures; or for labour officials and police officers to ensure the monitoring and regulation of private employment agencies as well as the detection of forced labour exploitation;
- Special training programmes on child trafficking for law enforcement personnel and other concerned agencies dealing with trafficked children. Such training should focus on the specific rights and needs of child victims.

²⁶⁸See: <http://www.icmpd.org>

²⁶⁹ See National Referral Mechanism in Chapter 3.7.1 and Explanatory Paper 5.

Already developed materials (and adapted as necessary) should be used effectively and supplemented by new ones that should fill the gaps. The next logical step is delivering that training through a series of national and international seminars and workshops, but also through study visits, exchange of officials, peer training, etc. In all of these the multiplier effect (train the trainer) should be pursued whenever possible.

Training for law enforcement officials

Training for law enforcement officials should aim at strengthening the capacities of law enforcement officers to contribute to the countering of human trafficking (prevent and/or detect cases of trafficking, adequately protect and support trafficked persons, and carry out effective anti-trafficking investigations in line with human rights principles).

The training is needed at the non-specialist level as well as the special investigators level and should aim at enhancing the overall law enforcement response to the crime of trafficking.

The *generalist level training* should target all non-specialist police (including border police and customs officials) of all ranks. The objective of this training is to release the potential of non-specialist police (front-line and recruit police officers) to:

- provide the initial response to trafficked persons: better identification and treatment/protection of victims;
 - contribute to anti-trafficking investigations: low-level counter-trafficking intelligence gathering, in support of the special investigators' tasks;
 - enhance co-operation with NGOs.
- The *specialist level training* should target specialised counter-trafficking investigators that hold specific responsibility for the crime (including prosecutors, as appropriate) and aim to:
- develop the capacity and investigative skills of specialist anti-trafficking investigators;
 - enhance co-operation of specialised investigators in the region according to a regional investigative standard.

These two levels of training are complementary and mutually reinforcing. Law enforcement training institutes should be the locus of institutionalised anti trafficking training as part of the general police training curriculum.

Training for border guards, customs officials and consular staff

In addition to prevention of trafficking through border controls – with due respect to the freedom of movement of persons in line with relevant national and international legislation – border guards have a role in monitoring and undertaking surveillance of suspected traffickers and in identifying missing persons (if recorded in the SIS) and possibly trafficked persons. Particularly with an eye to the identification and appropriate referral of missing and possibly trafficked persons they should be involved in training to support the implementation of National Referral Mechanisms (NRMs). Additionally it could be considered that border

guards hand out leaflets with pan-European hotline numbers to all passengers, including possibly trafficked persons. Specific attention needs to be paid to the identification and proper treatment and referral of possibly trafficked children.

Training for labour inspectors and other non-traditional actors

Particular attention should be paid to the training of labour inspectors and other actors not traditionally associated with counter trafficking measures; such as health and safety inspectors, trade unionists, employers and others. Training should sensitise them to trafficking issues and aid identification of trafficked persons in informal and formal work place sectors.

Training for judges, prosecutors and attorneys

In addition to the general awareness raising part training for this target group should cover: effective implementation of national anti-trafficking legislation, the rights and needs of victims of trafficking during investigation and court procedures, victim protection and assistance during prosecution and trial, specialist investigative techniques, specific aspects of criminal proceedings on trafficking cases, and international judicial co-operation.

General training of international military and police peacekeepers and related civilian contractors

Special anti-trafficking measures as well as training schemes must be in place for international military and police peacekeepers and related civilian contractors. These measures should cover:

- introduction of codes of conduct in the training of employees of international organisations in conflict or post-conflict areas to reduce the demand for cheap and exploitable labour;
- provision of appropriate training on anti-trafficking policies and practices;
- designation of women as formal representatives at peace discussions in post-conflict situations and including them in the new governments;
- known human rights abusers and organised criminals should not be part of governments.

Special training for those who deal with trafficked children

Law enforcement and other officials, NGOs, social personnel and any person that could come in touch or deal with (possible) trafficked children need specific training on the needs and rights of children. On the general level agencies should be trained in identification and referral of possibly trafficked children, child sensitive methods of working and the appropriate standards of care. On the specialist those who deal with children in the context of the criminal justice systems should be trained in the specific procedures that apply to child victims and witnesses, apart from training in child friendly methods of working. Training needs to be given by appropriate experts (i.e. not necessarily State entities) and should be focused not only on the needs, but also on the rights of the child victims of trafficking.

Explanatory Paper 9

Identification of trafficked persons: Channels for identification

Trafficked persons may be identified by government actors and law enforcement as well as by NGOs, local social-welfare organisations, labour unions labour inspections and other labour related agencies, particularly if they are trained and if a system of referral is in place. Moreover, they may be identified by civil society actors, such as colleagues, clients, neighbours and other citizens who might come into contact with trafficked persons. In order to build confidence and trust and to establish contacts with presumed trafficked persons outreach work, drop-in centres and hotlines should be developed within support systems.

Outreach work and drop-in centres

Outreach work is being carried out through so-called fieldwork or street work,²⁷⁰ often for the purpose of providing health education to persons active in the sex industry.²⁷¹ Other forms of street work may be targeted at unaccompanied children.

Outreach work is a crucial element in supporting presumed trafficked persons in the environment in which they are forced to work. A respectful and empathetic approach by social workers, combined with basic information on health promotion and support structures can build trust between the target groups and professionals.²⁷² An effective way of building trust is working with peer educators: that is persons coming from the same group as the target group. This can empower a presumed trafficked person to enter the support structure. Furthermore, outreach work can sometimes enable NGOs to observe and map the phenomenon of trafficking and to conduct needs analyses for its victims.²⁷³

Apart from the existing ones, which are mostly linked to the sex industry, new forms of outreach work need to be developed by unions and other labour related organisations targeted at the specific sectors in which trafficking is likely to take place, such as construction sites, agricultural labour and the garment industry.

²⁷⁰ See for a more extensive description Explanatory Paper 10.

²⁷¹ See EUROPAP (<http://www.europap.net/>) and TAMPEP (<http://www.tampep.com>).

²⁷² This experience is shared by numerous non-governmental organisations in North America, and in Western and Central Europe. One example can be viewed in *Dortmunder Mitternachtsmission*, Germany (<http://standort-dortmund.de/mitternachtsmission>).

²⁷³ Regione Emilia-Romagna, Associazione On the Road, *Article 18: Protection of Victims of Trafficking and the Fight against Crime (Italy and the European Scenarios). Research Report*, On the Road Edizioni, Martinsicuro, 2002, p. 248.

In addition to outreach work, drop-in centres should be established as part of the identification cycle. That is easily accessible centres in the environments where trafficked persons may work and where people, if they wish so anonymously, may walk in for information, assistance and other services. Drop-in centres could be particularly important for domestic workers, which may not be reached through forms of outreach work, due to their isolated position as workers in private households.

Hotlines

Hotline²⁷⁴ numbers for trafficked persons and/or for victims of different crimes, including trafficking in human beings, should be implemented through media campaigns. Different types of materials (e.g. leaflets, stickers, info guides, etc.) with basic information on support structures and hotline numbers can be distributed during outreach work, in means of transportation and in potential venues attended by trafficked persons, but also by colleagues and the general public that – as previously underlined – can play an important role in the process of identification and referral.

Specific tailor made information materials should be developed for the different sectors in which trafficking is likely to take place. At present the experience with hotlines is mostly limited to trafficking in the sex industry, it is not yet clear whether they also will be successful in reaching trafficked persons in other sectors. It is also not yet clear whether a general hotline – addressing trafficking in all sectors – would do or whether it would be more effective to establish hotlines per sector. For example, the stigma on prostitution could prevent trafficked persons in other sectors to make use of general hotlines.

Indicators and questionnaires

Currently, in most countries, specific tools for the identification of trafficked persons are not in place. It is recommended that the relevant agencies develop, implement and share lists of indicators and proper instruments (e.g. questionnaires, information flyers for specific groups of professionals, etc.) to promptly identify trafficked persons or persons at risk.

Identification of trafficked persons by law enforcement and labour authorities

In 2002, research on victim support programmes in South Eastern Europe highlighted that only a third of all women presumed to be trafficked for the sex industry were identified by law enforcement agencies. Moreover, the majority of trafficked women were not referred to support programmes and shelters but were sent to detention centres and prisons in order to be subsequently deported.²⁷⁵

²⁷⁴ See for a more extensive description Explanatory Paper 10.

²⁷⁵ Limanowska, B., *Trafficking in Human Beings in South-eastern Europe: Current situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova, Romania*, ODIHR/UNICEF/UNOHCHC, 2002, p. 152.

There are numerous reasons for this trend:

- trafficked persons are being threatened by traffickers not to contact the police;
- trafficked persons do not trust law enforcement authorities because of previous experiences and because of their illegal status in the countries of destination;
- trafficked persons are often suffering from post-traumatic stress disorder and – like other victims of torture – they keep silent during initial interrogation by law enforcement about the serious violations they may have suffered;²⁷⁶
- law enforcement agencies often lack personnel and appropriate infrastructure – including specialised interpreters – to conduct proper interrogation of presumed trafficked persons. This is particularly true in the case of small police stations confronted with a large number of presumed trafficked persons in the wake of a raid.²⁷⁷

This means that questionnaires or lists of indicators, when they are in place and used by law enforcement in order to identify presumed trafficked persons, can be considered as only one tool in clarifying the crime. They often cannot determine conclusively whether a person has been trafficked. Additional measures and training is needed.

As said before, little experience has been gained with the role that labour inspections and other labour related authorities can play in the identification of trafficked persons in other sectors than the sex industry. There is a clear need for training and the development of new methods and materials here.

Identification of trafficked children

Agencies (including law enforcement, social service, health and education agencies, labour inspections, hotlines, out reach workers, etc.) should co-operate and share information to ensure that trafficked children are identified, assisted and if applicable appointed a legal guardian as early as possible. Relying only on initiatives to address the issue at borders has limited effectiveness for two reasons: because of the difficulty of establishing the precise relationship between the child and accompanying adult (if accompanied), but most importantly because in many cases the exploitative nature of the relationship between the adult and child only becomes evident once in the country of destination.

Questionnaires or lists of indicators for use by front line police and border personnel should take into account the specificities of trafficking in children, cover the entire cycle of the trafficking process and relate to the perception of (trafficked) children. In cases where there is a suspicion that the child is a victim of trafficking, the child should be referred to the appropriate child welfare authorities. These authorities should be responsible for taking any decision concerning the integration of the trafficked child in the host country, its return to her/his home country or its resettlement in a third country, independently from immigration

²⁷⁶ For a comprehensive overview on the psychological state of mind of trafficked women see Animus Association Foundation/La Strada Bulgaria, *Trafficking in Women. Questions and Answers*, Sofia, 2002.

²⁷⁷ Southeast European Co-operative Initiative (SECI), *Evaluation report of Operation Mirage. A SECI Effort to Combat Trans-Border Trafficking of Human Beings & Illegal Migration*, Bucharest, 2003, p. 7.

or police authorities.

After placing the child in a safe accommodation, appropriate measures need to be taken for the identification and assistance of the child (e.g. assessing the psychological and physical condition of the child, interviewing the child, contacting the consulate for the child's identification, consulting the database of missing persons, etc.). If the child is accompanied by an adult, the relationship between the child and the accompanying adult needs to be asserted. The child should be separated from the adult only if this is considered to be necessary to protect the child. In this case measures should be adopted to reduce to a minimum the trauma of the separation and the length of time that the child stays separated from the adult pending the assessment of the relationship between them.

Where the age of the trafficked person is uncertain, due to the absence of papers or to false identity papers, and she/he claims to be less than 18 years of age, the presumption should be that she/he is a child and she/he should be provisionally treated as such. Age assessments should take into account physical, psychological and cultural factors and should be carried out by independent professionals with appropriate expertise. In making an age determination, children should be given the benefit of the doubt, in accordance with current UNHCHR guidelines.²⁷⁸

²⁷⁸ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, New York and Geneva, 2002.

Explanatory Paper 10

Reflection period and residence status

Prompt assistance and protection measures should not be connected with the direct co-operation of a trafficked person with the criminal justice system. In many cases, in fact, a trafficked person does not have relevant information about the criminal organisation; or the criminals have already been prosecuted; or more likely, initially, she/he is too scared for their own or their relatives' safety to press charges. Nonetheless, these factors do not diminish her/his "victim status" and the need and the right to receive help and support. In fact, a person who is being offered care, safe accommodation, counselling, contact with other trafficked people who reported their traffickers is keener to press charges. It is thus fundamental to guarantee to victims of trafficking the possibility to join a social assistance programme aimed at their empowerment and social inclusion²⁷⁹ in the receiving country regardless of their unwillingness or ability to file a complaint against the criminals who trafficked and exploited them. A victim of trafficking is a person whose human rights have been violated and as such she/he must be treated and assisted. Finally, a human rights approach is an important means to fight organised crime, since also those trafficked people who are otherwise reluctant to contact NGOs or law enforcement agencies, can provide useful information with regard to investigations against traffickers and exploiters.²⁸⁰

At the moment most trafficked persons are very reluctant to report to the authorities, which is one of the reasons why traffickers can act with impunity. Some reasons for this are inherent to the crime of trafficking itself and include fear, dependency, confinement, isolation, threats, blackmail, debt bondage and physical violence. Other reasons, however, can be found in the failure of current policies to ensure trafficked persons a minimum standard of protection and assistance.

Many trafficked persons have no legal residence status. Reporting to the authorities will thus expose them to the risk of arrest, detention and (immediate) expulsion. In addition, trafficked persons might risk criminal charges because of entering, staying or working illegally. When deported, they are likely to find themselves in a situation where they have no means of existence, no possibility to pay back debts they might have incurred to pay the original recruiters, no place to go if they cannot return to their family or community, no medical or

²⁷⁹ Defined as the process "which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in economic, social and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live. It ensures that they have greater participation in decision-making which affects their lives and access to their fundamental rights", taken from the Joint Report by the Commission and the Council on social inclusion (2003) (http://europa.eu.int/comm/employment_social/soc-prot/soc-ncl/final_joint_inclusion_report_2003_en.pdf).

²⁸⁰ Regione Emilia-Romagna, Associazione On the Road, *Article 18: Protection of Victims of Trafficking and the Fight against Crime (Italy and the European Scenarios)*. Research Report, On the Road Edizioni, Martinsicuro, 2002.

other aid, no protection from the authorities against reprisals from the traffickers and no guarantee that they themselves will not be arrested or harassed by those same authorities if they have left the country illegally or have worked in the sex industry. Moreover, deportation does not automatically mean escape from traffickers. The internationally organised character of trafficking means that in many cases traffickers re-establish control over their victims the moment they return to their home country.

In addition, apart from the ordeal of the court case itself, to give testimony against the traffickers, particularly in cases of organised crime, increases the risk of reprisals without any guarantee to the trafficked person that she/he will receive adequate protection either from the State in which the criminal proceedings take place or her/his State of origin. Moreover, testifying heightens the chance that it becomes known in her or his country of origin that she/he has been a victim of trafficking. This may have far reaching consequences for the trafficked person's future perspectives, in particular in cases of trafficking for prostitution.

Under these circumstances very few persons consider pressing charges or acting as a witness a viable option. As a result, traffickers run an extremely low risk of being caught and prosecuted. Even when caught, chances of a conviction are low due to the unwillingness of victims to testify against them. Conversely, if a victim is provided with appropriate assistance and support that promote her/his safety, their well being and their trust in the institutions of the hosting country then she/he will be more likely to press charges and give evidence against her/his perpetrators. Therefore, protection of trafficked persons is the cornerstone of effective prosecution of traffickers.

Such protection should not be dependent on the willingness or capacity of trafficked persons to act as a witness. Those victims who do not wish to testify as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection measures as those who decide to testify against their violators.²⁸¹ Under no circumstances should the safety of the trafficked person be subordinate to the needs of the prosecution.

Moreover, protection should not be provided at the discretion of States in each separate and individual case. In order to effectively encourage trafficked persons to report to the authorities, to press charges and act as witnesses they must know beforehand that they can rely on the State to provide assistance and protection. At this moment, such guarantee is missing in most if not all EU Member States. If States are not willing to guarantee such protection as a right rather than a favour, it will not have the effect intended.

Special attention should be paid to trafficked children, i.e. persons below the age of 18, in that their best interests should be a paramount consideration in all policies and procedures involving them in accordance with the UN Convention on the Rights of the Child and other relevant treaties.

Protection should include the following elements.

²⁸¹ UNHCHR, *op. cit.*, Guideline No. 6.

Reflection period

If there is the slightest indication that a person may be a victim of trafficking, a reflection period of not less than three months should be granted. A period of three months is the minimum time frame to ensure that the presumed trafficked person receives appropriate assistance: such as secure housing, psychological counselling, medical and social care, and legal consultation. These measures are pre-requisites for the trafficked person to take back control over her/his life and to consider her/his options, including taking an informed decision on whether to assist in criminal proceedings, to pursue legal proceedings for compensation claims, to enter a social reintegration programme or to immediately return home. In the case of children, extension of the reflection period should be possible.

A stay of deportation removes the fear of immediate deportation. It serves two purposes: first, it allows the trafficked person time to recover and re-take control over her/his life and, second, it enables the effective prosecution of traffickers by encouraging victims to report to the authorities and to act as witnesses. For the authorities, the reflection period enables the identification of the trafficked person, including determining whether or not the person concerned is trafficked indeed.

Temporary residence permits

If the person – both adult or under the age of 18 – is identified as a victim of trafficking, a temporary residence permit, including the right to work, should be granted for a period of at least six months with the possibility of renewal, regardless of the victim's willingness to cooperate as a witness and regardless of whether perpetrators are prosecuted. Ground for granting such temporary residence permit should be, separate and apart from the trafficked person's willingness to press charges and/or to testify, the participation of the trafficked person in a social assistance programme aimed at the social inclusion of the trafficked person and enabling her/him to regain control over her/his life and to build a sustainable future. Such programmes should include access to education and vocational training.²⁸² The separation of the residency procedure from participation in criminal proceedings allows focusing on the trafficked person's needs, rather than the need to obtain evidence for the prosecution and thus contributes to avoid re-traumatisation of the person concerned.

If the trafficked person decides to be a witness in the criminal case or to claim compensation in a civil case she/he should be entitled to a temporary staying permit at least until the end of the legal proceedings.

Trafficked children should be granted a temporary and/or permanent residence permit on humanitarian grounds and the corresponding rights, including access to full protection and assistance, independent of their willingness or capacity to cooperate with the authorities and to testify against the traffickers or exploiter, in accordance with the principle of the “best

²⁸² A good practice is the Italian model which provides for residency permits for trafficked persons who are considered to be in danger as a result of leaving their situation of exploitation and who are willing to engage in a social assistance and inclusion programme. See also Chapter 5.4.

interests of the child”. When child victims of trafficking reach the age of majority, if no other kind of residence permit can be issued on the basis of ordinary national law (e.g. for employment or study reasons), full regard should be given to their vulnerable position and they should be allowed to remain in the host country for humanitarian reasons.

Assistance

During both the reflection period and the temporary residence permit, the trafficked person should be entitled to receive legal, medical and other necessary aid, including safe housing and counselling in her or his own language.

Permanent or long term residence permits

Following the temporary residence permit, trafficked persons should be entitled to a long term or permanent residence permit, either on humanitarian or refugee grounds or because they successfully have completed a social assistance programme and have found sustainable employment (including the establishment as self-employed worker). In the latter case her/his temporary residence permit should be transformed into a work permit and thus be subjected to the regular regulations for migrant workers.

If there are substantial reasons to believe that it is unsafe for a trafficked person to return home because of the risk of retaliation from the traffickers and/or of criminal prosecution for status related offences by the authorities in the home country, or if there are other pressing humanitarian reasons trafficked persons should qualify for a permanent residence permit, regardless of their having acted as witnesses. Criteria for the granting of a permanent residence permit on humanitarian grounds should include:

- the risk of retaliation against the trafficked person and/or her or his family and the capacity and/or willingness of the authorities in the home country to provide protection against such reprisals;
- the risk of criminal or administrative prosecution by the authorities of the home country for status related offences, e.g. having crossed the border illegally or having worked in the sex industry;
- the lack of perspectives of social inclusion in her/his community in the country of origin, including a sufficient standard of living, taking into account the specific background of the trafficked person, the possible disruption of family ties and in the case of trafficking for prostitution, social attitudes (stigmatisation and discrimination) and State policies on prostitution;
- the lack of availability of adequate, confidential and non stigmatising support services;
- the presence of children.

Moreover, the principle of non-refoulement and the Art. 3 of the European Convention on Human Rights, which holds that no one should be subjected to inhuman or degrading treatment, must be taken into account. If the trafficked person runs a real risk of being subjected to such a treatment upon return to her or his home country, including the likelihood of being re-trafficked, a permanent residence permit should be granted. In addition,

trafficked persons should be entitled to seek and enjoy asylum from persecution in accordance with international refugee law.

Risk assessment

In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom, or submits them to inhuman or degrading treatment, States should be obliged to make a risk/security assessment before deporting or returning a trafficked person at any stage of the process, from the identification of a (suspected) trafficked person up till the possible application for a long term residence permit.²⁸³

Children and family members of trafficked persons

In many cases trafficked persons have children and/or other family members at home whose safety can be put in danger if they decide to (try to) escape the trafficking network and/or decide to press charges and act as a witness. Evidently traffickers not only threaten the trafficked person her/himself, but also – and often very effectively – the people the trafficked person cares about most. Many cases are known where family members are beaten up or children are kidnapped in order to silence or intimidate the trafficked person. This means that trafficked persons not only have to take care of their own safety, but also have a responsibility to protect the safety of their children and family. The safety of children and family often is an essential consideration in the decision whether or not to take action against the traffickers. Measures to protect the trafficked persons should therefore be extended to include family members, including access to temporary and permanent residence status in the country of destination.

At the minimum trafficked persons who are granted a temporary and/or permanent residence permit should have the option to bring their children to the country of residence to see them safe. This also forms an important part of their recovery process. Under the present situation, this is almost never allowed. Moreover, in most cases they cannot even visit their children due to visa restrictions. In practice this might mean that, in particular when the trafficked person decides to act as a witness, due to the often lengthy duration of the legal proceedings, she/he might not be able see her/his children for two-three years or more.

Trafficked children

Trafficked children should equally be entitled to a temporary and/or permanent residence permit and the corresponding rights, independent of the child's willingness or capacity to cooperate with the authorities, in accordance with the principle of the "best interests of the child" as laid down in the UNCRC.

In the case of unaccompanied children all steps necessary need to be taken to identify and

²⁸³ See for an extensive discussion of the issue of risk assessments Explanatory Paper 13.

locate family members and measures should be taken to facilitate the reunion of the child with her/his family where this is deemed to be in her/his best interests. In all cases the view of the child, in particular regarding decisions on her/his possible return to her/his family, should be given due weight in accordance with its age and maturity.²⁸⁴

However, children should only be returned if the return is in the best interests of the child, and if the return is safe and assisted. To ensure that it is safe for a child to return, a risk assessment should always be made prior to any decision on return of the child to her/his home country or family.

²⁸⁴ UNHCHR, *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum*, Geneva, 1997, Guidelines Nos. 8.4, 8.6.

Explanatory Paper 11

Social assistance and the development of standards

Why do we need standards?

Currently the assistance provided to trafficked persons differs from country to country and often also within the same country. In order to guarantee that all trafficked people have their human and civil rights protected and, therefore, have access to a wide range of services, common standards should be developed at national and international level through the setting up of a National Referral Mechanism (NRM) that, *inter alia*, is responsible for the development of criteria and recommendations to efficiently run anti-trafficking frameworks.²⁸⁵ The setting up of shared standards would be a fundamental step to ensure the provision of qualitative and qualified services in every country. Furthermore, it would make the mechanisms put in place transparent, clear and accessible, for the benefit of trafficked persons.

The provisions of social assistance has two interrelated phases: in the first place the immediate needs of the trafficked person need to be met, such as safe accommodation and means of existence. Secondly, long term and structured assistance programmes are needed. Such programmes should be tailor made and aim at the empowerment and social inclusion of the trafficked person either in the country of destination or the country of origin or any other country where the trafficked person might settle down. For the development of long term perspectives access to education, training and employment is conditional.

Since trafficking often is a transnational crime, it is crucial that assistance and protection are organised across borders and that a “common language” among service providers is developed. Standards should then represent a means for common understanding and action that would greatly contribute to the better functioning of the services set up and, most of all, to aptly address the trafficked persons’ needs.²⁸⁶ Exchanges and co-operation with agencies concerned with victim assistance within and from countries of origin, transit and destination is thus fundamental to develop and improve standards through exchange of good practices that can foster innovation.

The use of standards would endorse the development and implementation of assessment procedures of the assistance measures and of the service providers. The use of common indicators would guarantee the comparability of different data. Furthermore, standards are a means to ensure professionalism (rather than good-will activities, which can do an incredible harm), but also to avoid the potential abuse of power over the trafficked persons by

²⁸⁵ See also Explanatory Paper 5.

²⁸⁶ BD pt. 13, 6th bullet point.

assistance organisations. Assistance based on common standards and on monitoring and evaluation procedures would enable trafficked persons to take a well-informed, autonomous and conscious decision about their future life.^{287/288}

Underlying principles for the assistance of trafficked persons

The following principles should underlie the assistance of trafficked persons:

➤ *A trafficked person is a subject and a holder of rights*

Any assistance measure provided to trafficked persons should comply with the following human rights norms:²⁸⁹

- be *non discriminatory* in regard to nationality, gender, legal status and be non-judgemental in respect of the trafficked person's former experiences and her/his current choices and behaviour;
- *confidentiality*: service providers are not allowed to use or/and transfer to a third party any information provided by the trafficked person without her/his consent;
- *safety and fair treatment*: service providers must guarantee protection from harm and retaliations and avoid any form of re-victimisation throughout the period of assistance of a trafficked person;
- *respect for decisions*: any decision must be taken by the trafficked person on a consensual and fully informed basis. Service providers must respect the decisions and the time required to reach them. Often, the resolution to leave any form of exploitative conditions is a process that can take time and that can imply that a trafficked person may temporarily continue to stay with the trafficker or exploiter. This should not impede the trafficked person to fully enjoy her/his human and legal rights, even in case she/he decides to go back to the perpetrator. This approach contributes to the empowerment of the trafficked person and fosters confidence between the contact person of the service provider and the assisted person;
- *empowerment* should be the underlying principle of all assistance provisions targeting trafficked persons. The latter should evaluate and decide what they want to do with their life. Empowering trafficked persons means "to promote the self-actualisation or influence²⁹⁰ of the persons", by assessing their skills and their potential to be developed, providing them with training and awareness that build confidence and professional skills (...) in order to actively participate in all levels of economic, political, and social life."²⁹¹ The principle of empowerment should also be applied to prevent risk groups from being trafficked.

²⁸⁷ Based on the definition of the CAT-Project-Christian Action and Networking funded by EU-Stop-Programme (2002-2003): "We want to assist women (potentially) affected by trafficking in a way which enables them to take a well-informed, un-pressurised autonomous decision about what they want to do with their life in the future."

²⁸⁸ BD 13, 2nd bullet point.

²⁸⁹ GAATW, *Human Rights in Practice. A Guide to Assist Trafficked Women and Children*, Bangkok, 1999, pp. 24-25.

²⁹⁰ <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=empowerment>

²⁹¹ <http://www.irex.org/civilsociety/womens.asp>

➤ *Rights of children*

Rights of children should be duly taken into account in accordance with the UNCRC. Especially in case of doubt and in case there are reasons to believe that the trafficked person is under 18 years of age, she/he should be considered and treated as a child. As soon as a trafficked child is identified, the child protection system of the country to which the child is trafficked should promptly appoint a legal guardian that will have the duty to act in the best interests of the child. Furthermore, any decision concerning the future of the trafficked child (i.e. integration in the host country, return or resettlement in a third country) should be taken by the child welfare authorities of the hosting country independently from the immigration or police authorities.

➤ *Clarity of expectations/Clarity of obligations*

A trafficked person should be fully informed what to expect from the service provider and the professionals she/he is in contact with and what is expected from her/him. She/he must be aware that she/he is responsible for her/his decisions and actions.

➤ *Clarity of roles*

All key actors providing support and protection to trafficked persons should ensure their co-operation and acknowledge and respect their distinct roles, e.g. providing assistance, ensuring protection, investigation and prosecution, etc. The distinct roles and related responsibilities should be described and agreed upon in protocols or memoranda of understanding.

➤ *Tailored measures*

There is no “recipe” for assistance valid for all trafficked people. Service providers should in fact offer services tailored to the individual needs of the persons they assist. In the case of trafficked children their views should be sought and taken into account according with their age and maturity. Moreover, the active involvement of the final beneficiaries of the intervention in the process of developing services, activities and materials is essential.

➤ *Multidisciplinary co-operation*

Given the manifold nature of trafficking, a multi-agency approach is indispensable to address the needs of trafficked people. Local multidisciplinary assistance teams comprising various key organisations providing distinct services and different professionals – such as social workers, outreach workers, doctors, psychologists, lawyers, public officers, law enforcement officers, labour inspectors, trade unions personnel – should be set up at local level in order to address the different needs of trafficked persons. These teams – led by a specialised organisation or through a specialised steering committee – should co-operate on systematic basis, respecting one another’s role and duties that might be defined through joint memoranda of understanding. The implementation of such team/units allows for a broader awareness raising among professionals of all categories and may contribute to reach a greater number of trafficked persons. Teamwork allows sharing the “burden” of a case and the split-up of responsibilities and information. Ideally each member of the team has only the type of information she/he needs to carry out their work in order to minimise the risk for the

trafficked person. The teams should cover an adequate area to ensure that also rural districts are covered.

Trafficked children should be given special attention by including care providers and psychologists specialised on children in the assistance system.

All local multidisciplinary assistance teams should be connected with the National Referral Mechanism in order to guarantee an appropriate response and promptly answer to the target's needs.

➤ *Training and supervision*

Professionals providing assistance to trafficked persons need a thorough preparation (by specialised independent organisations) and regular professional supervision/debriefing in order to ensure the quality of the work and to protect them from possible risks connected to the work. Training measures should include intercultural competence to fully and correctly understand a trafficked person accordingly to her/his individual cultural background. Moreover regular updating on changes in legislation should be supplied. It should be a duty of service providers and law enforcement agencies to get involved in prevention and training schemes, preferably through cross-sectoral training organised jointly by NGOs and public officials of different departments. Legal guardians for trafficked children should be included in appropriate training courses.

➤ *Work with interpreters and cultural mediators*

Assistance providers should ensure the involvement of interpreters and cultural mediators in their work. Due to security risks it is of utmost importance to set up criteria for the selection of competent and trustworthy interpreters, which should be trained to act with the necessary sensitivity and to master the specific terminology. The presence of cultural mediators – where appropriate belonging to the same nationality or ethnic group of the trafficked persons – is crucial to gain the persons' confidence and build a trusting relationship. As they deal with a sensitive issue, both interpreters and cultural mediators should have regular supervision.

➤ *Data collection and analysis*

All service providers should keep records of the quantitative and qualitative data of the cases assisted. Such data should be anonymous and used to elaborate reports and research in order to contribute to investigate the changes occurring in the field of trafficking and, consequently, to plan proper social interventions in favour of trafficked persons.

➤ *Trans-nationality*

International exchanges and collaboration with service providers of other countries of origin, transit and destination should be integral part of any assistance system. This approach allows for collegial support both in the assistance of trafficked persons in the hosting country and in exploration of the return options, moreover it represents a significant source for the transfer of innovative approaches and the improvement of the standards applied.

➤ *Quality standards*

Assistance providers should develop common quality standards based on measurable and transparent indicators.

Services to support and assist trafficked persons

An effective assistance and protection system for trafficked persons should be based on a set of multiple specialised services managed by a multidisciplinary team of trained professionals who offer a tailored programme jointly elaborated by the victim and the assistance provider, and a constant connection with the NRM. Such a system should comprise the following services and activities:

- **Mechanisms for crisis intervention**

Non-bureaucratic mechanisms for crisis intervention should be in place around the clock, all year round, to provide prompt assistance in emergency cases of trafficked persons looking for help.

- **Shelters**

To provide a safe place to stay: this allows the trafficked person to recover, to reflect on the decisions to make, to be regularly assisted, to plan and to carry on her/his personalised programme. Different types of accommodation can be provided, also according to the stages of the person's programme, namely: flight and emergency shelter, care shelter, autonomy house. Family placement and non-residential programme²⁹² may be considered as alternative solutions to community shelters. Foster families and residential settings with appropriate adult support should be maintained as the most suitable housing choices for trafficked children; older children should not be treated as *de facto* adults and placed in reception centres without any adult support. In no way should detention centres or custody measures be maintained as appropriate options either for adults or for children. The shelters may differ in size, capacity and time of staying, accordingly to each organisation's decision, and should grant a safe and positive environment. They should all provide cultural and religious appropriate meals, lodging and a set of activities aimed at fostering the person's empowerment and autonomy: accompaniment to social and health services upon request, language classes, social activities, free legal and psychological counselling, tutoring, access to education and vocational training, job placement, child care. It is fundamental that the location of any type of accommodation remains confidential to avoid the risk to be detected by the criminal organisation and to endanger the hosts' and the working team's safety.

²⁹² This option is foreseen for those who enjoy an autonomous and liable accommodation usually shared with "significant others", such as partners, family members or friends. In this case, the assisted persons are supported by the assistance agency whose professionals regularly and frequently meet and visit them. This alternative values as fundamental a woman's or a man's personal network in order to support her/his social inclusion in the receiving country.

- **Social and health services**

Trafficked persons should have the right to access all State provided health and social services. Medical examinations and tests should be provided only upon the assisted person's request and in no case should they be mandatory. The hosting organisation may accompany the person to the service and initially serve as mediator between the two parties.

- **Social counselling**

To assess the situation of the person; consider her/his options; check her/his willingness to access the social protection scheme or return back home; develop an individualised programme; evaluate the opportunity to co-operate with the competent authorities.

- **Psychological counselling**

To help the trafficked person to overcome the feelings of fear, shame, disorientation and improve her/his self-esteem and self-reliance. The traumatic experiences suffered by trafficked persons may be an obstacle that impedes them to acknowledge their needs and their status, the counselling of a psychologist is thus fundamental to support them in the process of self-identification as a subject and a holder of rights. Psychological counselling can be provided on individual basis or through group sessions.

- **Free legal counselling**

To provide the person with information about her/his rights and legal options. The organisation may help her/him to find a lawyer and accompany her/him to court. It is advisable to include a legal consultant or a lawyer in the organisation's staff, who can take care of all legal procedures (e.g.: application for temporary residence permit, withdrawal of the expulsion order, application for family reunion, legal representation, etc.) and relationships with the law enforcement agencies and public prosecutor's office.

- **Education, vocational guidance, training and job placement**

The organisation through qualified internal staff or external agencies should provide a diversified set of options to allow the hosted person the opportunity to improve her/his educational and professional skills. This is an important step to foster not only the person's professional inclusion but also the social one in the receiving or home country. Different types of training courses may be offered in view of the person's needs and the availability locally. It is essential to enhance the skills formerly acquired and to aim at the assisted person's insertion in stable sectors of the labour market in order to avoid unfavourable work conditions that may lead to a new form of exploitation.

Services and activities should be provided by professionals specifically trained to work in the field of social inclusion and trafficking, such as: psychologists, outreach workers, social workers, cultural mediators, legal consultants. The team should develop and share a common strategy primarily aimed at protecting and empowering the trafficked persons. The special situation of trafficked children and the need for specifically trained personnel and a longer accompaniment should be taken into account.

The organisation should provide regular sessions of supervision to the working team, the risk of burn-out is very high in this field and, therefore, it is fundamental to support the operators in order to improve the quality of the services provided and to avoid a high turnover.

Assistance and prevention

Some services for trafficked persons are both measures for assistance and prevention. The agencies providing these services should be part of the local referral and assistance systems as well as of the NRM in order to be able to swiftly relay the trafficked persons to the appropriate services and to share information on the development of the phenomenon of trafficking.

- **Outreach work**

Outreach work should be carried out by a team of operators that directly contact the target groups where they work or live and provide them with health, legal and social information, written materials (in the main languages spoken by the target groups) and health prevention materials. They may also accompany them to the health and social services. This kind of approach is of great importance to people who are often in a difficult position for their being irregular migrants and, therefore, “invisible” persons by definition. The presence of cultural mediators (belonging to the same nationality or ethnic group of the target) in the outreach team is fundamental to gain the persons’ confidence and build a trusting relationship. Outreach workers should also be in contact with club and brothel owners and employers in other sectors where trafficking is likely to occur, in order to sensitise them in regard to the issues of trafficking and promote the adoption a code of conduct aimed at fighting trafficking and exploitation.

- **Drop-in centres**

Drop-in centres are a place of first contact for trafficked persons, practitioners and professionals that assist them. The drop-in workers provide the users with health, legal and social information, written materials (in the main languages spoken by the final beneficiaries of the intervention) and may also accompany trafficked persons to the health and social services. Also in this case, the collaboration of cultural mediators is essential. Furthermore, due to its direct contact with the target group and the constant mapping out of the phenomena addressed, this activity – along with the outreach work – can give relevant information about the features and the changes occurring in the field of trafficking and social exclusion. Such data can be used to plan and implement innovative models of intervention.

- **Hotlines**

Free of charge hotlines enable trafficked persons or potentially trafficked persons to find helpful information and to seek assistance; it may also provide information to social workers, law enforcement officers and the population at large. Information should be given in the various languages spoken by the target group. It is useful to establish a toll-free number operating at national level, composed of a single central switchboard – that

operates as a filter for the calls – and some territorial branches located in different regional or inter-regional areas throughout the country. This service must work in strong collaboration with all the agencies providing care and assistance services – at local and national level – to trafficked persons. In this manner, the toll-free line can function as a referral system and a sort of national “resource database” to promptly respond to specific needs (accommodation availability, work placement and so on). Its institution would greatly contribute to share methods and know-how on a regular basis. Any established hotlines should include specialised staff in the needs and rights of trafficked children. The establishment of hotlines at the international level would also represent a key tool both to assist trafficked persons and to raise awareness among potential victims of trafficking.

▪ **Information materials**

Leaflets, brochures, stickers, videos, posters, billboards, special info-kits, radio and TV commercials are useful means to reach trafficked persons or potential trafficked persons and provide them with practical hints and information. All these materials should convey a clear-cut message in the main languages spoken by the target group and adapted to the cultural code of the beneficiaries.

Quality of assistance providers: Indicators

All types of counter-trafficking agencies (NGOs, local authorities, IOs, IGOs, etc.) should include in their activities the monitoring and the evaluation of the services provided to assist trafficked persons or potentially trafficked persons. Given the fact that anti-trafficking programmes generally work in manifold areas (social, legal, psychological, health, vocational, occupational) and at different phases of the trafficking process (before, during and after), it is fundamental that they define clear goals associated to specific activities. Clear goals not only serve as assessment indicators, but their inclusion into the activities also facilitates the development, the management and the reporting of the intervention.²⁹³

In order to monitor and evaluate the quality of a given service, it is necessary to establish a set of indicators before its implementation or, at least, at an early stage of its implementation. The typologies of indicators to adopt may be those suggested by the European Commission and, then, adapted to the context of trafficking in human beings:²⁹⁴

- ⇒ *output indicators*: which assess a programme performance through the evaluation of quantifiable data (e.g. activities conducted, persons served, materials distributed, number of job placement provided, etc.); output may also take the form of facilities, works, and immaterial services (e.g. training, consultancy, information);
- ⇒ *input indicators*: which refer to the human, financial and material resources allocated for an activity or a programme (e.g. money spent to equip an outreach unit, to buy prevention

²⁹³ Population Council/Frontiers Program, *Anti-Trafficking Programs in South Asia: Appropriate Activities, Indicators and Evaluation Methodologies*, Kathmandu, 2001.

²⁹⁴ EC-DG XVI, *The New Programming Period 2000-2006: Methodological Working Paper 3 (Indicators for Monitoring and Evaluation: An Indicative Methodology)*, May 1999, p. 8.

materials to distribute to the target, the number of social workers employed in a service, the working hours allocated for psychological counselling, etc.);

- ⇒ *process indicators*: which refer to the quality of the process in an activity or programme (e.g. does the timing of an activity meet the needs and the situation of the trafficked persons? Do the latter understand the information and what is expected from them? Is the crisis intervention quick enough to meet the trafficked persons' needs?);
- ⇒ *result indicators*: which measure the direct and immediate effect produced by a specific activity or programme upon the direct beneficiaries (e.g.: increased awareness of their civil and human rights among the trafficked persons assisted, acquisition of new labour skills, self-referral to the local health services, decrease in number of trafficked persons, number of persons benefiting from a social programme, etc.);
- ⇒ *impact indicators*: which consider the positive and negative outcomes of an activity or a programme beyond the immediate effects on its direct beneficiaries (e.g.: change in knowledge and attitude of population in regard to commercial sexual exploitation of children, etc.); certain impact indicators can be observed among direct addressees after a few months or in the long term.

The *main general indicators* that may be employed to evaluate the quality of the agencies that provide services to trafficked persons are those of:²⁹⁵

- ⇒ *Relevance*: it assesses to what extent the service provided is relevant in relation to the trafficked persons' needs and priorities (e.g. do the legal information provided meet the person's needs? Are the drop-in centres office hours suitable for the target group? Are the languages spoken by the operators of the local anti-trafficking help line those of the target group?);
- ⇒ *Efficiency*: it compares the outputs, results, and impact achieved with the resources used to measure the performance of an activity and of its management (e.g. were the professional profiles of the social workers adequate to meet the specific needs of the target group? Did the skills transferred through the training courses favour access to the labour market?);
- ⇒ *Effectiveness*: it compares the outputs, results, and impact achieved with those originally planned (e.g. Was the shelter's availability sufficient to host the actual number of people looking for help? Was the quantity of the information materials distributed by the outreach unit sufficient to reach the entire target group?);
- ⇒ *Utility*: it measures the impact of the activity on the target group in relation to its needs (e.g. how many trafficked persons joined a scheme of social protection? How many were granted a temporary residence permit? How many found a job?);
- ⇒ *Sustainability*: it assesses to what extent the changes can be expected to last after the activity has been completed (e.g. will the assisted person access social and health services

²⁹⁵ Idem, p. 9.

autonomously? Will the person assisted use the information provided and the social and job skills acquired to avoid the risks of being re-trafficked?).

A high level of consistency among needs, objectives, activities and their planned results proves the good quality of the services provided by a counter-trafficking agency. Such consistency is essential to meet the needs of the selected target group and, thus, to guarantee the short- and long-term success of a social intervention.

Explanatory Paper 12

Witness protection and judicial treatment of trafficked persons

Definition of witness/victim requiring protection

Measures to protect trafficked persons as witnesses and victims in criminal procedures should not be narrowly confined to those who give evidence in court, or co-operate with law enforcement. Rather they should apply to all trafficked persons, who as victims of crime will be witnesses to a crime, to protect them and help mitigate the effect of the crime. The trauma suffered by a victim of crime and the risk faced as a witness to a crime occurs from the commission of the crime to beyond the conclusion of the court proceedings. Co-operation with law enforcement and giving evidence in court may by their nature increase the trauma and risk and require special additional provisions and protection.

Access to information and advice

Transparency of procedures and honesty of information is important. Trafficked persons will have been frequently deceived and used. It is important that they are given full accurate information to enable them to make informed decisions and begin to regain control of their lives. Provision of accurate information, and support at an early stage will better enable trafficked person to build co-operative relationships with law enforcement and other officials.

At a minimum a trafficked person should receive the following:

- *Immediate contact with support organisations and information on the type of support they can obtain*²⁹⁶

This includes their entitlement to a form of residence permit, as well as other forms of support.²⁹⁷ On identification a trafficked person should immediately be put in contact with a NGO support provider.

- *Access to translation and legal assistance free of charge*²⁹⁸

States should provide trafficked persons with free legal representation and translation services before and during criminal proceedings against the trafficker, as well as during proceedings for civil compensation.

²⁹⁶ Framework Decision on the standing of victims in criminal proceedings provides states shall provide information on the types of services or organisations to which they can turn for support – Article 4(1)(a) and the type of support they can obtain Article 4(1)(b).

²⁹⁷ See Chapter 5.4 and Explanatory Paper 9.

²⁹⁸ Framework Decision on the standing of Victims, Articles 4(1) and 4(1)(f).

➤ *Provisions for reporting the offence*

The trafficked person should be informed of provisions for reporting a criminal offence and procedures. This should be done in a language they understand and with the assistance of free legal aid to understand the legal consequences of actions. Social or psychological support should also be provided when giving this information as appropriate.

➤ *Decision to cooperate*

The trafficked person should be given time to decide whether they wish to co-operate with law enforcement prior to being interviewed. The decision to co-operate is difficult and has severe implications for the trafficked person, which need to be fully understood and considered. Trafficked persons are often traumatised and may take some time before they can fully consider their position. While law enforcement may want immediate information, so they can apprehend and arrest suspects, they should wait until the trafficked person is able to make an informed decision. This lessens the likelihood of re-victimisation of the trafficked person and is likely to lead to better evidence in the long run.

The decision to co-operate with law enforcement should be made at a neutral venue. A friend, NGO service provider or other supporter should be present to assist and advise. The following information should be provided:

- their role in connection with criminal proceedings, especially their rights and duties;²⁹⁹
- an accurate assessment of the risks they face in co-operating with the authorities;
- accurate information about the degree and nature of protection they can expect and the consequences of this protection;³⁰⁰
- the ability to obtain legal aid;³⁰¹
- the ability to obtain compensation;³⁰²
- the outcome of investigation and the release or detention of the trafficker;³⁰³
- the effect of co-operation on their legal rights to stay in country and other opportunities to stay;
- provisions for voluntary repatriation;
- provisions for guaranteeing privacy/likelihood of media intrusion;
- requirements to attend court, give testimony, etc.

The refusal to co-operate should not affect assistance and protection measures that are necessary for the safety or re-integration of the trafficked person. In particular, access to measures such as reflection delay, residence permit and support services should not be dependent on the decision to co-operate.

Special provision will be needed for co-operation of minors. States may consider appointing a guardian, parent or other person to represent the best interests of the child and to provide the

²⁹⁹ Ibid. Article 4(1)(d).

³⁰⁰ Ibid. Article 4(1)(e).

³⁰¹ Ibid. Article 4(1)(f).

³⁰² Ibid. Article 4(1)(g).

³⁰³ Ibid. Article 4(2).

consent of the child. The degree to which the child her/himself will be able to give full consent will depend on a series of factors, including the maturity and age of the child. Wherever possible the child's wishes should be taken account of.

Access to support from NGOs during the trial

In cases related to the trafficking of persons, the victim of the crime should have the possibility of receiving support from a social organisation in the investigation, interview and trial. In such cases a social worker may be permitted to take part in the proceedings, dependent on the type of legal system, if there is a need of protection of social interest or important individual interest.³⁰⁴ The interests of children should always be represented by an appropriate adult.

Investigation and interview

Interview³⁰⁵

Interviews of trafficked persons should meet the following standards:

- interviews should be conducted by personnel trained in trafficking and post traumatic stress disorder. For children, interviewers should be specifically trained in interviewing children;
- the interviewer and interpreter should be of the same sex as the trafficked person;
- the interview should take place in a non-confrontational, non-judgmental and professional environment;
- the trafficked person should be free to leave at any time during the interview. Interviews should not be more than two hours long and there should be assessment with counsellors, social workers, etc., as to the length and frequency of interviews;
- the trafficked person should be able to have a social worker, NGO worker, psychological or other support present during the interview. If a child, a parent or guardian or appropriate adult to protect the child's interests should be present;
- the interview questions and technique should be non-confrontational and non-judgmental;
- in cases involving sexual exploitation questions regarding the trafficked person's sexual history not immediately relevant to the allegations should not be asked.³⁰⁶

³⁰⁴ Ibid. Article 13(1)(c).

³⁰⁵ See International Centre for Migration Policy Development (ICMPD), *Regional Standard for Anti Trafficking Police in South-Eastern Europe*, Vienna, 2003.

³⁰⁶ Framework Decision on the standing of Victims, Article 3: "Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings." See also footnote to ICMPD, *Training Manual*, Vienna, 2004, and International Criminal Court (ICC), *Guidelines on Sexual Offences*, The Hague, 2003.

Physical examination

Physical examination of a trafficked person should only occur where absolutely necessary for the purposes of the investigation. It should be conducted by a trained medical practitioner of the same sex. A counsellor or supporter should be present if requested by the trafficked person. Results of the medical examination should be used for the purpose of the investigation only and for no other purpose. The trafficked persons must give their informed consent to examination. Refusal to consent should not be seen as failure to co-operate with the authorities.

Recording the interview

In some jurisdictions video recording of the testimony may be possible and it may be possible for this to be used in court proceedings. Where such possibility exists the option of video recording should be given to the trafficked person. The possibilities for use of this instead of direct testimony should be explained. The fact that the trafficked person will be identified should be explained. There should be clear procedures to secure the video and prevent its circulation beyond those necessary for the investigation. There must be criminal sanctions in place for the circulation or showing of such tape beyond those specifically authorised.

Investigation

Law enforcement should explore using intelligence led investigation methods, such as surveillance, money tracing and accountancy mechanisms, use of informants, etc., to avoid the need for direct victim testimony.

Awareness of the risks posed to victims in investigations should be paramount. Law enforcement should be particularly careful that enquiries (for example in the victims' home town, of the victims' friends or associates or of trafficking suspects) do not lead to the identification, social exclusion or risk to the victim, their friends or family.

Privacy

All necessary steps should be taken to ensure the privacy of the trafficked person. These include:

- The media should be banned from publishing details likely to lead to the identification of a trafficked person, including name, address or photograph, where such publication could lead to risk to the trafficked person or infringe their right to privacy under Article 8 of the European Convention of Human Rights. Such publication should be banned in cases involving sexual exploitation. Provision should also relate to passing details to the media, not only in country of destination, but also in country of origin of the trafficked persons. Passing such information should be prohibited by criminal law through contempt of court or specific legislation. Bans should apply from initial identification of the trafficked

persons (for example during brothel raids) to beyond the conclusion of court proceedings.

- Sharing information: strict guidelines need to be developed for the collection, sharing and dissemination of personal information on trafficked persons.³⁰⁷ There are two issues to be born in mind when sharing information:
 - the privacy rights of the trafficked persons;
 - the security implications of information sharing.

Under Article 8 of the European Convention on Human Rights individuals are entitled to protection of their privacy. This extends to trafficked persons as victims of crime who should not be treated as criminals due to any matter that has arisen as a result of being trafficked. Sharing of information on trafficked persons through law enforcement mechanisms such as Europol, Schengen Information System and other mechanisms need to bear in mind that the information is in relation to victims, not criminals. As such information held on systems should clearly be identified as in relation to victims of a crime. Care should be taken that the information is only used for the purpose that it is collected and not for other purposes (for example to prevent trafficked persons from crossing borders).

Risk assessment and safety

The safety of the trafficked person, their close friends and family, both in destination and origin country must be paramount consideration, and responsibility of law enforcement and others. States are obliged under the European Convention of Human Rights³⁰⁸ and UN conventions³⁰⁹ to provide protection in circumstances for those at risk. The trafficked person is at risk from the very first contact with authorities. Risk assessments must be carried out from the first contact and constantly reviewed. Risks to close friends and family need to also be assessed and safety provisions for them may also be necessary. Protection given should be based on risk assessment and need, not on whether co-operation or evidence is given. It is likely, but not always the case, that risk will increase if evidence is given.

In dealing with risk practical measures are those most likely to be effective. Full scale witness protection, involving change of identity, and/or relocation to a third country, is not only expensive but also less likely to be effective and is more traumatic for the trafficked person. It should only be considered as a last resort.

Issues to consider in protecting trafficked person include:

➤ *Safe accommodation*

Accommodation may most appropriately be provided by NGO sector. Law enforcement should co-operate with the NGO sector. However, the provision of safety should not be seen as the responsibility of the NGO sector. Safety risks to trafficked persons should not

³⁰⁷ See Chapter 3.8.

³⁰⁸ Articles 2 and 3 of the ECHR right to life. See *Mastromatteo V Italy*, 24 October 2002 and *Osman v UK* 28 October 1998.

³⁰⁹ UN TrafProt Article 6 para 5; Article 25 para 1 UN-TOCC.

be a justification for detention in a custodial environment.

➤ *Practical measures*

Practical measures can be effective ways of minimizing risk. For example the following should be considered:

- provision of panic alarms;
- provision of mobile telephone with immediate access to police numbers;
- police (if necessary plain clothes) accompanying to scenes of crime, court, etc.;
- separate entrances to court and waiting areas;
- testimony through video link, or behind screens.

➤ *Change of location and or identity*

Removing the trafficked person to a location away from where they were trafficked to or trafficked from and/or changing their identity may be considered. This can include relocation to a third country. Some policies have tended to concentrate on relocation to safe third countries as practical response to ensuring trafficked persons safety. However, in practice this should only be used as a policy of last resort, where all other protection measures are not appropriate, and with full discussion and consent of the trafficked person. Relocation to third countries is problematic and likely to have significant risks attached, as well as increase the trauma of the trafficked persons and their risk of being re-trafficked. Relocation would require a trafficked person to cut off links with their families and friends and support network. In a third country the trafficked person may not speak the language, may not have access to labour markets or lack appropriate skills and may not have access to social support networks.

If relocation occurs, then it must be culturally and socially appropriate. Full support measures including language classes, vocational training, employment, accommodation, financial assistance and support networks, including contact with appropriate local NGO service providers should be provided.

Relocation will also have to include the trafficked person's family. Again full support measures should be provided. However, in all cases problems are likely to occur as expecting trafficked persons and family members to sever contacts with their friends, family and community are unrealistic and unlikely.

Full change of identity is even harder to achieve, as this requires the trafficked person to completely cut themselves off from their family, friends, community and previous life and often culture. Again this should only be considered in the most extreme of circumstances, after full discussion and understanding of all options and consequences.

In court procedures

Again, practical measures, such as ensuring separate waiting areas, are as important to consider as more formal measures such as witness anonymity. Clear information for the trafficked person as to what protection and measures they can expect should be given at the earliest possible stage, to minimize continuing trauma.

Giving testimony³¹⁰

Articles 6(1) and 6(3)(d) of the European Convention on Human Rights generally provides that court proceedings should be in public, with the defendant given the opportunity to cross examine witnesses in person. However, there can be exceptions to this to protect the witness and providing the rights of the defendant are not prejudiced.

In *Van Mechelen v The Netherlands*³¹¹ following the case of *Doorson v The Netherlands*³¹² the ECHR held that anonymity of witnesses could be allowed in exceptional circumstances, where:

- a) there was a well founded threat of violence;
- b) the witnesses were heard in the presence of the defendants lawyer; and
- c) there was other (identification) evidence unrelated to those witnesses.

The procedures of the trial should ensure that the rights of the defendant to a fair trial are upheld. Thus any restrictions on the rights of a defendant to cross examine a witness, or provision for anonymity for a witness, should be such to counter balance any unfairness the defence may suffer. The fairness of the proceedings as a whole under Article 6 has to be considered.

Some jurisdictions (for example the UK) allow for evidence to be given from behind a screen, or by video link when the witness is vulnerable or at risk (for example a child or in cases of allegations involving sexual offences). Other jurisdictions allow for interviews or video interviews to be admitted as evidence in chief, the witness only having to attend (for example by video link) for cross-examination. Systems based on the inquisitorial system (such as Belgium) can allow for preliminary examination of a witness by a judge, in the absence of the defendant. Such examination is provided to the defence. Depending on the system, and practice, the witness may be required to be cross examined by the defence at a later stage in the proceedings.

In the recent case of *S.N v Sweden*, 2 July 2002, the European Court of Human Rights, in considering a case involving sexual abuse of a 10 year old, where two video statements (one at the request of the defence) had been taken, stated: “The Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular where the latter is unwillingly confronted with the defendant. These features are even more prominent in cases involving a minor. In assessment of whether or not in such proceedings an accused received a fair trial account must be taken of the right to respect for the private life of the alleged victim. Therefore the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the protection of the victim, providing that such measures can be reconciled with an adequate and effective exercise of the rights of the defence”.

³¹⁰ For more detailed analysis, see ICMPD, *Draft Training Manual for Judges and Prosecutors*, Vienna, 2004.

³¹¹ Judgement of the European Courts of Human Rights (ECHR), 23 April 1997.

³¹² Judgement of the ECHR, 26 March 1997.

For trafficked persons the fear of confronting their trafficker in court may be significant. Research has shown that, after escape from the traffickers, the hardest thing for trafficked persons to do is to confront their trafficker in court.³¹³ Provisions to lessen the trauma for direct confrontation are important. On occasion protecting the witness from reprisals through anonymity may also need to be considered, although with the personal nature of many trafficking cases it is likely that the nature of the evidence will reveal the identity of the witness to the defendant, making witness anonymity impossible. With all procedures, it is important that it is clear from the outset what protections can be given, so the trafficked person is fully aware of what they will face when deciding to give evidence.

States should explore the possibilities of providing provisions to protect trafficked persons giving evidence in court proceedings that are consistent with the rights of the defence. These may include, depending on the legal system, and the nature of the risk to the trafficked person:

- giving evidence in chief by pre-recorded video or written statement;
- giving evidence by video link;
- cross examination of the trafficked person by an inquisitorial judge, or lawyer appointed by the court, in the absence of either the defendant, or defence lawyer;
- anonymity of the witness from the defendant.

States should have clear procedures in place, and inform the trafficked person when they make the decision to give evidence, of what protections they will have.

Evidence of previous sexual or immoral behaviour

In cases related to sexual offences, the defence may seek to introduce evidence in relation to the trafficked person's previous sexual behaviour to show that exploitation did not occur or to try to cast doubt on the integrity of the witness.

A model how to address this issue is Section 7 of the UNMIK-Regulation No. 2001/4³¹⁴ which explicitly provides that except with the leave of the president of the panel of judges, it shall not be permissible for a defendant charged with trafficking "to introduce evidence of the alleged character or personal history of the alleged victim". A defendant may petition the president of the panel of judges to allow the introduction of such evidence. The president will then conduct a hearing in-camera allowing for the defendant and the prosecution to be heard on the subject. But the introduction of such evidence will only be allowed if the president is satisfied that the evidence is of such relevance and its omission would be so prejudicial to the defendant, that this would result in a miscarriage of justice for the defendant. In such cases, the president will still establish the limits within which such evidence or questions may be introduced.

³¹³ Anti- Slavery International, *Human Traffic Human Rights: Redefining Victim Protection*, Pearson, E., London, 2002.

³¹⁴ United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 2001/4 of 12 January 2001 on the prohibition of trafficking in persons in Kosovo (<http://www.unmikonline.org/regulations/2001/reg04-01.html>).

Practical issues

If a trafficked person, their friends or family are to attend court to give evidence, practical protection is important. Issues to consider include:

- safe escorts to and from the court building;
- separate waiting, eating and toilet areas;
- fixed hearing dates, with minimal waiting time;
- clear explanation of court procedures with previous visit to the court premises if necessary;
- screens, clearing of the public gallery, removal of media, as provided for by national law;
- presence of a supporter or advisor, as allowed by national law.

The right of the victim to be present and be heard

UN Convention on Combating Transnational Organized crime and the UN Trafficking Protocol both provide that States should make provisions in appropriate cases subject to their domestic laws to enable the victims' views and concerns to be heard. For some victims involvement in the criminal justice procedures is an important part of their recovery to see those who have offended against them brought to justice. States should make provision for this to occur. Often the effect of the use of video testimony, or other investigative methods, and the early return of the trafficked person to their country of origin can make it difficult for them to return and participate fully in proceedings when they wish to do so.

States can also make provision for trafficked persons' views to be heard through means such as joining them as a party to the criminal proceedings (in jurisdictions that allow this) or victim impact statements.

Training

Training for all those who come into contact with trafficked persons (in particular law enforcement officers, immigration officials, lawyers, prosecutors, judges and court staff) on the particular rights and needs of trafficked persons, must be provided by States.³¹⁵

³¹⁵ See Chapter 4.5 and Explanatory Paper 8.

Explanatory Paper 13

Return and social inclusion

Why is there a need for return and social assistance programmes?

Trafficking does not end with the return of trafficked persons to their homes, nor are the problems trafficked persons face solved by simply returning home. On the contrary, the possibilities to protect victims in their home country are generally much less than the protection that can be offered in Western European countries. Often, the criminal network that trafficked them is still active in their home country. Moreover, in a number of countries of origin the rule of law functions only to a limited extent. Corruption and involvement of the authorities in trafficking may pose a serious problem. Apart from the issue of safety and lack of protection, victims may face a number of other problems on their return. Especially when they have been trafficked for prostitution they may be exposed to stigmatisation, discrimination and rejection by their families and social exclusion when their predicament gets known in their community. Evidently, these risks increase when they have given testimony in the country to which they were trafficked, and/or when they choose or are obliged to do so after their return to their home country. A change of venue very often is no option as many countries of origin do not have a social security system, meaning that trafficked persons are completely dependent on their families for accommodation, means of subsistence and the possibility to find work. Moreover, in a number of countries citizens are not free to choose their place of residence. Due to the above described problems trafficked persons often have a legitimate interest in keeping silent and hiding their experiences from their environment. This obviously forms an obstacle in asking for protection and assistance. In addition, trafficked persons may risk to be prosecuted themselves, e.g. for having left the country illegally, for having made use of fraudulent identity papers and/or for having worked in prostitution.

All trafficked persons, irrespective into which industry they were trafficked, face the problem of finding viable employment. In many cases this is precisely the reason why they decided to migrate to another country to try and find work elsewhere and improve their perspectives. Often this problem is aggravated by the fact that they or their families still have debts to the original recruiters that they have to pay off under the threat of sanctions. This means that trafficked persons who return to their home country in many cases find themselves back in even worse conditions than the ones they originally started from, thus exposing them to the risk of being re-trafficked as the only available alternative. Trauma as a consequence of being trafficked, characterized by lack of faith in the future, inability to build trusting relationships and reduced ability to assess risk may further add to their vulnerability to abuse. In addition, many trafficked person do not dispose anymore of their identity papers as these were confiscated by the traffickers, or have been travelling on false identity papers.

Still a great number of victims want to return. Others are forced to return because they do not

qualify for a temporary residence permit or because the temporary residence permit has expired and they do not qualify for a permanent residence status or asylum.

At the same time, many countries of origin have difficulties in providing victims of trafficking with appropriate support and assistance. Often there is a lack of specialised structures supported by the government, adequate services addressing the specific needs of victims and established frameworks for social assistance to trafficked persons. Both in countries of destination and in countries of origin, assistance measures are mostly short-term and do not provide sustainable social and economic alternatives.

In order to prevent trafficked persons from being re-victimised and/or re-trafficked and to protect their safety it is essential to establish appropriate, preferably voluntary, return procedures and social assistance programmes; the latter offering long term assistance to enable trafficked persons to regain control over their lives and build an independent life. Such programmes should start in the country to which the person was trafficked and should continue after the trafficked person has returned to her/his home country. To this aim close co-operation between NGOs in countries of destination, transit and origin is needed. They should be accessible independent of the trafficked person's capacity and willingness to co-operate as a witness. Return programmes should be considered as re-migration programmes to avoid stigmatisation of trafficked persons.

Within a human rights framework such programmes should aim for the long term recovery, empowerment and social inclusion³¹⁶ of trafficked persons. Empowerment could be described as a process through which an individual can develop her/his ability to stand independently, make her/his own decisions and show control over her/his life. It implies the involvement and active participation of trafficked persons as opposed to treating them as passive victims.³¹⁷ Essential elements are the creation of conditions to become economically and psychologically independent, opportunities for work, which includes access to information, education and training, physical and mental health services and the active participation of the trafficked person her/himself.

Return procedures

Return procedures should at least include the following elements:

- on the wish of the trafficked person to return, she/he should be repatriated without undue or unreasonable delay;³¹⁸

³¹⁶ Defined as the process “which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in economic, social and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live. It ensures that they have greater participation in decision-making which affects their lives and access to their fundamental rights”, taken from the Joint Report by the Commission and the Council on social inclusion (2003) (cf. http://europa.eu.int/comm/employment_social/soc-prot/soc-ncl/final_joint_inclusion_report_2003_en.pdf).

³¹⁷ Definition from GAATW, “The process of recovery from trafficking”, in *Alliance News*, Issue 19-20, July/December 2003, Bangkok, 2003.

³¹⁸ OSCE, Action Plan V.7.1.

- the safety of the trafficked person should be paramount:³¹⁹ no identified trafficked person shall be deported against her/his will before a proper risk assessment has been made in order to ensure the trafficked person's safety. Such a risk assessment must cover the physical safety of the victim as well as the possibilities for social inclusion in the country of origin;³²⁰
- the financial costs for the return should be covered by the EU Member State in which the victim is exploited, unless otherwise provided in agreements between the State of destination and origin;
- information about her/his right to access to diplomatic and consular representatives from her/his State of nationality. If the person concerned wished so, she/he shall be assisted in contacting her/his consulate or embassy;³²¹
- information regarding the available assistance in her/his home country. The decision whether or not to make use of such services, however, shall be with the trafficked person; if she/he decides to make use of available support services in the country of origin the receiving service agency shall be informed timely and properly;
- arrangement of proper identity documents.³²² To this aim co-operation agreements should be made between countries of destination and origin. Countries of origin should be encouraged to appoint contact persons at their embassies and consulates to deal with trafficked persons and to take care that they are properly trained;³²³
- no reference should be made of the status of the person as a victim of trafficking in any identity papers;
- no confidential information should be given to the authorities in the home country without the consent of the trafficked person;³²⁴
- basic necessities such as clothing and food during the return process should be taken care for.

Return and social assistance programmes

In close partnership with NGOs, programmes should be established in countries of origin to ensure that trafficked persons who return to their home country are provided with both immediate and long term assistance to ensure their well-being, to facilitate their social inclusion, to prevent re-victimisation and to reduce the risk of re-trafficking.

During and after return, the trafficked person should be properly accompanied and their well being should be effectively monitored. In case of a trafficked person under the age of 18, prior to her/his return, contact between the child and her/his family should be facilitated and social assistance programmes should be proposed to the child and the family. Child victims of trafficking should never be forcibly returned to their country of origin if their family has not been traced, does not agree with the return of the child or is not able to provide her/him

³¹⁹ OSCE Ministerial Council Decision No. 1, para 1; UN TrafProt Art. 8.2.

³²⁰ See para 5.3.

³²¹ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, New York and Geneva, 2002, Guideline No. 6.3.

³²² BD, pt. 15; OSCE Ministerial Council Decision No. 1, para 1, OSCE Action Plan V.5.

³²³ UNHCHR, *op. cit.*, Guideline No. 6.3 (see footnote 4); UN Trafficking Protocol, Art. 8.4.

³²⁴ Positions of the Members of the Experts Group differ on this issue.

immediate and long term care. Other suitable care givers different from the family may be considered only if the child agrees.

To ensure proper assistance and support NGOs providing these services to returning trafficked persons should be adequately financed. Co-operation between NGOs and other civil society organisations in countries of origin, transit and destination should be encouraged and facilitated.³²⁵ The development of social assistance programmes should make an integral part of development co-operation policies.³²⁶

Return and social assistance programmes for trafficked persons should rest on the following principles:

- voluntariness: it is the trafficked person who decides whether he or she wants to make use of the available services;
- protection of the privacy and safety:³²⁷ no personal information regarding the trafficked person, including name, address and health status shall be made public or disclosed to third parties, including law enforcement, without her/his consent;
- protection of the confidentiality of the contact between the service provider and the trafficked person;
- freedom of movement:³²⁸ under no circumstances should the trafficked person be detained, locked in or otherwise limited in her/his freedom of movement;
- the needs, views and concerns of the trafficked person should be at the centre;
- non-stigmatisation: programmes shall be developed in such a way that they do not stigmatise trafficked persons. Preferably they shall be part of general programmes for returnees;
- trafficked persons shall be treated in a respectful, non-judgmental and non-moralising or patronizing way;
- programmes should aim at the social inclusion and empowerment of the trafficked person³²⁹ defined as the process through which an individual can develop her/his ability to stand independently, make her/his own decisions and show control over her/his life;
- independence of the service providing agency;
- differentiation between adults and children: it is as much inappropriate to treat a child as an adult as it is to treat an adult as a child;
- in the case of children special policies and programmes should be developed to ensure that they will be provided with appropriate physical, psychological, legal, educational, housing and health care assistance.³³⁰

Elements of such programmes should be:

- a needs assessments in order to develop a programme which answers to the personal needs and situation of the trafficked person and adequately protects her/his safety;
- regularisation of the documentation status of the person with regards to national identity

³²⁵ BD, pt. 15; UNHCHR, *op. cit.*, Guidelines Nos. 11, 12 (see footnote 4).

³²⁶ The Hague Declaration, III, 3.4.

³²⁷ The Hague Declaration, III, 3.4.

³²⁸ UNHCHR, *op. cit.*, Guideline No. 1.5 (see footnote 4).

³²⁹ BD, pt. 15.

³³⁰ UNHCHR, *op. cit.*, Guideline No. 8.7 (see footnote 4); UN TrafProt Art. 6.4.

- papers, national insurance numbers, medical cards and other necessary documentation;
- appropriate housing, including safe shelters and facilitating access to independent housing;
- health care, psychological assistance, free legal aid and, if necessary, social and economic benefits;³³¹
- advice and assistance in finding sustainable employment opportunities, including access to education and vocational training in order to enable the trafficked person to attain economic independence;³³²
- if requested contacts with the family of the trafficked person in order to sensitise them and enhance their acceptance of the trafficked person;
- encouragement and support of self-organisation.

Risk assessment

Prior to the return or deportation of the trafficked person, including children, a risk assessment should be made. The purpose of such risk assessment is to actively investigate whether or not the trafficked person runs a real risk of reprisals, e.g. because (members of) the criminal network are still active in the country of origin, whether family members in the home country have been subjected to threats, whether the authorities in the home country of the trafficked person are able and willing to provide protection against intimidation from the traffickers, whether the trafficked person runs a risk of prosecution by the authorities in the home country for status related offences and whether adequate and confidential assistance is available. If applicable, information from the criminal case should make part of such risk assessment. NGOs and other agencies that provide assistance to the victim should be included actively in this process, as they are most likely to have relevant information. They should have the right to submit information on the mentioned aspects which will be taken into due account in any decision made about the return of the trafficked person. Moreover, the right to privacy of the trafficked person should be respected, meaning that no information about the person shall be given to third parties without the permission of the trafficked person.

In making a risk assessment the following factors should be taken into account in order to assess the security of the person and her/his perspectives of social and professional inclusion on her/his return and the risks of re-trafficking:

- Risk of reprisals:
 - have family members/friends or associates in the country of origin been contacted and/or threatened by (associates) of the trafficker/ trafficking network;
 - has the trafficked person her/himself been threatened during her/his stay in the country of destination or during legal proceedings;
 - is the place of residence of the trafficked person and/or her/his family known to (associates of) the trafficker/ trafficking network;

³³¹ OSCE, Action Plan V.7.3; UNHCR, *op. cit.*, Guideline No. 6.8. (see footnote 4).

³³² BD, pt. 15; UNHCHR, *op. cit.*, Guideline No. 6.8 (see footnote 4).

- does or did the trafficker make part of the social circle of the trafficked person in the country of origin;
 - are the authorities in the country of origin able or willing to protect the trafficked person and her/his family and friends from reprisals of the trafficker/trafficking network;
 - upon request, does the local police provide protection where appropriate;
 - if applicable is there a functioning witness protection programme;
 - is corruption a real problem in the country of origin;
 - are there outstanding debts of the trafficked person and/or her/his family to the traffickers or to other third parties made to pay the traffickers/recruiters.
- Risk of being harassed, arrested, detained or prosecuted by the authorities:
- does the trafficked person run the risk of being arrested, detained or prosecuted by the authorities in the country of origin for offences related to her/his situation as a victim of trafficking; such as prostitution, the use or possession of false documents or illegal exit;
 - in case of trafficking for the sex industry the legal and social policies on prostitution and the extent of social exclusion, stigmatisation and marginalisation of prostitutes.
- The social position of the trafficked person and risk of social exclusion³³³:
- is the situation of the trafficked person known to her/his social environment;
 - will the trafficked person be able to talk about her/his experience with her/his family or friends;
 - will the trafficked person be accepted and supported by her/his social environment; including family, friends and the community in which the trafficked person lived before departure;
 - to what extent is the survival of the trafficked person dependent on support and inclusion by her/his family;
 - is there a system of social welfare that ensures that the basic needs of the trafficked person to survive will be met, such as housing, medical aid and means of existence;
 - in the case of trafficking for the sex industry what is the general attitude against prostitution, including the risks of marginalisation, stigmatisation or isolation;
 - is there a (real) possibility for the trafficked person to move to another city and to find housing and employment.
- Access to assistance, education and sustainable means of existence:

³³³ Defined as the process “whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination. This distances them from job, income and education opportunities as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feeling powerless and unable to take control over the decisions that affect their day-to-day lives,” taken from the Joint Report by the Commission and the Council on social inclusion (2003) (cf. http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf).

- does the trafficked person have access to immediate and long term assistance services; such as safe accommodation, medical, legal and psychological aid;
- does the trafficked person have access to education and viable and sustainable employment;
- is there an opportunity for long term, independent economic independence.

In the case the trafficked person has children:

- what will be the position of the child(ren) of the trafficked person;
- will the child(ren) have the opportunity to go to school and to receive medical, social and other necessary care and protection.

In no case may a trafficked person be returned to her/his home country if there is reason to believe that there is a real risk that her/his life may be endangered or that she/he may be subjected to inhuman or degrading treatment upon return (principle of non-refoulement³³⁴).

Concepts used in the context of return and reintegration

In the context of assistance to returning trafficked persons a number of different terms are used, e.g. repatriation, rehabilitation, re-integration, integration, recovery, social inclusion.³³⁵ These terms, however, are not neutral and reflect underlying values and attitudes towards trafficked persons. The choice of terms may, therefore, be important to avoid stigmatisation and support empowerment of trafficked persons. Rehabilitation, for instance, is often used in particular in the context of trafficking for prostitution. As this word is more commonly used in relation to criminals, it suggests that there is something inherently disreputable with the person that needs to be corrected, that a conscious effort needs to be made to change that person's mindset or redirect negative behavioural patterns. Moreover, it objectifies the trafficked person, as a person can only be rehabilitated but cannot 'rehabilitate' on its own. A more appropriate term would be integration and re-integration to respectively describe the process of integration of the trafficked person in the country of destination and origin. In this report the term social inclusion is used as this describes more adequately the active and two way character of the process as an interaction between the person and her/his context and also implies a sense of 'belonging and being involved'. Underlying the choice of terms are certain principles of working in a human rights framework, such as self determination, autonomy and empowerment.

³³⁴ As laid down in e.g. Art. 19, Charter of Fundamental Rights of the European Union, Art. 7 of the International Covenant on Civil and Political Rights and Art. 3 of the European Convention on Human Rights.

³³⁵ See for a more extensive discussion of concepts GAATW, "The process of recovery from trafficking," *op. cit.*

Explanatory Paper 14

Anti-corruption strategies

The phenomenon of corruption

Different viewpoints, different definitions

The phenomenon of corruption can be tackled in different ways. According to the approach (criminal law, social, criminal or economics) some expressions of the phenomenon can be put together under the notion of *corruption*.

From a criminal law point of view, corruption remains limited to penalisation. According to that point of view, one can only speak about corruption when all the components of the crime are known and can actually be proved.

This however limits too much the phenomenon of corruption thus preventing a complete approach and the tackling of the problem. Criminal law makes up just one of the many instruments enabling a reaction against the emergence of sociably undesirable phenomena and, after all, serves as an ultimate remedy.

From a sociological and criminological point of view, corruption is generally defined as a deviation or an abuse of power. This is the case when a person is a civil servant or works in an organisation and serves other objectives or other interests than those according to the law. Since public authorities are very often the victim of corruption, corruption generally is restricted to the public sphere. It is clear, however, that also a private organisation can be the victim of corruption, for example the infiltration of criminal organisations in NGOs taking care of the victims of human trafficking.

Such an approach has the advantage of reducing the moral debate to its minimum. It is generally acknowledged that when one belongs to an organisation, in the private or in the public sphere, and enjoys a certain decisional competence within that organisation, that competence is always linked to objectives and standards of good professional behaviour. If that competence is exercised while neglecting these objectives in order to favour other interests, this implies by definition a behaviour that deviates from the norm. When corruption is formulated as a deviation of the normal exercise of power a whole series of behaviours fall within the definition.

Corruption has to be seen as a process that often starts with the emergence of deviant or deontologically unacceptable behaviour (a blurring of the norm).

If there is no appropriate reaction to that behaviour from the competent authorities, it paves the way for a second stage in the process, which is corrupt behaviour. In this phase most of the components of the legal definition of corruption are there, but the concrete evidence lacks. The last stage of the whole process of corruption is when according to the criminal law definition all the components can be collected and also be proved.

The causes at different levels

As corruption is a complex phenomenon that can emerge in different ways, its causes can also be situated at different levels.

Causes at the macro level

Individuals, inevitably undergo influences from the global social context in which they work and live. Some economic factors such as general economic globalisation and the increasing intervention of the authorities in the economic organisation indisputably play a major role at that level.

Some evolutions in the administration create a fertile ground for corruption at the macro level. The more the occasions to corrupt are prevalent and the greater the interests at stake, the more the corruption will increase. The risk of corruption increases as soon as there are more contacts between the administration and the citizens (more possibilities) and the power of the administration is more significant more important interests. In that sense the tendency of decentralisation, the increasing discretionary competences of public servants and the introduction of market ideology within the public authorities and the administration are factors that increase the risks of corruption.

Another macro cause of corruption is the lack of coherence and transparency of laws and regulations. Because of the excess of often complex rules decreed at different levels, citizens do not know any longer what they should stick to. This favours considerably the process of a blurring of the norm and of corruption. Moreover, this phenomenon strikes a blow at the confidence of the citizens in the law in general. The effectiveness and the fairness of the legal apparatus are indeed under pressure, which makes the perception of corruption less risky and less unacceptable.

Finally, still at the macro level, we should mention some causes linked to modified ethical concepts. Some consider that the increasing individualism and materialism and the decreasing civism can result into corruption. The perception of criminality is also changing. The fact that some reprehensible behaviour is being considered as less serious leads to a certain tolerance and a weakening of the legal norm.

Causes at the meso level

The causes of corruption located at the meso level are those that ensue from the direct professional environment. Both the intern regulation (and the absence of it) of the organisation and its structure and culture can become fertile grounds for corruption.

It is obvious that the lack of clarity and transparency of the rules of a service or an organisation can be abused. Individuals, public servants or private persons need points of reference to carry out correctly the tasks they have been given without being influenced.

Moreover, a distinction can be made between the causes of corruption at the structural level of the organisation and within the culture of the service or organisation. For the first category, we can quote the example of persons who are working for an excessively long period of time in sensitive sectors, like for instance social or police control in the sex business. An imperfect separation of the functions resulting in a lack of clarity regarding the question of responsibilities, insufficient remuneration and an extensive bureaucracy are all considered as elements making up a risk situation at the level of the organisation. Important causes of corruption can also be found at the cultural level of the organisation. The source of corruption can, indeed, be located at the management level, when it does not assume its responsibilities and refuses to follow a clear policy concerning the corruption practices. A lack of encouragement of the staff, a negative work climate, a blind confidence in subordinates and a lack of reaction to undeontological behaviour may become fertile grounds for corruption.

Causes at the micro level

Some persons are more sensitive to corruption than others. A person can, moreover, find himself in a specific situation that invites or leads to corruption. The moral attitude of the person can also play a role in the emergence of corruption.

Strategies for fighting against corruption

Basic conditions for an anti-corruption project

➤ *The risk of a "Black Sheep" approach*

Considering the complexity of the phenomenon of corruption and its multiple causes, it is senseless to limit the reaction to certain aspects of the phenomenon. This approach, however, is seducing since it gives the organisation or the system the fallacious excuse to continue to function in the same way. When an organisation considers a case of corruption as an isolated case, we use the expression "*Black Sheep*," meaning it would be enough to remove the sheep from the herd in order to resolve all the problems. In most of the cases, however, because of the complexity of the phenomenon, a corruption problem is never *an*

individual problem, but an organisational one. That is why an anti-corruption project must aim at the *whole herd* and not only the *black sheep*.

➤ *The multi disciplinary and integrated approach of corruption*

The causes of the phenomenon of corruption are indeed located at *different levels*. Focussing on the reaction to the phenomenon via one level only seems thus useless.

An efficient strategy for fighting corruption tackles as many causes as possible and should be based on a multi disciplinary and integrated approach.

Elaborating such a strategy is not easy and requires a simultaneous activity at several levels. Bearing in mind an overall view and having a well thought out and prepared plan are obviously the required conditions to guarantee that the project succeeds. At the same time, a mechanism for a periodic evaluation and re-adjustment should be integrated.

The necessary integral and integrated character of an anti-corruption project implies that it focuses on preventive as well as repressive strategies.

An anti-corruption project takes each sector's specificity into account. The fact that the phenomenon of corruption requires a well thought out and integrated project does not mean, however, that it is possible to elaborate a general model for such a project that would be applicable to every situation.

An anti-corruption project must be applied at different levels and within different sectors (public and private). Consequently, it must be flexible enough and adaptable to different situations.

It is possible to start with a selection of a certain number of sectors particularly sensitive to corruption so that the anti-corruption project can focus on these sectors. The area of human trafficking and the economic sectors connected to it are good examples.

Preventive strategies

At micro level

Elaborating a genuine integrated project to fight corruption requires above all an appropriate political climate. A genuine policy to fight corruption can only be implemented when authorities assume their responsibilities and have clearly defined and verifiable competences.

Every anti-corruption project must be backed by a *general policy that clearly determines its policy*

objectives and takes into account the multi-dimensional character of the corruption issue. This implies that the will to integrate the attention for corruption within the general policy exists, besides the elaboration of a concrete legislation and the creation of services that fight corruption.

As the major part of the corruption facts are linked to public corruption, authorities can efficiently play a preventive role, which is very important.

An efficient and attentive administration wishing to pay attention to the elaboration of a public mechanism that inspires confidence and authority is indispensable. The importance of a governmental policy that evaluates the public administrations and their functioning (external audit) and introduces, if needed, some adjustments, should not be underestimated as a strategy to fight corruption. The correct functioning and transparency of the administration eliminates a lot of the germs of the phenomenon of corruption. The 8th International Anti-Corruption Conference (IAAC) concluded in Lima in 1997 that: “All governments should operate in a transparent and accountable manner at all levels, with the public having access to information to the maximum extent possible. They should ensure that public accounts are open to public scrutiny. The role of civil society is most crucial at the national and local levels, where participation should be fostered by providing open access to decision makers and the holding of public hearings in matters of importance.”

Transparency is also essential from a legislative point of view. The actual overabundance of laws and regulation often creates an inextricable judicial web that favours neither the citizens nor the control authorities.

Besides a solid legislative arsenal and the efficient functioning of public services in general, having a reliable control mechanism is of great importance. An efficient audit of the private institutions and public services plays a key role within the context of that control task.

Anti-corruption projects must be well documented with regard to the complexity of the phenomenon and be based on concrete figures. Until now, such figures were not available or are at least insufficient. It is thus necessary that the appropriate measures be taken in order to improve the quantitative vision on the phenomenon. An appropriate codification of criminal law files (in order to make the term *corruption* visible and no longer hidden by more general notions) and the establishment of an obligation of the police services or the Magistrates in charge of a corruption case to inform the central agency dealing with corruption would be a serious move forward.

At every level we also have the importance of scientific research and the exchange of information regarding corruption.

Finally, a vibrant civil society enabling accountability and scrutiny of public policy and officials is an important factor in any anti corruption strategy.

The meso and the micro level

➤ *Selection and training*

Within an organisation or a service, the prevention of corruption and corruptive behaviour first goes through the application of particular selection criteria while recruiting and selecting staff. These criteria should not exclusively aim at experience, but should also focus on integrity, especially when the persons involved will have to take up a post of confidence or accomplish tasks sensitive to corruption. A selection procedure may include an inquiry about the antecedents of the candidate, even with regard to her/his private life. When such an examination reveals antecedents such as dishonesty or in-opportune relations, the candidate should not be engaged. As the private life has to be protected, it is not easy to analyse antecedents. The question, which must be considered, is to know until where to go when analysing the past of a (candidate) State employee.

Introducing a system of transparency concerning the financial situation of the person can also be useful. It is true that this method will not enable the detection of illicit transactions, yet such a system can play a major preventive role. Moreover, the declaration of the person concerned can constitute an important piece of evidence within the context of a disciplinary or criminal law procedure. The idea defended by some is to centralise these declarations within a Cell that manages dynamically the patrimonial register and realises the coupling of data stemming from other authorities (police, etc.) so that this financial publicity benefits from a supplementary dimension. It goes without saying that the eventual repercussions of such a system on the protection of the private life as well as the location where such a service would be implanted within a global anti-corruption project should first be analysed.

As far as training is concerned, it is important that the rules and procedures concerning the functioning of the organisation be accessible for everyone. Within that context, ethical training and the creation of a balanced professional attitude deserve a particular attention. It is important that such training is not limited to the training phase but is followed up afterwards.

➤ *Optimisation of the organisational structure*

The administrative organisation or the organisational structure constitutes a major link of the whole anti-corruption project, which assumes an inventory of the departments sensitive to corruption within the organisation and an appropriate securing of these services. The members of an organisation or a public service should have an accurate description of their competences as well as a clearly elaborated description of their function. Everyone thus knows which are their own responsibilities, tasks and competences.

Within that context, an internal audit can be useful. A preventive audit can, indeed, enable the structural analysis of the vulnerable functions and lead to recommendations

for the organisation or guarantee the protection of these functions. The sole financial analysis of an organisation leads already to positive results in many cases. Such an audit could be realised by the organisation itself or, if the need arises, like in France or in Hong Kong, by a central anti-corruption service.

In order to reduce, as far as possible, the seduction factor, it is appropriate to introduce in certain cases a rotational system (rotation of the location or of the function) for public servants. Thanks to these measures lasting contacts with dishonest people, trying to subject people to inadmissible forms of influence (such as intimidation or financial corruption) would become more difficult. The rotational system is also guarantee for the public servant.

The reinforcement of the social control within the organisation (pride and peer control) may also play an important role in the prevention of corruption. This method avoids that public servants continue to work in an isolated way. A second form of internal social control uses teamwork. While working in teams of two or several persons, the seducing factor becomes restricted. This second option gives the opportunity to bow together over the problem and to find solutions without de-personifying the action of the public authorities.

Finally, at that level, it is appropriate to take a closer look at the detection of corruption thanks to the spontaneous denunciation of citizens. A mediation service could be created in order to control the correct application of the rules of the administrations and its abuse of power. Moreover, this service could also assume the communication with the citizen and take on the role of first filter. In order to guarantee the confidentiality of the citizen, the independence of the mediation service needs to be guaranteed.

➤ *Optimisation of the culture of the organisation*

As far as the cultural organisation is concerned, one should first of all encourage, within the organisation, the intention to be open. One has to admit that corruption can occur within every organisation and that it has to be thwarted via a whole series of measures. This point constitutes an essential pillar to the anti-corruption project.

The organisation of the external and internal information concerning corruption and the treatment of these files give to a large extent an answer to the need of transparency. It is in the interest of the organisation to inform citizens and organisations other than workers as much as possible of the recorded misdeeds.

One of the key instruments of anti-corruption projects can be located at the management level as such. The organisation is supposed to pursue its development and to verify that every worker participates in the realisation of a common objective. It is essential that the management feel that it is responsible for everything that is going on within its sphere of competences and that the organisation can easily designate it as responsible (management accountability). The leaders must indeed

implement a clear policy regarding the appropriate behaviour and set an example.

It is also important that (morally) distressed persons benefit from a discrete accompaniment within the organisation. At the same time, State employees could receive positive incentives such as a material reward. The absence of recognition on the field often leads to frustrated and deceived State employees that initially were motivated.

➤ *The elaboration of lines of conduct*

Besides the formal rules regarding the function and competence processes and dispositions, it is important to get down to the elaboration of lines of conduct that establish clearly and in a simple way the rules of an upright behaviour and specify the meaning of the legal dispositions that determine this theme.

Lines of conduct can overcome the problem of discrepancy between the law and its specific application in practice and generate the required clarity. These lines will only have a positive effect when their elaboration implies an open discussion with those who are obliged to abide by these rules.

These lines constitute an indication concerning the behaviour that a public servant should adopt both within the context of its relations with its colleagues as with the population. The agreements on the extra's and the donations could for instance be part of the lines of conduct.

Repressive strategies

The macro level: Criminal law and a repressive fight against corruption

An important part played by criminal law is to ensure that corruption is detected, pursued and punished. Criminal law is the ultimate remedy, even though it is a precious instrument in the context of the establishment of norms and their upholding. Moreover, criminal law functions repressively.

In order to improve the quality of inquiries in the corruption field, a service within the police could be specifically in charge of it. Anyway, it is appropriate to verify that the repressive anti-corruption service collaborates optimally with the different services of internal control as well as with the services that in one way or another are linked to the anti-corruption project.

The meso level: The formal control within the organisation

Besides the implementation of a social control system thanks to preventive strategies, the presence of a normal control system within the organisation seems necessary. Internal

horizontal control systems based upon the distribution of tasks between colleagues as well as a vertical internal control carried out by the services or functions ensuring the surveillance are thus necessary.

In this last case, however, the internal and external control services play an important role.

These services must be provided with power, must be familiarised with the organisation, show independency and have the necessary means and inquiry competences.

Internal contact points can turn out to be very useful at that level, as they allow to manage internal intolerable situations without necessarily reporting it to the superiors. It may even be envisaged to offer a certain form of protection to the persons involved in corruption yet disposed to reveal information about corrupt practices (whistle blowing).

Finally, the importance of disciplinary measures must be underlined. An administrative and disciplinary reaction to corruption offers indeed more possibilities than a strictly criminal law approach, as the criminal incriminations must not necessarily be proved. Within that context, disciplinary measures complete criminal law. It is important to react rapidly and carefully to eventual situations of abuse. The elaboration of an efficient disciplinary policy cannot be done in an isolated way. It has to be incorporated in an integrated anti-corruption project. The disciplinary measures often get stuck because of a lack of general vision concerning corruption and concrete measures at the organisation level.

Explanatory Paper 15

Money laundering, seizure of assets, financial investigations

General remarks

Trafficking in human beings, as defined by the UN Trafficking Protocol, is “transnational” in nature and a cross-border phenomenon. The majority of human trafficking cases involve organised criminal groups that engage in preparing, planning, directing or controlling criminal activities in several States. Usually, their effect, the exploitation of the trafficked person, occurs in another State than the one where that person has been recruited or first transported or harboured. Human trafficking as migration related crime brings aspects of the globalisation³³⁶ of crime to the foreground. The speed of communications between persons and the ease of movement of people, goods, money and information have not only changed dramatically, but also facilitated criminal action such as money laundering that has a negative impact on the international financial market, epitomising the globalisation of crime.

In the Financial Action Task Force Report (FATF) on money laundering typologies (2000 and 2001), “trafficking in human beings was noted as a growing source of illegal funds in last year’s exercise,”³³⁷ especially in relation to cash transaction, which remains the major form in which illegal funds are generated, especially in many regions of the world outside the FATF membership. Trafficking in human beings creates huge amounts of cash. Cash proceeds are usually found before or at the beginning of the laundering process (for example when sexual services of a trafficked person are paid) although laundering schemes have been noticed, in which proceeds had been converted back to cash in order to break the paper trail. The utility of cross border reporting requirements was mentioned by the FATF experts, but also a recent study conducted in Europe (“Money penny Project”) re-iterates the need for tracing cash movements across borders.³³⁸

³³⁶ “Globalisation” has been defined as “an evident loss of borders respect of everyday operations in different dimensions of the economy, of information, ecology, technology, trans-cultural conflicts and civil society (...). Money, technologies, goods, information, pollution, go beyond borders, as though didn’t exist. Even things, persons and ideas which Governments would like to keep out of their countries (drugs, illegal migrants, critics of the violation of human rights) find their way in (...) so globalisation translates into a killing of distance.” (Beck, U., *Che cos’è la globalizzazione. Rischi e prospettive della società planetaria*, Carocci, Roma, 1999, p. 39).

³³⁷ No. 52 of the report (http://www1.oecd.org/fatf/pdf/TY2001_en.pdf).

³³⁸ Directive 91/308/EEC,1 as amended, provides for Community-wide controls on currency movements in excess of EUR 15.000 when the transactions are made via the financial institutions. But a large sums of money of dubious origin are entering and leaving the Community which cannot be detected by this mechanism. Cash movements should be subject to the principle of obligatory declaration at the external frontiers, as suggested in the Report on controls on cross-border cash movements and the Proposal for a Regulation on the prevention of money laundering by means of customs co-operation COM (2002) 328).

Money laundering, seizure of assets, financial investigations

The Council Framework Decision of 19 July 2002 on combating trafficking in human beings (preamble; consideration 8) underlines the necessity of introducing sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime, such as Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union³³⁹ and Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime.³⁴⁰ In the latter the Member States agreed to make all serious offences, as defined in the Joint Action, predicate offences for the purpose of the criminalization of money laundering.

In recent years, there has been a trend towards a much wider definition of money laundering based on a broader range of predicate or underlying offences in order to facilitate the international co-operation in prosecuting organised criminal activities and confiscating the proceeds of crimes.

Money laundering should be criminalized worldwide not only on the basis of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention), but also in respect to the UN Convention against Transnational Organized Crime 2000 (the Palermo Convention). The Parties should apply the crime of money laundering to all serious offences with a view to including the widest range of predicate offences and should adopt legislative measures (similar to those set forth in the Vienna and Palermo Conventions) which enable their competent authorities to confiscate the proceeds from clearly defined money laundering or predicate offences.

An interpretative analysis of the European legal instruments shows that trafficking in human beings can be considered as a predicate offence of money laundering.

However, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering – as amended by Directive 2001/97/EC of the European Parliament and of the Council of 28 December 2001 – does not provide a homogenous list of crimes as predicate offence of money laundering.

The Directive establishes that predicate offences of money laundering should include at least trafficking in drugs (as defined in Article 3 of the Vienna Convention), activities of criminal organisations (as defined in the Joint Action 98/733), fraud (as defined in the Convention on the protection of the European Communities' financial interests), corruption and “an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State”. Before 15 December 2004, Member States shall amend the definition provided for in this last sentence in order to bring this definition in line with the definition of a serious crime in Joint Action 98/699/JHA. In any case they are free to designate any other offence as a criminal activity for the purposes

³³⁹ OJ L 351, 29.12.1998, p. 1.

³⁴⁰ OJ L 333, 09.12.1998, p. 1.

of the Directive. Present EU legislation does not contain a common substantial definition of money laundering and the range of predicate offences is variable within the European Union.

In relation to the possibility of including trafficking in human beings in the “list” of predicate offences of money laundering Article 3 (Penalties) of the Framework Decision on combating trafficking in human beings has to be taken into account. It establishes that each Member State shall take the necessary measures to ensure that an offence referred to this Framework Decision is punishable by effective, proportionate and dissuasive criminal penalties (which may entail extradition). In particular, each Member State shall ensure that the offence is punishable “by terms of imprisonment with a maximum penalty that is not less than eight years” where it has been committed in aggravating circumstances. Therefore it can be concluded, that trafficking offences, which usually generate substantial proceeds, are punishable by a severe sentence of imprisonment. But a clear qualification of human trafficking as predicate offence of money laundering in the Directive is needed and attention has to be drawn to the possibility of using the prevention system established in the Directive in order to combat human trafficking.

Furthermore, the Council Framework Decision of 26 June 2001 on money laundering and the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime³⁴¹ sets up some additional goals for prosecuting all types of crime which are committed for the purpose of obtaining a profit and shall comprehensively ensure the tracing, freezing, seizing and confiscating of the proceeds of crime.³⁴² The fundamental importance of this aspect is underlined by the provision on “value confiscation.”³⁴³ At international level, a mandatory provision applies to trafficking in human beings,³⁴⁴ but again a more transparent and clearer regulation could facilitate investigations in human trafficking cases.

Finally, various national legislators have introduced confiscation provisions requiring a less challenging evidentiary basis with regard to certain crimes. Even though the formulation of such provisions is different, all the formulations are based on the following concept: the persons convicted of certain serious crimes should have confiscated such property or pecuniary resources that are disproportionate to their present or past known income unless they are able to give a satisfactory explanation in that regard. In practice, this means an inversion of the “burden of proof” in cases of continuous criminal behaviour resulting from

³⁴¹ OJ L 182, 5.7.2001, p. 1.

³⁴² The direction already indicated by the Council of Europe Convention on money laundering, search, seizure and forfeiture of the proceeds of crime, signed in Strasbourg on November 8th, 1990.

³⁴³ “Legislation and procedures on the confiscation of the proceeds of crime also should allow, at least in cases where these proceeds cannot be seized, for the confiscation of property the value of which corresponds to such proceeds.”

³⁴⁴ Article 12 of the Palermo Convention: “States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention. 2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.” With regard to the relation between Convention and the Trafficking Protocol Art. 1 of the Protocol says that the offences established in accordance with the latter shall be regarded as offences established in accordance with the Convention.

membership in an organised criminal group.³⁴⁵ Such a way may be considered as well with regard to trafficking in human beings.

³⁴⁵ Examples of such provision is the Art. 12-*sexies* of the Italian Law No. 356/1992; this article establishes, in case of conviction for certain criminal offences, including participation in a Mafia-type organisation, extortion, kidnapping as well as a number of drug offences, mandatory confiscation of all monies, property and other pecuniary resources, which are under the direct or indirect control of the offender, when their value appears to be out of all proportions to his income and he is unwilling or unable to provide a satisfactory explanation. The "burden of a satisfactory explanation", becomes only effective for the offender, once prosecution has established his criminal liability for one of the offences mentioned in Art. 12-*sexies*, Law 356/1992. The Italian Constitutional Court (*Corte Costituzionale*) and Supreme Court (*Corte di Cassazione*) in various instances had to consider whether this article did comply with the presumption of innocence as provided by Art. 27 para 2 of the Italian Constitution. Both courts concluded that the presumption of innocence as a principle of criminal law was not applicable to Art. 12-*sexies*, Law. 356/1992. According to the courts, the purpose of the provision was not to sanction the offender, but rather to eliminate the resources for financing future criminal activities. The recent Italian law on trafficking in human beings (No. 228/2003) inserted in the Art 12-*sexies* also the mention of the offences related to trafficking in human beings and reduction in servitude or slavery.

Explanatory Paper 16

Restitution and compensation of victims

The issue of compensation as it has been addressed at EU level with regard to crime victims in general is highly relevant in the context of human trafficking. The presidency Conclusions of the European Council in Tampere 1999 called for the drawing up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs.

Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

A first step in this direction was made with the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings that apply to victims in general. This includes an obligation for Member States to ensure that crime victims can obtain a decision on compensation from the offender in the course of criminal proceedings. Member States shall also take measures to encourage the offender to provide adequate compensation to victims. Beyond these provisions, however, compensation to crime victims is not addressed.

The Council Framework Decision on the standing of victims in criminal proceedings covers the "penal part" of victim support and addresses the question of compensation from a limited and strictly procedural point of view only. In many cases, the victims cannot obtain compensation from the offender, for example when the offender cannot be successfully prosecuted or lacks the means to compensate the victim. In addition trafficked persons are often deported from the country prior to any criminal trial or civil procedure taking place and are unable to have their interest in obtaining compensation represented. Often legal assistance for gaining compensation, in either criminal or civil procedures, is not available. Other sources, such as compulsory or private insurance, may neither provide an adequate cover for the losses sustained by the victim. Consequently victims are in a very negative situation.

The Framework Decision on the standing of victims in criminal proceedings does not solve these problems as it includes only a mandatory provision for each Member State to ensure that victims are entitled to obtain a decision with reasonable time limits on compensation by the offender.

Directive on compensation

In order to further develop the relevant EU legislation, on 28 September 2001 the Commission presented a Green Paper on compensation to crime victims³⁴⁶ and, in fact, on 29 April 2004 the Justice and Home Affairs Council adopted the Directive on compensation to crime victims.³⁴⁷ It shall ensure that the compensation aspect is duly covered at European level. However, there is not any provision regarding the possibilities for the crime victim to get compensation from the offender.

The objective of this new Directive is limited to ensure that all EU citizens, and all legal residents in the EU, can receive adequate compensation for the losses they have suffered in case they fall victim to a crime within the EU. This objective is pursued through the creation of a minimum standard for State compensation to crime victims. The goals are:

- a. to ensure that the possibilities afforded in practice for the crime victim to get State compensation are not negatively influenced by the Member State in which the crime is committed;
- b. to facilitate access to compensation in situations where the crime took place in another Member State than that of the victim's residence (cross border situations).

In practice, the victims covered by the Directive will be able to apply for State compensation in all Member States (choosing between the State where the crime was committed and the State where the victim lives). Unfortunately, this new instrument will be applicable only to a part of the victims of trafficking: EU citizens or non-EU persons with a permit of residence in one of the Member States at the time of their victimisation.

Therefore, the majority of trafficked persons (third country nationals without a legal residence status) will not be included in the benefits of this system. More precisely, there will be two different channels for the compensation of the victims depending on their status and causing a discrimination between the victims of the same crime (not only the same type of crime, but also the same criminal conduct: the victims of the same offender will be treated in different way depending on their status as EU citizens or legal residents).

European Convention of 1983 on compensation to victims of crime

Looking at the Council of Europe, the European Convention of 1983 on compensation to victims of crime³⁴⁸ has to be mentioned, which sought to introduce a minimum standard for State compensation schemes.³⁴⁹ According to its Article 3 compensation shall be paid by the State on whose territory the crime was committed to nationals of the States party to this Convention and to nationals of all Member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed, but it does not

³⁴⁶ COM(2001) 536 final.

³⁴⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

³⁴⁸ <http://conventions.coe.int/Treaty/EN/Treaties/Html/116.htm>. 14 EU Member States are parties of the Convention and four of them signed it (source: <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>).

³⁴⁹ European Convention on compensation to victims of crime, Preamble, third consideration.

include any concrete measures to facilitate access to State compensation in cross border situations.

Domestic schemes

Individual European countries have developed State compensation schemes for victims of serious crime. At the same time, countries are beginning to develop and implement legislation for the seizure of criminal assets, which has the potential to access traffickers' assets for victims of traffickers.

In conclusion, it is evident that compensation is one of the essential steps for the social reintegration of the victims. Nevertheless, the possibility for trafficked persons of getting adequate compensation is not well developed at European level. A joint European effort could express particular solidarity with the trafficked persons without prejudice to existing national systems on compensation to victims of crime.

Glossary of abbreviations

BD	Brussels Declaration
EU	European Union
EC	European Commission
ECHR	European Court of Human Rights
FD	Framework Decision
ICCPR	International Covenant on Civil and Political Rights
ICMPD	International Centre for Migration Policy Development
IGO	Inter-Governmental Organisation
ILO	International Labour Organisation
IO	International Organisation
IOM	International Organization for Migration
NRM	National Referral Mechanism
NGO	Non-Governmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
SIS	Schengen Information System
THB	Trafficking in Human Beings
TrafProt	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

Annex 1

Members of the Experts Group on Trafficking in Human Beings

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French, Commissaire divisionnaire, chef de l'office central pour la répression de la traite des êtres humains. Entré dans la police en 1981, rejoint la Police Judiciaire dès 1982 où responsable pour plusieurs spécialités y compris lutte contre la délinquance financière, lutte contre le grand banditisme, lutte contre la criminalité organisée, lutte contre la traite des êtres humains.

Pippo Costella

Italian, Programme Director of Save the Children Italia, Expert on children rights. He has worked for several NGOs, international agencies and institutions in the Middle East, South East Asia and Europe. His experience involves, among other issues, shaping strategies and programmes addressing the protection of persons under 18 from different forms of exploitation and abuse as well as programmes addressing children in war and emergencies. He is currently a member of the Save the Children International Alliance task group on child trafficking. He is also an external expert consultant for the Italian Ministry of Foreign Affairs.

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Brice de Ruyver

Belgian, full professor at the Department of Criminal Law and Criminology at the University of Ghent in the field of criminal law and the director of the research group International Research Group on Criminal Policy (IRCP) at the University of Ghent. He has already acquired many years of experience in scientific research relating to drug policy, criminal policy, trafficking in human beings and international crime. He was the promoter of a large number of studies, among others on trafficking in human beings in the Philippines, Poland and Hungary for the European Commission (STOP programme). Nationally, Prof. De Ruyver was involved as an expert in Parliamentary Working groups on Trafficking in Human Beings (1993-1994), on Drug policy (1996-1997), on Organised Crime (1996-1997), and on the Dutroux case (1996-1998). Currently, he is an expert adviser to the Belgian Prime Minister in relation to drug policy, security, the police reforms and trafficking in human beings (2000-). Furthermore, he was the co-organiser of the International Conference 'Strategies of the EU

and the US in Combating Transnational Organized Crime', including the topic of trafficking in human beings, Flanders Expo, Ghent (January 2001). Internationally, among other things, Prof. De Ruyver was an expert in Europol Round-table conferences on trafficking in human beings and sexual exploitation in The Hague and in the East-West Colloquium on Cross Border Crime in Europe in Prague (1999).

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Italian. Sociologist. Did his B.A. in Geography in Chile, Masters in Sociology at the Latin American Faculty of Social Sciences (FLACSO), and PH.D. in Sociology in Canada. He has been university teacher in Chile and in Canada. From the 1960s Senior researcher in different international migration projects with the Economic Commission for Latin America and the FAO. Director for Latin America, the Caribbean and Francophone Africa at the World University Service in Geneva from 1976 to 1983. Since 1983 he has been with the International Organization for Migration in different senior positions both in the field and at Headquarters, including the position of Director of the Counter-Trafficking Service, responsible for the organisation's world-wide policy and strategy on trafficking issues. General rapporteur of the Brussels Conference on Trafficking in Human Beings in 2002. He has provided advice on counter-trafficking and migration issues to governments and parliaments of many countries in Europe, Asia, Africa and Latin America.

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Plamen Kolarski

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Martina Liebsch

German. Social worker; since 1984 working at different levels for Caritas Germany, currently at the Caritas Germany Brussels office. General professional experience: longstanding experience in the area of migration, as counsellor, head of a migration service, as project manager and lobbyist; intercultural and networking skills. Specific professional experience: First experiences as counsellor for trafficked women at the beginning of the 90’s. Since 1998 in charge of developing, setting up and coordinating a network of Catholic Organisations in Europe working against trafficking (Coatnet – Christian Organisations against trafficking), initiated by Caritas Europa. Since 2002 cooperation with CCME (Churches Commission for Migrants in Europe) in a project funded by the Stop II – programme and enlargement of the network to a Christian Network (CAT-Christian Action against Trafficking).

Michel Marcus

French. He is judge and Executive Director of the European Forum for Urban Safety, a non-governmental organisation with some 400 European member cities and regional authorities. The European Forum for Urban Safety endeavours to enhance safety policies based on the triptyque “prevention, repression and solidarity”; consolidate the role of cities and local representatives in local safety policy partnerships; secure the place of local safety policies within the construction of Europe. Secretary of the International Center of Montreal on Prevention of Criminality, Consultant expert to the permanent Conference of Local Powers and to the Parliamentary Assembly of the Council of Europe, Consultant of the European Commission, Counsellor of the Mayor of Dakar, President of the African Forum for Urban Safety, Member of ISPAC (International Scientific and Professional Advisory Council of the United Nations – Crime Prevention and Criminal Justice Programme), Lecturer at the National School of Administration, Paris and at the Institute of Criminology of the University of Liège.

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Nell Rasmussen

Danish. Head of the department on prostitution at the Danish Research and Communication Centre on Socially Vulnerable Groups – an independent institution under the Ministry of Social Affairs. Lawyer, additional degrees in criminology and journalism. She has many years experience in international advocacy and management of projects on women’s rights, including sexual and reproductive rights issues, latest as a senior advisor at the Danish Centre for Human Rights. She has worked with prostitution and trafficking issues in many relations

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Czech. Ministry of the Interior of the Czech Republic. 1995 - 2000 Human Resources and Education Department - in charge of international training since 2000 - Crime Prevention Department – Human Rights Unit – police ethics, trafficking in human beings. January 2001 - December 2001 seconded to the OSCE/ODIHR as senior advisor on anti-trafficking issues (Stability Pact Task Force on Trafficking in Human Beings). From November 2002 to May 2004 – project manager of the UN project “Criminal Justice Response to Trafficking in Human Beings in the Czech Republic”.

Gerda Theuermann

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Bulgarian. Currently enrolled in post-graduate studies at the University of Oxford, UK. Responsible for and involved in a number of research projects on trafficking in human beings for Anti-Trafficking Programme at CHANGE in London. Participated also in Project on "Reintegration of trafficked women from the empowerment perspective", implemented by OXFAM/NOVIB/HUMANITAS in partnership with CHANGE and the "Shehrazad-Combating Violence in the Name of Honour" Project. Furthermore she worked at the National Centre for Social Research, London, for the Animus Association, Rehabilitation Centre for Women, Adolescents and Children Survivors of Violence – Sofia, as well as for the La Strada Programme against Traffic in Women in Central and Eastern Europe. Other selected professional activities include: participation in the project "Responding to the Health Needs of Trafficked Women" of the Health Policy Unit, London School of Hygiene and Tropical Medicine (LSHTM), 2001/2002; consultation on the WHO's health and safety guidelines on interviewing trafficked women, produced by the team of the Health Policy Unit at LSHTM; Co-founder and Trustee of Axios Foundation, Bulgaria (1999-2002); Representative of CHANGE to the 57th and 59th United Nations Commissions on Human Rights; Lecturer on migration and trafficking for the Gender Education Project in high schools in Bulgaria, Project of Bulgarian Gender Foundation and Women Alliance for Development. Publications: (2003) *Co-operation: Practices and Constraints - A report on inter-agency collaboration in combating trafficking in Czech Republic, Greece, Italy and Romania*; (2002) *Combating Trafficking in Persons: A Directory of Organizations*; (2003) *Trafficking in the World Today* all with F. Luckhoo and for CHANGE, London; (2002) "NGO's response to Trafficking in Women", in *Gender and Development Magazine*, Oxfam, Oxford; (2000) "Bulgarian Policy toward Turkish Ethnic Minority in Bulgaria 1944-1984", *International Relations Magazine*, Sofia, Bulgaria; (2001) 'Case Studies on Trafficking in Women in Bulgaria', La Strada, Sofia, with M. Stateva; Editor of bimonthly newsletter on migration and human trafficking, produced by La Strada, Sofia, Bulgaria (April 1999-October 2000).

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German. Political scientist, long standing experience in anti-trafficking work within non-governmental and intergovernmental organisations, including grass-root counseling for trafficked persons, policy development, advocacy, legislative review, academic research, training of professionals and author/editor of numerous reports and manuals on this issue. Her career record includes: Co-founder of the La Strada NGO network in Central and Eastern Europe and Director of La Strada Czech Republic; General Secretary for

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Dutch. MA in social sciences; LL.M, specialised in international law and human rights. Senior staff member of the Clara Wichmann Institute, Dutch expert centre for women and law. Consultant in the field of trafficking in human beings. From 1987 to 1999 she worked as a staff member of the Foundation against Trafficking in Women in the Netherlands. As such, she was involved in the development of the Dutch policies on trafficking in women and in providing practical support to victims of trafficking as well as in lobbying, campaigning and networking on national, European and international level. Among other things she was actively involved in the NGO-lobby on the UN Trafficking Protocol as member and co-coordinator of the Human Rights Caucus, and in the drafting of the *Human Rights Standards for the Treatment of Trafficked Persons*, developed by the Dutch Foundation Against Trafficking in Women, the International Human Rights Law Group and the Global Alliance Against Trafficking in Women. In 1997 she carried out an international investigation into trafficking in women on the request of the UN Special Rapporteur on Violence Against Women, in collaboration with the Global Alliance Against Trafficking in Women (*Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*, M.Wijers & L. Lap-Chew, GAATW/STV, Utrecht 1997/1999). Over the past 17 years she published many articles, both on the national and international level, on, among others, providing support services to victims of trafficking, national and international strategies to address trafficking, decriminalization of prostitution, and national laws on sex work and trafficking and their impact on the women concerned. She is a member of the Working Group on the International Protection of Human Rights of the Dutch Section of the International Commission of Jurists.

Annex 2

Opinion of the Experts Group on Trafficking in Human Beings of the European Commission

On reflection period and residence permit for victims of trafficking in human beings³⁵⁰

Considering the negotiations at the Council of Europe for a European Convention on action against Trafficking in Human Beings and the participation of the Commission in the negotiations;

Considering the agreement on the necessity to integrate a human rights perspective into such a Convention, including specific attention on the position and needs of children consistent with the Convention on the Rights of the Child;

Considering the adoption by the Council of the European Union of the Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Recalling the Brussels Declaration on Preventing and Combating Trafficking in Human Beings as the final outcome of the European Conference on Preventing and Combating Trafficking in Human Beings-Global Challenge for the 21st Century from 18 to 20 September 2002;

Recalling the Brussels Declaration as setting out the basis for further action by the Commission;

Recalling the European Commission's Decision of 25 March 2003 setting up a consultative group, to be known as the "Experts Group on Trafficking in Human Beings" (2003/209/EC) and the mission of the group to issue opinions on its own initiative as set forth in Article 2, para 2;

³⁵⁰ The European Expert Group stresses the reality of trafficked persons being victims of severe crimes. The term "victims of trafficking" is further related to the Council Directive on the residence permit issued to third-country nationals (...) (14994/03). Nevertheless, the Group shares the concern that the use of the word "victim" is controversial because of its emphasis on vulnerability and powerlessness. Therefore, the term "trafficked persons" is being used in the opinion, which is in compliance with International Human Rights Documents, such as the UNHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002 (E/2002/68/Add.1).

The Experts Group on Trafficking in Human Beings issues the following opinion with a view to the negotiations in the ad hoc Committee on action against trafficking in human beings (CAHTEH) on a European Convention on Action against Trafficking in Human Beings and especially the role of the Commission in these negotiations.

Background

1. Granting a reflection period, followed by a temporary residence permit, including corresponding rights to trafficked persons – regardless of whether the trafficked person is able or willing to give evidence as a witness – assists Member States in the obligation to protect the human rights of trafficked persons and not to treat the trafficked person exclusively as an instrument for the prosecution.³⁵¹ Categorical protection of basic rights also serves to raise the trafficked person's confidence in the State and its ability to protect his/her interests. Once recovered, a trafficked person with confidence in the State would be more likely to make an informed decision and to co-operate with the authorities in the prosecution of traffickers. Special attention should be paid to child victims, i.e. persons below the age of 18, in that their best interests should be a primary consideration in all policies and procedures involving them.

Opinion

2. A reflection period should be granted immediately to all those who there is reason to suspect are trafficked. The purpose of the reflection period includes enabling identification of whether a person is trafficked, as well as granting the possibility for the trafficked person to begin to recover and make an informed decision about his/her options, including the decision on whether to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims.

3. The reflection period should be for not less than three months and should include the obligation to inform the affected person about and refer them to service agencies which can take care of him/her and provide him/her with appropriate assistance.³⁵² A period of three months is a minimum time frame in which to ensure that the presumed trafficked person receives appropriate assistance and support, such as secure housing, psychological counselling, medical and social services, and legal consultation. During this period, a risk assessment should be conducted.³⁵³ Moreover, in case of return, proceedings have to be

³⁵¹ International Covenant on Civil and Political Rights (ICCPR), Art. 7; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention against Transnational Organized Crime, Art. 7.

³⁵² The so-called “B-9 regulations” in the Netherlands is considered to be a good example: Under the B-9 regulation, a presumed trafficked person cannot be expelled or deported for a three months reflection period.

³⁵³ See Brussels Declaration, Article 13 on immediate victim assistance, last para: “ Protocols of minimum standards should be drawn up between law enforcement services and IOs and NGOs on the immediate treatment of trafficked victims. Without endangering the confidence a victim should have for an NGO, these standards would include at least:

- That law enforcement officers must recognise victims of trafficking as victims of serious crime that must not be re-victimised and must treat them in accordance with their human rights and in accordance with the

adopted that secure safe repatriation and promote social inclusion in the country of origin. These measures are pre-requisites for the trafficked person to reach an informed decision about his/her options. In the case of children, there should be the opportunity to extend the reflection period.

4. The residence permit should be granted to identified trafficked persons following the reflection period for a period of at least six months, with the possibility of renewal, irrespective of the capacity and/or willingness of the trafficked person to act as a witness.

Those trafficked persons who do not wish to testify as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection measures as trafficked persons willing to testify.³⁵⁴

5. During the temporary residence permit trafficked persons should have access to appropriate and secure housing, medical, psychological, social, legal and financial assistance, and should be authorized to have access to the labour market and to vocational training and education in order to enable them to recover and take back control over their lives and to promote their social inclusion and future prospects.

4. When the temporary residence permit expires, if no other kind of residence permit can be issued on the basis of ordinary national aliens' law, Member States should issue a residence permit on humanitarian grounds, especially in case of particularly vulnerable categories such as minors and victims of sexual violence or other serious human rights abuses, in particular if there is a reasonable ground to believe that the victim's life, health or personal liberty will be under threat upon return to his/her country of origin

6. Child victims of trafficking should equally be entitled to a temporary and/or permanent residence permit and the corresponding rights, independent of the child's willingness or capacity to co-operate with the authorities, consistent with the principle of the "best interests of the child". Limiting the possibility of the issuance of a residence permit for trafficked persons to adults could act as an incentive for traffickers to target children.

UN Protocol on trafficking in persons.

- That the safety of the victims and their families is the paramount consideration.
- That the investigator has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.

³⁵⁴ See Italian model "Article 18" of the Legislative Decree no. 286/98 now law no. 228/20 and UNHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council*, 20 May 2002 (E/2002/68/Add.1), Guideline no. 6.

Annex 3

Opinion of the Experts Group on Trafficking in Human Beings of the European Commission

On measures in the Council of Europe Convention on Action Against Trafficking in Human Beings to establish a Monitoring Mechanism³⁵⁵

Considering the negotiations at the Council of Europe for a European Convention on action against Trafficking in Human Beings and the participation of the Commission in the negotiations;

Considering the agreement on the necessity to integrate a human rights perspective in such a Convention, including specific attention for the position and needs of children consistent with the Convention on the Rights of the Child;

Recalling the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, as being the final outcome of the European Conference on Preventing and Combating Trafficking in Human Beings-Global Challenges for the 21st Century from 18 to 20 September 2002;

Recalling the Brussels Declaration as setting out the basis for further action by the Commission;

Recalling the European Commission's Decision of 25 March 2003 setting up a consultative group, to be known as the "Experts Group on Trafficking in Human Beings" (2003/209/EC) and the mission of the group to issue opinions on its own initiative as set forth in Article 2, para 2;

Noting the proposals in Articles 42 and 43 of the revised Draft of the Council of Europe Convention on Action Against trafficking in Human Beings to establish a mechanism for monitoring the implementation of the Convention by the Parties (GRETA);

³⁵⁵ The European Expert Group stresses the reality of trafficked persons as being victims of a serious human rights abuse and severe crimes. The term "victims of trafficking" is further related to the Council Directive on the residence permit issued to third-country nationals (...) (14994/03). Nevertheless, the Group shares the concern that the use of the word "victim" is controversial because of its emphasis on vulnerability and powerlessness. Therefore, the term "trafficked persons" is being used in the opinion, which is in compliance with International Human Rights Documents, such as the UNHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council*, 20 May 2002 (E/2002/68/Add.1).

Considering the need for a strong monitoring and supervisory mechanism;

The Experts Group on Trafficking in Human Beings issues the following opinion with a view to the negotiations in the ad hoc Committee on action against trafficking in human beings (CAHTEH) on a European Convention on Action against Trafficking in Human Beings and especially the role of the Commission in these negotiations.

Opinion

1. A body should be established to monitor the implementation of the Council of Europe Convention on Action Against Trafficking in Persons.
2. Members of such a body should be appointed in an open and transparent process which includes consultation with civil society. The composition of such a body should take into account a gender and geographical balance (including countries of origin, transit and destination), and represent a multi disciplinary expertise in trafficking in human beings, including expertise from civil society.
3. Each State Party should be required to provide regular and comprehensive reports to the body about the measures taken to implement each of the provisions of the convention. The body should be expressly empowered to seek and consider information from any source, including civil society, about the implementation of the Convention by State Parties.
4. The body should be mandated to review and analyze reports of the State Parties; make recommendations to State Parties to ensure better implementation of the Convention; visit State Parties and consider complaints alleging failures by State Parties to implement the convention.
5. The reports of its work (including recommendations to State Parties and conclusions on complaints) should be made public upon their adoption by the body, and submitted to the Council of Europe's Committee of Ministers. The Committee of Ministers should review and adopt the reports of this body and ensure implementation by State Parties of the body's recommendations.

Annex 4

Opinion of the Experts Group on Trafficking in Human Beings of the European Commission

In the Context of the elaboration of a new multi-annual program building an area of freedom, security and justice, the Tampere II Agenda

Considering the elaboration within the Council of the European Union of a new multi-annual program building an area of freedom, security and justice and the participation of the Commission in that process;

Recalling the broad consensus of governments, international organisations, non-governmental organisations and civil society that trafficking in human beings is a serious criminal offence that constitutes a violation of the dignity and rights of human beings;

Recalling Articles 29 of the Treaty on European Union and the conclusions of the European Council's meeting in Tampere in October 1999 referring to trafficking in human beings;

Recalling the European Commission's Communication on Tampere from June 2004 which calls for a realistic approach, taking account of economic and demographic needs, to facilitate the legal admission of immigrants to the European Union in accordance with a coherent policy respecting the principle of fair treatment of third country nationals and underlines the need for an integrated approach to combat trafficking in human beings;

Recalling the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, as being the final outcome of the European Conference on Preventing and Combating Trafficking in Human Beings-Global Challenges for the 21st Century from 18 to 20 September 2002;

Recalling the high importance given to the Brussels Declaration by the Commission;

Recalling the European Commission's Decision of 25 March 2003 setting up a consultative group, to be known as the "Experts Group on Trafficking in Human Beings" (2003/209/EC) and the mission of the group to issue opinions on its own initiative as set forth in Article 2 (2);

Concluding that significant progress has been made in the field of preventing and combating trafficking in human beings since 1999 at the level of the European Union as well as within the broader international context, manifested *inter alia* by the adoption of a series of framework decisions in the field of police and judicial co-operation, including a Framework Decision on the approximation of criminal law on trafficking in human beings, the support to

various projects in various geographical areas and the references made in the Constitutional Treaty agreed in Brussels on 18 June;

Noting that the Experts Group will provide proposals for the further development of fighting and preventing trafficking in human beings at the level of the European Union in a report that will be presented by the end of this year;

The Experts Group on Trafficking in Human Beings issues the following opinion, with a view to the elaboration of a new multi-annual program building an area of freedom, security and justice.

Opinion

As indicated above, significant progress has been made at European level in developing instruments and mechanisms to fight and prevent trafficking in human beings. In the context of elaborating a new multi-annual program building an area of freedom, security and justice (Tampere II-agenda), the Experts Group on Trafficking in Human Beings is of the view that the European Council should take stock of these developments and provide impetus for further work. In this respect, the Experts Group in particular wishes to point to the need for:

- the European Council taking a clear stand that trafficking in human beings is not primarily an issue of illegal migration but needs to be addressed as a serious crime and human rights violation, underlining the EU's commitment to an integrated and human rights based approach;
- The Tampere II-agenda to include a reference to trafficking in human beings as an impetus for further action at the level of the European Union;
- EU Member States to maintain their commitments made at the Tampere Council Meeting in 1999,³⁵⁶ in particular to promote regular and managed migration based on demand and need, including the demand for unskilled labour, which is gender sensitive and implies the establishment of clear and comprehensive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, society and governments.

³⁵⁶ Presidency Conclusions, Tampere European Council 15 and 16 October 1999: specifically conclusions Nos. 3, 22, 23, 26 and 48 (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm).

Annex 5

Report of the Consultative Workshop in the Framework of the EU Forum for the Prevention of Organised Crime

Brussels 26 October 2004

The European Commission (represented by Jürgen Merz) welcomed the Experts Group and participants. Marjan Wijers, as president of the Experts Group, explained the background and the work of the Experts Group. Hana Snajdrova introduced the methodology for the workshop (working groups).

Reports from the working groups to the plenary:

Group 1 – Guiding principles and cross-cutting themes

Participants expressed wide approval of the report and congratulated the Group. In particular the HR approach was much appreciated, as was the specific attention for children. The latter could do even more by further stressing a child rights approach and paying more attention to specific issues, such as identity thefts and forced marriages. Also the issue of self determination could be emphasised more. Participants supported the proposal for the development of a Human Rights impact assessment tool; it would be good if the report could elaborate more on how this could be done. Explicit attention should be paid to the issue of social inclusion and its link with empowerment. In the context of the issue of regular and managed migration the link with a human rights approach should be made. Also the gender aspect/vulnerability of minorities should feature more significantly.

It was suggested to specify more the rules and functions for the EU, in particular to translate the proposals into legally binding mechanisms. The need for specific allocations of resources to NGOs and for children should be stressed.

Participants largely supported the analysis of the Group in the definition chapter and thought it could even be formulated sharper, however, some of the participants felt that the chapter only addressed part of the definition of the Palermo Protocol and that there should be more emphasis on the purposes of the exploitation of the prostitution of others and other forms of sexual exploitation. In general participants were happy with the principles expressed but suggested to again look carefully at the language to avoid confusion. The fact that an element of coercion is not required in relation to children should be more clearly addressed. Moreover, specific reference should be made to internal trafficking

The connection of the report with the process of the Council of Europe Draft Convention should be clarified.

Although the report is directed towards the EU, participants felt that the report had a world wide application as opposed to Europe purely – a global impact. It would be good therefore to include mention of other countries outside the EU.

Concern was expressed about the link made in the section on human security between trafficking and extremism/terrorism. It was felt that this issue was more complicated and would need more clarification. The role and the function of the proposed Anti trafficking network would need more clarity.

Some participants felt that the report should address the different manifestations of trafficking more in detail, for example domestic workers of diplomatic personnel.

Finally, participants asked questions with regard to the future of the Experts Group and its possible role in monitoring the implementation of the proposals made.

Group 2 – Prevention

Participants felt that the report was much connected to the daily practice of addressing trafficking. It would be a useful tool and would offer a good basis for discussion at Member State level and translation into legally binding instruments.

With regard to the reflection period and residence permit, the relation of trafficking vs. irregular migration should be more elaborated.

The need for visibility of children and their special situation could be stressed more, in particular the difference between legal representation vs. a guardian and the issue of child protection systems in countries of origin should be mentioned.

Some participants felt that the role of demand and gender inequality should be addressed more clearly in relation to the prevention of trafficking for sexual exploitation.

The role of NGOs could be made more clear and visible. The need for protection of NGO workers and in particular the fact that they should not be forced to testify in court as currently happens in a number of Member States should be addressed stronger, as well as the need for adequate and sustainable funding by Member States.

More emphasis should be put on the issue of social inclusion, its connection with empowerment, and the fact that this process should already start in the country of destination. It would be appreciated if the issue of risk assessment could be more elaborated; a strong need was felt to develop standards in this regard in order to be clear about who should do this and how it should be done.

A reference was missed to the need for EU inter-service co-ordination and to include trafficking in the social dialogue.

Group 3 – Assistance and protection

The report was seen both as a good tool for advocacy work and as an orientation for those working with trafficked person. Moreover this report could be a basis to launch a debate in the Member States on which policies should be implemented. Taking the recommendations seriously would imply quite a change.

Participants expressed their appreciation for the positive and clear human rights perspective and the focus on empowerment and self determination. The latter could be expressed even stronger. Also the need for an integrated and multi-sectoral approach, in particular the establishment of institutional mechanisms of co-ordination between all involved actors, including NGOs, could be stronger emphasised, in relation to the Member States. There is not only a need for policies, but also for the allocation of budget for anti-trafficking measures.

There was a longer discussion on the proposals for a reflection period and a residence permit. Some participants expressed their concern that the “unconditionality” for a trafficked person to gain a residence permit would be an incentive for trafficking and irregular migration. Others felt that this unconditional approach to recovery is very positive and would lead to effectively combat trafficking.

The special aspects of trafficking in children should be emphasized more in the report. More over a clear distinction should be made between a legal representative of a child and a legal guardian.

More visibility should be given to the important role of NGOs. At the same time a clear description of their role should be given in distinction to other actors. NGOs should not be obliged to testify in court and should have the right of confidentiality.

Participants recommended that in terms of terminology and content the focus should be on social inclusion of trafficked persons. It should be highlighted that inclusion does not start after return to their country of origin, but begins in the country where they have been trafficked to.

It was felt that the ideas on the risk assessment should be further developed. There should be clarity on who does the risk assessment and on what criteria it is based. It would be appreciated if standards could be developed and also victims who cannot be witnesses would be entitled to a risk assessment prior to their return.

It would be good to prioritise the recommendations and make a distinction between the long, medium and short-term to give guidance for implementation.

There was a need for more knowledge gathering and research analysis of the impact of projects and policies at EU level. It was regretted that in the report EU projects were not analysed for their impact, although there is a clear need to synergise existing information.

Finally a reference to the Social Dialogue at EU-Level and the opportunities provided by it for anti-trafficking was missed.

Group 4 – Law enforcement strategies

Participants expressed their general satisfaction with the content of the report and the overall focus on a human rights approach. On the other hand, the gender aspect as structural element needs further emphasis. With regard to children in the context of law enforcement it is important to stress that they are represented and protected.

Participants also missed certain aspects, such as the role of transit countries and third countries, the differences between Member States and the need for appropriate staffing of Europol.

The importance of training and the positive effects thereof was underlined, including the need for special training with regard to children. More attention should be paid to parents exploiting their children and to collaboration between law enforcement and other agencies. A number of aspects should be stressed stronger, in particular the fact that we are dealing with serious crime, the importance of going after the proceeds of crime and the need for restitution of the victims. The issue of a “victim less approach” vs. the rights of the victim should be expressed more clearly.

Plenary session

Following the reports of the working groups, the Commission elaborated on the relationship between the report, COM and the future. The Commission’s decision to set up the Experts Group did mainly but not solely focus on the Brussels Declaration. The Experts Group is meant to advise the Commission and is mandated to issue opinions. Up till now it has issued three opinions. The Commission will need to analyse the report and the opinions. The report will act as a basis for a Communication of the Commission, but will not be the sole basis. Other elements such as the ongoing evaluation of the implementation of relevant EU legislation must also be taken into account. However, the spirit of the report will be reflected in the text of the Communication.

On behalf of the Experts Group Ms Wijers expressed her appreciation for all the useful and critical comments the participants had made. She ensured participants that the Experts Group would take full account of all the comments made in drafting the final report. Moreover, a report of the main issues discussed would be attached to the report.

The Commission indicated that in the 2nd half of 2005 the EU Forum for the Prevention of Organised Crime could be used again for the discussion of trafficking in human beings and thanked the participants as well as the Experts Group.

Annex 6

List of organisations/persons that participated in the consultative workshop or provided written comments on the Draft Report

Organisations/persons that participated in the consultative workshop:

Red Cross, ADORNA Daniela
Amnesty International, ALEGRE Susie
Hellenic Police, ANDREAKOU Antonia
US Department of State, ANGHA Negah
Turkish Permanent Delegation, ANGILI Sabri Tunc
Caritas Europa, BANDERA Natalia
European Women's Lobby, BJÖRK Malin
Rotterdam-Rijsmond Police, BOER Edwin
LÉFO, BOIDI Maria Cristina
Les Amis du Bus des Femmes, BOUCHER Claude
Tampep International Foundation, BRUSSA Licia
CNCA – *Associazione On the Road*, BUFO Marco
Global Alliance Against Traffic in Women, CHEW Choo Lin
Humanitas-BLinN, CLAASSEN Sandra
Ministry of Justice NL, CLIJNK Andy
European Women's Lobby, COLLINS Mary
Ministry of Justice BE, CONINGS Linda
Ralaheen Research, CONROY Pauline
Tampep Onlus – Torino, CORACI Grazia
Comitato per i Diritti Civili delle Prostitute, COVRE Pia
Child Focus, D'ANNA Sandro
International Organisation for Migration (IOM), DANZIGER Richard
Belgium Fed. Public Service Foreign Affairs, DARTOIS Philippe
DG of Turkish National Police Department for Foreigners, Asylum Border, division of Hum
Movements, DAYSAL Ramazan
Centre pour l'égalité des chances, DE FRANCESCO Paolo
Child Focus, DE PAUW Heidi
European Women's Lobby, DE TROY Colette
ECPAT Europe, DECLERCQ Katlijn
University of Ghent, DHONT Fleur
Queen's University Belfast, EBERHARDT Eva
Bundesministerium des Innern, EICKELPASH Jorg
European Women's Lobby, ERSBERG Sara
ERA, FRANCO Juliano
Associazione Differenza Donna, GARGANO Oria
Anti-trafficking assistance unit, OSCE, GOMES DE ARANJO Anelise

Proyecto Esperanza, GONZALEZ Marta
 Bulgarian Gender Research Foundation, GOTSXOVA Desislava
 Cabiria, GUILLMAUT Françoise
 Europol, HARVEY Steve
 Gaatw, HEIZELMANN Barbara
 Women's Council in Denmark, HUSMARK Birgitte
Centre pour l'égalité des chances, JANSSENS Stef
 Office of the Committee for European Integration, JASINSKI Filip
 Le Nid, JEKELER Sophie
 Kent Police, JOHNSON Andrew
 La Strada Ukraine, KALASHNYK Olga
 IOM, KEATING Tamara
 UK Immigration Service, KERRY Kevin
 Foundation Against Traffic in Women, KOOSTRA Trijntje
 Dutch Rapporteur on THB, KOSTER Dagmar
 Humanitas-BLinN, KROON Sanne
 Caritas Czech Republic, KRPALKOVA Jindriska
 Ministry of Justice (RO), LACRIMA Ciorbea
 Home Office, LAXTON Matthew
Centre pour l'égalité des chances, LE COCQ Patricia
 UK Delegation, LLEWELLYN-JONES Ben
 ALC, MARENGO Federica
Fondation Roi Baudoin, MESSIAEN Laurent
 US Mission to the EU, MEZNAR Marc
 Law Society Scotland, MILLER Claire
 Ministry of Justice (BE), MINET Jean-François
 MOENS Bruno
 Scot-Pep, MORGAN THOMAS Ruth
 Churches Commission for Migrants in Europe, MORITZ Torsien
 Catholic Relief Services, MUELLER Monica
 University of California (Los Angeles), MUSTO Jennifer Lynne
 IOM, NILSSON Helen
 UNICEF, NORDENMARK Anna
 Ecpat (NL), NOTEN Theo
 Payoke, NUYTS Gert
 Re-integrations Centre for Migrant Workers, PAPANTONIOU-FRANGOULI Maria
 Terre des Hommes, PARATA Salvatore
 GUE/NGL, PENNLERT Lina
 Terre des Hommes, PHIIIPPE Pierre
 Ministère de la Justice (LU), PHILIPPART Bernard
 International Labor Office, PLANT Roger
 Ban Ying, PRASAD Nivedita
 Kent County Council, PUGH Dafydd
 Foyer Jo Balan, RAMOS CUEVAS Christine
 Police Headquarters, Unit THB, REBROS Jaroslav
 European Parliament, REHFELD Anna
Associazione Gruppo Abele, ROBOTTI Nicoletta
 UNICEF Innocenti Research Centre, ROSSI Andrea

Istituto degli Innocenti, RUGGIERO Roberta
Associazione Tampep Onlus – Torino, SABBADINI Martina
 La Strada Bosnia-Herzegovina, SAKIC Izida
Donne in Movimento, SIESI Agnes
 Center against Violence and Human Trafficking, SINITSYN Fedor
 Ministry of Foreign Affairs (NO), SKARSTEIN Tove
 Home Office, SMITH Mark
Les Amis du Bus des Femmes, Sophie
 Payoke, SÖRENSEN Patsy
 Représentation permanente Grèce, SOTIROPULOU Sophia
 Save the Children, SUTTON Diana
 Nane Women’s Right Association, TOTH Gyorgky
 Mission of Croatia to the EU, TURKAY Christian
 Churches Commission for Migrants in Europe, VALLET Maryada
 Dutch Foundation Religious against Trafficking in women, VAN DE KAR Ivonne
 Portuguese Immigration Police, VAN DER KELLEN José
 Rotterdam-Rijsmond Police, VAN RIJSSEL Henk
Comité contre l’esclavage moderne, VAZ CABRAL Georgina
 US Embassy – the Hague, WEBSTER-MAIN Erin
Sec gen du Conseil JAI, WHITE Claire
 CDDIF – République Dominicaine
 Ministry of Public Order, VOULGARAKI, Charikleia
 European Commission, KALASHNYK Olga
 European Commission, HUBERT Agnes

Organisations/persons that provided written comments on the Draft Report

- European Women’s Lobby
- International Federation Terre des Hommes
- Italian National Childhood and Adolescence Documentation and Analysis Centre
- Silvia Scarpa, Ph.D. Candidate in Human Rights Law, Pisa, Italy
- UNICEF
- UNICEF Innocenti Research Centre

All written comments are published on the website of the European Commission,
 Directorate-General Justice, Freedom and Security:
http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.htm